



Phil Mullin

Bill Analysis
Legislative Service Commission

H.B. 376

126th General Assembly
(As Introduced)

Rep. Patton

BILL SUMMARY

- Creates the Workers' Compensation Investment Board and transfers to the Board the Workers' Compensation Oversight Commission's powers and duties regarding the Bureau of Workers' Compensation investment program.

CONTENT AND OPERATION

Creation of the Workers' Compensation Investment Board

The bill creates the Workers' Compensation Investment Board consisting of seven members. The Treasurer of State must appoint two members and the Governor, House Speaker, and Senate President each must appoint one member. Each of these members must have the following qualifications:

- Be a financial or investment expert.
- Be an Ohio resident.
- Have direct experience in the management, analysis, supervision, or investment of assets.
- Within three years immediately preceding appointment, not have been employed by the Bureau of Workers' Compensation (BWC) or by any person, partnership, or corporation that has provided to the BWC services of a financial or investment nature, including the management, analysis, or supervision of assets. (R.C. 4121.05(A).)

The remaining two Board members must be two members from the Workers' Compensation Oversight Commission, one of whom represents employees who are not members of an employee organization and one of whom represent employers, who has experience as an employer in compliance with the

requirements to pay into the State Insurance Fund, and who is not a self-insuring employer. These members must serve on the Board during the term in which they are appointed to the Oversight Commission. (R.C. 4121.05(C).)

Terms of office of the members appointed by the Governor, Treasurer of State, House Speaker, and Senate President are for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member must hold office from the date of appointment until the end of the term for which the member was appointed. Such a member cannot be appointed to more than two full terms of office on the Board. Vacancies must be filled in the manner prescribed for original appointments. A member appointed to fill a vacancy may subsequently be appointed to no more than two full terms on the Board. A member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (R.C. 4121.05(B).)

All Board members must receive their reasonable and necessary expenses while engaged in the performance of their duties as members as determined in accordance with the state law that governs the reimbursement of the expenses of state employees while engaged in the performance of their duties. Members appointed by the Governor, Treasurer of State, House Speaker, and Senate President also must receive an annual salary not to exceed \$18,000 payable on the following basis. A member must receive \$2,000 per month during a month in which the member attends one or more Board meetings and must receive no payment during a month in which a member attends no Board meetings. A member may receive not more than \$18,000 per year regardless of the number of meetings the Board holds during a year or the number of meetings in excess of nine within a year that the member attends. (R.C. 4121.05(D).)

The Board must meet at least once a month and the Board and the Oversight Commission must meet jointly at least once each quarter (R.C. 4121.05(E)).

The office of a member of the Board must be deemed vacant if the member is convicted of or pleaded guilty to a felony, a theft offense as defined in the Theft Offense Law, a violation of the Ethics Law, or a violation of various specified offenses against justice and public administration. The vacancy must be filled in the same manner as the original appointment. A person who has been convicted of or pleaded guilty to such an offense is ineligible to be a Board member. A Board member who receives a bill of indictment for any such offense must be suspended automatically from the Board pending resolution of the criminal matter. (R.C. 4121.05(F).)

Duties of the Workers' Compensation Investment Board

The Workers' Compensation Investment Board must do all of the following:

- Establish objectives, policies, and criteria for the administration of the BWC investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines, and monitor the progress of the Administrator of Workers' Compensation (Administrator) in implementing the objectives, policies, and criteria on a quarterly basis. The Board must review and publish the objectives, policies, and criteria no less than annually and must make copies available to interested parties. The Board must prohibit, on a prospective basis, any specific investment activity it finds to be contrary to its investment policies, objectives, and criteria. The objectives, policies, and criteria must prohibit investing assets of funds, directly or indirectly, in vehicles that target any of the following: (1) coins, (2) artwork, (3) horses, (4) jewelry or gems, (5) stamps, (6) antiques, (7) artifacts, (8) collectibles, (9) memorabilia, and (10) similar unregulated investment that are not commonly part of an institutional portfolio, that lack liquidity, and that lack readily determinable valuation. (R.C. 4121.051(A)(1).)
- Specify in the objectives, policies, and criteria for the investment program that the Administrator is permitted to invest in an investment class only if the Board, by a majority vote, opens that class. After the Board opens an investment class but prior to the Administrator investing in that class, the Board must adopt rules establishing due diligence standards for BWC employees to follow when investing in that class and must establish policies and procedures to review and monitor the performance and value of each investment class. The Board must submit a report annually on the performance and value of each investment class to the Governor, House Speaker, Senate President, Minority Leaders of the House and Senate, and the Oversight Commission. The Board may vote to close any investment class. (R.C. 4121.051(A)(2) and 4121.121(B)(7).)
- Comply with the requirements relating to the Board's hiring of the Chief Investment Officer of the BWC (R.C. 4121.051(A)(3)).
- Be subject to an independent financial audit conducted annually under the authority of the Auditor of State and publish the findings

