



Ohio Legislative Service Commission

Final Analysis

Julie A. Rishel

Am. Sub. H.B. 15

128th General Assembly

(As Passed by the General Assembly)

(Excluding appropriations, fund transfers, and similar provisions)*

Reps. Sykes, Dodd, Bolon, Boyd, DeBose, Domenick, Dyer, Foley, Harris, Koziura, Letson, Luckie, Mallory, Moran, Stewart, Szollosi, Ujvagi, Weddington, B. Williams, S. Williams, Yates, Yuko

Sens. Buehrer, Faber, Gibbs, Grendell, Niehaus, Harris

Effective date: June 30, 2009; certain provisions effective September 29, 2009; contains item vetoes

ACT SUMMARY

- Creates in the state treasury the "Deputy Inspector General for the Bureau of Workers' Compensation and the Industrial Commission Fund" and requires the Inspector General to use the Fund to pay the costs incurred by the Deputy Inspector General for the Bureau of Workers' Compensation and the Industrial Commission in the performance of the Deputy Inspector General's duties.
- Specifies that the Fund consists of moneys deposited into it from the Administrator of Workers' Compensation and the Industrial Commission in accordance with the act's requirements.
- Makes the existing Surplus Fund an account within the State Insurance Fund.
- Eliminates the requirement that 10% of the money paid into the State Insurance Fund be set aside to create the Surplus Fund and the other limits specified for the amount of money that must be allocated to the Surplus Fund.
- Allows the Administrator to transfer a portion of the State Insurance Fund to the Surplus Fund Account as the Administrator determines is necessary to satisfy the

* See the Legislative Service Commission's Budget in Detail spreadsheet and Comparison Document, As Enacted versions, for analysis of such provisions.

needs of the Surplus Fund Account and to guarantee the solvency of the Fund and the Account.

- Changes the date by which the Bureau of Workers' Compensation Board of Directors Nominating Committee must submit to the Governor an initial list of names to fill a vacancy due to term expiration on the Bureau of Worker's Compensation (BWC) Board of Directors to at least 30 days prior to the term expiration, rather than within 60 days after the term expires as under current law.
- Specifies that if the Governor appoints an individual to fill a vacancy resulting from the expiration of a term, the individual appointed begins serving as a Board member when that term expires or, if the term already has expired, immediately upon appointment by the Governor, whichever occurs later.
- Changes the date by which the Board of Directors must submit to specified entities the annual actuarial report required under continuing law to a point in time that is on or before the first day of November following the year for which the valuation was made, rather than not later than the first day of September as under current law.
- Requires the Board to submit a report annually on the performance and value of each investment class to the Workers' Compensation Council in addition to other entities already specified in continuing law.
- Would have created various notification requirements relating to the group rating program (VETOED).
- Would have required the Administrator to offer a Drug Free Workplace Program and a Workplace Safety Program and to offer a discount for participation in those programs to both employers who and who do not participate in the group rating program (VETOED).
- Requires certified health care providers to bill employers participating in the Medical-Only Program the same rates for services as the provider bills the Administrator, and prohibits certified health care providers from billing the employee for any amount in excess of the rate charged to the employer.
- Allows a municipal power agency to self-insure a construction project.
- Would have required the Administrator to adopt a rule estimating discounts for programs or alternative premium plans not later than the first day of September prior to the policy year in which the program or alternative premium plan is to be in effect and establishing the actual discounts by January 1 of that policy year (VETOED).

- Requires the Bureau of Workers' Compensation to offer a construction industry cap to eligible construction industry employers for a specified period of time.
- Gives the Superintendent of Insurance the sole authority to regulate any insurance products that indemnify or insure employers against workers' compensation losses.
- Permits, instead of requires, the Workers' Compensation Council to contract with an actuary to perform an actuarial valuation of the assets, liabilities, and funding requirements of the Workers' Compensation funds.
- Splits the appointing authority of the Speaker of the House of Representatives and the President of the Senate for the Workers' Compensation Council.
- Removes the authority of the Administrator to establish, under the supervision of the Director of Rehabilitation who is appointed by and responsible to the Administrator, the BWC Division of Rehabilitation.
- Eliminates the requirement that the Labor-Management Council submit a list of names of individuals to the Administrator from which the Administrator must appoint an individual to serve as the Director of Rehabilitation.
- Adds three members to the Labor-Management Government Advisory Council.

