

COMPETITION FOR WORKERS' COMPENSATION INSURANCE

BACKGROUND:

Since 1911, Washington state has operated a workers' compensation insurance program through the Department of Labor & Industries. The government is the only entity through which workers' compensation insurance may be purchased. In the 1970s, the Legislature began allowing very large companies to self-insure instead of purchasing coverage through the government. There are about 400 self-insured companies in Washington, representing more than 800,000 employees.

In the 1980s, efforts to allow private insurance companies to sell workers' compensation insurance in Washington were nearly successful. After narrowly defeating a "privatization" bill in the Legislature, proponents of the government monopoly created the Retrospective Rating program. This program provides an opportunity for employers to earn a refund of a portion of their workers' comp premiums if the premiums exceed losses. It has been a successful public/private partnership for nearly 30 years, and has consistently resulted in safer workplaces and lower base workers' comp rates for all employers.

Unfortunately, the government is still the insurer. Decades of mismanagement and inefficiency at the Department of Labor & Industries have resulted in a high-cost system with the highest rate of lost time for injured workers in the country. Administrative expenses have spiraled out of control, our pension rate has increased more than 300% in a decade, and the Department is increasing taxes by nearly \$120 million in 2010.

Forty-six states in the U.S. currently allow private insurance companies to sell workers' compensation insurance. In West Virginia, which privatized in 2005, rates are down 30%. In Oregon, where private insurers compete with the state government, workers' compensation rates have not increased in 20 years.

THE SOLUTION:

Allow private insurance companies to sell workers' compensation insurance in Washington.

- Taxpayers are fed up with high costs and increasing taxes, but currently have no alternative insurance option.
- The Department of Labor & Industries has repeatedly demonstrated an inability or unwillingness to get costs under control.
- The Department is undermining the Retrospective rating program – one of the few things that works to lower costs.
- We need a private insurance option to keep the public insurer honest.



RETRO

BACKGROUND:

Retrospective rating programs have been under attack by labor unions, trial lawyers and “progressive” interest groups for more than a dozen years. Legislative efforts to undermine retro programs have failed, but the creation of a retro “study group” has led to a number of changes at the Department of Labor & Industries which will dramatically affect retro groups and employers.

In the past, Legislators eager to prove their worth to their liberal allies have advanced proposals to cap the amount of refunds groups like BIAW can keep in administering retrospective rating programs. When the “cap” idea failed, they tried to limit what retro groups can do with the money refunded by L&I – money which belongs to the ratepayers, not the government. More recent attempts sought to impose unnecessary regulatory and reporting requirements on retro groups.

Newspapers saw through these transparent acts of political retribution. Multiple newspapers editorialized against the legislative proposals, with comments such as “Democratic lawmakers disingenuously target employer retro pools,” and “Bill is Democrats’ attempt to silence building industry association.”

The Department of Labor & Industries recently made two regulatory changes to retro rules which have cut available retro refunds for employers by half. Additional recommendations by the agency will be contemplated by the Legislature. If adopted, these changes would eliminate the incentive many employers have to participate in retro, compromising the overall viability of all retro programs.

THE SOLUTION:

Don’t fix what’s not broken.

- Retro has existed for more than 25 years and is widely described as a success story for employers, workers and the state. It has proven to be highly effective in encouraging employers to provide safer workplaces and return injured workers to the job sooner.
- Retro allows employers to receive a refund on their industrial insurance premiums if their claims costs are less than premiums paid.
- Retro employers voluntarily sign contracts with sponsoring Associations to administer their workers’ compensation claims. In return, the Associations collect an administrative fee from the employer members for the services provided, which often include:
 - *Workplace safety assistance
 - *Light duty/return to work programs
 - *Claims management
- There are more than 17,000 businesses in Retro programs now, more than 60 Retro groups, and plenty of competition. Retro represents 48% of the total state fund premium.
- Organized labor groups maintain that “public” money shouldn’t go back to retro associations....but it’s not public money. It is a return on a premium overpayment, not unlike an IRS refund. It belongs to the employers.
- Progressive groups also complain that refund money is being used for politics. But once the retro association receives payment for providing the services for which they are contracted, the association has a right to spend it in any manner it sees fit. It’s not the government’s job to tell any organization how they can and cannot spend their money.
- Labor groups argue that the administrative fees collected by BIAW and other groups are too high and should be limited. But competition exists in each industry class – if an employer is unhappy with the program, the fees, the services or any aspect, the employer can find another program. Participation in retro is 100% voluntary.

CONTRACTOR LIABILITY

BACKGROUND:

During the past three legislative sessions, bills to require mandatory new home warranties have been introduced by Legislators seeking to provide better consumer protection for home buyers. In reality, the bills have merely provided clearer and easier paths to litigation, increasing liability for contractors and proposing to make insurance unaffordable or impossible to obtain.

House Bill 1045 proposed to mandate a four year warranty with water penetration issues covered up to ten years. It also provided a simpler path to sue builders. Senate Bill 5895 also proposed to mandate a warranty as well as third party inspections. The bill would have raised contractor bonds from \$12,000 to \$24,000. The final warranty bill, House Bill 1393, also contained troubling warranty provisions.

Proponents of new home warranties make comparisons to the condominium market, where warranties are mandatory. However, the cost of liability insurance for all builders is extremely expensive for condo contractors. The warranties proposed by the Legislature would be uninsurable for single family home builders. This means the warranties would not be backed by a third-party insurance company – just as they are not in the condo market.

BIAW has historically and consistently opposed mandatory warranties because the lack of insurability will force many small contractors out of business.

THE SOLUTION:

BIAW and other construction-related interest groups have worked on legislative proposals to develop an alternative dispute resolution process for homeowners which can occur without unnecessary litigation.