of the audit once a year and publish a report on the performance of the investment portfolio once a quarter and deliver copies of the findings and reports to the Governor, Auditor of State, Treasurer of State, Attorney General, Senate President and Minority Leader, House Speaker and Minority Leader, and the Oversight Commission (R.C. 4121.051(A)(4) and (5)).

- Require the Chief Investment Officer of the BWC to attend each meeting of the Oversight Commission and make a report at each meeting (R.C. 4121.051(A)(6)).
- Have an independent auditor conduct a fiduciary performance audit of the BWC investment program once during the three-year period after the Board adopts the first investment policy and once every five years after the initial audit. That audit must include an audit of the investment policies of the Board and the BWC. The Board must submit a copy of that audit to the Auditor of State (R.C. 4121.051(A)(7)).
- Require each member of the Board appointed by the Governor, Treasurer of State, House Speaker, and Senate President to obtain eight hours of continuing education annually in the areas of investments, finance, or ethics (R.C. 4121.051(A)(8)).

The Board may contract with an independent investment consultant to help advise and evaluate investment matters relating to the State Insurance Fund (R.C. 4121.051(B)).

The Administrator, with the Board's advice and consent, must employ an internal auditor who must report directly to the Board on investment matters. The Board may request and review internal audits conducted by the internal auditor. (R.C. 4121.051(C).) The Administrator must pay the expenses the Board incurs to effectively fulfill its duties and exercise its powers as the Administrator pays other operating expenses of the BWC (R.C. 4121.051(D)).

Changes to the Workers' Compensation Oversight Commission and transfer of investment duties

The bill removes from the 11-member Oversight Commission two members designated as "investment expert members" and requires that those members be reappointed to the Board (see **Initial appointments to the Board,**" below). Existing law requires these members to have the same qualifications as those required of members of the Board as described above and to receive the same salary that the members of the Oversight Commission appointed by the

Governor receive. Under existing law, the investment expert members vote only on investment matters. (R.C. 4121.12(D) and (E).)

Under current law, the Oversight Commission is required to develop objectives, policies, and criteria for administration of the BWC investment program in accordance with the requirements specified in current law. (R.C. 4121.12(F)(6) and (7).) The Oversight Commission also must (1) appoint an independent auditor to conduct, at least once every ten years, a fiduciary performance audit of the BWC investment program and (2) consent to the employment of an internal auditor by the Administrator who must report directly to the Oversight Commission on investment matters (R.C. 4121.25(D) and (E)).

The bill provides for the transfer of the powers and duties of the Oversight Commission relating to the BWC investment program, and for the transfer of related appropriations, reappropriations, documents, records, funds, assets, equipment, supplies, real property, and office space, to the Board (R.C. 4121.051 and 4121.12; Section 6). If at the time the last member of the Board is appointed, the BWC has already employed a person or designated a BWC employee to serve as the BWC Chief Investment Officer (see "*Appointment of the Chief Investment Officer of the BWC*," below), that person must serve at the Board's pleasure and is subject to the Board's authority to dismiss. If, at the time the last member of the Board has been appointed, the BWC has not appointed a person to serve as the Chief Investment Officer, the Board must do so in accordance with the bill. (Section 6.)

The investment policy for the administration of the investment program of the State Insurance Fund in existence on the bill's effective date must continue until the Board approves objectives, policies, and criteria for the administration of the program as required by the bill (Section 8).

The bill requires the Board to begin publishing, as promptly as possible, the various investment reports the bill requires it to publish. If on the bill's effective date the Oversight Commission has not yet completed any such reports that current law requires it to complete, the Board must assume responsibility for completing those reports and the Administrator and the Oversight Commission must compile information and provide access to records as necessary for the Board to comply with the requirements described in this paragraph beginning on the bill's effective date. (Section 7.)

