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**Commerce & Labor Committee**

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**HB 3139**

**Brief Description:** Providing for stays of industrial insurance orders on appeal.

**Sponsors:** Representatives Conway, Wood, Green, Moeller, Simpson and Ormsby.

**Brief Summary of Bill**

- Provides that an order awarding industrial insurance benefits becomes due on the date issued unless the Board of Industrial Insurance Appeals (Board) orders a stay.
- Provides procedures and standards for motions to stay.

**Hearing Date:** 2/1/08

**Staff:** Joan Elgee (786-7106).

**Background:**

The Industrial Insurance Act (Act) permits employers or workers to contest orders issued by the Department of Labor and Industries (Department). Aggrieved parties may appeal directly to the Board or may first request reconsideration by the Department. Upon filing of a notice of appeal, the Department must transmit the record to the Board. If the Board does not deny the appeal or allow the relief requested based on the record, the appeal is granted and the appeal proceeds.

The Act allows the Department to adopt policies regarding payment of benefits pending appeal. The Department's written policy states that time-loss benefits are not paid while an employer's appeal is pending unless the issue does not involve the payment of time-loss benefits or the allowance or reopening of the claim, or unless the employer's appeal is unfounded. The Department's policy states that it is intended to avoid unnecessary recoupment costs when an employer prevails.

If a worker is overpaid benefits, the worker must repay the benefits and recoupment may be made from future payments. The Director of the Department may waive all or part of the payments where recovery would be against equity and good conscience.

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*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.*

**Summary of Bill:**

An order awarding industrial insurance benefits becomes due on the date issued and may not be stayed unless the Board orders a stay. Procedures and standards are established for motions to stay.

A motion for a stay must be filed within 15 days of an order granting an appeal. The Board must conduct an expedited review of the claim file within 30 days of the motion and the receipt of the claim file. Within 40 days of the motion, the Board must issue a decision on the stay. The Board must grant a motion to stay if the person seeking the stay demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order. There is a presumption that the Department's order was correct. The Board must not consider the likelihood of recoupment of benefits as a basis to grant or deny a stay.

If the Department has ordered an increase in a permanent partial disability award upon reconsideration, only the increase in the award is stayed pending a final decision on the merits. If a self-insured employer appeals an order setting a time-loss rate, only the payment of time-loss or pension benefits at the increased rate is stayed pending a final decision on the merits.

**Rules Authority:** The bill does not directly address rule-making; however, the Board may need to adopt rules to implement the provisions.

**Appropriation:** None.

**Fiscal Note:** Requested on January 24, 2008.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.