SB 5463, "Good Faith and Fair Dealing"
Myth vs. Fact

SB 5463 was heard in the Labor & Commerce Committee on 2/4. Many claims were made about the bill, self-insured employers, their handling of workers' compensation claims, and the perceived necessity to apply the 2023 law (HB 1521) to all private self-insured employers.

SB 5463 is not a "Fix"

- SB 5463 was described as if it is a simple technical fix bill, cleaning up an omission from the 2023 legislation limiting the duty and penalties to municipal self-insured employers.
- However, this limitation was a deliberate choice of the Legislature after extensive debate, and the "three strikes" decertification penalty was introduced at the same time as limiting the bill to municipals.
- The bill arose from a dispute between a firefighters' local union and one or more cities. One of those cities has voluntarily left self-insurance since 2023, and the other one is leaving self-insurance in April.

L&I already is a "two-tiered system" of claims handling

- It was suggested that SB 5463 cures an unfair "two-tier system" of self-insured claims handling between public and private sector employers.
- However, the workers' compensation system has many considered differences in claims handling rules.
- The State Fund, which covers 75 percent of workers, is not under the duty of good faith and fair dealing. It does not regulate itself, it does not audit itself, there is no mechanism to file a complaint for poor claims handling, and there are no penalties available to a worker for poor claims handling.
- If L&I takes over the claims handling of a decertified employer, it will not manage those claims under the same "duty of good faith and fair dealing" that led to decertification.

L&I rules did not remove fundamental ambiguities

- It was suggested that since L&I has adopted clarifying rules since 2023, there is no risk to expanding the obligation to private employers.
- However, L&I's rules do not address the underlying law's two fundamental ambiguities – what it means in practice to "coerce" a worker to accept less benefits than otherwise entitled, and what it means to give "equal consideration" to the interests of the worker and the employer. As made clear by the tenor of committee testimony, in practice, good faith disagreements about the entitlement or amount of benefits are likely to draw allegations of bad faith as there are no built-in disincentives not to file complaints and seek penalties.

The financial penalty of decertification is unworkable for private employers

- If the Department decertifies a private self-insured employer on three administrative findings of violation in three years, which could arise within the context of thousands of open claims and thousands of claims decisions, it will treat the employer as in default.
- It will move to liquidate the collateral (bond or letter of credit) the employer is required by law to hold to back its financial obligations to its workers.
- It will make claims against any re-insurance the employer may have secured to further back its obligations, but will have full control over the management of these claims.
- This is totally unworkable as merely the risk of administrative decertification will make it much riskier, speculative, and expensive for employers to secure the financial backing of their programs they are required to hold for the benefit of the worker.
- This was acknowledged in 2023 as the "three strikes" provision was not extended to private sector firefighter employers, even though the duty was.