



Julie A. Rishel

Final Analysis
Legislative Service Commission

Sub. H.B. 79

127th General Assembly

(As Passed by the General Assembly)

(Excluding appropriations, fund transfers, and similar provisions)

Reps. Batchelder, J. McGregor, Fessler, Latta, Stebelton, Webster, Uecker, Aslanides, Bacon, Blessing, Collier, Combs, Daniels, Dolan, Evans, Flowers, Gibbs, Goodwin, J. Hagan, Huffman, Hughes, R. McGregor, Mecklenborg, Patton, Peterson, Reinhard, Schindel, Schneider, Setzer, Wachtmann, Wagner, Wagoner, White, Widowfield, Wolpert, Zehringer

Sens. Buehrer, Harris, Patton, Schuler, Seitz, Stivers, Wagoner, Wilson, Schaffer

Effective date: *

ACT SUMMARY

- Requires the Administrator of Workers' Compensation to consider an employer group a single entity for purposes of group, rather than retrospective, rating.
- Requires the Administrator to examine the group rating program and to make and submit a plan to address the equity and adequacy of the workers' compensation premiums for Ohio employers.
- Creates the Workers' Compensation Council Remuneration Fund for purposes of paying benefits and compensation to employees of the Workers' Compensation Council and creates the Workers' Compensation Council Fund.
- Prohibits the Controlling Board from transferring funds in excess of needs from the Remuneration Fund to the General Revenue Fund.

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Requires the Director of the Workers' Compensation Council to request and have transferred amounts from the Workers' Compensation Council Fund created by the Controlling Board to the Workers' Compensation Remuneration Fund and have transferred any remaining amount to the Workers' Compensation Council Fund created by the act.
- Abolishes the Workers' Compensation Council Fund created by the Controlling Board.
- Includes the Council's budget in the Bureau of Workers' Compensation budget and excludes the Council's budget from the main operating appropriations budget bill.
- Exempts the Council from sunset review, public works, supplies, and services as administered by the Department of Administrative Services, and specifies that the Council is created in the legislative branch of government.
- Allows the Council to enter into agreements with the Department of Administrative Services for the furnishing of work, supplies, and services under the laws from which the Council is exempt.
- Requires, rather than permits under former law, the Council to appoint a Director and specifies that the Director serves at the pleasure of the Council.
- Allows the Council to authorize the Director to employ, rather than allowing the Council directly to employ as under former law, staff as necessary and employ or hire on a consulting basis, persons to provide actuarial, legal, investment, or other technical services.
- Places all employees of the Council in the unclassified civil service.
- Requires the Director, rather than allowing the Council as under former law, to fix the compensation of all other employees of the Council.
- Requires the Director to adopt policies relating to payment for overtime, granting of compensatory time off, utilizing flexible hours, and working on holidays and compensation for holiday work.
- Prohibits the Council from taking action without the approval by at least six members rather than five members as under former law.

- Exempts the act's provisions from Council review.
- Makes an appropriation.

CONTENT AND OPERATION

Changes to group rating

Under continuing law retained in part by the act, the Administrator of Workers' Compensation must consider an employer group as a single employing entity for purposes of "retrospective" rating. The act retains the Administrator's obligation to consider employer groups as a single employing entity, but changes the requirement to state that it is for purposes of "group" rating. (R.C. 4123.29.)

Premium study

The act requires the Administrator to examine the group rating program and make a plan to address the equity and adequacy of workers' compensation premiums for Ohio employers. The Administrator must provide the report to the Speaker of the House of Representatives, the President of the Senate, the minority leaders of the House and Senate, the chairperson of any standing committee of the General Assembly that regularly considers workers' compensation bills, and the Workers' Compensation Council by September 15, 2009. (Section 6.)

Background--the Workers' Compensation Council

The Workers' Compensation Council was created by Am. Sub. H.B. 100 of the 127th General Assembly. The purpose of the Council is to review the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system. The Council cannot be involved in the daily operations and oversight of the Bureau of Workers' Compensation ("BWC") or Industrial Commission. (R.C. 4121.75.)

