

MINUTES

SPECIAL COMMITTEE ON LABOR AND INDUSTRY

June 22 and 23, 1977

Members Present

Representative Eugene Gastl, Chairman
Senator John Vermillion, Vice-Chairman
Senator Paul Feleciano, Jr.
Senator Bill Morris
Senator Don Allegrucci
Representative Samuel Sifers
Representative Lynn Whiteside
Representative Denny Burgess
Representative Darrell Webb
Representative John Sutter
Representative Bill Wisdom

Staff Present

Mike Heim, Kansas Legislative Research Department
Sherman Parks, Revisor of Statutes Office
Russ Mills, Kansas Legislative Research Department
Phill Jones, Kansas Legislative Research Department

Conferees and Others Present

Dick Smelser, Division of Worker's Compensation, Department of Human Resources
Morris Taylor, Division of Worker's Compensation, Department of Human Resources
Bryce Moore, Director, Division of Worker's Compensation, Department of Human Resources
Bill Morrissey, Assistant Director, Division of Worker's Compensation, Department
of Human Resources
Tim Brazil, Kansas Insurance Department
George Welch, State Worker's Compensation Self-Insurance Fund, Department of
Administration
Bill Douglass, League of Kansas Municipalities
Bud Grant, Kansas Association of Commerce and Industry
Jack Swartz, Kansas Association of Commerce and Industry
Mark L. Bennett, American Insurance Association
Homer Cowan, Jr., The Western Insurance Company
Leslie Thompson, U.S. Department of Labor
Rob Hodges, Kansas Association of Commerce and Industry
Charles D. Lewis, United Telephone of Kansas
Ray Rathert, Kansas Insurance Department
J. Kurtiss Carlson, Kansas Insurance Department
Bill Wempe, Kansas Insurance Department
Hamp Fairleigh, Department of Human Resources
Dr. James McCain, Secretary of the Department of Human Resources
Ruth Baughman, Wichita, Kansas.

June 22, 1977

Proposal No. 45 - Workmen's Compensation

The meeting was called to order by the Chairman, Representative Eugene Gastl at 10:00 a.m. He said that the purpose of the 1977 Special Committee on Labor and Industry was to study Proposal No. 45 and Proposal No. 46. Proposal No. 45 calls for a study to determine whether the Kansas Workmen's Compensation Law should be brought into full compliance with the 19 essential recommendations of the National Commission on State Workmen's Compensation Laws with particular attention to the possibility of eliminating the \$50,000 maximum death benefit limit or instituting an automatic cost-of-living factor for these benefits and to review provisions

of Kansas law which prohibit payment of benefits in certain coronary and cerebrovascular cases. Proposal No. 46 calls for a review of the adequacy of the Kansas Employment Security Law and the impact of the 1977 amendments on employers, employees and local units of government.

The chairman announced that the Committee will meet on July 20 and 21; August 17 and 18; September 14 and 15, October 19 and 20, and November 16. He said that the meetings will begin at 10:00 a.m. on the first day and at 9:00 a.m. on the second day.

Mike Heim of the Kansas Legislative Research Department reviewed the concept and history of workmen's compensation. He said the concept originated in Austria and Germany during the 1800's and was later adopted in England near the turn of the century. In simplest terms, workmen's compensation is a "no fault" insurance plan paid for by employers whereby injured workmen are paid benefits for work-related accidents. Workmen's compensation provide cash benefits to replace lost wages, medical care and often times rehabilitation services. The distinguishing feature of workmen's compensation is that it assures benefits will be paid for work-related accidents for many workers who could not win suit for damages under common law and it helps protect employers from costly legal bills for each work-related accident. Mr. Heim reviewed an article entitled "Historical Development of Workmen's Compensation", (Compendium on Workmen's Compensation, President's National Commission on State Workmen's Compensation Laws, 1973), a copy of which is in the Committee notebooks. He also reviewed the 1973 Special Committee on Employer-Employee Relations Report to the 1974 Legislature, a copy of which is also in the Committee notebooks. This Report contains a detailed explanation of the President's National Commission on State Workmen's Compensation Laws and the Commission's 19 essential recommendations.

Mr. Sherman Parks of the Revisor of Statutes Office, gave a brief review of the amendments to the Kansas Workmen's Compensation Act since 1974. He explained that major amendments were made to the law in 1974, which included: (1) coverage was made mandatory for most employers except those involved in agriculture; (2) death and disability benefit maximums were increased to \$50,000; (3) total disability was defined as when the worker is unable to return to any substantial or gainful employment; and (4) the second injury fund liability was expanded and its name was changed to the Workmen's Compensation Fund to be administered by the Department of Insurance. Mr. Parks said that there were only minor changes made in 1975 and 1976. In 1977, however, significant changes were made including the removal of the social security off-set for death benefits and for benefits paid to persons eligible for Federal old age social security payments. Other legislation amended the Workmen's Compensation Act to increase the rate at which an injured worker can be paid for traveling for out-of-town medical care and amended statutes concerning the administration of the Workmen's Compensation Fund in an effort to control the accelerating costs associated with this Fund. The Committee Chairman asked Mr. Parks to submit a summary of his remarks at a later date.

Mr. Bryce Moore, Worker's Compensation Division Director of the Kansas Department of Human Resources, reviewed the Kansas Workmen's Compensation Law and its administration, statistical reporting responsibilities of his office, the rehabilitation program and Kansas compliance with the 19 essential recommendations of the National Commission on State Workmen's Compensation Laws.

He said that the 1974 amendments to the Workmen's Compensation Act were the most significant changes in the Act since his tenure of office began. In 1976, his office was re-organized and became a division of the Department of Human Resources. Mr. Moore said that there are three types of benefits of Workmen's Compensation including medical benefits, rehabilitation benefits, and dollar benefits paid to the injured worker or a deceased worker's family. The current maximum weekly benefit amount is set at \$112.67 but as of July 1, 1977, the maximum will be raised to \$120.95.

Mr. Moore then discussed the Kansas compliance with the 19 essential recommendations of the National Commission on State Workmen's Compensation Laws (See Attachment I). He said that Kansas has met fully or partially 16 of the 19 essential recommendations.

Mr. Dick Smelser, Administrative Assistant to Mr. Moore, distributed copies of the Workers' Compensation Newsletter, a copy of which is in the Committee notebooks. He also distributed two organizational charts, copies of which are attached (Attachment II). Mr. Smelser explained that there are five fulltime examiners with offices in Topeka, Great Bend, Wichita, and Kansas City (two). As of January 1, 1977, there were 44,488 Workers' Compensation insurance policies issued to Kansas employers written by

the 257 insurance companies handling this type of insurance in Kansas. There are also 183 companies which are self-insured. He said that the Workers' Compensation Division is a fee-fund agency with a department budget of \$550,000.

Mr. Morris Taylor, Rehabilitation Administrator of the Workers' Compensation Division, said that his office screens all accident reports from insurance companies to see if rehabilitation services are needed. He also acts in a coordination role with an injured employee, his employer and the insurance company if litigation is involved. He discussed the types of vocational rehabilitation programs available and noted that there are 300 people at the present time referred to rehabilitation counselors of which approximately 150 are involved in job training programs. He said that one area that needs improvement is in communication between the courts, insurance companies and the rehabilitation counselors. The services of counselors of the Department of Social and Rehabilitation Services are normally utilized.

The meeting was recessed by Chairman Gastl at 12:00 noon for lunch.

Afternoon Session

Chairman Gastl called the meeting to order at 1:30 p.m. He introduced Dr. James McCain, Secretary of the Department of Human Resources. Mr. McCain briefly explained the selection process he utilized to hire five fulltime Workmen's Compensation examiners and explained how this led to the formation of a Workers' Compensation Advisory Council. He then explained the membership, functions and bylaws of the newly formed Workers' Compensation Joint Advisory Council. A list of the Advisory Council members and bylaws are attached (Attachment III).

Dr. McCain said that a quorum of the Council consists of two members representing labor and two members representing industry. The labor and the industry representatives of the Council are the only voting members of the group. At the Council's first meeting on May 18, 1977, a lengthy discussion was held on what role it should play in regard to the Legislature. It was felt by the Council that it should be a body to which issues, not bills, should be referred. The Council plans to meet the first Wednesday of each month. At the July meeting, it will review the 19 essential recommendations of the National Commission on State Workmen's Compensation Laws and will try to arrive at recommendations by September or October to present to the Committee for consideration. Dr. McCain emphasized that the council is purely advisory. Recommendations from the council will go to the Governor for his approval before they are presented to the Special Committee on Labor and Industry. He said that he would like to see representation on the council reflect all of organized labor as well as non-union labor.

Representative Wisdom and Senator Feleciano both expressed concern that the members of advisory councils should not try and usurp the duties of the Legislature and that proposed legislation should be given consideration by the Legislature regardless of whether or not an advisory council has recommended or approved it.

Mr. Tim Brazil of the Kansas Insurance Department spoke on the administration of the Workmen's Compensation Fund by the Kansas Department of Insurance. A copy of his statement and a chart summarizing the expenses of the Fund are attached (Attachment IV and V).

Mr. Ray Rathert of the Department of Insurance explained the Workmen's Compensation insurance rate system. A copy of his statement is attached (Attachment VI).

Mr. George Welch, Administrator of the State Workmen's Compensation Self-Insurance Fund, Department of Administration, gave a review of the administration of that Fund. A copy of his statement is attached (Attachment VII).

The meeting was adjourned at 3:30 p.m. by Chairman Gastl.

June 23, 1977

The meeting was called to order by Chairman Gastl at 9:00 a.m. The chairman introduced Ms. Leslie Thompson, Regional Representative, United States Department of Labor, who spoke on the role of the Federal Interdepartmental Workers' Compensation Task Force and Kansas compliance with the 19 essential recommendations of the President's National Commission on State Workmen's Compensation Laws. She also

discussed pending federal legislation. (See Attachments VIII, IX and X). She said that the most serious areas of non-compliance with the 19 essential recommendations were in the areas of coverage and benefits. She said that \$50,000 benefit maximums was unrealistic and that the exemption for agricultural workers and most household and domestic workers (because of the \$10,000 payroll exemption for employers) also represented substantial non-compliance with several of the 19 essential recommendations.

Mr. William Morrissey, Assistant Director of Workers' Compensation Division of the Kansas Department of Human Resources spoke on the heart amendment provision of Kansas law. Mr. Morrissey said that the amendment has been tested in the Supreme Court several times. The last Supreme Court decision was in the case of Lentz vs. the City of Marion. This decision allowed less unusual exertion than in previous decisions of the court. The procedure for filing a workmen's compensation claim was also described by Mr. Morrissey.

Mr. Bill Douglass, League of Kansas Municipalities, then spoke to the Committee on the impact of Workmen's Compensation on local governments. A copy of his statement is attached. (Attachment XI).

Mrs. Ruth Baughman of Wichita asked to be heard by the Committee. She said there are many problems with the Workmen's Compensation Law and that death benefits were inadequate. She said that an autopsy should be mandatory on all workers killed in job-related accidents.

The Committee agenda for the remainder of the interim was reviewed. The tentative agenda is as follows:

- July 20 - Conferees on Workmen's Compensation Proposal No. 45
- July 21 - Tour of the Employment Division Offices of the Department of Human Resources. Lunch will follow at the Topeka Club hosted by the KACI and the AFL-CIO.
- August 17 - Hearings on Unemployment Insurance Proposal No. 46
- August 18 - Committee discussion on Workmen's Compensation to formulate amendments
- September 14 - Finalize any proposed amendments in Workmen's Compensation and 15 and Unemployment Insurance
- October 19 - Hearing on proposed drafts of legislation for both Workmen's and 20 Compensation and Unemployment Insurance
- November 16 - Review and approval of Committee report and suggested legislation.

Staff agreed to gather information about state workmen's compensation funds operated by approximately 17 states that provide insurance to employers either exclusively or in competition with private insurance companies. Staff also agreed to obtain more detailed information about the Workmen's Compensation Fund administered by the Kansas Insurance Office.

Representative Whiteside moved that the meeting adjourn. Senator Feleciano seconded the motion. The motion carried.

Prepared by Mike Heim

Approved by Committee on:

July 20, 1977
Date

6TH FLOOR, 535 KANSAS AVE. TOPEKA, KANSAS 66603

913-296-3441

How Kansas has complied with the nineteen (19) essential recommendations of the National Commission on State Workers' Compensation Laws. Prepared by the Division of Workers' Compensation, State of Kansas.

- 1) Coverage by workmen's compensation laws be compulsory and no waiver be permitted.

