State of Washington

Office of Program Research **House of Representatives** **August 11, 2010**

Summary of Initiative 1082

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1082. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Allows employers, individually or as part of a group, to secure workers' compensation with a private insurer beginning July 1, 2012.
- Eliminates the provision that State Fund workers pay one-half of the Medical Aid Fund premium.
- Requires the exposure medium used by each insurer (including the State Fund) to be total payroll.
- Creates a 12-member Joint Legislative Task Force on Private Competition for Industrial Insurance to develop proposed legislation that conforms current statutes to the initiative's provisions and directs the Legislature to adopt such supplemental legislation as may be necessary to fully implement the policy directives of the measure.

BACKGROUND

Initiative 1082

Initiative 1082 was certified for the ballot on July 13, 2010. The ballot title and summary prepared by the Attorney General, and amended by court order on April 26, 2010, are as follows:

> **Ballot Title**
> Statement of Subject: Initiative Measure No. 1082 concerns industrial insurance.
>
> Concise Description: This measure would authorize employers to purchase private industrial insurance beginning July 1, 2012; direct the legislature to enact conforming legislation by March 1, 2012; and eliminate the worker-paid share of medical-benefit

premiums.

Should this measure be enacted into law? Yes [ ] No [ ]

Ballot Measure Summary
This measure would permit certification of private insurers as industrial insurance insurers, and authorize employers to provide state-mandated industrial insurance coverage through an “industrial insurance insurer” beginning July 1, 2012. It would establish a joint legislative task force to propose legislation conforming current statutes to this measure’s provisions, and would direct the legislature to enact such supplemental conforming legislation as necessary by March 1, 2012. It would also eliminate the worker-paid share of medical-benefit premiums.

Workers' Compensation

Nearly all employers in the state must provide industrial insurance through the State Fund administered by the Department of Labor and Industries (Department). Employers meeting certain qualifications, however, may self-insure. Washington is one of a small group of states, known as "exclusive fund states," that do not allow private insurers to provide industrial insurance.

The Department classifies State Fund employers based on the degree of hazard, and for nearly all employment classifications, the Department calculates premiums based on hours worked. State Fund employers pay premiums into the Accident Fund and the Medical Aid Fund and deduct half of the Medical Aid Fund premium from the pay of each worker. (State Fund and self-insured employers, as well as workers of both, pay premiums into the Supplemental Pension Fund.)

Benefits for injured workers include medical benefits, partial wage replacement benefits (time-loss and pensions), and permanent partial disability awards. The Department determines eligibility for benefits and otherwise administers State Fund claims. Self-insurers are authorized to perform some claims administration functions that are performed by the Department for State Fund claims.

A retrospective rating plan (retro) is available to State Fund employers, either individually or as part of a group. Entities must meet certain criteria to sponsor a group. Participation in retro allows an employer or a group of employers to assume a portion of industrial insurance risk and receive premium refunds or be assessed additional premiums based on claim losses.

The Board of Industrial Insurance Appeals (Board) decides appeals of Department decisions on industrial insurance claims. The Board is funded from the Accident and Medical Aid Funds and an administrative assessment paid by self-insurers.

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Regulation of Private Insurance

The Insurance Commissioner (Commissioner) regulates private insurers, such as companies engaged in automobile, life, and title insurance businesses, in the state. Insurers must obtain a certificate of authority from the Commissioner. The Commissioner's powers and duties include the adoption of rules, suspension and revocation of certificates of authority, issuance of licenses to sell insurance, review of rates and contracts, and issuance of cease and desist orders regarding unfair methods of competition and unfair or deceptive acts or practices. Insurers pay a regulatory assessment to cover the costs of the Commissioner.

SUMMARY

Intent

Findings are made regarding private sector competition in providing workers' compensation coverage. The initiative's purposes are to:

- maintain existing benefit levels for injured workers while improving their opportunity to return to work;
- as a result of private sector competition, eliminate the requirement that workers pay one-half of their medical coverage for on-the-job injuries;
- create an efficient and cost-effective system for the benefit of both employers and workers by competition through a choice of insurance providers;
- provide workers the benefit of safety systems developed by both the private sector and government;
- improve the state's economic climate by allowing the private sector to provide industrial insurance with appropriate standards and oversight; and
- eliminate the state's monopoly by providing employers choices for industrial insurance coverage.

