



1995 ASSEMBLY BILL 938

February 23, 1996 - Introduced by Representatives MURAT, HASENOHRL, BALDUS, LORGE and KREUSER, cosponsored by Senators BURKE and SHIBILSKI. Referred to Committee on Labor and Employment.

1 **AN ACT** *to create* 102.17 (1) (am) of the statutes; **relating to:** substitution of a
2 hearing examiner in a worker's compensation case.

Analysis by the Legislative Reference Bureau

Under current law, a party may request a substitution of a judge in a civil, criminal, traffic, small claims or municipal court proceeding. Currently, no party may file more than one request for a substitution of a judge in any one case, except that a party who has previously requested a substitution may do so again if the case is sent back for retrial after an appeal. Currently, a request for a substitution of a judge may not name more than one judge. This bill permits a party in a worker's compensation case to request a substitution of a hearing examiner along the same lines as a party in a court case may request a substitution of a judge currently.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 102.17 (1) (am) of the statutes is created to read:
4 102.17 (1) (am) 1. Any party in interest may file a written request with the
5 examiner assigned to the party's case for a substitution of a new examiner for the
6 assigned examiner. The written request shall be filed within 10 days after the case
7 is scheduled for a hearing. If a new examiner is assigned to the hearing of a case, a
8 request for substitution must be made within 10 days after service of the notice of

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1 assignment, except that if the notice of assignment is served less than 10 days before
2 the hearing, the request for substitution must be made within 48 hours after service
3 of the notice and if the notice of assignment is served less than 48 hours before the
4 hearing, the case may proceed to hearing only if the parties in interest stipulate that
5 the assigned examiner may preside at the hearing.

6 2. After the written request has been filed, the original examiner has no further
7 jurisdiction over the case except to determine if the request is correct as to form and
8 timely filed. If no determination is made within 7 days after the request is filed, the
9 examiner shall refer the matter to the commission for the determination and
10 reassignment of the case as necessary. If the request is correct as to form and timely
11 filed, the named examiner shall be disqualified and shall promptly request the
12 commission to assign another examiner.

13 3. Except as provided in subd. 4., no party in interest may file more than one
14 request for a substitution of an examiner in any one case, and any single request may
15 not name more than one examiner. For purposes of this subdivision, parties united
16 in interest and pleading together are considered a single party, but the consent of all
17 of those parties is not needed for one party united in interest to file a request.

18 4. If on review of a finding, award or order the commission orders the taking
19 of additional evidence or reverses, sets aside or modifies the finding, award or order
20 as to any party in interest in a manner such that a further hearing before an
21 examiner is necessary, any party in interest may file a request under subd. 1. within
22 20 days after the entry of the decision of the commission, regardless of whether that
23 party filed another request before the time the petition for review was filed.

SECTION 2. Initial applicability.