Comment: Workmen's Compensation is compulsory for those employers that are mandatorily covered under the act. The prior law allowed an employer at his election to come out from under the act. However, it would be pointed out that certain employments are not mandatorily covered in this state such as agricultural pursuits and those employers who have less than a \$10,000 annual payroll in the preceding calendar year.

- 2) Employers not be exempted from workmen's compensation coverage because of the number of their employees.

Comment: Kansas no longer exempts employers because of the number of employees. However, as noted there is a \$10,000 payroll exemption.

- 3) A two-stage approach to the coverage of farm workers. First, as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. As a second stage, as of July 1, 1975, farmworkers be covered on the same basis as all other employees.

Comment: Kansas excludes agricultural pursuits, therefore, does not meet this recommendation.

- 4) As of July 1, 1975, household workers and all causal workers be covered under workmen's compensation at least to the extent that are covered by Social Security.

Comment: Kansas would not discriminate against household workers or any causal workers, however, it would be pointed out that there is a \$10,000 payroll exemption.

- 5) Workmen's Compensation coverage be mandatory for all government employees.
Comment: Workmen's compensation coverage is mandatory for all state employees and generally for all employees of other local units of government. However, it would be pointed out where a local unit of government has less than a \$10,000 annual payroll in the preceding calendar year, they would be exempted from the Kansas Workmen's Compensation Act.
- 6) There be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.
Comment: Kansas would meet this recommendation.
- 7) An employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.
Comment: Kansas would meet this recommendation.
- 8) Full coverage for work-related diseases.
Comment: Generally Kansas would meet this requirement.
- 9) Subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.
Comment: Kansas would meet this recommendation.
- 10) As of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
Comment: Kansas meets the first part of this recommendation, but not the second. The maximum benefit in Kansas at the present time is 66 2/3 percent of the State's average weekly wage.
- 11) The definition of permanent total disability used in most States be retained. However, in those few states which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, the benefit proposals be applicable only to those cases which meet the test if permanent total disability used in most States.
Comment: Kansas would seem to meet this recommendation as the definition of total disability is the ability to engage in any gainful and substantial employment.
- 12) Subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.
Comment: Kansas would meet this recommendation.
- 13) As of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
Comment: Kansas would meet the first part of this recommendation, but would not meet the second part of this recommendation. The maximum in Kansas is 66 2/3 percent of the State's average weekly wage.

- 14) Total disability benefits be paid for the duration of the worker's disability, or for life, without any limitation as to dollar amount or time.

Comment: Kansas does not meet this recommendation as there is a monetary limit of \$50,000 for each claim in Kansas.

- 15) Subject to State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage.

Comment: Kansas would meet this recommendation.

- 16) As of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

Comment: Kansas would meet the first part of this recommendation, but not the second part. The maximum benefit in Kansas for a weekly death benefit is 66 2/3 percent of the State's average weekly wage.

- 17) Death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage two years' benefits be paid in a lump sum to the widow or widower. Benefits for a dependent child be continued at least until the child reaches age eighteen, or beyond such age if actually dependent, or at least until age twenty-five if enrolled as a full-time student in any accredited educational institution.

Comment: Kansas would partially meet this recommendation, but in part would not. Death benefits are not paid for the life time of the widow or widower and there are monetary limitations on these payments. Benefits to dependent children are only paid up to age 23 under the circumstances set out in this recommendation. Kansas does allow a 100 weeks lump sum benefit upon remarriage.

- 18) There be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

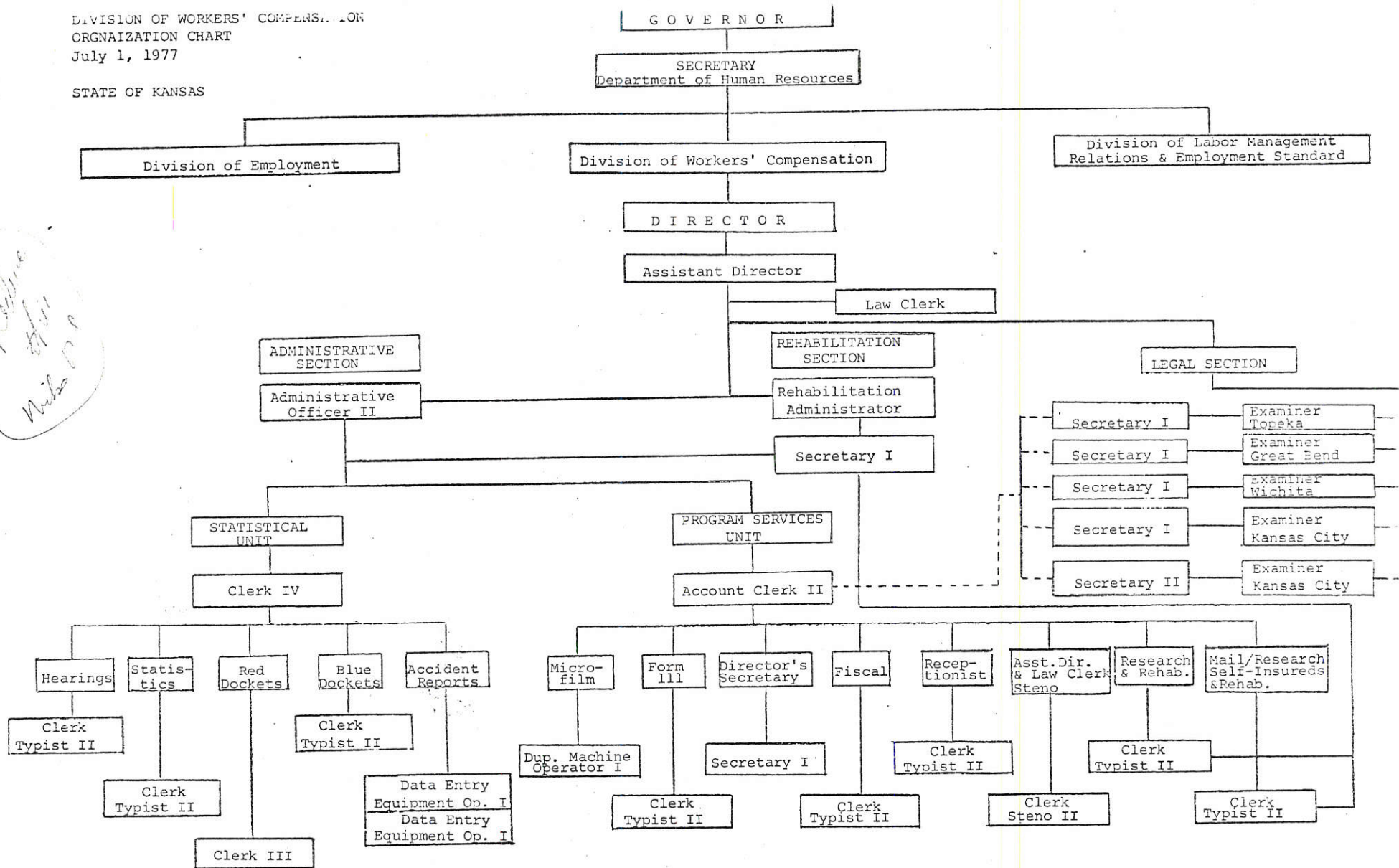
Comment: Kansas would generally meet this recommendation. However, the statute of limitations could terminate the right to future medical.

- 19) The right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

Comment: Kansas would generally meet this recommendation. However, the statute of limitations could terminate the right to future medical.

STATE OF KANSAS

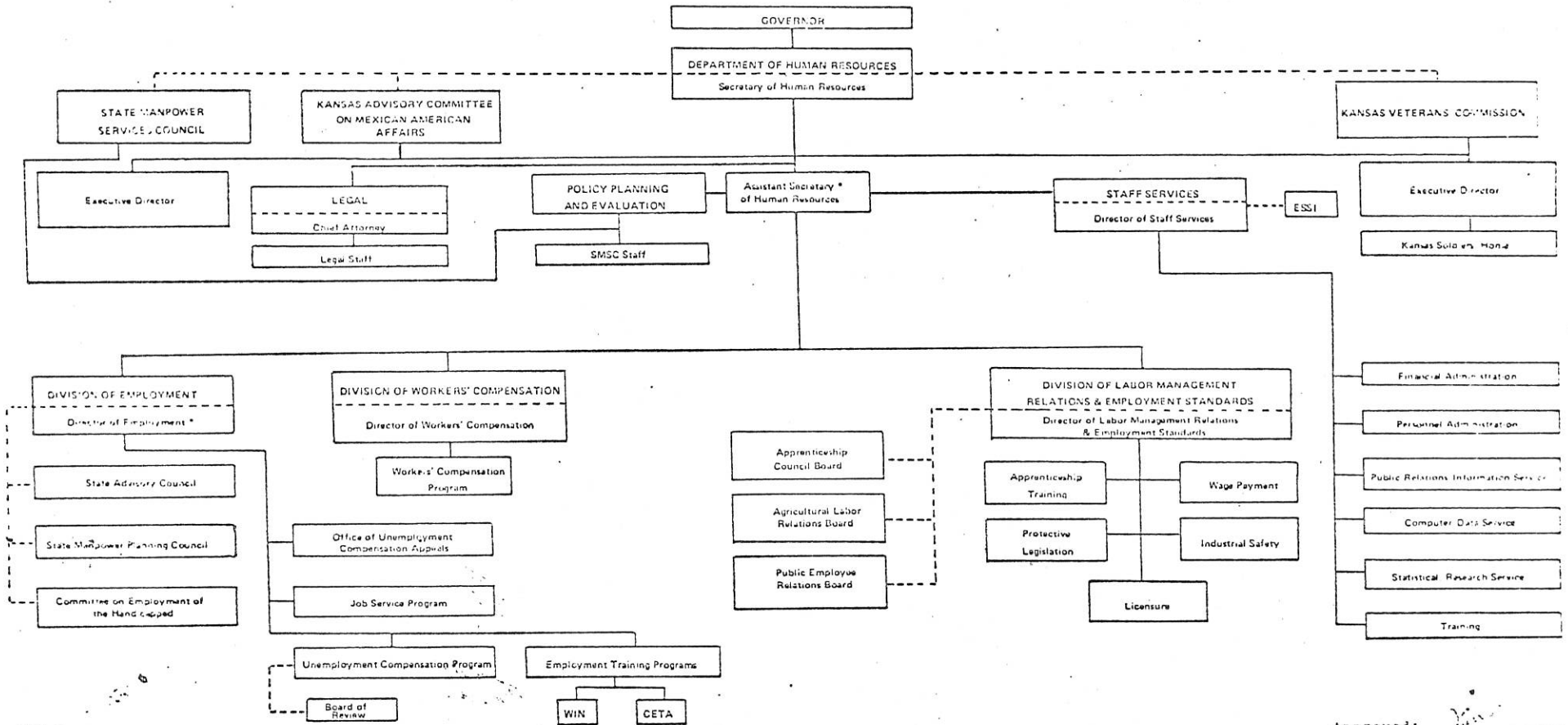
Attached I
Robbie
4/11
Wils



Atch. II

KANSAS DEPARTMENT OF HUMAN RESOURCES

Organization Chart



DHR 1

* Dual Capacity Position

Approved: _____

WORKERS' COMPENSATION JOINT ADVISORY COMMITTEE RULES

Effective May 18, 1977

1. The committee shall consist of a Chairman (Secretary of Department of Human Resources), Vice-Chairman (representing state of Kansas), and Secretary; and three (3) members representing labor and three (3) members representing industry. Representatives from the Division of Workers' Compensation shall attend meetings in an advisory capacity.
2. In controversial matters, if agreement cannot be reached, the minutes of the meeting will reflect this impasse when directed by the committee. If agreement is reached on suggested changes in the law however, this will be passed on to the legislature when appropriate by the Chairman. A quorum would consist of two (2) from labor and two (2) from industry. If a quorum will not be present, then the meeting will be cancelled. Alternates are permitted if designated in advance of the meeting by the person who will be absent. At least two (2) members of labor and/or industry must vote in favor of a suggested change requiring a "simple majority" of each side.
3. Committee members will back up Dr. McCain on agreed suggestions to the legislature and no member should speak publicly on matters before the Committee unless approved by Committee. An individual member can, of course, publicly represent his own interest.
4. The Committee's responsibility shall be to the injured worker, employers and the administration of the Act.
5. All items from members including discussion topics should be sent to Committee Chairman with a copy sent to Committee Secretary in advance of meeting.
6. Committee will meet the first Wednesday of each month or as otherwise set by the Committee.

