SENATE BILL REPORT
SB 6602

As Reported by Senate Committee On:
Commerce & Labor, February 3, 2016

Title: An act relating to industrial insurance claims made to self-insurers.

Brief Description: Addressing industrial insurance claims made to self-insurers.

Sponsors: Senators Braun, Mullet and Hargrove.

Brief History:
Committee Activity: Commerce & Labor: 2/01/16, 2/03/16 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6602 be substituted therefor, and the substitute bill do pass.
Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Keiser, King and Warnick.

Minority Report: Do not pass.
Signed by Senators Hasegawa, Ranking Minority Member; Conway.

Staff: Susan Jones (786-7404)

Background: State Industrial Insurance Laws. Under the state's industrial insurance laws - workers' compensation - employers must insure through the state fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure. Self-insurance is a program in which the employer, the self-insurer, provides any and all appropriate benefits to the injured worker and manages the claims of its employees.

JLARC Performance Audit. In 2011, the Legislature directed the Joint Legislative Audit & Review Committee (JLARC) to conduct a performance audit of the workers' compensation claims management at L&I. JLARC hired a consulting firm with expertise evaluating workers' compensation programs to assist with the audit. The consultants' review focused largely on claims management between 2010 and 2013. Between 2010 and 2013, an average of 125,000 claims were accepted for compensation each year. Of these, L&I directly managed an average of 87,000 claims - state fund claims - and self-insurers managed another 38,000 claims with L&I oversight.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

JLARC Audit Report on Self-Insurers. Self-insurers receive claims from workers, make the initial decision to accept or deny the claim, and request L&I's approval. L&I makes the official decision as an order. The JLARC report provided that the L&I approval step delays decisions and may not add value for acceptance decisions, known as "allowance orders." The consultants reviewed a sample of 111 claims and found that L&I accepted 110 of the claims - 99 percent. The one exception involved a denial that was later overturned and accepted. JLARC reported that allowing self-insured employers to issue the formal decision when accepting claims could eliminate 30 to 45 days from the process for certain claims. JLARC recommended that the Legislature should allow self-insurers to issue formal orders when accepting claims, and L&I should incorporate a review of those orders in its audits of self-insurers.

Summary of Bill (Recommended Substitute): Self-Insurer's Order Allowing a Claim. For any industrial insurance claim where the worker may be entitled to benefits other than medical treatment only, when a self-insurer has determined to allow a claim, the self-insurer must issue an order allowing the claim to the injured worker, attending medical provider, and L&I within 60 days from the date that the claim is filed or 120 days from the date that the claim is filed, if an order is issued for additional time to make the decision. The order of the self-insurer must be issued consistent with L&I rules.

Self-Insurer's Request for Denial a Claim. The self-insurer must request denial of a claim within 60 days from the date that the claim is filed or 120 days from the date that the claim is filed, if an order is issued for additional time to make the decision.

Additional Time for a Decision. When a self-insurer requires additional time to determine whether to allow or request denial of the claim, the self-insurer must issue an order to the injured worker, attending medical provider, and L&I within 60 days from the date that the claim is filed. The order must state the reasons why the self-insurer requires additional time. During the 60-day period after this order is issued, the self-insurer must pay temporary disability benefits as entitled if the attending provider certifies that the worker cannot return to work because of the injury or illness provided in the claim, and pay for any medical examination or test required by the self-insurer to determine whether to allow or request denial of the claim. In the event the claim is denied by L&I, any temporary disability and other benefits paid may be recovered by the self-insurer.

Provisional Payments. Pending a decision of allowance or denial, temporary disability compensation must be paid in accordance with the law.

L&I Action Required and Rules. If the self-insurer fails to act, L&I must promptly intervene and adjudicate the claim. L&I is authorized to adopt rules as necessary to implement this act to include the form of orders allowing industrial insurance claims consistent with the standards followed by L&I .

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): Allows self-insurers to issue orders only for allowances, not denials; clarifies time periods for allowing claims and requesting denials; clarifies that pending a decision of allowance or denial, temporary disability compensation must be paid as required under the law.

Appropriation: None.

Fiscal Note: January 21, 2016.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This is an appropriate efficiency step. There is strong evidence from an impartial audit that L&I and self-insurers agree 98 to 99 percent of the time. That is a strong agreement level. There is an audit process that needs some work to fully roll out the audit process and that will happen with some legislative direction. It will lead to quicker and better claims results for employers and employees. This bill does not change any time frames. The issue of interlocutory order is currently in practice and in the WAC but not defined in statute. The third JLARC recommendation provides for allowance of the orders. The report also provides that denial orders are agreed to 98 percent of the time by L&I. The same rationale should apply to denial orders and allowance orders. There is no added value for the 45 to 60 days it takes for L&I to pass on the self-insurer order. Statistically, the state fund and self-insurers percentage of denial orders are the same in the report and there is no evidence of different outcomes. In the report, workers satisfaction with the claims process was the same for state fund and self-insurer claims process. There is a strong, newly robust audit process for self-insured employers. There needs to be strong audit and strong authority for self-insurers to manage claims. There are penalties if a self-insurer unreasonably denies, accepts, or delays payment of a claim. It is grounds for withdrawal of a self-insurers certificate to self-insure to be found to unreasonably reject a benefit claim. There is an office of ombuds for injured workers of self-insured workers. There is a strong appeal protest culture that a worker will utilize if the worker feels aggrieved. This is on the innocuous end.

CON: There is a 14-day requirement that the self-insured employer must decide whether to approve or deny a claim. The bill drags this out to 60 days or possibly 120 days. There is nothing in the JLARC study that sets this as a policy direction. The bill does not address segregation of a condition. If there is a complex condition where the self-insured employer does not agree entirely with the attending physician then what is done - is that an approval or a denial? There is also a concern about the interlocutory order. If an injured worker is given provisional time loss and medical care, it only compounds the already challenging situation the worker is in if the worker has to pay it back. In fact, even under the statute that requires self-insured employers to pay benefits pending appeals before the Board of Industrial Insurance Appeals, there is a reserve fund if the worker is unable to pay it back. It is not clear that there is anything similar under the bill. This puts an enormous amount of pressure on the workers and does not seem to be in their best interest.

OTHER: L&I's concerns are the conflicts between the bill and existing law and are willing to provide technical assistance. A primary example is with the 14 days statutory requirement to begin payment of time loss even if there has not been a decision to allow a claim. The silence in the bill about payments at the 14 day time period is concerning. There are a few other concerns. Today, orders are not issued on medical only claims. That needs to be clear to avoid additional work for the self-insurer.

Persons Testifying on Original Bill: PRO: Senator John Braun, Sponsor; Kris Tefft, Washington Self-Insurers Association (WSIA).

CON: Joe Kendo, Washington State Labor Council.

OTHER: Vickie Kennedy, Labor & Industries.

Persons Signed In To Testify But Not Testifying on Original Bill: CON: Michael Temple, Washington State Association for Justice