TABLE OF CONTENTS

Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund	4
Surplus Fund Account within the State Insurance Fund	4
Deadline to submit names to the Governor for BWC Board of Directors appointments	5
Annual actuarial report due date	6
Copy of investment reports to the Workers' Compensation Council	6
Group Rating Program	6
Merger of employer participating in Group Rating Program	6
Notification to employer of participating groups	7
Drug Free Workplace Program	7
Workplace Safety Program	7
Medical-Only Program	8
Self-insuring employers	8
Adoption of rules affecting premium rates	8
Experience modification rate for the construction industry	9
Contracts or agreements that indemnify or insure employers against workers' compensation losses	9
Workers' Compensation Council	10
Contract with an independent actuary	10
Appointees to the Council	11

References to BWC's Division of Rehabilitation	12
Background--the Division of Rehabilitation	12
Removal of authority to establish the Division of Rehabilitation.....	13
Membership of the Labor-Management Government Advisory Council	13

CONTENT AND OPERATION

Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund

Under continuing law, the Office of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission exists in the Office of the Inspector General. The Deputy Inspector General must investigate wrongful acts or omissions that have been committed by or are being committed by officers or employees of the Bureau of Workers' Compensation (BWC) and the Industrial Commission. The Deputy Inspector General has the same powers and duties regarding matters concerning BWC and the Commission as those specified in continuing law for the Inspector General. The Inspector General appoints the Deputy Inspector General, and the Inspector General must provide professional and clerical assistance to the Deputy Inspector General. (R.C. 121.52.)

The act creates, in the state treasury, the "Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund," which consists of moneys deposited into it that the Inspector General receives from the Administrator of Workers' Compensation and receives from the Industrial Commission. The Inspector General must use the Fund to pay the costs incurred by the Deputy Inspector General in performing the Deputy Inspector General's duties as required under continuing law. (R.C. 121.52.)

Surplus Fund Account within the State Insurance Fund

Under continuing law, the BWC Board of Directors and the Administrator have the duty to safeguard and maintain the solvency of the State Insurance Fund and all other funds specified in Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) (R.C. 4123.34). Under former law, the Administrator, in fixing the rates of premium for the various occupations or industries, had to set aside 10% of the money paid into the State Insurance Fund for the creation of a surplus until the surplus amounted to the sum of \$100,000, after which time, whenever necessary in the Administrator's judgment to guarantee a solvent State Insurance Fund, a sum not exceeding 5% of all the money paid into the State Insurance Fund had to be credited to the Surplus Fund. In addition to all statutory authority under the Workers' Compensation Law, continuing law grants the Administrator discretionary and contingency authority to make charges to Surplus. The Administrator must account for



all charges, whether statutory, discretionary, or contingency, that the Administrator may make to Surplus. (R.C. 4123.34(B).)

The act makes the existing law Surplus Fund an account within the State Insurance Fund. The act also eliminates the requirement that 10% of the money paid into the State Insurance Fund be set aside to create the Surplus Fund and the limits specified for the amount of money that must be allocated to the Surplus Fund as described immediately above. Instead, under the act, an unspecified amount of the money paid into the State Insurance Fund must be set aside to create the Surplus Fund Account, and thereafter, the Administrator may transfer such portion of the State Insurance Fund to the Surplus Fund Account as the Administrator determines is necessary to satisfy the needs of the Surplus Fund Account and to guarantee the solvency of the State Insurance Fund and the Surplus Fund Account. The act also deems any references in the Workers' Compensation Law to the "Surplus Fund," the "Surplus" created in this provision, the "Statutory Surplus Fund," or the "Statutory Surplus of the State Insurance Fund" as being the equivalent to references to the "Surplus Fund Account." (R.C. 4123.34(B).)