WORKERS' COMPENSATION JOINT ADVISORY COMMITTEE

State

Dr. James A. McCain, Secretary
Department of Human Resources

Thomas J. Pitner, General Counsel
Corporation Commission

Bryce Moore, Director
Bill Morrissey, Asst. Director
Richard Smelser, Administrative Asst.
Division of Workers' Compensation

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KANSAS DEPT. OF
HUMAN RESOURCES

ON JULY 1, 1974, IN ACCORDANCE WITH ~~K.S.A. 1976 SUPP. 44-566(A)~~, THE OLD KANSAS SECOND INJURY FUND WAS ABOLISHED AND BECAME THE KANSAS WORKMEN'S COMPENSATION FUND. AT THIS SAME TIME, THE ADMINISTRATION OF THE WORKMEN'S COMPENSATION FUND CAME UNDER THE JURISDICTION OF THE KANSAS COMMISSIONER OF INSURANCE. ON JUNE 30, 1977, COMMISSIONER BELL'S OFFICE WILL CONCLUDE ITS THIRD YEAR OF ADMINISTERING THE FUND.

ALSO, INCLUDED WITH THE CHANGE IN THE NAME OF THE FUND WAS AN EXPANSION OF THE FUND'S DUTIES AND LIABILITIES WHICH INCLUDED:

FIRST) AN OVERALL EXPANSION OF THE COMPENSATION BENEFITS AVAILABLE TO CLAIMANTS FROM THE PREVIOUS MAXIMUM WEEKLY WAGE COMPENSATION OF \$56 A WEEK TO ONE OF \$95.20 OR A 70% INCREASE. SINCE THAT TIME, THE AVERAGE WEEKLY WAGE HAS CONTINUED TO INCREASE AS THE STATE'S AVERAGE WAGE HAS INCREASED AND MAXIMUM DISABILITY PAYMENTS ARE NOW \$112.67 PER WEEK. PRIOR TO JULY 1, 1974, THERE WAS A \$10,500.00 LIMITATION ON MEDICAL BENEFITS. AFTER JULY 1, 1974, THERE WAS NO LIMITATION ON THE AMOUNT OF MEDICAL EXPENSES THAT MAY BE AWARDED.

SECOND) THE WORKMEN'S COMPENSATION FUND BECAME LIABLE FOR INSOLVENT EMPLOYER AND REIMBURSEMENT SITUATIONS. THIS IS IN ADDITION TO THE SECOND INJURY TYPE CASES THAT PREVIOUSLY HAD BEEN THE SOLE AREA THAT THE FUND WAS INVOLVED IN. THE REIMBURSEMENT SITUATION ARISES WHEN COMPENSATION THAT IS AWARDED TO A CLAIMANT IN A PRELIMINARY HEARING IS LATER REDUCED OR TOTALLY DISALLOWED. THE AMOUNT OF COMPENSATION THAT HAS THEN BEEN OVERPAID BY THE RESPONDENT IS REIMBURSED FROM THE FUND.

INSOLVENT EMPLOYER SITUATIONS ARISE WHEN IT IS SHOWN THAT THE CLAIMANT'S EMPLOYER SHOULD HAVE CARRIED WORKMEN'S COMPENSATION FOR HIS EMPLOYEES AND FAILED TO DO SO AND IS NOW FINANCIALLY UNABLE TO PAY THE COMPENSATION THAT IT OWES THE CLAIMANT. BOTH OF THESE SITUATIONS INVOLVE ALL WORKMEN'S COMPENSATION CASES, NOT JUST THOSE INVOLVING SECOND INJURIES.

THIRD) ON JULY 1, 1974, THE DEFINITION OF A HANDICAPPED EMPLOYEE WAS EXPANDED WHICH HAS INCREASED THE LIABILITY OF THE FUND. THERE ARE NOW MORE EMPLOYEES WHO QUALIFY AS HAVING PRE-EXISTING HANDICAPS, THUS PROVIDING GROUNDS FOR IMPEADING THE FUND IN A GREATER PERCENTAGE OF CASES.

FOURTH) THE NOTICE REQUIREMENTS FOR IMPEADING THE FUND WERE BROADENED WITH THE DELETION OF THE MANDATORY FORM 88 REQUIREMENT. NOT ONLY COULD THE EMPLOYER SHOW NOTICE OF RETAINING OR HIRING AN EMPLOYEE WITH A PRE-EXISTING HANDICAP BY FILING THE FORM 88, HE COULD NOW MAKE THIS SHOWING BY ANY AVAILABLE EVIDENCE OF KNOWLEDGE OF A PRE-EXISTING CONDITION, OR IF HE HAD NO ACTUAL KNOWLEDGE, KNOWLEDGE WOULD BE IMPUTED IF THE EMPLOYEE MISREPRESENTED HIS PRE-EXISTING CONDITION. THIS, OF COURSE, RESULTED IN A LARGE INCREASE IN THE NUMBER OF IMPEADINGS.

THE REQUIREMENTS FOR HOLDING THE FUND LIABLE ARE AS FOLLOWS:

THERE MUST BE A COMPENSABLE INJURY UNDER THE ACT.

THE EMPLOYER MUST HAVE HIRED OR RETAINED A HANDICAPPED EMPLOYEE.

THE EMPLOYER MUST HAVE KNOWLEDGE OF THE PRE-EXISTING HANDICAP. THIS KNOWLEDGE REQUIREMENT IS SPECIFICALLY ADDRESSED IN K.S.A. 44-567(B) AND (C). THESE PROVISIONS WERE RECENTLY AMENDED BY THE 1977 LEGISLATURE UNDER HOUSE BILL 2549 UPON THE RECOMMENDATION OF THE INSURANCE DEPARTMENT AND AGAIN REQUIRE EITHER FILING A FORM 88 OR A SHOWING OF MISREPRESENTATION AS REQUIRED UNDER OLD PARAGRAPH (C) OF 44-567.

THE NEW DISABILITY OF THE HANDICAPPED EMPLOYEE THAT WAS RETAINED OR HIRED MUST BE CAUSED OR CONTRIBUTED TO BY THE PRE-EXISTING HANDICAP. THIS IS ADDRESSED IN 44-567(A)(1) AND (2) AND IS ALSO INTERPRETED IN A LINE OF KANSAS SUPREME COURT CASES. BASICALLY, 44-567(A)(1) REQUIRES THAT THE PRE-EXISTING CONDITION MUST HAVE CAUSED THE NEW INJURIES. IF THIS CAUSAL RELATIONSHIP IS SHOWN THE FUND WILL BE 100%

LIABLE FOR THE COMPENSATION AWARDED AFTER THE SECOND INJURY. THE ALTERNATIVE SITUATION IN 44-567(A)(2) IS THE CASE WHERE THERE IS SOME CONTRIBUTION TO THE CLAIMANT'S SECOND INJURIES BECAUSE OF THE PRE-EXISTING HANDICAP AND THERE IS MEDICAL EVIDENCE TO SUPPORT THE AMOUNT OF CONTRIBUTION. IN THIS CASE, THE FUND IS LIABLE FOR THE PERCENTAGE OF THE AWARD THAT THE PRE-EXISTING CONDITION CONTRIBUTED TO THE RESULTING DISABILITY.

THE MOST REFLECTIVE CRITERIA OF THE TREMENDOUS GROWTH RATE THAT THE FUND HAS EXPERIENCED SINCE THE LEGISLATIVE CHANGE ON JULY 1, 1974, IS THE GROWTH IN THE NUMBER OF IMPLEADINGS OF THE FUND AND IN THE EXPENDITURES OF THE FUND. THE FOLLOWING INFORMATION IS FOUND ON HANDOUT I(A).

THE IMPLEADINGS OF THE FUND HAVE GROWN QUITE RAPIDLY SINCE THE NEW LAW WAS ENACTED. THE LAST YEAR UNDER THE OLD LAW, THE SECOND INJURY FUND WAS IMPLEADED IN 39 CASES. IN FISCAL YEAR 1975, WHICH WAS THE FIRST YEAR UNDER THE NEW ACT, WE RECEIVED 155 IMPLEADINGS. IN FISCAL YEAR 1976, WE RECEIVED 475 NEW IMPLEADINGS AND AS OF JUNE 10, 1977, WE HAVE RECEIVED 591 IMPLEADINGS IN THE CURRENT FISCAL YEAR. THIS IN ITSELF DEMONSTRATES THE RAPID GROWTH RATE IN THE NUMBER OF CASES THE FUND IS HANDLING PER YEAR. SINCE MOST CASES TAKE LONGER THAN A YEAR TO COMPLETION THERE IS ALWAYS A CARRY OVER OF CASES FROM ONE YEAR TO THE NEXT. CONSEQUENTLY, WE ARE CURRENTLY HANDLING OVER ONE THOUSAND ACTIVE FILES.

THE EXPENDITURES FOR COMPENSATION AND MEDICAL EXPENSES HAVE ALSO RAPIDLY INCREASED OVER THE LAST FOUR FISCAL YEARS. IN FISCAL YEAR 1974, PRIOR TO THE ENACTMENT OF THE NEW LAW, THERE WAS \$84,987.71 PAID TO CLAIMANTS FOR DISABILITY COMPENSATION OR MEDICAL EXPENSES. IN FISCAL YEAR 1975, THE FIRST YEAR UNDER THE NEW ACT, THIS AMOUNT INCREASED TO \$165,720.00. IN FISCAL YEAR 1976, \$378,432.00 AND FOR THE FIRST 11 MONTHS OF FISCAL YEAR 1977, \$600,000.00. THESE AMOUNTS DIRECTLY CORRESPOND TO THE INCREASE IN THE COMPENSATION BENEFITS UNDER THE LAW, THE EXPANDED DUTIES AND LIABILITIES OF THE FUND, THE

BROADENED DEFINITION OF HANDICAPPED EMPLOYEE, AND THE RELAXED NOTICE REQUIREMENTS TO IMPEAD THE FUND.

ATTORNEYS FEES TO DEFEND THE FUND DURING THIS PERIOD WERE: IN FISCAL YEAR 1974, \$24,377.04; IN 1975, \$40,912.00; IN 1976, \$129,916.00. FOR THE CURRENT FISCAL YEAR, \$230,000.00. THIS, AGAIN, IS DIRECTLY RELATED TO THE INCREASED NUMBER OF CASES THAT HAVE BEEN HANDLED BY THE FUND.

OTHER OPERATING COSTS OF THE FUND, WHICH INVOLVE COURT REPORTING FEES AND OTHER COURT COSTS, WERE, FOR FISCAL YEAR 1975, \$5,743.00; FISCAL YEAR 1976, \$11,790.00; AND FISCAL YEAR 1977, \$26,500.00.

THE ADMINISTRATIVE COSTS OF THE FUND HAVE ALSO INCREASED AND UNDER NEW LEGISLATION PASSED BY THE 1977 LEGISLATURE THESE COSTS WILL INCREASE FURTHER DUE TO THE ADDITION OF TWO MORE STAFF POSITIONS. HOWEVER, THE ADDITION OF THESE POSITIONS WILL GIVE US THE CAPABILITY OF DOING SOME OF THE WORK WE ARE CURRENTLY PAYING ATTORNEYS TO DO. OUR CURRENT STAFF CONSISTS OF ONE ATTORNEY, ONE LAW CLERK, ONE CLERK-STENO II, AND ONE ACCOUNT-CLERK IV. TOTAL SALARY FOR THESE INDIVIDUALS FOR FISCAL YEAR 1977 WILL BE \$38,051.43.

IN ADDITION, THE FUND INCURS EXPENSES FOR SUPPLIES AND SOME OTHER ADMINISTRATIVE EXPENDITURES CAUSED BY THE FUND'S EXISTENCE. HOWEVER, THESE EXPENSES, AS WELL AS THOSE FOR SALARIES, ARE PAID FROM THE INSURANCE DEPARTMENT BUDGET. AS I HAVE SET OUT, THERE HAVE BEEN INCREASES IN ALL ASPECTS OF THE FUND, WHICH ARE CONSISTENT WITH ONE ANOTHER AND CONSISTENT WITH THE BROADENING IN LIABILITY OF THE FUND UNDER THE 1974 ACT.

