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Joint Committee on Finance

Paper #695

Transfer Worker's Compensation Positions to DOA (Workforce Development -- Other Programs and Administration -- Transfers)

[LFB 2017-19 Budget Summary: Page 495, #1, and Page 39, #4]

CURRENT LAW

The Department of Workforce Development's Worker's Compensation Division (DWD-WC) administers the State of Wisconsin's worker's compensation law. If a claim for worker's compensation benefits is denied, the dispute may be handled through a formal hearing or through an informal alternative dispute resolution process. The Department of Administration's Division of Hearings and Appeals (DHA) conducts hearings for DWD-WC. DHA assesses DWD for the costs incurred to hold these hearings. DWD-WC is supported with fees assessed upon and collected from worker's compensation insurance carriers.

GOVERNOR

Transfer 5.5 positions from DWD-WC to DHA. On the effective date of the bill, 5.5 FTE positions and the incumbent DWD-WC employees holding those positions, who perform duties relating to worker's compensation hearings, as determined by the DOA Secretary, would be transferred to DHA. The transferred employees would have the same rights and status related to state employment relations that the employee held immediately before the transfer. Transferred employees who have attained permanent status would not be required to serve a probationary period.

Funding associated with the positions would not be reduced from DWD's worker's compensation operations administration appropriation, but rather reallocated to supplies and services to pay charges annually assessed by DHA. Spending authority would be increased in DOA's hearings and appeals fees appropriation by \$1,240,700 PR annually. Of this amount, \$363,600 PR annually would be allocated to salary and fringe costs associated with the transfer of the 5.5 positions and \$877,100 PR annually would be allocated to supplies and services associated with rent, information technology (IT) costs, contract court reporter and interpreter costs, and other charges related to conducting worker's compensation hearings.

DISCUSSION POINTS

2015-17 Biennial Budget Provisions

1. The 2015-17 biennial budget (2015 Act 55) transferred worker's compensation hearings from DWD-WC to DHA, effective January 1, 2016. To accommodate the transfer, Act 55 required that not less than 18.0 FTE administrative law judge (ALJ) positions, and the incumbent DWD employees holding those positions, be transferred to DHA. In determining the number of ALJ positions to be transferred, the DOA Secretary was instructed to ensure that not less than six worker's compensation ALJs and two legal support staff remain at DWD to decide claims where a formal hearing is not scheduled.

2. The 2015-17 budget provision resulted in a total of 32 positions (inclusive of the 18 ALJ positions) being transferred from DWD to DHA as well as \$3,686,300 PR annually being provided as additional spending authority in DHA that could be used to charge DWD for salary and fringe costs related to the positions. DHA's increased spending authority was limited to salary and fringe costs related to the transferred positions and did not account for other expenses incurred by DHA related to rent, IT services, court reporter services, interpreter/translator services, and various supplies and maintenance.

3. DWD-WC positions are SEG funded from moneys received by DWD from fees assessed upon and collected from worker's compensation insurance carriers. DOA receives these moneys as program revenues (PR) from the respective DWD SEG appropriation account for services provided.

Memorandum of Understanding

4. Subsequent to the enactment of Act 55, DWD and DHA executed a Memorandum of Understanding (MOU), signed on December 10, 2015. The MOU defined the respective responsibilities of each agency related to the transfer of adjudication functions from DWD-WC to DHA. The MOU was executed, in part, because at the time the motion to transfer hearing responsibilities from DWD-WC to DHA was adopted by the Joint Committee on Finance, it was not known what precise level of staffing and spending authority would be needed at each agency to effectively implement the provisions of the bill. The MOU clarified these roles and responsibilities.

5. The MOU specified that additional employees, beyond the 32 transferred positions, would be either dedicated to DHA or shared between DHA and DWD-WC to assist in the delivery of hearings functions. These positions included two additional Administrative Law Judge (ALJ) positions and one office operations associate that were offered by DWD-WC to DHA to meet program needs and to alleviate caseload pressures at DHA.

6. The MOU also specified a procedure whereby staffing levels would be reviewed quarterly to assess caseload levels at both DWD-WC and DHA. Based upon these evaluations, the MOU stated that DWD and DHA would make staffing and budgetary recommendations for the 2017-19 biennial budget. The MOU specified that DWD would monitor the percent of time of full-time equivalent (FTE) non-transferred employees dedicated to adjudicatory responsibilities and that

DHA would likely ask for these positions in the 2017-19 budget.