Deadline to submit names to the Governor for BWC Board of Directors appointments

The Governor, with the advice and consent of the Senate, must appoint the members of the BWC Board of Directors (R.C. 4121.12(A)). In making appointments to the Board, continuing law requires the Governor to select the members from the list of names submitted by the Workers' Compensation Board of Directors Nominating Committee pursuant to requirements specified in continuing law. Continuing law requires the Governor, within 14 days after the submission of the list, to appoint individuals from the list. (R.C. 4121.12(C).)

Law retained in part by the act required the Nominating Committee, within 60 days after a vacancy occurred as a result of the expiration of a term and within 30 days after other vacancies occurring on the Board, to submit an initial list containing four names for each vacancy. Continuing law specifies deadline requirements for choosing members from and resubmissions of that list. Under the act, the Nominating Committee must submit the initial list to the Governor at least 30 days prior to the expiration of a term, rather than within 60 days after the expiration of a term as required under former law. Under the act, if the Governor appoints an individual to fill a vacancy occurring as a result of the expiration of a term, the individual appointed must begin serving as a Board member when the current term expires or, if the term already has expired, immediately upon appointment by the Governor, whichever occurs later. The act does not change the remaining deadlines specified in continuing law. (R.C. 4121.12(C).)

Annual actuarial report due date

Continuing law requires the Board to contract to have prepared annually by or under the supervision of an actuary a report that consists of an actuarial valuation of the assets, liabilities, and funding requirements of the funds specified in the Workers' Compensation Law (R.C. 4121.125(C) and (E)). The firm or person must prepare a report of the valuation and include all of the information specified in continuing law regarding that report. Under former law, the firm or person had to submit the report to the Board, and the Board had to submit the report to the Workers' Compensation Council and the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation not later than the first day of September following the year for which the valuation was made. The act delays the date the Board must submit the report to on or before the first day of November following the year for which the valuation was made, rather than not later than the first day of September. (R.C. 4121.125(C)(3).)

Copy of investment reports to the Workers' Compensation Council

Under continuing law, the Board must submit a report annually on the performance and value of each investment class to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. The act requires the Board also to submit that report to the Workers' Compensation Council. (R.C. 4121.12(F)(12).)

Group Rating Program

Under continuing law, the Administrator, subject to the approval of the Oversight Commission, must offer to insure the obligations of employers under the Workers' Compensation Law under a group-rating plan that pools the risk of the employers within the group provided that the employers meet conditions specified in continuing law. Organizations sponsor these employer groups.

Merger of employer participating in Group Rating Program

The Governor vetoed a provision that would have required an employer that is merging operations with another employer to notify the Administrator of the merger no more than 30 days after the merger takes effect. If the Administrator had received such a notice from one or more employers of a merger and if any employer involved in the merger participates in the Group Rating Program, the vetoed provision required the Administrator to provide a written notice to the organization that sponsors and the third party administrator that administers the group plan in which the employer who is involved in the merger participates informing that organization and the third party administrator about the merger. The Administrator would have been required to notify

the organization that sponsors and the third party administrator that administers the group plan in which a merging employer participates for every employer that participates in the Group Rating Program that is involved in a merger about which the Administrator received such a notice. (R.C. 4123.29(A)(4)(g).)

Notification to employer of participating groups

The Governor vetoed a provision that would have required the Administrator to supply an employer, at the time the employer institutes workers' compensation coverage under Ohio's Workers' Compensation Law and first selects a managed care organization under the Health Partnership Program, with a list of all groups participating in the group rating program and a list of all premium discount programs offered by the Administrator under Ohio's Workers' Compensation Law (R.C. 4123.29(B)).

Drug Free Workplace Program

Under continuing law the Administrator, by administrative rules, offers a Drug Free Workplace Program (O.A.C. 4123-17-58), although the program is not specifically required by Ohio's Workers' Compensation Law. The Governor vetoed a provision that would have, commencing with the BWC policy year beginning on July 1, 2010, required the Administrator to offer a Drug Free Workplace Program that is substantially similar to the Drug Free Workplace Program offered by BWC to all employers on the provision's effective date, whether or not the employers participate in the Group Rating Program. The vetoed provision required the Administrator to provide any employer who participates in the Drug Free Workplace Program a discount on the employer's premiums.