THE SOURCE OF THE MONEYS AVAILABLE TO THE FUND ARE AS FOLLOWS: ON JULY 1 OF EACH YEAR, THE COMMISSIONER ASSESSES ALL WORKMEN'S COMPENSATION INSURANCE CARRIERS AND SELF-INSURERS FOR THE AMOUNT OF MONEY HE FEELS WILL BE NEEDED BY THE FUND FOR THE ENSUING FISCAL YEAR. THIS AMOUNT REPRESENTS THE TOTAL AMOUNT OF MONEY THAT WILL BE SPENT

BY THE FUND LESS THE MONEY THAT IS TO BE RECEIVED FROM THE OTHER SOURCES OF REVENUE. 2) THE WORKMEN'S COMPENSATION FUND ALSO RECEIVES FUNDS FROM THE STATE GENERAL FUND. THE AMOUNT OF GENERAL FUND ENTITLEMENT FOR EACH FISCAL YEAR IS BASED ON THE AMOUNT OF DISABILITY COMPENSATION AND MEDICAL EXPENSES THAT WERE PAID BY THE WORKMEN'S COMPENSATION FUND FOR SECOND INJURY CASES IN THE FISCAL YEAR NEXT PROCEEDING THE ONE IN WHICH WE RECEIVE THIS ENTITLEMENT, AND IS REDUCED BY THE AMOUNT OF NONDEPENDENT DEATH RECEIPTS DURING THAT SAME FISCAL YEAR. THIS STATUTORY SCHEME IS SET OUT IN K.S.A 1976 SUPP. 44-566(A). 3) NONDEPENDENT DEATH RECEIPTS UNDER K.S.A. 44-570 ALSO PROVIDES A SOURCE OF REVENUE FOR THE FUND. EACH TIME A WORKMAN IS KILLED WHILE COVERED BY THE KANSAS WORKMEN'S COMPANSATION ACT AND LEAVES NO DEPENDENTS THEN THE RESPONDENT MUST PAY THE WORKMEN'S COMPENSATION FUND \$5,000. HANDOUT 2 REFLECTS OUR ACTUAL EXPERIENCE REGARDING REVENUE RECEIVED FROM ASSESSMENTS AND GENERAL FUND ENTITLEMENTS.

PRIOR TO JULY 1, 1977, THE ATTORNEY FEES FOR THE FUND HAVE BEEN PAID BY A GENERAL FUND SPECIAL APPROPRIATION AND THE OTHER OPERATING COSTS HAVE BEEN PAID BY THE GENERAL FUND AND INCLUDED IN THE INSURANCE DEPARTMENT'S BUDGET. NOW THAT HOUSE BILL No. 2549 HAS PASSED, ATTORNEY FEES AND OTHER OPERATING COSTS WILL BE HANDLED EXACTLY LIKE DISABILITY COMPENSATION AND MEDICAL BENEFITS ARE CURRENTLY HANDLED. THEREFORE, THE ASSESSMENT OF THE FUND AS WELL AS THE GENERAL FUND ENTITLEMENT WILL CONTINUE TO INCREASE IN THE IMMEDIATE FUTURE.

OTHER CHANGES INCLUDED IN HOUSE BILL No. 2549 WERE REINSTATEMENT OF THE FORM 88, AUTHORITY FOR THE DIRECTOR TO DISMISS THE FUND IF HE FINDS THERE IS INSUFFICIENT EVIDENCE IN ANY PROCEEDING DURING A WORKMEN'S COMPENSATION CASE, AND ALSO AUTHORITY FOR THE DIRECTOR TO ASSESS THE ATTORNEY FEES OF THE FUND AGAINST THE PARTY IMPLEADING THE FUND IF IT IS FOUND THAT THE FUND SHOULD NOT HAVE BEEN IMPLEADED IN THE CASE. WE FEEL THAT THE PROVISIONS OF THIS BILL WILL HELP TO REDUCE THE RATE OF GROWTH THAT THE FUND HAS EXPERIENCED IN THE PAST AND ALSO SHOULD REDUCE THE PERCENTAGE OF INCREASE IN THE EXPENDITURES

OF THE FUND. HOWEVER, THE WAY THE CURRENT WORKMEN'S COMPENSATION LAWS ARE INTERPRETED THESE REMEDIES WILL NOT ALLOW AN ACTUAL OVERALL DECREASE IN THE AMOUNTS SPENT IN PREVIOUS FISCAL YEARS, ONLY A REDUCTION IN THE PERCENTAGE OF THE INCREASE OVER THESE PREVIOUS YEARS.

WE HAVE NOW PLACED ALL THE FINANCIAL RECORDS OF THE FUND ON THE INSURANCE DEPARTMENT'S COMPUTER WHICH HAS GREATLY ASSISTED IN THE ADMINISTRATION OF THE FUND. WE ALSO MAINTAIN A BETTER RECORD KEEPING SYSTEM, BETTER FILING SYSTEMS, AND BETTER COMMUNICATION SYSTEMS. WE, OF COURSE, ARE CONTINUING TO STRIVE TO MAKE SUCH IMPROVEMENTS SO THE FUND CAN OPERATE MORE EFFICIENTLY AND EFFECTIVELY.

REGARDING PROBLEMS IN THE ADMINISTRATION OF THE FUND, PROBABLY THE MOST APPARENT PROBLEM DURING THE CURRENT FISCAL YEAR HAS BEEN MAINTAINING SUFFICIENT FUNDS IN OUR VARIOUS ACCOUNTS TO MEET OUR GROWING LIABILITIES. WE ASKED FOR AND RECEIVED EMERGENCY APPROPRIATIONS FROM THE 1977 LEGISLATURE IN ORDER TO MEET OUR OBLIGATIONS FOR ATTORNEY'S FEES AND OPERATING COSTS. HOWEVER, FOR A PERIOD OF TIME, WE WERE WITHOUT FUNDS IN THOSE ACCOUNTS AND WERE REQUIRED TO INFORM OUR ATTORNEYS THAT WE COULD NOT GUARANTEE PAYMENT FOR THEIR SERVICES DURING THAT PERIOD OF TIME. FORTUNATELY, WITH THE COOPERATION OF OUR ATTORNEYS, WE WERE ABLE TO MAINTAIN THE DEFENSE OF THE FUND UNTIL THE APPROPRIATIONS WERE RECEIVED. WE ANTICIPATE THAT THIS PROBLEM WILL BE REMEDIED BY THE RECENT LEGISLATIVE CHANGES WHICH ALLOW US TO ASSESS FOR ATTORNEYS FEES AND COSTS IN THE FUTURE.

IN ADDITION, SINCE APRIL, IT HAS BEEN APPARENT THAT WE WOULD NOT HAVE SUFFICIENT FUNDS TO PAY LARGE LUMP SUM AMOUNTS AWARDED AGAINST THE FUND, UNTIL ADDITIONAL FUNDS ARE RECEIVED FROM OUR 1978 GENERAL FUND ENTITLEMENT ON JULY 1, 1977, AND OUR 1978 ASSESSMENT WHICH IS DUE SEPTEMBER 1, 1977. CONSEQUENTLY, WE WILL HAVE A CARRYOVER LIABILITY OF APPROXIMATELY \$240,000.00 INTO FISCAL YEAR 1978.

THE OVERRIDING PROBLEM IN ADMINISTERING THE FUND HAS BEEN THE OVERWHELMING GROWTH RATE THE FUND HAS EXPERIENCED. THE 1977 FISCAL YEAR

ASSESSMENT WAS FOR JUST OVER \$300,000.00 WHICH IN ADDITION TO A CARRY OVER BALANCE FROM FISCAL YEAR 1976 AND OUR 1977 GENERAL FUND ENTITLEMENT OF \$101,204.00 ALLOWED US \$605,813.74 TO MEET FISCAL YEAR 1977 LIABILITIES. THIS AMOUNT, AS IT TURNED OUT, WAS SUBSTANTIALLY LESS THAN WAS NEEDED.

A THOROUGH READING OF THE FUNDING PROCEDURE INDICATES THAT, AT LEAST IN THEORY, THE MAJOR PORTION OF THE FUND'S EXPENSES ARE TO BE PAID FROM TAX DOLLARS. THE ASSESSMENT ON INSURERS AND SELF-INSURERS SHOULD BE PRIMARILY FOR PAYING EXPENSES DUE TO REIMBURSEMENT AND INSOLVENT EMPLOYER CASES, PLUS AN ADDITIONAL AMOUNT TO ALLOW FOR THE DIFFERENCE OF OUR ANTICIPATED EXPENSES, LESS OUR GENERAL FUND ENTITLEMENT AND NONDEPENDENT DEATH RECEIPTS. HOWEVER, DUE TO THE COMBINED EFFECT OF INFLATION AND THE RAPID GROWTH RATE IN THE NUMBER OF NEW CASES, THE ASSESSMENT HAS PAID THE MAJORITY OF THE FUND'S EXPENSES SINCE JULY 1, 1974. THIS WILL CONTINUE TO BE TRUE IN THE IMMEDIATE FUTURE AS OUR GENERAL FUND ENTITLEMENT FOR FISCAL YEAR 1978 IS \$196,000.00 AND WE ARE ANTICIPATING EXPENSES OF \$2,798,722.00. CONSEQUENTLY, OUR 1978 ASSESSMENT WILL BE FOR \$2,567,767.50. IT IS IMPORTANT TO REMEMBER THAT THE EXPENSES WE ACTUALLY INCUR IN FISCAL YEAR 1978 WILL EVENTUALLY BE REIMBURSED FROM THE GENERAL FUND.

~~Stop~~

AS POINTED OUT EARLIER, THE 1977 LEGISLATURE MADE SEVERAL CHANGES IN THE WORKMEN'S COMPENSATION LAW, WHICH TO SOME EXTENT, DEALS WITH THESE PROBLEMS. HOWEVER, THESE WERE PRIMARILY PROCEDURAL CHANGES AND WE DO NOT ANTICIPATE THAT THESE CHANGES ALONE WILL STOP THE INCREASE IN THE FUND'S LIABILITIES. ADDITIONAL CHANGES, IN THE SUBSTANTIVE LAW PERTAINING TO THE FUND, ARE REQUIRED IF AN ACTUAL REDUCTION IS TO BE ACCOMPLISHED. THESE TYPES OF CHANGES CANNOT BE MADE WITHOUT CONSIDERABLE RESEARCH AND I WOULD SUGGEST IF YOU WISH PURSUE MAKING THESE CHANGES THAT YOU LOOK INTO THE FOLLOWING AREAS:

1. A MORE RESTRICTIVE DEFINITION OF WHAT CONSTITUTES A HANDICAP UNDER K.S.A. 44-566.
2. MORE DEFINITIVE LANGUAGE IN K.S.A. 44-567(A)(1) AND (2) REGARD-

ING WHEN THE FUND IS TO BE ENTIRELY RESPONSIBLE FOR A SECOND INJURY, UNDER SUBSECTION (A)(1), AND WHEN A CONTRIBUTION SITUATION EXISTS, UNDER SUBSECTION (A)(2), THE EXTENT AND NATURE OF THE MEDICAL EVIDENCE REQUIRED TO ESTABLISH THE AMOUNT OF THAT CONTRIBUTION.

3. SPECIFIC LANGUAGE IN THE ACT REGARDING WHETHER COMPENSATION IS TO BE PAID ON THE BASIS OF A FUNCTIONAL OR A WORK RELATED DISABILITY. CURRENT CASE LAW ALLOWS PAYMENT BASED UPON THE HIGHER OF THE TWO.

4. A STATUTORY CHANGE OF THE CURRENT COMMON LAW, AS FOUND IN THE CASE OF POEHLMAN VS. LEYDIG, 194 KAN. 684, IN ORDER TO ALLOW A REDUCTION OR PRORATING OF THE DISABILITY DUE TO THE COMPENSABLE ACCIDENT AND THAT DUE TO THE EMPLOYEES PRE-EXISTING CONDITION. UNDER THE CURRENT LAW, AN EMPLOYEE CAN RECEIVE COMPENSATION FOR A NON-WORK RELATED DISABILITY OR CAN BE COMPENSATED MORE THAN ONCE FOR THE SAME DISABILITY.

WE, OF COURSE, ARE MORE THAN HAPPY TO DISCUSS OTHER PROBLEM AREAS YOU FEEL EXIST, AND WOULD BE HAPPY TO ASSIST IN FURTHER RESEARCH REGARDING POSSIBLE FUTURE LEGISLATIVE CHANGES.

Handout I

A. All Expenditures

Fiscal Year	Impleadings	Compensation and Medical	Attorney Fees	Other Operating Costs	Total Expense
1974	39	\$ 84,987.71	\$ 24,377.04		\$109,325.00
1975	155	165,720.00	40,912.00	\$ 5,743.00	221,375.00
1976	475	378,432.00	129,916.00	11,790.00	520,130.00
1977	591	600,000.00*	230,000.00	26,500.00	856,500.00*

* \$240,000.00 additional to be paid in fiscal year 1978.