7. In the absence of adequate spending authority provided to DHA in the 2015-17 budget, the MOU clarified that DWD would absorb DHA's costs in the current biennium related to rent, IT services, court reporter services, interpreter/translator services, supplies and maintenance.

Transfer 5.5 Positions and Increase Spending Authority

8. The administration's Budget in Brief states that the transfer of 5.5 positions would finalize the worker's compensation transfer initiated in Act 55 from DWD-WC to DHA and achieve efficiencies through functional consolidation. According to DHA, the 5.5 positions currently work wholly on the due process needs of the workers compensation hearings unit. The Governor's budget proposal to transfer 5.5 positions is based on discussions with both DHA and DWD to find a solution to the staffing issues addressed in the MOU.

9. According to DHA, since assuming the responsibility for worker's compensation hearings, the caseload has been constant, but staffing has not. There have been two ALJ retirements since January 1, 2016, a long-term ALJ medical leave, and an ALJ position on interagency loan from DWD which has expired and the position is back at DWD.

10. According to DWD, the following 5.5 positions will be transferred to DHA under the bill: 3.5 positions related to the functions and scheduling of hearings for DHA after an application for a hearing has been filed with DWD (the point where a file is transferred from DWD to DHA and enters "litigated" status); 1.0 attorney position which provides mediation services for DHA after an application for a hearing has been filed; and 1.0 position which currently serves as a computations technician in the DWD-WC Claims Monitoring Unit. This position would provide DHA the ability to compute benefit awards without the need to interface with DWD-WC.

11. As indicated, of the 5.5 transferred positions, one position is an attorney. Currently the attorney in question mediates disputes in an attempt to reduce the number of hearings needed for scheduling. Since the attorney's position deals exclusively with mediation efforts after an application for a hearing has been filed, this position would be transferred from DWD-WC to DHA. The 2015-17 biennial budget directed DWD-WC to have and maintain on its staff such hearings examiners as are necessary to mediate claims and to assist in the effective administration of Chapter 102. Under the bill, DWD-WC would maintain three attorney positions to handle administration of Chapter 102 (Worker's Compensation). According to DWD, these three attorneys are sufficient for DWD-WC to process the current workload.

12. The bill would address two issues that the MOU between the two agencies had previously detailed. First, the lack of expenditure authority for supplies at DHA would be addressed by increasing spending authority by \$877,100 PR annually for 2017-19 for expenses incurred by DHA related to rent, IT services, court reporter services, interpreter/translator services, and various supplies and maintenance. Second, DHA's need to consolidate employees that are dedicated to adjudicatory responsibilities is addressed with the transfer of 5.5 positions, some of which had been on loan or are currently on loan from DWD-WC under the MOU [Alternative 1].

13. The Workers Compensation Advisory Council (WCAC) is statutorily required to advise DWD in carrying out the purpose of the Workers Compensation Act. WCAC membership is comprised of five voting representatives from organized labor; five voting management representatives; three non-voting representatives from the insurance industry; and one representative from DWD. The Council can submit its recommendations for changes in worker's compensation law to the Legislature in an "agreed bill" and report its views on any other pending legislation which relates to worker's compensation. According to the Department, the "agreed bill" concept is a long-standing tradition of the Council. As the name implies, Council members come to a consensual agreement to support the Council's proposed changes in the Legislature and not to individually seek any changes to those proposals.

14. The proposal to transfer staff to DHA did not go through the WCAC agreed upon bill process. The WCAC was provided with a summary of the changes in the budget at the March 14, 2017, meeting. The WCAC, if they choose, can report its views on any pending bill to the proper legislative committee. To date, the Council has not taken action to support or oppose any provisions found in the bill [Alternative 2].

ALTERNATIVES

1. Approve the Governor's proposal to transfer 5.5 positions from DWD's Division of Worker's Compensation to DOA's Division of Hearings and Appeals. In DWD, transfer \$363,600 annually from salary and fringe to supplies to pay DOA for the positions. In DOA, provide \$1,240,700 PR annually for salary, fringe, and supplies for the 5.5 transferred positions.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DOA				
PR	\$2,481,400	5.50	\$0	0.00
DWD				
SEG	\$0	- 5.50	\$0	0.00

2. Maintain current law. [The WCAC could consider recommending the provision as part of the 2017 worker's compensation agreed upon bill.]

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DOA				
PR	\$0	0.00	- \$2,481,400	- 5.50
DWD				
SEG	\$0	0.00	\$0	5.50

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