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## Commerce & Labor Committee

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### ESSB 6035

**Brief Description:** Concerning retrospective rating plans.

**Sponsors:** Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, McDermott, Franklin, Keiser, Jacobsen, Fraser, Regala, Haugen, Murray, Kline and McAuliffe).

#### Brief Summary of Engrossed Substitute Bill

- Requires the Department of Labor and Industries (Department) to conduct an annual actuarial review of the industrial insurance retrospective rating program for five years beginning January 1, 2010.
- Requires sponsors of retrospective rating groups (sponsors) to provide a distribution plan to the Department upon enrollment and annually to employer members, and to report to the Department and employer members a detailed list of costs for which a portion of a refund was retained for administration, safety, claims assistance, and reserves.
- Provides that sponsors may retain a portion of a refund for other legal purposes if the employer member provides annual written authorization.
- Places limits on a sponsor's authority to place conditions on employer members or applicants with respect to reenrollment, membership, and contributions.

**Hearing Date:** 3/24/09

**Staff:** Joan Elgee (786-7106)

#### **Background:**

Legislation enacted in 1999 requires the Department of Labor and Industries (Department) to offer an industrial insurance retrospective rating plan (retro) for any qualified employer or group of employers. (Previously, the Department offered a retro plan but was not required to do so.) Participation in retro allows an employer or a group of employers to assume a portion of

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industrial insurance risk and receive premium refunds or be assessed additional premiums based on claim losses. Retro is designed to reward employers that are able to keep claim costs below a preselected level as a result of improvements in workplace safety and injured worker outcomes.

Participation in retro is available to any employer or group of employers who elect to participate and meet requirements set forth in law and rule. An entity sponsoring a group (sponsor) must obtain initial approval from the Department and meet certain criteria: (1) the sponsor must have been in existence for at least four years; (2) the sponsor must exist primarily for a purpose other than obtaining or offering insurance; (3) the sponsor must have a safety and accident prevention plan; (4) all employer members must be members of the sponsoring entity; (5) fifty percent of the original employers in the group must have been members of the sponsor for one year before the group's entrance into retro; (6) the group must be composed of employers who are substantially similar considering the services or activities performed by the employees; (7) the initial premium for the group must be at least \$1.5 million; and (8) the formation and operation of the group must seek to substantially improve workplace safety and accident prevention for the employers in the group. A safety plan must be submitted with the application.

A group sponsor selects a 12-month coverage period and chooses from among various plans. By rule, the Department makes three adjustments (refunds or assessments), the first at approximately nine months from the end of the coverage period and then at the end of the two subsequent 12-month periods. Claims with injury dates within the coverage period are considered at each adjustment. To reenroll, a sponsor must submit a new agreement and a safety report and must secure authorization from each employer member. Refunds are made from and assessments paid into the industrial insurance Accident Fund.

In February 2009 the Department discovered a computer coding error going back many years which resulted in higher refunds to retro participants than should have been made.

### **Summary of Bill:**

#### Intent.

Legislative findings are made regarding the miscalculation of refunds to sponsors of industrial insurance retrospective rating plans (retro). The Legislature finds a miscalculation depleted the Accident Fund of more than \$100 million and perhaps as much as \$150 million. The Legislature further finds that the miscalculation required base premiums to be set at a level higher than would otherwise be necessary, which caused non-retro employers to subsidize retro employers. Further, legislative findings are made that additional evaluations and increased transparency of the retro system are needed.

Legislative findings are also made that the primary purposes of the retro program are increasing workplace safety, preventing accidents, and improving worker outcomes. Further, the Legislature finds that any retro refunds not used to administer the group or support the purposes of the program belong to and should be returned to the employer members, except that employer members may authorize the use of refunds for purposes unrelated to worker safety and accident prevention, similar to the annual authorization required from the members of union organizations. Finally, intent is stated that to restore public confidence in the use of retro funds, the Legislature intends to make information concerning the sponsors' administration of the retro program available to the public.

### Actuarial Review.

The Department of Labor and Industries (Department) must conduct an actuarial review of the retro program annually for five years beginning January 1, 2010. The review must include an examination of: (1) the method used to calculate premiums, refunds, and assessments; (2) the impact retro refunds and assessments have on the Accident Fund; and (3) any other factors necessary to conduct a thorough actuarial review. The Department must report the contents of the review by December 31 of each year to the appropriate committees of the Legislature.

### Refunds.

Requirements are established for refunds made by sponsors of retro groups. Sponsors must distribute a refund or adjustment to member employers based on a distribution plan within a time period set forth in the plan. The plan must be provided to the Department upon enrollment and annually to the group members. The Department must make the plan publicly available, excluding financial information specific to individual employer members.

A portion of the refund may be retained for:

- Reasonable administrative costs. When a refund is distributed, the sponsor must disclose to employer members and the Department the purposes for which the costs were incurred.
- Safety plan costs. The Department must adopt rules to define the required elements of a safety plan and the sponsor must submit the safety plan to the Department annually.
- Claims assistance.
- Reserves. The portion of the refund retained for reserves must be for the sole and exclusive purpose of covering the costs of future potential retro assessments, penalties, or other unexpected costs incurred during the same or subsequent coverage year.

The sponsor must keep a detailed list of costs and report this list to the Department and employer members when refunds or adjustments are distributed.

A sponsor may also retain a portion of a refund due to a group member for any legal purpose if the member has provided written authorization. Any authorization is effective for not more than one year. The sponsor must inform the employer member of the amount withheld. The Department must develop a form authorizing the retention of refunds. The form must authorize the retention of either a percentage of the refund or a fixed dollar amount and inform the member that the authorization is irrevocable for one year. A sponsor may also use a form it has prepared which is approved by the Department.

A sponsor must comply with the refund requirements to be approved by the Department for future enrollment.

### Employer Member Requirements.

A sponsor may not require an employer member or applicant to agree to: (1) reenroll in the group's future coverage period; (2) maintain membership in the sponsor or any other organization beyond the coverage period, which includes the three-year period during which further refunds and assessments may be made; or (3) contribute funds to the sponsor or the organization in excess of amounts authorized.

**Rules Authority:** The bill contains provisions addressing the rule-making authority of the Department of Labor and Industries.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.