

# HOUSE BILL REPORT

## HB 1611

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**As Reported by House Committee On:**  
Labor

**Title:** An act relating to claims and compensation under the industrial insurance laws.

**Brief Description:** Addressing claims and compensation under the industrial insurance laws.

**Sponsors:** Representatives Reykdal, Dunshee, Sells and Pollet.

**Brief History:**

**Committee Activity:**

Labor: 2/5/15, 2/10/15, 2/12/15 [DPS].

**Brief Summary of Substitute Bill**

- Requires that attorneys' fees and costs be paid by the state fund or self-insurer, as appropriate, when the Board of Industrial Insurance Appeals issues certain orders regarding treatment or paying for treatment.

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### HOUSE COMMITTEE ON LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

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

**Background:**

Under the state's industrial insurance laws, employers must insure through the state fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are

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entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for total and partial permanent disabilities.

Workers, employers, and others may appeal decisions of the Department to the Board of Industrial Insurance Appeals (Board). If the Board reverses or modifies a Department decision and grants the worker additional relief, or if an employer or other party appeals and the Board sustains the worker's right to relief, the worker or the worker's attorney may apply to the Board to fix the attorney's fee. If the Board fixes the fee, it is unlawful for an attorney to charge or receive an additional fee.

If a self-insurer or the Department fail to comply with a compensation order which has become final, an action in superior court may be initiated.

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**Summary of Substitute Bill:**

Attorneys' fee provisions are modified for decisions concerning treatment or payment for treatment. If the Board reverses or modifies the Department's decision and orders treatment to be allowed or paid for, or if an employer appeals and a decision allowing treatment or payment for treatment is affirmed, in whole or part, the Board must fix a reasonable attorneys' fee and order reimbursement to the claimant of all reasonable costs incurred before the Board, including witness fees. The fees and costs are payable by the state fund or self-insured employer, as appropriate.

Attorneys' fees and costs must be paid within 60 days of the date the Board's order becomes final. Interest at 12 percent per annum is payable on fees and costs not paid within 60 days. The claimant may enforce the award through superior court, and the superior court may award reasonable attorneys' fees and reasonable costs. These fees and costs must also be paid by the state fund or self-insured employer, as appropriate.

**Substitute Bill Compared to Original Bill:**

A definition of benefits for purposes of self-insurer penalties for delay or refusal to pay was deleted. The specification that costs be reasonable was added.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2015.

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

**Staff Summary of Public Testimony:**

(In support) This bill will help minimize harm to workers. It's inexcusable that some self-insured employers fail to pay benefits. Medical bills stack up. It's also important for the attorney and doctor that benefits be paid. It's common for injured workers to have to borrow money and go on public assistance. Injured workers have to use attorneys to get the benefits they are entitled to but are not made whole because of the attorneys' fees. Doctors charge \$2,000 to \$3,000 for a deposition and in a treatment-only case, there is no money from which to recover fees and costs. Placing some downside risk on filing an appeal will maximize the Board's work.

(With concerns) Adding state fund costs is of concern. The definition of benefits is vague; for example, what is included in "medical services." Medical fees are not required to be reasonable.

(Opposed) The bill is trying to do two different things and violates the single subject rule. An administrative rule on penalties just went into effect and should be allowed to work. The bill just protects attorneys. When a case is open for treatment, usually the worker gets time-loss, so there is a source for paying the attorney. There is no concern that workers will have trouble finding representation. The bill won't change whether a case is appealed.

**Persons Testifying:** (In support) Representative Reykdal, prime sponsor; Joe Kendo, Washington State Labor Council; Kendall Ricanoscuito; and Doug Palmer, Washington State Association of Justice.

(With concerns) Vickie Kennedy, Department of Labor and Industries.

(Opposed) Kris Tefft, Washington Self-Insurers Association; Bernadette Pratt, Pratt, Day & Stratton PLLC ; and Bob Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.