B. Total Salary Expense for Staff Personnel from Insurance Department Budget--\$38,051.43

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Attached IV

Handout 2

Fiscal Year	(A) Assessment (Amount Commissioner deems will be needed less receipts under B & C.)	(B) Non-Dependent Deaths	(C) State General Fund (Amount Paid in Fiscal Year preceeding this one less for second injury cases. The amounts received in (B) for that year.)
1975	347,974.56	32,000.00	86,940.00 (special app.)
1976	75,580.17	65,000.00	73,696.00
1977*	301,585.04	47,000.00	101,204.00
1978	2,567,767.50	50,000.00 est.	196,287.00

A + B + C = total amount needed by Fund for that fiscal year.

Example - On July 1, 1977, (beginning of fiscal year 1978) the Fund will receive its 1978 entitlement of \$196,287.00. This figure represents the \$261,286.73 that was spent for disability compensation and medical in fiscal year 1976 less the \$65,000.00 that was received for no dependent death cases in fiscal year 1976.

1. RATING PROCEDURES. THE RATING PROCEDURES AND THE POLICY FORMS USED BY INSURANCE COMPANIES WRITING WORKMEN'S COMPENSATION INSURANCE IN KANSAS IS UNDER THE JURISDICTION OF THE COMMISSIONER OF INSURANCE. THE RATES ARE PROMULGATED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, A NATIONAL RATING ORGANIZATION THAT IS CONTROLLED BY THE INSURANCE COMPANIES AND MAKES SUCH NECESSARY RATE FILINGS ON BEHALF OF THEIR MEMBER AND SUBSCRIBER COMPANIES. THIS ORGANIZATION, THROUGH THEIR COMPANIES, COLLECTS THE EXPERIENCE ON WORKMEN'S COMPENSATION INSURANCE, COMPILES ALL THESE STATISTICS, AND COMPUTES RATING FORMULAS BY WHICH THE MANUAL RATES ARE PRODUCED. THESE RATE FILINGS MUST BE SUBMITTED TO THE COMMISSIONER OF INSURANCE FOR APPROVAL.

2. BRIEF SUMMARY OF RATING PROCEDURES: THE KANSAS WORKMEN'S COMPENSATION INSURANCE RATES ARE CALCULATED ONLY ON THE EXPERIENCE OF KANSAS RISKS. THE FIRST PROCEDURE IN RATE MAKING IS TO DETERMINE, ON THE BASIS OF THE PAST EXPERIENCE-- USUALLY THE MOST RECENT TWO YEARS, WHAT AMOUNT OF PREMIUM IS NEEDED TO PROPERLY COMPENSATE THE COMPANIES FOR WRITING SUCH BUSINESS. THIS IS CALCULATED IN WORKMEN'S COMPENSATION INSURANCE BY THE USE OF A RATING FORMULA. THE RATING FORMULA PRODUCES THE FOLLOWING BREAK-DOWN OF THE STANDARD PREMIUM DOLLAR:

COMPANY EXPENSES	25.9
PROFIT AND CONTINGENCIES	2.5
TAXES, LICENSES AND FEES	2.7
LOSS & LOSS-ADJUSTMENT EXPENSES	68.9
	100.0

AFTER THE OVER-ALL STATEWIDE EXPERIENCE HAS BEEN EXAMINED AND THE PERCENT OF INCREASE OR DECREASE HAS BEEN COMPUTED, THAT IS NECESSARY TO PRODUCE THE AMOUNT OF PREMIUM REQUIRED BY THE FORMULA CITED ABOVE; THE INCREASES OR DECREASES ARE THEN ALLOCATED TO THE VARIOUS WORKMEN'S COMPENSATION

CLASSIFICATIONS. CLASSIFICATIONS ARE ESTABLISHED TO ATTEMPT TO GROUP TOGETHER RISKS OF SIMILAR EXPOSURE IN ACCORDANCE WITH INSURANCE PRINCIPLES SINCE THE THEORY OF INSURANCE ~~IS THAT~~ IS THAT YOU MUST HAVE A HOMOGENEOUS GROUP OF RISKS. THESE ARE BROKEN DOWN BASICALLY AS FOLLOWS INTO INDUSTRY GROUPS: CONTRACTING, MANUFACTURING, AND ALL OTHERS. WITHIN THESE THREE MAIN CLASSIFICATIONS, THERE ARE APPROXIMATELY 700 INDIVIDUAL RISK CLASSIFICATIONS.

IN A RATE FILING, THE MAJORITY OF THESE 700 CLASSIFICATIONS ARE INDIVIDUALLY REVIEWED, AND THE OVERALL STATEWIDE INCREASE OR DECREASE IS ALLOCATED TO THESE CLASSIFICATIONS AND INDUSTRY GROUPS ON THE BASIS OF THE PREMIUM VOLUME PRODUCED IN KANSAS BY THESE CLASSIFICATIONS AND WHETHER OR NOT SUCH PREMIUM VOLUME IS OF A CREDIBLE AMOUNT FOR RATE-MAKING PURPOSES.

IN ADDITION TO THE ESTABLISHMENT OF THESE VARIOUS CLASSIFICATIONS, EACH SUCH CLASSIFICATION, DEPENDING UPON THE SIZE OF THE PREMIUM, MAY THEN BE SUBJECT TO VARIOUS RATING PLANS. THE PRIMARY ~~PLAN~~ PLAN IS THE EXPERIENCE RATING PLAN THAT PROVIDES THAT ALL RISKS PRODUCING A CERTAIN AMOUNT OF PREMIUM MAY THEN HAVE THEIR MANUAL PREMIUM ADJUSTED UPWARD OR DOWNWARD, DEPENDING UPON THE RISK'S OWN INDIVIDUAL EXPERIENCE FOR THE PAST YEAR OR YEARS.

FOR THE EXTREMELY LARGE RISKS, THE RETROSPECTIVE RATING PLANS ARE AVAILABLE THAT PROVIDE FOR A SET AMOUNT OF EXPENSES PAYABLE TO THE COMPANY AND THEN THE RATE FOR THE RISK IS THEN MODIFIED ON THE BASIS OF THE RISK'S OWN EXPERIENCE.

3. THERE ARE CONSIDERABLE DIFFERENCES IN RATES FOR WORKMEN'S COMPENSATION INSURANCE BETWEEN STATES AND ALSO BETWEEN INDIVIDUAL CLASSIFICATIONS. THE OVERALL CAUSES OF RATE DIFFERENCES BETWEEN STATES (THAT IS, WHETHER OR NOT THEIR RATES ARE HIGHER OR LOWER THAN THE NEIGHBORING STATES FOR SIMILAR OCCUPATIONS) ARE DETERMINED BY THE FOLLOWING FACTORS:

- ✓ 1. VARIATION IN BENEFIT LEVELS UNDER THE WORKMEN'S COMPENSATION LAWS.
2. VARIATIONS IN INDUSTRIAL ACTIVITY OR LACK OF SUCH ACTIVITY.
3. VARIATIONS IN EFFECTIVENESS AND INTENSITY OF SAFETY-ENGINEERING PROGRAMS, INCLUDING VARIATIONS IN THE DEGREE OF THE EMPLOYER AND THE EMPLOYEE COOPERATION.
- ✓ 4. VARIATIONS IN THE TYPE OF LABOR OR OTHER PERSONNEL EMPLOYED TO CONDUCT THE OPERATIONS OF THE BUSINESS.
- ✓ 5. RELATIVE LIBERALITY OR CONSERVATISM OF CLAIM AT JUDICATING BODIES.
- ✓ 6. VARIATIONS IN WAGE LEVELS FROM STATE TO STATE.
7. EXTENT AND ACCESSIBILITY OF MEDICAL AND HOSPITAL FACILITIES.
- ✓ 8. VARIATIONS IN ACCIDENT FREQUENCY AND SEVERITY.

AS RESPECTS THE INDIVIDUAL EMPLOYER IN REGARD TO THIS COST FOR WORKMEN'S COMPENSATION INSURANCE, THE PRIMARY FACTOR IS, OF COURSE, THE NUMBER OF LOSSES THAT ~~THE~~^{HE} INCURS. EVEN THOUGH A CLASSIFICATION, SUCH AS THE TRUCKMEN CLASSIFICATION, COULD BE VERY GOOD OR VERY BAD AS A WHOLE, THE RATE FOR THIS CLASSIFICATION MAY BE MODIFIED AS RESPECTS ANY INDIVIDUAL EMPLOYER TO A GREAT DEGREE BECAUSE OF HIS OWN EXPERIENCE AND HIS OWN OPERATION. THE BASIC ELEMENT THAT THE INSURANCE COMPANIES TRY TO INSTILL IN THE EMPLOYER'S OPERATION TO CUT DOWN HIS OWN COST OF INSURANCE IS, OF COURSE, SAFETY PROGRAMS. THE COMPANIES ATTEMPT TO WORK WITH THE INSURED TO INCREASE THEIR SAFETY PROGRAM AND TO CUT DOWN UPON THE NUMBER OF LOSSES THAT WILL OCCUR. IF THIS TYPE OF PROGRAM IS FOLLOWED BY ALL MEMBERS OF A PARTICULAR CLASSIFICATION, THEN THE RESULT WILL BE A DECREASE IN THE MANUAL RATE FOR SUCH INSURANCE.

CURRENTLY, THERE ARE APPROXIMATELY 250 COMPANIES
AUTHORIZED TO WRITE DIRECT WORKERS' COMPENSATION COVERAGE
IN KANSAS.

FOUR (4) COMPANIES HAVE FILED DOWNWARD DEVIATIONS WHICH
RANGE FROM 10 TO 12 1/2% FROM THE MANUAL RATES.

EFFECT OF RATES ON INDIVIDUAL INSUREDS

CODE 5645 - "CARPENTRY-DETACHED ONE OR TWO FAMILY DWELLINGS"

RATE 5.34 M.P. - \$206.00

10,400 payroll x 5.34 rate per hundred = \$555.00
50,000 payroll x 5.34 rate per hundred = \$2670.00 * **
100,000 payroll x 5.34 rate per hundred = \$5340.00 * **

X *Exp. mod. (.21 to 4.09)* X *Size of firm disc.*

CODE 9079 - "RESTAURANT & CLERICAL NPD, NOC"

RATE 1.34 M.P. - \$66.00

10,400 payroll x 1.34 rate per hundred = \$139.00

4.00 Loss Constant
15.00 Expense Constant
\$158.00

50,000 payroll x 1.34 rate per hundred = \$670.00

100,000 payroll x 1.34 rate per hundred = \$1340.00 * **

*subject to modification by experience modification
**subject to application of premium discount percentages

RATE INCREASES BY INDUSTRY GROUP

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>ACCUMULATIVE EFFECT 1972-1976</u>	<u>PROPOSED 1977</u>	<u>ACCUMULATIVE EFFECT RECOGNIZING THE PRO- POSED RATE INCREASE FOR 1977</u>
MANUFACTURING	8.6%	3.7%	21.3%	5.7%	8.0%	55.9%	19.5%	86.3%
CONTRACTING	.3	3.8	24.0	2.6	9.2	44.6	13.1	63.6
ALL OTHERS	(1.0%)	1.7	21.6	10.9	10.9	53.6	18.6	82.2
TOTAL % INCREASE	2.5	3.0	22.0	7.0	9.5	50.9	17.4	77.2
TOTAL % INCREASE FROM LAW	-0-	-0-	22.0	2.3	3.8	29.5	9.3	41.6

Exhibit "G"

W. Sch

Attachment II

The 1974 legislature created the Kansas State Self-Insurance Fund, Workers' Compensation, and it was given statutory authority to investigate, pay and settle all workers' compensation claims made by injured State employees. The act provides that all State agencies are regarded as a single employer making the State of Kansas the largest single employer in Kansas. About 45,000 State employees, including classified, unclassified, elected or appointed, were brought under workers' compensation. Prior to 1974, most State employees were not covered by compensation at all, but a few agencies such as Department of Transportation, Fish and Game Commission and Grain Inspection purchased coverage from a commercial company. Social and Rehabilitation Services were self-insured, but only institutional workers were covered. The 1974 legislature brought all these plans together into one fund where all employees would receive uniform benefits and management.

The Self-Insurance Fund started with five personnel positions and here, three years later, there are still five positions to do the business of the Fund. Claims for Workers' Compensation are received daily and processed through a system that has been developed since 1974. These systems have been altered and changed on numerous occasions with the objective being to analyze the claim as quickly as possible to effectuate proper action on its merits. Our goal is to continue an injured employee's paycheck without interruption following an on-the-job injury.