Funds and accounts

The act creates the Workers' Compensation Council Fund, which is in the custody of the Treasurer of State but is not to be a part of the state treasury. The fund consists of all moneys transferred into it by the Administrator. The act requires the Council to use the fund to pay the expenses incurred by the Council. The act requires the Treasurer of State to disburse moneys from the fund upon instruments authorized by the Council and signed by the Director of the Workers' Compensation Council. Former law required the compensation of all Council employees and other expenses of the Council to be paid upon vouchers approved by the Director and the chairperson of the Council. (R.C. 4121.79(C).)

Under the act, the Council is the trustee of the Workers' Compensation Council Fund. At the request of the Director of the Council, the act requires the Treasurer of State to select and contract with one or more investment managers to invest all money credited to the fund that is not currently needed for carrying out the Council's functions. The Treasurer of State must contract with an investment manager for whom the Administrator requested a criminal records check under continuing law for purposes of investing the assets of the State Insurance Fund and who has not been convicted of or pleaded guilty to a financial or investment crime as defined under continuing law. The act states that the eligible list of investments is the same as those specified in the investment policy for the State Insurance Fund approved by the BWC Board of Directors. All investments are subject to the same prohibitions, limitations, and requirements specified for the State Insurance Fund. The act requires all investment earnings of the fund to be credited to the Workers' Compensation Council Fund. (R.C. 4121.79(C).)

The act creates the Workers' Compensation Council Remuneration Fund ("Remuneration Fund") in the state treasury. The act requires the Treasurer of State to periodically pay into the Remuneration Fund, from the Workers' Compensation Council Fund, amounts requested by the Director of the Council to pay the compensation and benefits of the employees of the Council. Under the act, the Director of the Council must use the amounts credited to the Remuneration Fund solely to pay the compensation and benefits of all Council employees. The act requires all investment earnings of the Remuneration Fund to be credited to that fund. (R.C. 4121.79(D).) The act prohibits the Controlling Board from authorizing transfers of all or part of cash balances in excess of needs from the Remuneration Fund to the General Revenue Fund or to another fund of the state to which the money would have been credited in the absence of the Remuneration Fund (R.C. 127.14(D)).

The act requires the Director of Budget and Management to transfer a cash amount designated by the Director of the Council from the Workers' Compensation Council Fund, created by the Controlling Board in August, 2008, to the Remuneration Fund, upon the request of the Director of the Council. Under the act, the Director of the Council must request, on or before January 31, 2009, that the Director of Budget and Management transfer any remaining balance in the Controlling Board created Workers' Compensation Council Fund to the Workers' Compensation Council Fund created by the act. The act requires the Treasurer of State, at the request of the Director of Budget and Management, to execute the transfer. After this transfer has occurred, the act abolishes the Workers' Compensation Council Fund that was created by the Controlling Board. (Section 4.)

Budget and assessments for the Council

Former law required the Administrator to pay the Council's annual expenses. The Council, under former law, was required to prepare and submit to the Administrator on or before June 30 of each year an itemized estimate of the amounts necessary to pay the Council's expenses during the following year. (R.C. 4121.79.)

Instead, the act requires the Director of the Council to prepare and submit to the Council, for its approval, a biennial budget that includes an itemized estimate of the amounts necessary to pay the Council's expenses during the succeeding biennium. The act allows the Director to request and the Council to approve, anytime during that biennium, additional amounts to cover costs for audits or other necessary expenses that were not included in the budget the Director submits. The act requires that after the budget is approved, the Director must separate from the budget the portion covering the costs of compensation and benefits for the Council's employees and submit only that portion to the Director of Budget and Management as the Council's budget request for purposes of the Director of Budget and Management estimates submitted to the Governor. (R.C. 4121.79.)

Under continuing law, the appropriations for the Industrial Commission and BWC are not part of the main operating appropriations bill. The Industrial Commission budget is enacted in one bill and the BWC budget is enacted in another. The act requires the Council's budget to be included in the BWC's budget bill. (R.C. 101.352, 4121.03, 4121.121, and 4121.79.)

