SENATE BILL REPORT
SB 5378

As Reported By Senate Committee On:
Commerce & Trade, February 6, 2003

Title: An act relating to simplifying and adding certainty to the calculation of workers' compensation benefits.

Brief Description: Simplifying and adding certainty to the calculation of workers' compensation benefits.

Sponsors: Senators Honeyford, Hewitt, T. Sheldon, Mulliken, Rasmussen and Hale.

Brief History:
Committee Activity: Commerce & Trade: 1/30/03, 2/6/03 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 5378 be substituted therefor, and the substitute bill do pass.
Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.
Signed by Senators Franklin and Keiser.

Staff: Jennifer Ziegler (786-7316)

Background: A worker who is injured in the course of employment is entitled to benefits under Washington's industrial insurance law. Benefits include compensation for time lost from work (time-loss benefits) and for medical care related to the injury or occupational disease.

Calculation of Wages. Benefits for lost wages are based on the worker's monthly wage at the time of the injury. If a worker's employment is seasonal in nature or essentially part-time or intermittent, the monthly wages are determined by dividing by 12 the total wages earned from all employment in any 12 successive calendar months preceding the injury.

The current statutory definition of wages includes tips, to the extent they are reported to the employer for federal income tax purposes, and the "reasonable value of board, housing, and fuel or other consideration of like nature."

Time-Loss Benefits. If a worker is injured or dies as the result of an occupational injury or disease, the injured worker or the surviving spouse and children are eligible for 60-72 percent of the worker's monthly wage. The actual percentage of benefits received is determined by the number of dependents.

Payments to a worker with a temporary total disability cease when the present earning power of the worker, at any kind of work, is restored. If the present earning power is partially restored, the worker must receive 80 percent of the difference between the actual wages and the worker's earning power at the time of injury.

An injured worker with a permanent partial disability receives compensation for the disability according to a statutory schedule. Payments made under this program increase each July by the annual change in the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers.

Benefit payments for lost wages must not exceed 120 percent of the state's average monthly wage.

Relevant Court Cases. Two recent Washington Supreme Court decisions have affected the way wages are calculated. In *Cockle v. The Department of Labor and Industries*, the court held that health care benefits must be incorporated into the calculation of wages when determining time-loss benefits for injured workers.

In *Avundes v. The Department of Labor and Industries*, the court established a test to determine whether an employee's work was intermittent. If the Department of Labor and Industries or a self-insured employer determines that the work is intermittent, wages must be calculated by dividing the total year's wages by 12. If the work is not intermittent, wages must be calculated based on the worker's current monthly wage.

Summary of Substitute Bill: Changes are made to the calculation of wages and time-loss benefits.

Calculation of Wages. Wages are defined as any cash compensation paid by the employer for services performed. Wages include tips that are reported for federal income tax purposes and the actual value of board, housing and fuel received from the employer. The actual value of board, housing and fuel is not included in the calculation of wages if the employer continues to provide those benefits while the worker is not working.

Wages do not include fringe benefits. Fringe benefits include, but are not limited to: retirement and financial benefit plans; mental and physical health insurance; life, disability and wage replacement insurance; unused, accrued leave; memberships; employee discounts; materials; equipment and facilities; training and education; and other employee or beneficiary benefit plans.

To determine a worker's monthly wage, the department or a self-insurer must divide by 12 the total wages in any four successive quarters in the 24 months preceding the injury or disease that most reasonably represent the worker's wages. If the worker is self-employed or sustains an injury or occupational disease less than one year after beginning an employment relationship, the department or a self-insurer must calculate the monthly wage based on the usual wage paid other employees of the employer who perform similar duties. If no other employees exist for comparison purposes, the department or a self-insurer shall calculate the wage based on other employees in the worker's labor market who perform similar duties.

Time-Loss Benefits. After July 1, 2003, the surviving spouse of a deceased worker and a worker with a permanent or a temporary total disability must receive 65 and 5/10 percent of the wages of the worker's monthly wages, but no less than $276 per month.

Benefits for death, permanent total disability and temporary total disability after July 1, 2003 and before June 30, 2004 may not exceed 120 percent of the average monthly wage in the state on June 30, 2003. After July 1, 2004, the department must annually adjust the state's average monthly wage based on the wage during the previous 12 month period, to account for inflation.

A worker with a temporary total disability is eligible for benefits until the worker is capable of gainful employment on a reasonably continuous basis. If the worker's present earning power is partially restored and the worker is working, the worker must receive 80 percent of the difference between the worker's present wages and the worker's earning power at the time of injury. An injured worker is eligible for these temporary total disability benefits until the worker's condition is "medically fixed and stable."

The department must adjust permanent partial disability payments annually for inflation, beginning July 1, 2003.

Substitute Bill Compared to Original Bill: The inflation adjustment for permanent partial disability payments must start on July 1, 2003.

Appropriation: None.

Fiscal Note: Requested on January 23, 2003.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2003.

Testimony For: This bill provides for a fair and consistent application of the workers' compensation system. The current system is increasingly complex, which results in more costs for the employer and the employee. It is common around the country to use a flat rate for benefits. Employers do not vary what they pay based on number of beneficiaries. This legislation will decrease litigation.

Testimony Against: It is difficult for the department to make the necessary computer adjustments in one year. Averaging of wages has a significant impact on construction workers. The flat rate hurts large families. The implicit price deflator is not an accurate reflection of inflation. Four-quarter averaging will result in a substantial decrease in benefits. Workers have no real advocates in the system.

Testified: PRO: Lori Carlson, Sellen Construction; Wade Bennett, King/Pierce County Farm Bureau; Tammy Hattrick, Retailers; Kathleen Collins, WA Self-Insurers Assn.; Lisa Vivian, Eberle Vivian Self-Insurance Administrators; Mitch Sullivan, United Warehouse; Terry Peterson, attorney; Scott Crosser, Supervalu; CON: Robby Stern, WA Labor Council; Roger Boatwright, WA State Building and Construction Trades Council; Owen Linch, State Council of Teamsters; Jeff Johnson, WA Labor Council, AFL-CIO; Terri Herring, attorney; Stan Rumbaugh, attorney; Michael Young; Guadalupe Gambou, United Farm Workers.