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BILL ANALYSIS

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Senate Bill 419 (as enrolled)
Senate Bill 420 (as enrolled)
Senate Bill 421 (as enrolled)
Senate Bill 422 (as enrolled)
Sponsor: Senator Frederick Dillingham
Senate Committee: Human Resources and Senior Citizens
First House Committee: Appropriations
Second House Committee: Labor

PUBLIC ACT 114 of 1989
PUBLIC ACT 115 of 1989
PUBLIC ACT 116 of 1989
PUBLIC ACT 117 of 1989

Date Completed: 7-12-89

RATIONALE

Public Act 103 of 1985 made a number of changes in the Worker's Disability Compensation Act to address complaints about delays and other problems within the workers' compensation hearing and appeal process. At the time, there was a backlog before the appeal board of 8,000-10,000 cases. Among the 1985 changes was the creation of an appellate commission to co-exist with and then replace the appeal board, in the expectation that the board would have eliminated the backlog by its scheduled expiration on July 1, 1989. (The board is responsible for reviewing the decision on petitions filed by March 31, 1986, while the commission reviews cases filed after that date.) It is reported now, however, that some 6,000 cases remain to be decided by the board. Rather than simply extending the life of the board, it has been suggested that the size of the board be increased, and that incentives and productivity standards be built into the system to expedite the review of the backlogged cases.

final decisions, would exist from July 1, 1991, to October 1, 1993. Cases that remained before the board after October 1, 1993, would be decided by the worker's compensation appellate commission that was created by Public Act 103 of 1985.

Senate Bill 419

Board

A majority of the 45-member appeal board that would be created as of July 1, 1989, would have to be members in good standing of the State Bar of Michigan. Five members would have to represent employee interests, five would represent employer interests, and 35 would represent the general public. Board members would have to devote their entire time to and personally perform the duties of the office, and could not engage in other business or professional activity.

CONTENT

The bills would amend the Worker's Disability Compensation Act to replace the workers' compensation appeal board that is scheduled to expire on July 1, 1989, (and that currently contains 30 members) with a new 45-member appeal board that would expire on June 30, 1991, and whose members would be subject to productivity standards. A subsequent appeal board that consisted of five "permanent members", plus "adjunct members" who would receive fees for

With the advice and consent of the Senate, the Governor would have to appoint the members for a term ending June 30, 1991. A vacancy would have to be filled for an unexpired term in the same manner as the original appointment. A member appointed to fill a vacancy, who had not previously served as an appeal board member before July 1, 1989, would not be subject to the bill's productivity standards until the first full period of the standards occurring after his or her appointment.

The Governor would have to designate the

-S.B. 419-422 (7-12-89)

chairperson of the board to serve at the pleasure of the Governor. A board member could be removed by the Governor for good cause. A member would no longer be qualified to serve as a member if the chairperson certified that the member had not met the productivity standards.

Productivity Standards

Beginning July 1, 1989, each board member, except the chair, would have to produce 36 written opinions, decisions, or dissents each six-month period. Members also would have to participate as a second or third panel member on additional cases during each period as directed by the chair.

The minimum standard would have to be reduced proportionately for a member who was absent from work for two weeks or more due to illness or disability resulting from pregnancy, childbirth, or any other medical condition.

At the end of each six-month period, the chairperson would have to certify whether each member had met the productivity standards.

Repeal

The bill would be repealed on June 30, 1991 (pursuant to Senate Bill 420).

Proposed MCL 418.252

Senate Bill 420

Under current law, the existing appeal board is scheduled to expire as of July 1, 1989, or when there are no more cases to be decided by the board, whichever occurs first. The bill would eliminate that board on July 1, 1989. The bill also would set an expiration date for the appeal board that Senate Bill 419 would create, and for a section of the Act governing the existing board that Senate Bill 421 would amend; these sections would be repealed as of June 30, 1991, or when there were no more cases to be decided by the appeal board, whichever occurred first. In addition, the bill would delete the July 1, 1989, repeal of sections that pertain to the existing board. (Under Senate Bill 422, those sections would be repealed on October 1, 1993, or when there were no more cases to be decided by the appeal board, whichever occurred first.)

The Act provides that if any cases are remanded to the appeal board by a court, or remain to be decided by the board, after the board no longer exists, the cases are to be decided by the appellate commission. The bill provides, instead, for those cases to be decided by the appeal board that Senate Bill 419 would create. Cases that were remanded to the new board, or remained to be decided by the new board, after that board ceased to exist, would be decided by the subsequent board proposed by Senate Bill 422.

MCL 418.266 et al.