Under continuing law, assessments are made against each employer for purposes of paying the administrative costs of the Industrial Commission and BWC. Assessments for the Industrial Commission are placed into one account and assessments for BWC are placed into another. The act requires the Administrator also to assess each employer an assessment for those costs solely attributable to the Council and place any money received from the assessment into a separate account, created under the act, for purposes of paying the Council's administrative costs. Assessments are to be calculated and made in the same manner as under continuing law for the Industrial Commission and BWC. The act requires the Director of the Council, in a timely manner, to submit to the Administrator the information necessary for the Administrator to allocate and calculate, with the approval of the Director, for each class of employer as described in continuing law, the costs solely attributable to the Council's activities. The act specifically requires the Administrator to deposit any moneys received from a self-insuring employer for the self-insuring employer's assessment to pay the costs solely attributable to the Council into the Council's administrative assessment account. The act further requires that the Administrator or the

Administrator's designee transfer money from the administrative assessment account identified for the Council to the Workers' Compensation Council Fund created by the act in the same manner funds are transferred from the administrative assessment accounts for the Industrial Commission and BWC. Similar to the law governing the Industrial Commission's and BWC's assessments, to the extent that the moneys collected by the Administrator in any state fiscal biennium equal the administrative costs approved by the Council, the moneys must be paid into the Workers' Compensation Council Fund, and the Remuneration Fund, as appropriate, and any remainder must be retained in those funds and applied to reduce the amount collected during the next biennium. (R.C. 4123.341, 4123.342, and 4123.35.)

Exemptions applicable to the Council

The act exempts the Council from sunset review, which is required for other agencies under continuing law (R.C. 101.82).¹ Additionally, the act specifies that the Council is created in the legislative branch of government (R.C. 4121.75(A)). Therefore, the Council receives the same exemptions afforded to all entities residing in the legislative branch.

Under former law, the Council was not subject to the Office of Budget and Management Law, the Controlling Board Law, or the laws governing public works, purchases of supplies or services, or the hiring of personnel through the Department of Administrative Services (R.C. Chapters 123., 124., 125., 126., and 127.). Continuing law requires the Council to establish policies and procedures for purchasing goods and services on a competitive basis and maintaining tangible personal property. The policies and procedures must be designed to safeguard the use of funds received by the Council.

The act specifically exempts the Council from the requirements of the laws governing public works and the purchases of supplies and services, as administered by the Department of Administrative Services, and specifies that those laws do not apply to the Council. However, the act allows the Council to request the Department of Administrative Services, and the Department to agree, to perform for the Council any of the services relating to public works, supplies, and services. The Council may enter into agreements with the Director of Administrative Services for the performance of such services. (R.C. 4121.79(B).)

¹ The act states that it is not the intent of the General Assembly, in amending the law governing sunset review, to supersede the repeal and delayed effective date of that repeal established in Section 6 of Am. Sub. H.B. 516 of the 125th General Assembly (Section 7).

Compensation and staff of the Council

The act requires, rather than permits as under former law, the Council to appoint a director who must be a person who has had training and experience in areas related to the Council's duties. The act states that the Director serves at the pleasure of the Council. (R.C. 4121.77(A).)

The act allows the Council to authorize the Director to appoint professional, technical, and clerical staff (rather than "employees" as under former law) as necessary, and employ or hire on a consulting basis persons to provide actuarial, legal, investment, or other technical services required for the performance of the Council's duties rather than making those appointments directly as under former law. Under the act, all employees of the Council are in the unclassified civil service and the staff serve at the Director's pleasure. (R.C. 4121.77.)

The act requires, rather than permits as under former law, the Council to fix the compensation of the Director and requires the Director, rather than allowing the Council as under former law, to fix the compensation of all other employees of the Council. Under the act, the Director also must adopt policies relating to payment for overtime, granting of compensatory time off, utilizing flexible hours, and working on holidays and compensation for holiday work. (R.C. 4121.77.)

Action by the Council

Under former law, the Council was prohibited from taking action without approval by at least five voting members. The act increases the number of voting members required to take action from five to six. (R.C. 4121.76.)

Provisions applicable to the entire act

Council review

The act states that it is exempt from Council review required under continuing law (Section 3).

Effective date

The act contains an appropriation, and as a result is not subject to the referendum. The act's provisions take immediate effect. (Section 7.)

HISTORY

ACTION	DATE
Introduced	02-27-07
Reported, H. Commerce & Labor	10-18-07
Passed House (56-39)	12-04-07
Reported, S. Insurance, Commerce, & Labor	12-16-08
Passed Senate (31-1)	12-16-08
House concurred in Senate amendments (87-9)	12-17-08

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