The number of reported accidents were few in the beginning but, as employees became knowledgeable about workers' compensation, the reported number of accidents increased to 2,700 by FY 77. It was evident that injury accidents were occurring at an alarming rate. Governor Bennett

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issued an order in September, 1975, asking State agencies to take specific steps to create safety programs and results were very good. Reported injury accidents diminished from 288 per month to 184 per month in the first twelve months after the order.

The Self-Insurance Fund is an accurate barometer of accident frequency, and it was soon evident the Governor's action was only a stopgap measure without some organized follow-up procedures. The Fund, with the Governor's authority, organized an ad hoc committee to look into the possibility of developing a permanent safety program which could provide safe, healthy working conditions for all State employees. This committee's work concluded on June 1, 1977, when Governor Bennett issued a second executive order to all State agencies directing the Industrial Safety Section of Department of Human Resources to undertake a comprehensive program of safety and health inspections of State work places. Hopefully, this will be a viable, ongoing program which will reduce injury accidents while providing State workers a safe, comfortable place in which to work.

The primary function of the Self-Insurance Fund is to investigate and pay claims under provisions of the Workmen's Compensation Act, while the primary function of the Workmen's Compensation Act is to restore injured workers to their original state of health and return them to the job market. The philosophy of the Fund is consistent with these dual goals. Prompt attention to every accident report relieves apprehensions of the claimant so all his energies may be directed to recovery and return to work. Management of medical services assures prompt, adequate medical care to relieve the injured worker of his injuries and promote an early return to work. Coordination of efforts of the doctor, personnel officer, and worker will encourage a return to work at the earliest possible moment. Referral to vocational rehabilitation programs of seriously impaired workers at the proper time will enhance

their capability of returning to the work force in some capacity.

Prompt attention to accident reports is accomplished in several ways. Injured employees are telephoned immediately upon receipt of an injury report. They are assured their plight is known and prompt action is being taken on their claim. Their questions are answered, and they are put at ease relative to procedures to be followed during the course of their recovery. Meanwhile, informational forms are sent to sources such as doctors or hospitals, and all the necessary information is gathered to adjust the claim.

Management of medical services begins with the initial contact with the injured worker. He is referred to a specialist who will provide the best care available. A change of physicians may be recommended if a non-specialist is already being used. Proper medical care will insure the greatest degree of recovery.

When the injured worker begins to show signs of recovery, a concerted effort to effectuate a return to work is launched. The doctor is encouraged to release the patient to light work as soon as it is determined he can handle it. The employer is encouraged to accept the worker for light duty as soon as the doctor approves. The worker is encouraged to accept light duty as a form of therapy until he works back up to full strength.

Referral to vocational rehabilitation becomes necessary when the worker has suffered injuries which prevent him from returning to his old job. He receives professional counseling through a vocational rehabilitation program followed by retraining if necessary so that he may be returned to the job market in spite of his impairment. The Fund is currently working with an internal form of rehabilitation which consists simply of trying to find a different position for any worker who has been impaired in a job-related accident. Heretofore, when an employee was left with an

impairment that prevented his return to his job, he was terminated. Efforts are now being made to identify other jobs for which the worker would be qualified by virtue of his experience, education and background. The rewards of these efforts will be the return to the job market of an injured worker who might otherwise never work again and the saving of funds which would otherwise be spent on a long term disability case.

The Fund is financed by assessing agencies a flat rate against their payroll. This rate is established annually in house using the National Rating Bureau rates manual. The rate has been 0.3% for all three years of operation. This produced a "premium income" in FY 77 of \$1,100,000. About \$90,000 will pay administrative costs with the remainder going to claims costs. It is estimated that \$500,000 was saved in FY 77 over the cost of commercial insurance.

Problems in administering the Fund:

Workers' Compensation

A summary of recommendations in the January 1977
Report of the Policy Group

Attached
XIII

The Federal Role in Workers' Compensation

The Policy Group of the Interdepartmental Workers' Compensation Task Force concluded that Workers' Compensation fulfills an essential function, albeit imperfectly, and that it is probably more effectively managed at the state level. The group feels that states should be assisted and monitored by the Federal Government.

- States should manage workers' compensation programs more actively and effectively. (p.4)
- Federal Technical Assistance to states should increase significantly. (p.4)
 - Experts should be made available to consult with states. (p.4)
 - Short-term grants should be made available to states to aid administrative reform. (p.4)

Principles for Reform

Three principles underlie policy group recommendations for substantive reform of workers' compensation:

- Compensation for loss of earnings should be clearly separated from other benefits and it should be paid for wage loss, as it accrues. (p.5)
- Incentives for rehabilitation and reemployment should be strengthened. (p.6)
- The costs of work related injuries and illnesses should be borne by the industries in which they occur. (p.6)

Recommendations for State Reform

Insofar as they do not already do so, the policy group recommends that states build the following characteristics into their workers' compensation programs; some recommendations are without reservation while others are more tentative:

1. Workers' compensation should be extended to all employees insofar as practical means can be found to make this effective. (p.32)

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4

- . Coverage should be compulsory. (p.32)
 - . No waivers should be permitted. (p.32)
 - . All classes of employees should be covered. (p.32)
 - . All occupations and industries should be covered. (p.32)
 - . Government employees should be covered. (p.32)
 - . Farmworkers should be covered. (p.32)
 - . Casual workers and domestic workers should be covered to extent that they earn \$200. per quarter from any one employer. (p.33)
 - . A special fund could insure claimants against defaults by uninsured or bankrupt employers or insurers. (p.33)
 - . It may be desirable to phase in coverage for farmworkers rather than cover all at once. (p.34)
2. Extraterritoriality: States should cover injuries and illnesses of workers whose employment is principally localized within the state regardless of where the injury or illness occurs. States should also cover injuries or illnesses which occur within the state and injuries and illnesses of persons whose contract of hire was made within the state if the injured worker is not able to obtain benefits in the state where employment was principally localized. (p.34)
3. All work-related diseases should be covered and arbitrary barriers to compensability should be eliminated. (p.34)
- . States may wish to adopt the Council of State Governments' definition of injury: "Injury means any harmful change in the human organism arising out of and in the course of employment, but does not include any communicable disease unless the risk of contracting such disease is increased by the nature of the employment". (p.35)
 - . Occupational diseases should not be required to occur "by accident". (p.35)

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- . Illnesses should not be required to be "peculiar to" the workers' occupation or industry. (p.35)
- . "Ordinary diseases of life" should not be excluded from coverage. (p.35)
- . State panels of experts should make binding determinations as to causation of disease. (p.38)
- . It is cautiously recommended that diseases should be compensable under the following three conditions:
 1. When there is a reasonable medical certainty that the disease is work-related.
 2. When there is epidemiologic evidence that the incidence of the disease in the claimants' work environment is significantly greater than in the general population, and the employer fails to show that the disease is not due to work exposure, and
 3. When work exposure constitutes a substantial factor in causing the disease, along with other causes outside the workplace. (pp. 35 & 36)
- . Results of occupational disease research should be widely disseminated. (p.37)
- . Hospitals and physicians should obtain work histories as well as medical histories (p.37)
- . Workers should have access to employer information about exposures and results of medical examinations. (p.38)
- . Insurance carrier records should be available to occupational disease researchers, with privacy safeguards. (p.38)
- . Duration of exposure and recency of exposure restrictions should be eliminated unless related to scientific evidence. (p.38)

- . Time limits for filing occupational disease claims should start to run when the worker knows or should know of his/her condition and its potential compensability. (p.38)
 - . Benefits for disease related conditions should be in the same amount and for the same duration as other benefits. (pp. 38 & 39)
 - . Benefits should be based on recent earnings rather than earnings at the time of exposure to the hazard. (p.39)
 - . Waivers for pre-existing disease conditions should not be allowed. (p.39)
 - . Where there has been hazard exposure under more than one employer, the "last employer principle" is the most easily administered method of assessing liability. An alternative is to have a "second-injury" fund contribute toward payment of benefits. (p.39)
4. Replacement of a substantial proportion of lost earnings should be the main focus of workers' compensation (p.39)
- . Earnings loss payments should be separated from other compensation. (p.40)
 - . Wage loss payments should be made as they accrue rather than based on a prediction. (p.41)
 - . An injured worker who earns nothing should receive 2/3 pre-injury wage up to the state maximum; while a worker who earns less than his pre-injury wage should earn 2/3 the difference. (p.41)
 - . A minor impairment case could usually be closed after 3 months of stable employment. A major impairment case should remain open, subject to reactivation any time unemployment resumes. (p.41)
 - . The terms permanent partial disability and permanent total disability should be eliminated. (p.42)

- . Compromise and release settlements and lump sum payments should be strongly discouraged. (p.42)
 - . Weekly maximum benefits should be set at least at 100% of the state average and they should be gradually increased to 200% of the state average weekly wage. (p.42)
 - . Prospective long-term wage replacement benefits should be increased annually in proportion to changes in the state's average weekly wage. (p.43)
 - . State insurance regulatory agencies should carefully review cost projections for benefit escalation and should seek alternative methods of funding. (p.43)
 - . Retroactive long-term benefits should also be adjusted to current levels. (p.43)
5. Retirement and health insurance payments for social security and private insurance plans should continue to be made for disabled workers receiving workers' compensation. (p.43)
6. In addition to wage-loss benefits, States may also wish to require indemnity benefits for impairment.
- . Should be based on a simplified 10 point scale where 10 equals total impairment.
 - . Maximum impairment benefits should be well below the amounts that would be awarded in tort cases.
7. Survivors, in death cases, should be compensated on a wage-loss basis, as though the surviving spouse's income were the income of the impaired worker. (p.44)
- . Surviving spouses should not be required to work, even though able. (p.44)
 - . Child care and training expenses should be paid for the surviving spouse. (p.44)
8. Rehabilitation and reemployment should be the main thrust of efforts to minimize the costs of workers' compensation. (p.45)

- . The employer or his insurance carrier should have primary responsibility for developing and implementing a rehabilitation plan. (p.45)
 - . If the employer or his carrier is unable to develop a suitable plan, the state vocational rehabilitation agency should do so at the employer's expense. (p.45)
 - . The employer or his carrier should pay all rehabilitation costs, including travel and maintenance. (p.45)
 - . The state workers' compensation agency should oversee rehabilitation and re-employment. (p.45)
 - . Employers should make every effort to re-employ injured workers or assist employment elsewhere. (p.46)
9. There should be simple procedures for changing the status of wage-loss claims, i.e. no prior approval by the state agency should be required unless requested by the claimant. (p.47)
 10. If a wage-loss claimant declines to return to work when employment is available, the employer or his insurance carrier should be permitted to petition the state agency for termination of wage-loss benefits. (p.47)
 11. Experience rating should be extended to small, as well as large firms. (p.48)
 12. Dividends should reflect safety, health and re-employment experience of individual employers. (p.48)
 13. Insurance carriers should increase safety and health assistance to employers. (p.48)
 14. States should encourage employers to self-insure the first few hundred dollars of medical care and the first few days of wage-loss. (p.50)
 15. States should explore the possibility of allowing employers to merge workers' compensation benefits with other fringe benefits. (p.51)
 16. States should monitor self-insurers and perhaps they should encourage self-insurers to create reserves for future liability by providing a tax credit. (p.51)

17. It is vitally important for state agencies to strengthen administrative functions. (p.51)

- . Vigorous programs to inform all parties of rights and responsibilities. (p.51)
- . Enforce insurance requirements. (p.51)
- . Provide a state fund to insure hard-to-cover risks. (p.51)
- . Provide a state fund to guarantee benefits against default. (p.51)
- . Establish a state-panel to determine the cause of occupational diseases. (p.51)
- . Establish a unit to aid claimants, with easy telephone access. (p.52)
- . Require payments to begin within 15 days. (p.52)
- . Require hearings within 45 days, unless an extension is granted. (p.52)
- . Allow payments to begin immediately, without prior state review. (p.52)
- . Regulate legal fees. (p.52)
- . Review appropriateness of contingency fees for a wage-loss system. (p.52)
- . Penalize frivolous defenses. (p.52)
- . Review medical care, rehabilitation and reemployment plans and advise claimants. (p.52)
- . Cooperate with Federal and State safety and health agencies. (p.52)
- . Assess a tax on employers and insurers to finance administration. (p.52)

18. Develop improved management information systems. (p.53)

- . Establish common definitions and uniform tabulations for BAIS and the Task Force MIS. (p.53)

- Combine workers' compensation and occupational safety and health data systems. (p.53)

19. Prohibit concurrent receipt of workers' compensation and unemployment insurance benefits. (p.54)
20. Disallow concurrent receipt of workers' compensation and social security payments for disability or death. If SSA payments alone, would be greater, workers' compensation should be supplemented up to the level that would be allowed under the social security benefit. (pp. 53 & 54)

Interim Measures

For states that are not ready to implement a full wage-loss system at this time, the following interim steps are recommended: (p.56)

- Manage cases actively.
- Improve data systems.
- Reduce lump sum payments.
- Regulate legal fees.
- Restrict contingency fees.
- Focus on re-employment.
- Strengthen experience rating.
- Furnish better information to medical panels.
- Extend worker coverage.
- Integrate workers' compensation with other social insurance systems.

