

# HOUSE BILL REPORT

## SHB 1607

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### As Amended by the Senate

**Title:** An act relating to determination of benefits for permanent partial disability by industrial insurance self-insurers.

**Brief Description:** Providing for industrial insurance self-insurers to determine benefits for permanent disability.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Thompson, Dyer, Sheldon, Boldt, Honeyford, Lisk, Clements, Mulliken and Mielke).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/12/97, 3/5/97 [DPS].

**Floor Activity:**

Passed House: 3/15/97, 56-40.

Senate Amended.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

**Staff:** Chris Cordes (786-7103).

**Background:** The Department of Labor and Industries supervises all determinations of permanent disabilities in industrial insurance claims and closes all claims involving permanent disabilities, whether the injured worker is insured by the state fund or covered by a self-insured employer.

Self-insurers are authorized to close only those claims that do not involve permanent disabilities and that meet the criteria established by statute. The self-insurer must request the department to close other claims. If a self-insurer closes a claim, the order must

include notice of the worker's right to protest the order to the department within 60 days. If a protest is filed, the department must review the closure and enter a determinative order.

When the department issues a final order, the order must state that the order will become final unless, within 60 days of the date that the order is communicated, a written request for reconsideration is filed with the department or an appeal is filed with the Board of Industrial Insurance Appeals.

**Summary of Bill:** Beginning with claims accepted after June 30, 1997, self-insured employers are authorized to close certain industrial insurance claims that involve a determination of permanent partial disability. The claims that self-insurers may close must be undisputed and must concern a worker who has returned to work with the self-insurer of record at his or her previous job or a job with comparable wages and benefits. For these claims, the self-insurer may initiate the permanent partial disability determination and may require the worker to undergo a special medical examination.

On closing one of these claims, the self-insurer must notify the Department of Labor and Industries and the worker in writing that the claim is being closed with medical benefits or time-loss compensation, or both, and an award for permanent partial disability, if applicable. The notice to the worker must include information about the worker's right to protest the closure to the department. If the department receives a protest, the self-insurer's order must be held in abeyance and the department must review the closure and enter a determinative order. If no protest is filed, the self-insurer's order becomes final and has the same effect as a department order that has become final.

The department must review the self-insurers' claims closure program and the claims closure program of the department's self-insured section and report to the Legislature by January 1, 2000.

**EFFECT OF SENATE AMENDMENT(S):** Under the Senate amendment, the self-insurer's authority to close claims with PPD awards begins August 1, 1997, instead of July 1, 1997. The amendment adds that a self-insurer must, before closing a claim, get a supplemental medical opinion from a provider approved by the Department of Labor and Industries when:

- (1) a physician submits a report to a self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a PPD award; and
- (2) the worker's physician disagrees in writing within 14 days that the worker's condition is fixed and stable.

Alternatively, if the worker's physician disagrees, the self-insurer may forward the claim to the department for action.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 1997.

**Testimony For:** This bill is an administrative fix, intended to create a more efficient workers' compensation system. Under the bill, about 5 to 8 percent of the Department of Labor and Industries' self-insurance workload could be eliminated. In addition, workers could receive their disability awards much quicker because there would be no need to wait for the department to process the paperwork. This should reduce the number of phone calls that workers make to the department. The process that the self-insurer would use to make the award is the same as the department uses. In both cases, the physician determines the disability. The worker may file a protest at any time before the claim is closed or may protest the award and the department may correct any payments for two years afterward. There are strict penalties in place against self-insurers who violate their authority.

**Testimony Against:** This bill would change the objectivity and fairness that is intended under the industrial insurance system. The only way to protect workers under this bill would be to encourage them to file protests. This would severely increase the litigation rate. Workers' complaints about self-insurers are already very high. The issue addressed by this bill was reviewed by a department advisory committee, but no agreement could be reached. Self-insurers are not prevented from paying a disability award before the final department order has been issued. This bill puts all the burden on the worker to appeal an illegal order. There would be no disadvantage to the employer for choosing the lower disability rating if medical examiners disagreed about the rating. The worker's right to appeal is limited to taking the appeal to the department; an appeal directly to the Board of Industrial Insurance Appeals is not permitted by this bill.

**Testified:** (In support) Pam Televik, Washington Self-Insurers Association; Bill Johnson; and Pat Pinedo, City of Olympia. (Opposed) Harold Abbe, Association of Western Pulp and Paper Workers; Dan Sexton, United Association of Plumbers and Pipefitters; Owen Linch, Joint Council of Teamsters; Robby Stern, Washington State Labor Council; Karen McDonald; and Dick King, International Brotherhood of Electrical Workers.