Senate Bill 421

The Act gives the chairperson of the board general supervisory control of the assignment of work of the board and its employees, requires that the chairperson preliminarily review matters before the board to see if they can be disposed of by arbitration or in some expeditious manner, and requires the chairperson to exercise his or her powers and duties for the purpose of disposing of the cases to be heard by the appeal board not later than July 1, 1989. The bill would refer to the disposition of cases by the appeal board that would be created under Senate Bill 419, not later than June 30, 1991, when this section would be repealed.

MCL 418.261

Senate Bill 422

Board

Beginning July 1, 1991, if any cases remained to be decided by the appeal board that Senate Bill 419 would create, a new appeal board would be created. The board would consist of five permanent members appointed by the Governor with the advice and consent of the Senate, representing the general public, and qualified adjunct members. Permanent board members would have to devote their entire time to and personally perform the duties of the office, and could not engage in other business or professional activity. A vacancy would be filled for the unexpired term in the same manner as the original appointment.

The chairperson of the board, who would be designated by the Governor, would have to

establish and maintain a list of qualified adjunct members. Each member of the appeal board created under Senate Bill 419, as of June 30, 1991, who had met the productivity standards for the previous two years, would be qualified as an adjunct member. The chairperson also would have to select additional persons as adjunct members. An additional adjunct member would have to be an attorney licensed to practice in Michigan, a former or retired workers' compensation magistrate, or a former or retired workers' compensation administrative law judge.

Upon application for qualification as an adjunct member, an individual would have to indicate a designation as an employer representative or an employee representative. The Department of Labor would have to resolve questions concerning members' qualifications or the appropriateness of a designation.

The bill would re-enact existing provisions concerning the administrative responsibilities of the chairperson, including the requirement that he or she preliminarily review matters before the board to determine if they could be disposed of by arbitration or in some expeditious manner by the board.

Board Decision-Making/Fees

Beginning on July 1, 1991, all cases pending before the board would have to be assigned to a panel of two adjunct members, including at least one attorney. Except as otherwise provided, all assignments would have to be on a random basis. Each panel would be composed of one member designated as an employee representative and one designated an employer representative. The chairperson could refuse to assign cases to an adjunct member if the chair determined that the member had too many undecided cases already assigned.

In assigning cases to panels, the chairperson would have to pass over an adjunct member if there were any indication of a potential conflict of interest. Upon being assigned a case, each member would have to review it immediately to determine if there were potential conflict and, if a conflict were discovered, notify the chairperson immediately. The chairperson would be required to disqualify an adjunct member if the member could not impartially hear the case, including a case in which the

member: a) was interested as a party; b) was personally biased for or against a party or attorney; c) had been consulted or employed as an attorney in the matter in controversy; or d) was a partner of a party, attorney for a party, or member of a law firm representing a party within the preceding two years. If a conflict of interest were discovered, or a member were disqualified, the chairperson immediately would have to reassign the case.

Cases would have to be assigned to a two-member panel of adjunct members in pairs of two cases, with one member having primary responsibility for each case. The adjunct members could consult with each other with respect to their cases.

The decision reached by the assigned panel members would be the final decision of the board. If members could not decide, the chair would have to assign one of the general public permanent members as the third member to review the matter. The third member would have to choose between the two decisions of the assigned members. The decision of the third member would be the decision of the board.

If one panel member had decided the case for which he or she had primary responsibility, the second panel member would have 30 additional days to decide his or her assigned case. If the case were not decided within the 30 days, the chairperson would have to assign one of the permanent members as the second panel member to review and decide the case. If the new panel could not reach a decision within 30 additional days, the chair would have to assign one of the other permanent members as a third panel member.

When the board had issued a final decision in both cases in a pair of cases assigned to a panel of adjunct members, each panel member would have to be paid a fee of \$1,000. The chairperson could increase the fee paid to panel members for an individual pair of cases if, after written application by the members, the chair found that one or both of the cases were unusual and required an exceptional amount of time and effort by the members.

Effective Date/Repeal

The bill would take effect July 1, 1991.

The bill, and sections of the Act governing the operation of the board, would be repealed as of October 1, 1993, or when the Governor advised the Secretary of State that there were no more cases to be decided by the board, whichever occurred first. (The sections in question specify that the board is an independent body; provide for the salary and traveling expense reimbursement of board members; allow the board to grant additional time to file a claim for review; and require the board to review orders promptly, and announce in writing its findings of fact and conclusions of law.)

Cases that were remanded to the board by a court after October 1, 1993, would have to be decided by the appellate commission. The appellate commission also would have to decide any cases that remained to be decided by the board on the date the bill was repealed. Any review of such cases by the commission would have to be according to the law applicable to reviews conducted by the board.