Legislation supported by BIAW would establish a contractor board within the Attorney General's Office. The board would investigate home construction disputes and collect information about contractor complaints.

This approach would provide better protection for consumers than current law, and ensure that quality contractors – regardless of size – can stay in business.



TAXES & FEES

BACKGROUND:

Homebuilding has carried the state's economy on its broad shoulders for the last several years. In 2007, new home construction provided 121,431 full-time jobs and generated billions of dollars tax revenues at the federal, state and local levels. This occurred despite an equally consistent rise in housing prices. Much has changed in the new home construction industry since 2007. The housing bubble burst and the economy has dived into a full blown recession, with the construction segment losing 50,000 jobs.

The homebuilding industry has a proven track record of providing full-time employment and generating tax revenues. The State must act to ensure that new construction rebounds. Homebuilders in Washington pay more in taxes and fees than almost any other state in the nation. With the new construction market at a near standstill, state and local tax revenues are drying up. B&O taxes, sales taxes, property taxes and hosts of other revenue sources dry up when new construction swoons. To stimulate housing and the construction industry, the state Legislature should pass legislation to implement an impact fee moratorium to reduce the cost of housing and spur construction. At a minimum, the Legislature should pass legislation to delay the collection of impact fees from time of permitting to time of occupancy. Delaying or temporarily eliminating impact fees will help homebuyers, positively impact the construction industry, and will increase much needed revenue streams to local and state governments.

THE PROBLEM:

- **Impact fees and taxes raise prices.** Impact fees are assessed against the builder or developer and passed on to the buyer in the purchase price. As an element of the purchase price, impact fees increase the assessed value of all homes, thus increasing property taxes for all homeowners.
- **Impact fees are collected up front**, either at plat approval or when the building permit is issued. As a general rule, the earlier in the development process the fee is collected, the greater the effect on the total cost of the home. This is because the additional cost of the fee, added into the price of the land, increases the builder's borrowing costs which are then multiplied as they are carried through each transaction in the process. Impact fees ultimately cost homebuyers thousands of dollars when collected at the earliest stage of the process.
- **School impact fees** in many people's opinion are unconstitutional. Under the State's Constitution, it is the State's primary obligation to fully fund schools. School impact fees are imposed and collected locally. The State should relieve local jurisdictions of having to make up inadequate school funding via school impact fees. Furthermore, these fees are often imposed on those with no impact such as a retired couple downsizing to a new home, but not collected from a family with kids moving into a resale home. Finally, impact fees have proven to be an inadequate source of school funding.

THE SOLUTION:

- **The long-term answer is to replace impact fees, specifically school impact fees, with a broad-based funding source**, such as the Real Estate Excise Tax, State Sales Tax or existing broad-based State revenue sources.
- **Place a two year moratorium on GMA impact fees. HB 3088**
- **Move the collection of impact fees to time of occupancy**, saving homebuyers from paying unnecessary upfront carrying costs.

CONSTRUCTION STORMWATER

BACKGROUND:

Construction stormwater is regulated twice under the federal Clean Water Act—through state permits and local erosion ordinances. Ecology is responsible for both. It issues state permits and municipal permits (local erosion ordinances are based on the municipal permits). In December, 2005, Ecology adopted a revised **state permit**—the Construction Stormwater General Permit that applies to all sites over an acre and those under an acre in a subdivision. The permit requires detailed plans, treatment, inspections, sampling, and recordkeeping. The state permit is due for revision and reissuance in 2010.

January, 2007, Ecology adopted three new **municipal permits**—one for Eastern Washington, greater Western Washington, and the Puget Sound region. The new permits are required of all urbanized areas, which includes over 100 cities and counties (only Seattle, Tacoma, King, Pierce, Snohomish and Clark County were under the previous permit). The new municipal permits require these cities and counties to adopt comprehensive and restrictive stormwater ordinances in the next year or two. The ordinances must include an extensive stormwater approval process for construction, as well as on-site plans, treatment, inspections, sampling, and recordkeeping for all construction sites. Seattle, Tacoma, King, Pierce, Snohomish, and Clark County must also require low impact development where feasible.

THE PROBLEM:

Ecology estimates that the state permit costs *each small site* \$3,460 a year, but this *does not* include the hefty cost of developing the stormwater plan, implementing stormwater controls, and revising the plan during the course of construction. Unfortunately, WAC 173-226-120 does not require Ecology to include these costs in its Economic Impact Analysis (EIA) because they are minimum federal requirements. Thus, Ecology only has to include costs for requirements that exceed the federal minimums—*even though Ecology is responsible for administering and enforcing the entire permit*. As a result, the costs are vastly underrated. Because Ecology is allowed to cherry-pick costs used in the EIA, fewer exemptions and flexible standards are allowed for small business. This is a key issue given that the state permit is due for revision in the next year and small construction businesses are struggling to stay afloat.

Another burden on small contractors is the annual fee assessed by Ecology. In October, Ecology increased stormwater fees to \$454, which are charged *annually*. Ecology also eliminated back-end proration of permit fees. Thus, if a project terminates only a few months after paying the full annual fee in August, it will not receive a prorated refund, even though Ecology is providing no services in return. This also means identical construction projects could be charged vastly different fees depending on when they are built. The annual fee system is costly, complicated, and unfair for small businesses and seasonal projects.

THE SOLUTION:

- Add a new section to RCW 90.48 that requires full analysis of costs of the general permit, including all costs resulting from other state and federal mandates included in the permit. The stormwater permit EIA should resemble the SBEIS provisions contained in RCW 19.85.030 and 19.85.040.
- Amend 90.48.465 to clarify that construction projects are only required to pay a one-time fee related to the costs incurred by a project. **SB 6257**