SENATE BILL REPORT
SB 5381

As Reported by Senate Committee On:
Labor & Commerce, February 7, 2025

Title: An act relating to establishing department authority to ensure payment is received from the self-insured employer after a self-insured group or municipal employer has their self-insurer certification withdrawn.

Brief Description: Establishing department authority to ensure payment is received from the self-insured employer after a self-insured group or municipal employer has their self-insurer certification withdrawn.

Sponsors: Senators Conway, Hasegawa, Nobles and Saldaña; by request of Department of Labor & Industries.

Brief History:
Committee Activity: Labor & Commerce: 1/27/25, 2/07/25 [DP, DNP, w/oRec].

Brief Summary of Bill

- Requires the Department of Labor and Industries (L&I) to fulfill the workers' compensation obligations of any decertified self-insurance group or decertified municipal employer.
- Requires a decertified self-insurance group or decertified municipal employer to reimburse L&I for any payments made on its behalf.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.
Signed by Senators Saldaña, Chair; Conway, Vice Chair; King, Ranking Member; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.
Signed by Senators Braun and MacEwen.

Staff: Susan Jones (786-7404)

Background: Workers' Compensation—General. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disability benefits. The Department of Labor and Industries (L&I) administers the state's workers' compensation system. In Washington, all employers must provide workers' compensation coverage for their employees either by:

- insuring through the state fund by paying premiums to L&I; or
- qualifying as a self-insurer.

Self-Insured Employers. Self-insurance is a program in which the employer covers all costs associated with an on-the-job injury or occupational disease. Self-insured employers administer their own claims, and must maintain records of all payments and disputes. Self-insured employers may contract with certain third-party administrator to administer claims.

An employer may qualify as a self-insurer by establishing to L&I's satisfaction that the employer has sufficient financial ability to make certain the prompt payment of all workers' compensation benefits and all assessments which may become due from the employer. A self-insurer may be required by the L&I director (Director) to supplement existing financial ability by an escrow deposit, or a surety bond, or provide an irrevocable letter of credit. The Director may issue a certification to an employer qualified as a self-insurer. The certification remains in effect until withdrawn by the Director or surrendered by the employer with the Director's approval.

State law authorizes certain public employers to form self-insurance groups. There are three categories of self-insurance groups: (1) school districts or educational service districts, (2) public hospital districts or hospitals, and (3) private hospitals. A self-insurance group is considered to be the employer for purpose of workers' compensation, and must comply with certain L&I requirements.

Decertification. Certification of a self-insurer must be withdrawn when the self-insurer:

- no longer meets the self-insurer requirements;
- has an insufficient deposit;
- intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation;

- habitually fails to comply with rules and regulations of the Director regarding reports or other requirements necessary to carry out the purposes of this title;
- habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions;
- fails to pay an insolvency assessment; or
- is a municipal employer and has been found to have violated the self-insurer's duty of good faith and fair dealing three times within a three-year period.

The Director may delay withdrawing the certification of the self-insured municipal employer while the employer has an enforceable contract with a licensed third-party administrator that may not be legally terminated. However, the self-insured municipal employer may not renew or extend the contract.

Claims After Decertification. Self-insured employers have a long-term obligation to pay benefits during the lifetime of their claims. This obligation remains the employer's responsibility whether the self-insurance certification continues to be in effect or is surrendered or terminated. Whenever workers' compensation is not paid because of a self-insurer's uncorrected default, the compensation is paid from the medical aid and accidents funds, and any moneys obtained from the bonds or other security are deposited to the funds for the payment of compensation and administrative costs, including attorneys' fees.

A self-insurers' insolvency trust provides for the unsecured benefits paid to the injured workers of self-insurers for insolvent or defaulting self-insurers and for L&I's associated administrative costs. The insolvency trust is funded by an insolvency assessment levied on a post-insolvency basis and after the defaulting self-insured employer's security deposit, assets, and reinsurance have been exhausted. Insolvency assessments are imposed on all self-insurers, except school districts, cities, and counties.

Summary of Bill: If a self-insurance group or self-insured county, city, or other municipal employer has its self-insurer status terminated, L&I must fulfill the self-insurer's obligations, including paying compensation. The decertified group or municipal employer remains liable to L&I and must reimburse L&I for all payments made through quarterly charges.

L&I must adopt rules for these requirements, including the continuing obligations of decertified self-insurers and methods of how the self-insurers must meet the financial obligations.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is an agency request bill trying to address a narrow issue that was created by legislation in 2023. The bill directs L&I through rulemaking to determine how we would be able to both administer and pay claims from a self-insurer who is decertified. Once a claim is self-insured, it is always self-insured. L&I does not collect premiums to cover those costs. Municipal employers are not required to provide surety. The bill allows L&I to work out with those municipal self-insurers on how they will cover the expenses if they are decertified.

OTHER: The bill solves a problem or lays a groundwork for solve a problem through future rulemaking. The bill created a problem because it had provisions added late in the process that were not thought out. That bill triggered a need. The bill is simple but the underlying issues are complex as it relates to financing of potentially hundreds of open claims and benefit liabilities. There is another bill applicable to all self-insurers, including private sector self-insurers. There should be a broader conversation and the bill could have severe unintended financial consequences.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Tammy Fellin, Department of Labor & Industries.

OTHER: Kris Tefft, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying: No one.