Proposed MCL 418.253

FISCAL IMPACT

Under Senate Bills 419, 420, 421, and 422, approximately \$90,000 would have to be added to the annual board cost for each additional full-time member. This provides for the \$45,000 annual salary and other administrative support needs. The 30-member workers' compensation appeal board has been disposing of cases at an average rate of 1,600 to 2,000 cases each year for the last several years. As of March 1989, the board had a little more than 6,000 appeals on hand. The 1988-89 annual cost of supporting the 30-member appeal board is \$2,509,300. The estimated annual cost of supporting a 45-member board during the 1989-90 fiscal year would be \$4,457,500.

ARGUMENTS

Supporting Argument

The delay inherent in a backlog of nearly 6,000 cases is simply intolerable and a disgrace to the system. Moreover, it imposes a grave injustice on the injured workers who must wait years for a final resolution of their claim. Clearly, the 1985 amendments have not effected the anticipated improvements, since far more cases came into the system than were foreseen at

that time: reportedly, nearly 5,000 unexpected new appeals were filed before the March 31, 1986, deadline and, without those filings, the board would now have a backlog of 1,400 rather than 5,900. The bills' two-layer approach would address the remaining backlog as quickly and efficiently as possible, without sacrificing competency for the sake of expediency. By retaining the board's current functions for two more years, while expanding its size by 50%, the first stage of the proposal should increase the board's productivity while avoiding the administrative delays that could arise from immediately implementing a new system. (The proposed productivity standards also would be consistent with the minimum quotas instituted within the last year or so, which currently require board members to produce six decisions, opinions, or dissents per month.) The second part of the proposal, establishing a new panel system, would assure quick elimination of any remaining backlog. The proposed productivity standards, however, should provide the incentives needed for board members to work expeditiously.

Opposing Argument

The bills propose an unnecessarily complex resolution to a situation that calls for a simple, short-term solution. Rather than providing for a larger board that would have only a two-year grace period and then be succeeded by an entirely new panel system, the bills should simply extend the existing board for three years. In the first place, appointing 15 new board members could take six to nine months, leaving only 15-18 months for the larger board to do its work. If qualified people could, in fact, be found to take a job of such limited duration, they would not have enough time to eliminate the backlog. In the second place, the proposed panel system undoubtedly would be the subject of a legal challenge. Regardless of the merits of such a challenge, any judicial review would cause a delay, especially if an injunction against implementing the panel system were issued, and any delay would circumvent the goal of expediting resolution of claims.

Response: It is anticipated that the enlarged and extended board under Senate Bill 419 would dispose of the backlog, making the board under Senate Bill 422 unnecessary. It would be important to have the subsequent board as a back-up, however, in case the expanded board failed to eliminate the backlog.

Opposing Argument

Senate Bill 422 could be unconstitutional because it would, essentially, change the rules in the middle of the game. People who have filed between 1986 and the present are expecting, as well as entitled to, a certain kind of review, but would be receiving something entirely different under the proposed panel system. In addition, with cases being assigned to a virtually unlimited number of adjunct members, there would be little likelihood of consistency between panel decisions.

Response: It is not clear how review by the board under Senate Bill 422 would differ substantively from review by the existing board or by the board under Senate Bill 419. In each instance, a case would have to be assigned to a two-member panel that included one employer representative and one employee representative. Provisions of the law concerning evidence, written opinions, responsibilities of the board chairperson, and judicial review would be retained or re-enacted. Furthermore, the law entitles a party to file a claim for review, but not review by a particular appeal board.

Opposing Argument

The exceptions to the productivity standards in Senate Bill 419 are impractical and unnecessarily rigid. A board member should not be disqualified if he or she fails to meet the standards because of a death in the family, for example. Rather than limiting the exceptions to those spelled out in the bill, the bill should allow an exception to be made for other reasons approved by the board chair.

Opposing Argument

Instead of creating an entirely new appeal board, Senate Bill 419 should simply extend the existing board, to avoid an administrative nightmare within the system. If a new board were created on July 1, it would be necessary for the current board to complete the work on the cases before it by that date. If it failed to do so, the parties to a pending case could go to court and ask for a whole new decision, on the ground that the board before which their case was pending no longer existed.

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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.

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 420

Analysis First

See SB419

SFA BILL ANALYSIS

Senate Bill 420

Analysis Enrolled Analysis

See SB 419

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 421

Analysis First

See SB 419

SFA BILL ANALYSIS

Senate Bill 421

Analysis Enrolled

See SB 419

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 422

Analysis First

See SB 419

SFA BILL ANALYSIS

Senate Bill 422

Analysis Enrolled

See SB 419