The act prohibits the Administrator from placing a limit on the length of time that an employer may participate in the BWC Drug Free Workplace Program. (R.C. 4123.34(H) and (I).)

Workplace Safety Program

The Governor also vetoed a provision that would have required the Administrator, commencing with the BWC policy year beginning on July 1, 2010, to offer a Workplace Safety Program that is substantially similar to the workplace safety program BWC offers on the provision's effective date to all employers, whether or not the employers participate in the Group Rating Program. The vetoed provision would have required the Administrator to provide any employer who participates in the Workplace Safety Program a discount on the employer's premiums. (R.C. 4123.34(G).)

Medical-Only Program

Continuing law permits an employer to participate in the Medical-Only Program, whereby the employer can pay to a claimant or on behalf of the claimant the first \$15,000 of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. Under rules adopted by the Administrator for the Medical-Only Program, a certified health care provider was required to bill an employer the provider's usual and customary rate. The provider, under the rule, was not required to use the BWC fee schedule. (O.A.C. 4123-17-59(G).) The act requires certified health providers to extend to an employer participating in the Medical-Only Program the same rates for services rendered to an employee of that employer as the provider bills the Administrator for the same type of medical claim processed by the Bureau. The act prohibits certified health providers from charging, assessing, or otherwise attempting to collect from an employee any amount for covered services or supplies that is in excess of the rate charged to the employer. (R.C. 4123.29(A)(6).)

Self-insuring employers

Under continuing law, specified types of employers that may or may not be self-insuring employers are allowed to self-insure a construction project. The act adds a municipal power agency as defined in Ohio's Acid Rain Control and Byproduct Disposal Facilities Law (R.C. Chapter 3734.) to the list of employers that are allowed to self-insure a construction project.¹ (R.C. 4123.35(R).)

Adoption of rules affecting premium rates

The Governor vetoed a provision that would have required the Administrator to adopt the following rules:

(1) A rule that would have set an estimated discount for programs or alternative premium plans not later than the first day of September prior to the policy year in which the premium rate is to be in effect;

(2) A rule that would have set the actual discount for programs or alternative premium plans not later than the first day of January of the year in which the discount for programs or alternative premium plans is to be in effect.

¹ A "municipal power agency" is defined as any Ohio nonprofit corporation, the members of which are municipal corporations that own and operate electric utility systems, that sells electricity to its members for resale (R.C. 3734.058).

The vetoed provision did not require the Administrator to adopt the rule described in (1) above for the premium year starting July 1, 2010. (R.C. 4123.29(D).)

Experience modification rate for the construction industry

The act requires BWC to offer to an eligible construction industry employer a construction industry cap on the employer's experience modification for the policy year beginning July 1, 2009, and ending June 30, 2010, and thereafter until BWC completes BWC's transition to the adoption of a split-experienced rating plan in conformity with the current methodology of the National Council of Compensation Insurance. Under the act, BWC is required to establish the employer's experience modifier at .99 for the policy year beginning July 1, 2009, and ending June 30, 2010, unless the employer opts not to participate. BWC is required to adjust the premium rate calculation of a participating employer by including an adjustment factor in the calculation of the blended rate of the employer to establish a blended rate that the employer would have paid as established by using the initially calculated experience modifier.

The construction industry cap is available to a construction industry employer that satisfies all of the following requirements:

(1) The employer's predominant premium for the policy year beginning July 1, 2007, is in Industry Group 4, Construction, as identified in Appendix A to section 4123-17-05 of the Ohio Administrative Code;

(2) The employer had an experience modifier of less than or equal to 1.0 in the preceding policy year;

(3) The experience modifier initially calculated for the employer for the current policy year is greater than 1.0 and not more than 1.5;

(4) The employer participates in a safety program approved by BWC or by the Occupational Safety and Health Administration during the policy year to improve accident prevention. (Section 220.)