Social Security Changes

The policy group recommends several changes in the social security system in order to limit the extent to which regular SSA taxes pay costs attributable to job injuries and illnesses.

- Prepare legislation that would assess a variable disability insurance surcharge on industries which show an excess incidence of disease. (p.39)

- Disallow social security payments for disabled workers or survivors if they receive adequate workers' compensation payments. (p.53)
- Gradually implement a prohibition of concurrent receipt of workers' compensation and social security retirement benefits. Social Security would become the primary retirement benefit. (p.54)

Other Federal Measures

- The Secretary of Health, Education and Welfare should take steps to increase knowledge of disease etiology. (p.37)
- The Federal Government should coordinate collection and analysis of occupational disease information. (p.37)
- There should be further study of the relationship between workers' compensation and product liability. (p.47)
- OSHA can supplement the effect of workers' compensation safety and health incentives and use data developed by the workers' compensation system. (p.49)
- Perhaps a tax credit should be offered to encourage self-insurers to establish reserve funds. (p.51)
- An interdepartmental policy group should continue to oversee Federal workers' compensation policy. (p.55)

Interdepartmental Workers' Compensation Task Force
January 26, 1977

STATE WORKERS' COMPENSATION LAWS COMPARED WITH THE 19 ESSENTIAL RECOMMENDATIONS
 OF THE NATIONAL COMMISSION ON STATE WORKERS' COMPENSATION LAWS
 (Laws in Effect on January 1, 1977)

Number of States in Compliance	Essential Recommendation 1/																			State Compli Score					
	2.1 2/		2.2	2.4	2.5	2.6	2.7	2.11	2.13	3.7	3.6*	3.11	3.12	3.15*	3.17	3.21	3.23*	3.25 2/				4.2	4.4		
	(a)	(b)																(a)	(b)		(c)			(d)	
	33	33	34	13	2	39	22	27	49	43	23	50	47	21	16	30	18	13	8	13	6	57	43	-	
State																									
Alabama	X	X	-	-	-	-	X	X	X	X	-	X	X	-	X	-	-	-	-	-	-	-	X	X	10
Alaska	X	X	X	-	-	-	-	X	X	X	X	X	X	X	X	X	X	-	-	-	-	-	X	X	14
Arizona	X	-	X	X	-	X	X	X	X	X	-	X	X	-	X	-	-	-	-	-	-	-	X	X	12
Arkansas	X	X	-	-	-	X	-	-	X	-	X	X	X	-	X	-	-	-	-	-	-	-	X	X	9
California	X	X	X	X	(X)	X	X	-	X	X	-	X	X	-	-	X	-	-	-	-	-	X	-	-	12
Colorado	X	-	X	(X)	-	X	-	X	X	X	-	X	X	-	X	X	-	-	-	-	-	X	X	-	12
Connecticut	X	-	X	X	-	-	-	-	X	X	-	X	X	-	X	X	-	-	-	-	-	X	X	-	10
Delaware	X	X	X	-	-	-	-	X	X	X	-	X	X	-	X	X	-	-	-	-	-	X	X	-	11
District of Columbia	X	X	X	-	-	X	X	-	X	X	X	X	X	X	X	-	X	-	-	-	-	X	X	-	14
Florida	X	-	X	-	-	X	-	X	X	-	-	X	-	-	X	-	-	-	-	-	-	X	-	-	7
Georgia	X	-	-	-	-	-	-	X	X	X	X	X	X	-	X	X	-	-	-	-	-	X	X	-	9
Hawaii	X	X	X	X	-	X	-	X	X	X	X	X	X	X	X	-	-	X	X	-	-	X	X	-	14
Idaho	X	X	X	-	-	X	-	X	X	-	-	X	-	-	X	-	-	-	-	-	-	X	X	-	9
Illinois	X	X	X	-	-	-	-	X	X	X	X	X	X	X	X	X	X	X	X	X	-	X	X	-	14
Indiana	X	X	X	-	-	X	-	X	X	X	X	X	X	-	-	X	-	-	-	-	-	X	X	-	11
Iowa	X	-	X	-	-	X	-	X	X	X	X	X	X	X	X	X	X	-	-	-	-	X	X	-	14
Kansas	X	-	-	-	-	X	X	X	X	X	-	X	X	-	-	X	-	-	-	-	-	X	-	-	9
Kentucky	X	-	X	-	-	X	X	X	X	X	-	X	X	-	X	-	-	-	-	-	-	X	X	-	11
Louisiana	X	X	X	X	-	-	-	X	X	X	X	X	X	-	X	-	-	X	X	X	-	X	X	-	11
Maine	X	-	X	-	-	X	X	-	X	X	X	X	X	X	X	X	X	-	-	-	-	X	-	-	13
Maryland	X	-	X	-	-	X	X	-	X	X	X	X	X	X	X	X	X	X	X	-	-	X	X	-	15
Massachusetts	X	X	X	X	-	-	-	-	X	X	-	X	X	-	-	-	-	-	-	X	X	X	X	-	9
Michigan	X	X	X	X	-	X	X	-	X	X	-	X	X	-	X	X	-	-	-	-	-	X	X	-	12
Minnesota	X	X	X	-	-	-	-	X	X	-	X	X	X	-	X	-	-	X	-	-	-	X	X	-	10
Mississippi	X	X	-	-	-	-	-	-	X	-	X	X	X	-	-	-	-	-	-	-	-	X	X	-	7
Missouri	X	X	-	-	-	X	X	X	X	-	X	X	X	-	X	X	-	X	X	X	-	X	-	-	11
Montana	X	X	X	X	-	X	-	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	-	12
Nebraska	X	X	X	-	-	X	X	X	X	X	-	X	X	X	X	X	-	X	X	X	-	X	X	-	14
Nevada	X	X	X	-	-	X	-	-	X	X	X	X	X	X	X	X	X	X	X	X	-	X	X	-	14
New Hampshire	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	-	-	X	X	X	X	-	18
New Jersey	-	X	X	X	-	X	X	X	X	-	X	X	X	-	-	-	-	-	-	-	-	X	-	-	10
New Mexico	X	X	-	-	-	X	-	X	X	X	-	X	X	-	-	-	-	-	-	-	-	-	X	-	8
New York	X	X	X	-	-	-	-	-	X	X	-	X	X	-	X	-	-	-	-	-	-	-	X	X	9
North Carolina	X	-	-	-	-	-	-	X	X	X	X	X	X	X	X	X	X	X	X	-	-	X	X	-	12
North Dakota	X	X	X	-	-	X	-	-	X	X	X	X	X	X	X	X	-	X	-	X	-	X	X	-	13
Ohio	X	-	X	X	-	X	X	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	-	16
Oklahoma	X	-	-	-	-	-	-	-	-	-	-	X	X	-	-	-	-	-	-	-	-	X	X	-	5
Oregon	X	X	X	X	-	X	-	-	X	X	X	X	X	X	X	-	-	X	-	-	-	X	X	-	13
Pennsylvania	X	X	X	-	-	-	-	X	X	X	X	X	X	X	X	X	X	X	X	-	-	X	X	-	13
Rhode Island	X	X	-	-	-	-	-	X	-	X	X	X	X	X	X	X	X	X	X	-	-	X	X	-	13
South Carolina	-	-	-	-	-	-	-	X	X	X	X	X	X	X	-	X	X	-	-	-	-	X	X	-	11
South Dakota	X	-	X	-	-	-	-	-	X	X	-	X	X	-	X	X	-	-	-	-	-	X	X	-	9
Tennessee	X	-	-	-	-	-	-	X	-	-	X	X	X	-	-	-	-	-	-	-	-	-	-	-	4
Texas	-	X	X	-	-	-	-	-	X	-	X	X	X	-	-	-	X	X	X	X	X	X	X	-	19
Utah	X	X	X	-	-	X	X	-	X	X	X	X	X	-	X	X	-	-	-	-	-	X	X	-	13
Vermont	X	-	X	-	-	-	X	X	X	X	(X)	X	X	(X)	-	X	(X)	-	-	-	-	-	-	-	11
Virginia	X	-	-	-	-	-	-	-	X	X	X	X	X	X	-	X	X	-	-	-	-	X	X	-	10
Washington	X	X	X	-	-	X	X	X	X	X	-	X	X	-	X	-	-	-	-	-	-	X	X	-	10
West Virginia	X	X	X	-	-	X	X	-	X	X	X	X	X	X	-	X	X	X	X	-	-	X	X	-	14
Wisconsin	X	X	X	-	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	-	X	X	-	16
Wyoming	X	X	X	-	-	-	-	X	X	X	X	X	X	-	-	-	-	-	-	-	-	X	X	-	7

Total State Compliance Score 594

X Law meets recommended standard.
 - Law does not meet recommended standard.
 (X) Law has been enacted which will bring State into compliance at a future date, not later than December 31, 1977.
 1/ The essential recommendations are reproduced on the following page.
 2/ Recommendation 2.1 has two components, each with a value of 1/2; recommendation 3.25 has four components, each with a value of 1/4.
 * Based on the ratio of maximum weekly benefits on January 1, 1977 for a single worker (or surviving spouse) to the average weekly wage of workers covered under the State unemployment insurance laws for 1975, furnished by the U. S. Bureau of Labor Statistics or the respective State agency.

Atch. IX

ESSENTIAL RECOMMENDATIONS OF THE NATIONAL COMMISSION
ON STATE WORKMEN'S COMPENSATION LAWS 1/

- R2.1 Coverage by workmen's compensation laws be compulsory and that no waivers be permitted.
- R2.1(a) Coverage is compulsory for private employments generally.
- R2.1(b) No waivers are permitted.
- R2.2 Employers not be exempted from workmen's compensation coverage because of the number of their employees.
- R2.4 A two-stage approach to the coverage of farmworkers. First, as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. As a second stage, as of July 1, 1975, farmworkers be covered on the same basis as all other employees.
- R2.5 As of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.
- R2.6 Workmen's compensation coverage be mandatory for all government employees.
- R2.7 There be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.
- R2.11 An employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.
- R2.13 All States provide full coverage for work-related diseases.
- R3.7 Subject to the State's maximum weekly benefit, temporary total disability benefits be at least $66\frac{2}{3}$ percent of the worker's gross weekly wage.
- R3.8 As of July 1, 1973, the maximum weekly benefit for temporary total disability be at least $66\frac{2}{3}$ percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.11 The definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, the benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States.
- R3.12 Subject to the State's maximum weekly benefit, permanent total disability benefits be at least $66\frac{2}{3}$ percent of the worker's gross weekly wage.

ESSENTIAL RECOMMENDATIONS OF THE NATIONAL COMMISSION
ON STATE WORKMEN'S COMPENSATION LAWS 1/ (Continued)

- R3.15 As of July 1, 1973, the maximum weekly benefit for permanent total disability be at least $66\frac{2}{3}$ percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.17 Total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.
- R3.21 Subject to the State's maximum weekly benefit, death benefits be at least $66\frac{2}{3}$ percent of the worker's gross weekly wage.
- R3.23 As of July 1, 1973, the maximum weekly death benefit be at least $66\frac{2}{3}$ percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.25 Death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage two years' benefits be paid in a lump sum to the widow or widower. Benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution.
- R3.25(a) Benefits are paid to spouse for life or until remarriage.
- R3.25(b) Two years' benefits paid in lump sum, in event of remarriage.
- R3.25(c) Benefits paid to a child at least until age 18 and beyond if actually dependent.
- R3.25(d) Benefits paid to full time student dependents until age 25.
- R4.2 There be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.
- R4.1 The right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

1/ Source: Report of the National Commission on State Workmen's Compensation Laws, U. S. Government Printing Office, 1972.