Appointment of the Chief Investment Officer of the BWC

Current law requires the BWC, with the advice and consent of the Oversight Commission, to employ a person or designate a BWC employee, who is designated as a chartered financial analyst by the CFA Institute and who is

licensed by the Division of Securities in the state Department of Commerce as a BWC chief investment officer as the Chief Investment Officer of the BWC. The bill instead requires the Board to hire a person who meets these same qualifications to serve as the Chief Investment Officer of the BWC. The Chief Investment Officer serves at the Board's pleasure and, after December 31, 2005, the Board cannot hire a person as Chief Investment Officer who does not hold a valid BWC chief investment officer license issued by the Division of Securities. (R.C. 1707.01(KK) and 4123.441(A).)

Application of various laws to Workers' Compensation Investment Board and its members

The bill applies to the Board and its members the following provisions of current law that generally apply to the BWC and its Administrator, officers, and employees and to the Oversight Commission and its members:

- Requires Board members to file financial disclosure statements annually with the Ohio Ethics Commission (R.C. 102.02(A)).
- Authorizes the Ohio Ethics Commission in its discretion to share with the Attorney General and Auditor of State information about Board members gathered in the course of an Ethics Law violation investigation (R.C. 102.06(B)).
- Authorizes the Attorney General to maintain a civil action to recover damages or obtain injunctive relief against a Board member or the entire Board if the member or Board breaches the member's or Board's fiduciary duty to the BWC (R.C. 109.981) and makes the Attorney General the legal advisor of the Board (R.C. 4121.128).
- Authorizes the Board to retain independent legal counsel, including legal counsel provided by the Board's fiduciary insurance carrier, to advise the Board and represent the Board after being informed of an allegation that the entire Board has breached its fiduciary duty (R.C. 109.981).
- Prohibits Board members from conducting any business with or awarding any contract, other than one awarded by competitive bidding, for the purchase of goods or services costing more than \$500 to any individual, business association, estate, or trust, if the individual or individual's spouse has made, or any partner, shareholder, administrator, executor, trustee, or spouse of any of those individuals has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of

\$1,000 to the campaign committee of the Governor or Lieutenant Governor or to the campaign committee of any candidate for either of these offices (R.C. 3517.13(Y)).

- Prohibits Board members from conducting any business with or awarding any contract, other than one awarded by competitive bidding, for the purchase of goods or services costing more than \$500 to a corporation or business trust, except a professional association organized under the Professional Associations Law, if an owner of more than 20% of the corporation or business trust, or the owner's spouse, has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of such period, one or more contributions totaling in excess of \$1,000 to the campaign committee of the Governor or Lieutenant Governor or to the campaign committee of any candidate for either of these offices (R.C. 3517.13(Z)).
- Prohibits a Board member from (1) having any direct or indirect interest in the gains or profits of any investment made by the Administrator, (2) receiving directly or indirectly any pay or emolument for their services, (3) borrowing directly or indirectly, for self or as an agent or partner of others, any funds or deposits of the BWC or in any manner use the funds or deposits except to make current and necessary payments that are authorized by the Administrator, (4) becoming an indorser or surety or in any manner an obligor for moneys loaned by or borrowed from the BWC (R.C. 4121.126).
- Adds to the list of individuals with whom the Administrator is prohibited from making investments through or purchases from or otherwise doing business with a person who within the preceding three years was a member of the Board or was an officer of the Board (R.C. 4121.126).
- Authorizes assessments by the Administrator on employers for administrative costs to be used to support the Board (R.C. 4123.341 and 4123.342).
- Adds the Board members to the list of entities that are the trustees of the State Insurance Fund (R.C. 4123.44).



Initial appointments to the Board

Within 90 days after the bill's effective date, the Treasurer of State and Governor must each appoint to the Board one person who meets the qualifications the bill specifies for Board membership and the House Speaker and Senate President jointly must appoint one such person. The Treasurer's appointee and the Governor's appointee each must be appointed to serve a term ending two years after the bill's effective date, and the legislative leaders' appointee must be appointed to a term ending one year after that date. Thereafter terms of office are three years. (Section 3.)

On the date the last of these appointments is made, the positions of investment expert members on the Oversight Commission are abolished and the Treasurer of State must appoint to the Board the investment expert member the Treasurer originally appointed to the Oversight Commission and the House Speaker and Senate President must jointly appoint to the Board the investment expert member they originally jointly appointed to the Oversight Commission. These "reappointed" members must be appointed to serve terms ending three years after the bill's effective date and may be reappointed to serve one full term on the Board. (Section 4.)

At the time the House Speaker and Senate President jointly reappoint these members, they must enter into an agreement designating either the House Speaker or Senate President as having the authority to fill the first vacancy that occurs on the Board that either the House Speaker or Senate President is to appoint and agreeing that they will alternate in making these appointments thereafter (Section 5).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-11-05	p. 1717

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