Contracts or agreements that indemnify or insure employers against workers' compensation losses

Under former law, it was not clear who enforced requirements and prohibitions against insurance corporations and employers with respect to contracts or agreements that indemnify or insure employers against workers' compensation losses. Under the act, notwithstanding any other section of the Revised Code but subject to the continuing law prohibition against all contracts and agreements undertaken to indemnify or insure an employer against loss or liability for the payment of compensation to workers or

their dependents for death, injury, or occupational disease occasioned in the course of the workers' employment, the Superintendent of Insurance has the sole authority to regulate any insurance products, except for BWC and those products offered by BWC, that indemnify or insure employers against workers' compensation losses in Ohio or that are sold to employers in Ohio. (R.C. 4123.82(D).)

Workers' Compensation Council

Contract with an independent actuary

Under former law, the Workers' Compensation Council was required to contract with an independent actuary to have that actuary perform an actuarial valuation of the assets, liabilities, and funding requirements of the funds specified in Ohio's Workers' Compensation Law. The Council had to submit to the Governor and the General Assembly a report summarizing the valuation not later than September 10, 2009. The act allows, rather than requires as under former law, the Council to contract with an independent actuary to perform any of the following work as the Council determines is necessary:

- (1) The actuarial valuation that formerly was required to be performed;
- (2) A review of a recent actuarial valuation performed pursuant to Ohio's Workers' Compensation Law;
- (3) A review of the study the Administrator was required to commission to review the base rate premiums paid by employers and all of the rating programs used by the Administrator to determine an employer's premium rate under Ohio's Workers' Compensation Law;
- (4) A review of any actuarial analysis of any of the funds specified in Ohio's Workers' Compensation Law that is completed as required by the Auditor of State.

If the Council contracts with an actuary, as described above, the act requires that actuary to prepare a report of the review in accordance with the standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and to submit that report to the Council. The actuary must include all of the following information in the report:

- (1) A summary of the valuation, study, or analysis the actuary reviewed;
- (2) The actuarial assumptions and methods and the data underlying the valuation, study, or analysis, as appropriate;

(3) An assessment of the adequacy of each of the funds specified in Ohio's Workers' Compensation Law that were evaluated to pay the claims authorized under that law;

(4) A discussion of the reasonableness of the findings of valuation, study, or analysis, and whether the valuation, study, or analysis was performed in accordance with the actuarial standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries;

(5) A description of any additional studies the actuary recommends to assist the Council in the performance of its duties.

The act requires the Council to submit the summary of the report completed by the actuary not later than September 10, 2011. (Section 215.01.)

If the Council contracts with an actuary as described above on or before January 31, 2011, the act requires the Director of the Workers' Compensation Council to request the funds necessary to cover the expenses of the valuation or review, which amount must not exceed \$650,000, from the Administrator. The Administrator is required to direct the Treasurer of State to transfer the amount requested by the Director from the Workers' Compensation Fund to the Workers' Compensation Council Fund. The Administrator and Director must agree to a schedule for the transfer of these funds. (Section 203.)

Appointees to the Council

The Workers' Compensation Council has five members, one of whom must represent employers who employ 100 or more employees, one of whom must represent employers who employ less than 100 employees, one of whom must represent employees, one of whom must represent injured workers, and one of whom must represent the public and also be an individual who, on account of the individual's previous vocation, employment or affiliations, cannot be classed either as predominantly representative of employees or of employers. Of those five members, at least one must be a person with investment expertise. Under former law, the members were jointly appointed by the President of the Senate and the Speaker of the House of Representatives and not more than three of whom could be members of the same political party. The act instead requires those five members to be appointed as follows:

(1) The President of the Senate must appoint one member who represents employers who employ less than 100 employees and one member who represent injured workers;

(2) The Speaker of the House of Representatives must appoint one member who represents employers who employ 100 or more employees and one member who represents employees;

(3) The Speaker of the House of Representatives and the President of the Senate must alternate in the appointment of, for a term, one member who represents the public and also is an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers.

The act retains the requirement that one of the five members be a person with investment expertise, however the act removes the restriction on political party affiliation. Continuing law largely retained by the act fixes the terms of members at three years. The act specifies that the member who represents the public, as described in (3), above, must serve a term of two years. Finally, the act revises end point of the term. Under former law, a member continued in office subsequent to the expiration of the member's term until the member's successor took office or 60 days had elapsed, whichever occurred first. Under the act, a member continues in office until the member's successor takes office. (R.C. 4121.75.)