Leslie Thompson
US Dept. of Labor
Special Committee on
Labor and Industry X

It is only within the past several years that the Federal Government has taken much of an interest in State Worker's Compensation Programs. The Occupational Safety and Health Act of 1970 provided for the establishment of a National Commission to undertake a comprehensive study and evaluation of State Worker's Compensation Programs to determine if there was an adequate, equitable and efficient system of Compensation. This Commission, after conducting numerous hearings across the country, concluded that there was not and submitted a report on their findings to the President and Congress in July 1972. The report contained 84 recommendations, 19 of which were considered so essential for an adequate system, that Federal Action would be required if the States did not improve their existing systems by July 1975.

During 1973, further analysis of the recommendations of the National Commission was undertaken by an Interagency Group. They came out with the White Paper on Worker's Compensation in May 1974, expressing general support of the 19 essential recommendations and also proposing a program for assisting the states in improving their systems. This program provided for the establishment of a Task Force.

The President acted immediately on the recommendations of this group and issued a statement calling for reform of Worker's Compensation Laws by 1975. He also directed that an Interdepartmental Task Force be organized to provide technical assistance to the states and to undertake needed research into a number of issues. This Task Force is comprised of members of Labor, Commerce, FIA under HUD, and HEW, with Labor acting as the lead Agency.

Atch. X

The Task Force is headed by Howard Bunn, the former Director of the North Carolina Worker's Compensation Agency. The task force is comprised of a Research Division and a Technical Assistance Division.

Some of the areas in which the Research Division is working include:

Establishing a criteria upon which benefits should be based and the levels at which they should be set.

Determining the relationship between Worker's Compensation Programs and improved Occupational Safety and Health.

Determining the means to improve rehabilitation and re-employment programs.

Studying The advantages and disadvantages of the "adversary process" as opposed to the "inquiry system" used in Ontario, Canada.

Determining The relationship between Worker's Compensation Programs and other programs that seek to protect workers against the medical expenses of illness or injury and the loss of income resulting from disability.

Study of State and Federal Administrative practices.

A report by the Policy Group of the Interdepartmental Worker's Compensation Task Force was made to the President ^{and Congress} on January 20, 1977. This report was based only upon initial findings from draft reports on research and surveys which will not be completed for several months.

It is anticipated that the finalized report on research will be available by the end of the summer.

I can furnish each of you with a copy of the report, however, bear in mind, the Policy Group represented the previous administration. I will give you a brief summary of the report.

History of Federal Legislation

In July 1973, the Javits-Williams Bill, S-2008, was introduced in the Senate. This Bill compressed the time frame within which the States would be able to enact legislation to meet the 19 essential recommendations; and more significantly, included mandates which reached far beyond the Commission's recommendations.

The prior Administration opposed this Bill for a variety of reasons.

The most important being that decentralization to the greatest extent possible was always the goal of that Administration.

It was also felt that the States should have, at the minimum, the full 1975 Legislative Session to reform their laws.

That much more study was needed on the availability of records and the funding of the costs that would be incurred by the Bill's provision for retroactive benefits.

That the Longshoremen's and Harbor Worker's Compensation Act is not, as it stands, a suitable mechanism for administering State Programs.

introduced

The Revised Version of Senate Bill 2008 was ~~known~~ as Senate Bill 2018.

That Bill, in a number of respects, represented a response to some of the criticisms directed toward the original Bill. For example, the provisions on reopening of old cases was drastically revised; and the section on occupational disease standards was modified. The enforcement mechanism no longer required the States to submit plans for approval by the Secretary of Labor in order to continue to operate their own program; nor, did it provide for resort to the Longshoremen and Harbor Workers' Act if the States

failed to meet the standards. In general, the number of substantive standards (now called entitlements) were reduced, while the administrative requirements imposed on the States were spelled out in more detail. The States would have a two-year period following enactment to bring their laws into conformity with the standards.

This Bill is dead and we don't have specific information on details of a new Senate Bill or potential date of introduction. We can state with a ~~reasonable amount~~ of certainty that there will be a new Senate Bill.

There is at present a House Bill pending. This Bill - 15609 puts the onus of compliance on individual employers.

*reported out of committee
last fall
is not
being sponsored
by Congress
as HR 2054*

Employees may go into Federal District Court to appeal any provision of Law which has not been certified by the Secretary of Labor as being in compliance. This is without regard to the amount in controversy. Entitlements are essentially the same as in previous House Bills.

There is a provision for Grants to the States for improving administration capabilities.

*The entitlements follow very much the 19 essential
Recommendation*

As far as support of Minimum Federal Standards, I can only repeat a statement made by President Carter during the Campaign - "As Governor, I worked to upgrade the State of Georgia Workmen's Compensation Program - including improved compensation benefits. As President, I would aggressively support the Democratic Party Platform, which calls for the enactment of Minimum Federal Standards for Worker's Compensation laws." Also, during Senate confirmation hearings, Secretary of Labor Marshall expressed his support of Federal Minimum Standards.

Evaluation of Kansas

Our evaluation of Kansas shows compliance with 9 1/2 of the 19 essential recommendations. I have available, copies of State-by-State compliance

~~as well as a breakdown of Kansas non-compliance with the Section of Law noted which brings about the non-compliance.~~

rechart showing
I went go into detail on the areas where Kansas is in non-compliance as had no serious disagreement with my previous analysis yesterday
The most serious areas of non-compliance are coverage and benefits. The

payroll restriction of \$10,000 is in essence a numerical restriction.

Another serious area is the lack of agricultural coverage. Farmwork

is the third most hazardous occupation in this country with injuries and deaths exceeded only by construction and ~~manufacturing~~ *mining*.

The 50,000 maximum limit on benefits is totally unrealistic. The ^{66 2/3 of SAWW} maximum weekly

benefit amount is too low.

Heart Attack Amendments

Mr. Heim also requested me to cover Heart Amendment Legislation in other States. This is an area which is handled mostly by Case Law. ^{in most states} I do have

with me a Section of Larson's Law on Workmen's Compensation citing ^{some} some cases; however, as your next speaker is scheduled to make a presentation

on Heart Cases, I will not go into further detail. If you are interested,

I can make this material by Larson available to you.

I have sections of law from six States; however,

also Larson's statement that "The preponderance of jurisdictions that now accept the usual exertion rule in heart cases is three to one over those that reject it"

House Committee on Labor and Industry

June 23, 1977

Attch. XI

First, let me state that so far as we know workmen's compensation, of itself, has not created any major problems for the cities of Kansas. Workmen's compensation, together with other mandates, has the potential of creating serious problems.

There are 625 cities in this state. All of these cities, except those with annual payrolls of less than \$10,000, are required to provide workmen's compensation coverage. Frankly, we do not know how many cities are exempt. My judgment is that there probably are less than 50.

Only three of those cities required to provide workmen's compensation coverage have elected to become totally or partially self-insured. They are: Topeka, Wichita and Winfield. The remaining cities are financing workmen's compensation through insurance.

It is difficult to arrive at exactly the total cost of workmen's compensation coverage for cities because not all cities pay workmen's compensation costs from a workmen's compensation fund. Data on city tax levies collected annually by the League of Kansas Municipalities indicate that of the 625 cities in the state only 229 -- some 36.64 percent -- report they levy a special levy for workmen's compensation.

For these 229 cities, the levy for workmen's compensation amounts to 2.7 percent of the total tax levy for city purposes.

It must be assumed that for the balance of the cities, levies for workmen's compensation are included in their general fund levy. Therefore, they are not easily identified from the data we have available. It also is reasonable to assume that the cost to these

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cities is no less than the cost to those cities which make a separate tax levy.

To better understand what we are talking about, let's look at data segregated by class of city.

There are 22 cities of the first class. These range in size from approximately 9,000 persons to a population of more than 265,000. Only 13 of these cities report a separate tax levy for workmen's compensation.

Looking at these 13 cities, we find that 1.7 percent of their total tax levy for city purposes goes to provide workmen's compensation. At the same time, 6.77 percent of their total tax levy goes for social security and retirement (excluding police and fire pensions). The workmen's compensation levy in these cities amounts to 25.1 percent of the levy for social security and retirement.

Social security and retirement levies are mentioned because they both provide for disability and death benefits in addition to retirement benefits.

There are 87 cities of the second class ranging in size from 485 persons to more than 20,000 population. Of these cities, 64 have between 2,000 and 10,000 population. Ten cities have less than 2,000 persons and 12 cities have more than 10,000 persons. Of these 87 cities, 73 report they make a special tax levy for workmen's compensation.

Workmen's compensation levies account for 2.64 percent of the total tax levy for city purposes in cities of the second class. At the same time social security and retirement amounts to 11 percent of the total tax levy. The workmen's compensation levy amounts to 23.97 percent of the social security and retirement levy.

There are 516 cities of the third class in Kansas. These

cities represent 82.5 percent of all Kansas cities. Cities of the third class range in size from those with 9 persons to those with populations above 4,000. Of these 516 cities of the third class there are 235 cities -- 45 percent -- with populations of less than 300 persons. There are 257 cities -- 49.8 percent -- with populations between 300 and 2,000 persons. Only 24 of these cities have populations in excess of 2,000 persons.

Only 143 cities of the third class report a special tax levy for workmen's compensation. However, the workmen's compensation levy in these cities amounts to 2.9 percent of the total tax levy for city purposes. Social security and retirement levies in these cities account for 8.9 percent of the total city tax levy. The workmen's compensation levy is 32.67 percent of the social security and retirement levy.

These figures clearly indicate that it is the small city which faces the greatest fiscal impact from workmen's compensation. There are three major reasons for this. First, a greater percentage of the total city budget in most of these cities goes for city payroll. Second, the smaller cities are more dependent upon tax revenues since they have only limited additional sources of city funds. Third, these cities, generally, have too few resources to make it feasible for them to consider becoming self insurers.

One could reasonably argue that two to three percent of total tax levy is not an excessive amount. But it should be remembered that this two to three percent represents only one small item out of many which are mandatory for cities. There is no way to avoid tax levies for general government services; for the protection of life and property; for the maintenance of health and other services which the public feels are essential.

Nor can one overlook the fact that federal and state mandates extend to a multiplicity of matters including unemployment insurance, minimum wage and hour rates and environmental standards, including water and sewage disposal standards. In these matters cities have no choice but to meet the mandates or face the consequences. In such a climate, two to three percent of total tax levy becomes a major expenditure.

We also would call your attention to the fact that workmen's compensation insurance companies presently have an application pending to increase workmen's compensation insurance rates for governmental employers by 18.6 percent. If this full increase is granted -- and the record for the past several years indicates it will be -- this will force the average levy for workmen's compensation from 2.7 percent to 3.2 percent of total city tax levy.

For cities of the third class this increase would force the rate from 2.9 percent of the total city tax levy to 3.44 percent of the city tax levy. This is the proposed increase for workmen's compensation alone. It does not consider an approximately 20 percent increase in medical and hospital insurance rates. Nor does it consider the additional levies to be required for unemployment insurance or mandatory overtime payments. These are all costs directly relating to city employees. And, except for the insurance, they represent costs over which the employer has no direct control.

The problem faced by cities, as we see it, is not that each of these mandates is not meritorious. They are. In most cases the arguments for them far outweigh the arguments against them. But, regardless of merit, these matters do not stand alone. In the final analysis they represent a burden upon the employer which ultimately is passed along to the consumer. In the case of cities,

this is the taxpayer.

We also are greatly concerned about those areas in which workmen's compensation overlaps into other programs. We call specific attention to three areas: Social security, KPERS, and the firemen;s relief fund.

In 1976 the League's officially adopted policy statement read in part: "As a general rule, we believe that the total package of benefits, resulting from occupationally incurred injuries, received from workmen's compensation, social security primary benefits, Kansas public employees retirement system, Kansas police and fire retirement system, firemen's relieve fund, local pension fund or other publicly financed sources should provide not less than 80 percent nor more than 120 percent of the employee's regular weekly compensation, less taxes and other payroll deductions." This still is our position.

Only this year this committee approved and the legislature passed bills which removed social security offsets for death and disability benefits. We suggest that in considering future amendments to the workmen's compensation act, the legislature exercise great caution to insure that public employers are not required to use public funds to pay two or three times for disability or death benefits.

It is obvious that public employees, regardless of how small the city by which employed, have certain basic rights. No one can argue that some public workers should be denied equal rights or equal protection merely because they work for a small employer.

What we would like to impress upon this committee is that workmen's compensation cannot be separated from a myriad of other demands which are -- and will -- be made upon cities.

To increase the mandates upon these communities without, at the same time, giving some consideration to how these mandated costs will be funded is to hasten the day when many of these communities will be forced to price themselves into bankruptcy.