Private Insurance

Beginning July 1, 2012, an employer's options for securing industrial insurance include insuring with a private industrial insurance insurer (insurer), in addition to insuring with the State Fund or, if qualified, self-insuring.

Qualifications.

Insurers must hold a certificate of authority from the Insurance Commissioner (Commissioner). To receive a certificate, an insurer must meet the requirements to be licensed to sell insurance

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and meet the applicable insurance and industrial insurance laws. The Commissioner must certify that the insurer has the capacity to provide benefits, adequate safety engineering, loss prevention, and claims management services for all employers the insurer will insure. An insurer must maintain a location in the state where benefit applications may be made and maintained with the Commissioner, and a list of locations and telephone numbers where information about claims may be obtained.

Rates.

The Commissioner must designate a licensed rating organization to file a manual of classifications, rating plans, and policy forms and provisions. Insurers must be a member of the rating organization. Commissioner preapproval of manual rates filed by the rating organization is not required before use of the rates by insurers. Insurers may request approval of uniform percentage deviations from the manual rates.

Claims Administration.

Insurers administer claims without involvement by the Department of Labor and Industries (Department).

An insurer must notify the employer and injured worker:

- of its decision whether or not to pay benefits within five days of making a decision;
- each time the insurer decides to pay time-loss or pension benefits; and
- at intervals not to exceed 30 days of any medical services approved.

Notices must include an explanation of the potential impacts of the decision on the worker, the rates of the employer, and the right to appeal.

An insurer has the same rights and responsibilities as the Department with respect to appeals.

Administrative Costs.

An Industrial Insurance Administrative Fund is created for the expenses of the Commissioner and the Board of Industrial Insurance Appeals with respect to specified duties. Insurers pay assessments to cover the administrative costs of the Commissioner. The assessment must be in an amount bearing the same ratio to the total administrative costs that each insurer's adjusted premium bears to the total premium of all industrial insurance insurers. Insurers may be assessed a minimum as determined by the Commissioner, but not to exceed $500. The assessment may not exceed 4 percent per year of the total taxable industrial insurance premiums for the preceding year.

Group Plans.

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Plans offered to an employer group must meet the following criteria:

- The employers in the group must be members of an organization that has been in existence for at least four years and exists primarily for a purpose other than insurance;
- The employers must be substantially similar; and
- The formation and operation of the group program in the organization will improve accident prevention and claims management.

Benefits.

Insurers must provide the same benefits as required for State Fund employers and self-insurers.

Other.

Nothing in the initiative prohibits or regulates the payment of dividends and savings on unabsorbed premium deposits. The Commissioner must establish an assigned risk plan for all insurers. The Commissioner is given rule-making authority with respect to issuance of certificates of authority, rates, the assigned risk plan, and dividends and savings.

Medical Aid Fund Premiums

The provision for State Fund workers to pay one-half of the Medical Aid Fund premium is eliminated.

Exposure Medium

The exposure medium used by each carrier, self-insurer, or State Fund to provide insurance must be based on payroll and is not subject to any payroll limitation.

Task Force

A 12-member Joint Legislative Task Force on Private Competition for Industrial Insurance (Task Force) is established. The members, appointed by the Lieutenant Governor, are:

- one member each of the House of Representatives and the Senate;
- four employer members, of which at least one is an employer with fewer than 20 employees, at least one represents an association with a retrospective rating program, and at least one is a self-insured employer;
- four employee members, of which at least one is employed by an employer with fewer than 20 employees and one is an employee of a self-insured employer; and
- two insurer members.

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The Task Force must work with the Commissioner and the Department to develop proposed legislation to conform current statutes to the initiative's provisions and provide its recommendations to the Legislature by December 1, 2011. The Legislature must adopt such supplemental legislation as may be necessary to fully implement the policy directives of the initiative by March 1, 2012.

Effective Date:

The initiative takes effect 30 days after the election, except for section 7, specifying the criteria for group plans, and section 8, allowing an employer to secure industrial insurance with a private insurer, which take effect July 1, 2012.

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