The act requires all members serving on the Council on the effective date of the changes to the Council appointments to serve the duration of their terms as appointed. Upon the expiration of the terms of those members, new appointments must be made to the Council as specified under the act, as described above. With respect to the member who represents the public as described in (3), above, the President of the Senate must make the initial appointment. (Section 217.)

References to BWC's Division of Rehabilitation

Background--the Division of Rehabilitation

The Administrator, with the advice and consent of the Board, must adopt rules, take measures, and make expenditures as the Administrator deems necessary to aid claimants who have sustained compensable injuries or incurred compensable occupational diseases pursuant to the Workers' Compensation Law to return to work or to assist in lessening or removing any resulting handicap (R.C. 4121.61, not in the act). In exercising this authority, former law granted the Administrator the authority to establish within BWC a rehabilitation division under the supervision of a Director of Rehabilitation appointed by and responsible to the Administrator (R.C. 4121.62(A)(4)). Under former law, the Labor-Management Government Advisory Council had to recommend to the Administrator three candidates, who had to be chosen for their ability and background in the field of rehabilitation, for the position of Director of

Rehabilitation. The Administrator had to select a director from the list of candidates. (R.C. 4121.70.)

Former law placed the Director in the unclassified civil service and allowed the appointing authority to designate up to three positions at each facility under the Division's jurisdiction and up to six positions in the Division that were part of the Director's immediate staff as being in the unclassified service as long as the Administrator determined that the positions were primarily and distinctively administrative, managerial, or professional. All other full-time employees of the Division were in the classified civil service. (R.C. 4121.62(B).)

The Administrator was required to establish fees for use of services offered by the Division, including the expense of providing rehabilitation services, counseling, and training. The Administrator had to adopt rules, in accordance with the Administrative Procedure Act, which established the specific services the Division offered and the amount of the fee for those services, and that amount had to be based upon the actual cost of the Division providing the services to the employer and employee. (R.C. 4121.62(C).)

Removal of authority to establish the Division of Rehabilitation

The act specifically removes mention of the Administrator's authority to establish the BWC Division of Rehabilitation and appoint the Director of Rehabilitation and eliminates the requirement that the Labor-Management Council submit names of individuals to be appointed as the Director of Rehabilitation. The act also removes the requirement that the Administrator adopt rules to establish the services to be offered by the Division and the amount of fees to be charged for those services as described above. The basic authority of the Administrator, however, to provide for the rendition of rehabilitation services remains in law. (R.C. 4121.62 and 4121.70.)

Membership of the Labor-Management Government Advisory Council

Under former law, the Labor-Management Government Advisory Council consisted of 12 members. The act expands the Council's membership to 15 by adding all of the following members to the Council, to be appointed as specified:

(1) One person who by training and vocation represents nonprofit vocational rehabilitation services providers that deliver services to injured workers, appointed by the Speaker of the House of Representatives;

(2) One person who by training and vocation represents nonprofit vocational rehabilitation services providers that deliver services to injured workers, appointed by the President of the Senate;

(3) One member who, by training and vocation, represents a nonprofit association of vocational rehabilitation services providers that deliver services to injured workers, appointed by the Governor with the advice and consent of the Senate. (R.C. 4121.70.)

The act requires the members added to the Council, as described above, to be appointed within 60 days after the effective date of the amendment. The new members appointed to the Council as required under the act must serve terms of six years, and subsequent appointments must be made as provided for original appointments. (Section 219.)

HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Insurance	03-18-09
Re-referred to H. Finance & Appropriations	03-18-09
Re-reported, H. Finance & Appropriations	03-24-09
Passed House (90-8)	03-24-09
Reported, S. Insurance, Commerce, & Labor	06-17-09
Passed Senate (20-12)	06-17-09
House refused to concur in Senate amendments (45-52)	06-24-09
Senate requested conference committee	06-24-09
House acceded to request for conference committee	06-24-09
House agreed to conference committee report (96-1)	06-30-09
Senate agreed to conference committee report (32-0)	06-30-09

09-hb15-128.docx/jc

