



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 1277 (Substitute S-1 as reported)
Sponsor: Senator Mark C. Jansen
Committee: Commerce and Tourism

(as passed by the Senate)

Date Completed: 6-23-08

RATIONALE

Legislation enacted in the mid-1980s significantly restructured Michigan's workers' compensation system to address chronic delays within the decision-making process, particularly at the appellate stage, as well as complaints about costs to employers. The 1985 amendments to the Worker's Disability Compensation Act included the replacement of hearing referees with the Board of Magistrates, replacement of the former appeal board with the Appellate Commission, and creation of the Qualifications Advisory Committee (QAC). Subsequently, Executive Order 2003-18 abolished the Appellate Commission and the QAC, and transferred their statutory powers and duties to a newly created Commission and Committee. The Executive Order retained the Board of Magistrates but reduced its size. The members of all three entities are appointed by the Governor, and the responsibilities of the QAC include recommending qualified individuals for appointment to the Board of Magistrates and the Appellate Commission. Unlike the appointments to the Board and the Commission, however, the Governor's appointments to the Qualifications Advisory Committee are not subject to the advice and consent of the Senate, although both the Act and the Executive Order require that employer interests and employee interests be represented equally on the QAC. To help ensure a balance of interests, some people believe that the Senate's advice and consent function also should extend to members of the QAC.

CONTENT

The bill would amend the Worker's Disability Compensation Act to provide that, effective October 1, 2008, an appointee to the Qualifications Advisory Committee would be subject to the advice and consent of the Senate.

The bill also would make the following changes in the Act, which would reflect current law under Executive Order 2003-18:

- Changing the number of Committee members from six to 10.
- Changing a quorum of the Committee from four to six.
- Requiring a vacancy on the Committee to be filled by the Governor so that employer and employee interests continue to be equally represented, and requiring a vacancy to be filled for the remainder of the unexpired term.
- Requiring the Governor to appoint a Committee member to serve as the chairperson at the pleasure of the Governor.
- Allowing, rather than requiring, Committee members to be reimbursed for necessary expenses, and making reimbursement subject to available appropriations.

MCL 418.209

BACKGROUND

The Workers' Compensation Qualifications Advisory Committee must consist of individuals who have experience in the area

of workers' compensation. Members are appointed for four-year terms and vacancies on the QAC must be filled so that employer and employee interests continue to be equally represented. Commissioners serve without compensation but may be reimbursed for their expenses. In addition to giving the Governor lists of qualified candidates for appointment to the Board of Magistrates and the Appellate Commission, the QAC must review the productivity and caseload of the Appellate Commission and the Board of Magistrates annually, and recommend to the Governor any increase or reduction in the number of commissioners or magistrates.

The Workers' Compensation Appellate Commission is a body of five attorneys who are appointed to four-year terms. Members may be reappointed but a commissioner who served as a member of the Appellate Commission created under the Act or under the Executive Order for a combined total of 12 or more years may not be reappointed. To be eligible for appointment, an individual must successfully complete an interview with the QAC and either have at least five years of legal experience in the field of workers' compensation or successfully complete a written exam developed by the QAC. The Qualifications Advisory Committee must evaluate the performance of each appellate commissioner at least once every two years, and submit a report to the Governor. The Appellate Commission has the authority to review orders and opinions of the Board of Magistrates. Orders of the Director of the Workers' Compensation Agency, including orders regarding redemption agreements and lump sum applications, the payment of fees for attorneys and physicians, and employers' self-insured status, also may be appealed to the Commission.

The Workers' Compensation Board of Magistrates originally consisted of 30 members but Executive Order 2003-18 reduced that number to 26. Magistrates are appointed for four-year terms and may not be reappointed after serving 12 years. Magistrates must be licensed attorneys and either pass an examination or have five years of experience in workers' compensation. Magistrates decide claims at the formal hearing level of the contested claims process (when a claim for benefits is not voluntarily paid). Magistrates also are

responsible for hearing disputes that meet the requirements for the Small Claims Division, and approving the settlement of workers' compensation claims.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Qualifications Advisory Committee essentially serves as the "gatekeeper" for appointments to the Board of Magistrates and the Appellate Commission. Those entities are responsible for deciding whether injured workers and their dependents are entitled to compensation for wages, medical expenses, therapy, and other costs. These decisions affect not only the quality of life of individuals and families, but also the cost of doing business for employers. To ensure that neither employees nor employers are treated unfairly, both the Workers' Disability Compensation Act and Executive Order 2003-18 mandate that the interests of both groups be equally represented on the Qualifications Advisory Committee.

The bill would strengthen this delicate balance, and help ensure accountability, by making appointments to the QAC subject to the advice and consent of the Senate. The current lack of advice and consent diminishes the Senate's authority to approve magistrates and appellate commissioners, because those candidates are selected from lists supplied by the QAC. This represents a flaw in the checks and balances of the appointment system, which the bill would remedy.

Opposing Argument

Since the Governor's appointments to the Board of Magistrates and the Appellate Commission already are subject to the advice and consent of the Senate, extending this requirement to the Qualifications Advisory Committee would be unnecessary and redundant. The Governor's own Executive Order reiterated the statutory requirement that employer and employee interests be equally represented on the QAC, and added the requirement that vacancies be filled in a manner that retains equal representation.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.