SENATE BILL REPORT

ESB 5613

As Passed Senate, March 14, 1995

Title: An act relating to the authority of the department of labor and industries to hold industrial insurance orders in abeyance.

Brief Description: Revising the provision authorizing the department of labor and industries to hold industrial insurance orders in abeyance.

Sponsors: Senators Pelz, Franklin, Hargrove, Snyder, Fraser, Bauer, McAuliffe, Smith, Prentice, Heavey and Rinehart.

Brief History:
Committee Activity: Labor, Commerce & Trade: 2/7/95, 2/14/95 [DP].
Passed Senate, 3/14/95, 48-0.

SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

Majority Report: Do pass.
Signed by Senators Pelz, Chair; Heavey, Vice Chair; Franklin, Fraser and Wojahn.

Staff: Max Williams (786-7439)

Background: Workers, employers, and other parties aggrieved by Department of Labor and Industries' industrial insurance orders are entitled to request reconsideration of an order before appealing to the Board of Industrial Insurance Appeals. The request must be submitted within the time limit specified for appealing the order to the board, but there are no other time limits governing the request for reconsideration.

If the Department of Labor and Industries acts within certain time limits, the department may, on its own motion, hold an industrial insurance order in abeyance for up to 90 days to reconsider the order. For good cause, the department may extend the time period for an additional 90 days.

If the worker has filed an application to reopen a claim, the department must issue an order denying the application within 90 days of receiving the application. If the order is not issued within the time period, the application is deemed granted. This 90-day period may be extended 60 days for good cause.

In 1993 the Washington Supreme Court determined that these two time periods operate independently. In the case before the court, the department had issued an order denying an application to reopen a claim and had then placed the order in abeyance. The court held that once the department has issued an order denying a reopening application within the applicable time period, the time limits for making the initial decision on the application are satisfied. The department may then hold the order in abeyance for reconsideration for up to 180 days.

Summary of Bill: The Department of Labor and Industries' authority to reconsider an industrial insurance order for up to 180 days after the order is placed in abeyance is modified. If the order concerns an application to reopen a claim, the time period for reconsideration may not exceed 90 days from the date that the application was received. The department may extend this period for an additional 60 days for good cause. Good cause includes delay that results from a claimant's refusal to submit to medical examination. If the employer is a self-insurer, the department must notify the self-insurer by certified mail. The 90-day period commences when such notice is received by the self-insured employer. Reopening applications that are deemed granted by statute may not be held in abeyance.

Technical changes are also made to clarify and reorganize the statute.

Appropriation: None.

Fiscal Note: Requested on January 31, 1995.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This benefits the worker who is penalized by the lengthy process by which these cases are decided. In many cases, the rules are used to delay important decisions relating to the benefits of injured workers whose cases have gotten worse and warrant a re-examination of the claim. Making these two time periods; (1) consideration of application to reopen, and (2) abeyance for reconsideration operate concurrently (for a total of 150 days), places a reasonable restriction on the department's authority to consider matters where an injured worker's condition worsens and warrants consideration of benefit adjustments. It was not the Legislature's intent to allow over 300 days to consider these matters, as is now the reality.

Testimony Against: Many times the employer is not given adequate notice that an application to reopen a claim is granted. This puts a burden on an employer who may then have very limited time to gather materials in support of their position. Many claims may be adjudicated not on fact, but on a mandatory time frame. This time limit may be harmful to injured workers who may find their applications summarily denied and that denial not able to be reconsidered because the time limit has been reached.

Testified: PRO: Bill Hochberg, WSTLA; Jeff Johnson, Bobby Stern, WA State Labor Council AFL-CIO; CON: Kathryn Fewell, WA Self-Insurers Assn.; Paul Proctor, Timber Operators Council; Clif Finch, Assn. of WA Business.

House Amendment(s): The requirement that the department notify self-insurers by certified mail is amended to require that the department promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department. Language pertaining to commencement of the 90-day period upon such notice is eliminated. Organization of the statute is modified.