

Approved Arthur Douville 3-30-88  
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at  
Chairperson

9:09 a.m./~~p.m.~~ on March 4, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Ann Donaldson, Kansas Department of Legislative Research  
Jim Wilson, Revisor of Statutes Office  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

The business before the committee on this date was discussion and possible final action on a number of bills.

re: H.B. 3060

Representative O'Neal made a conceptual motion to amend the bill so credit would apply at the end of the period for which compensation was due. Representative Acheson seconded. The chairman explained the amendment saying it was not taking anything away from the employee because he had not been given anything and would not be required to repay anything as under the unemployment law.

Under the unemployment law, if an employee were granted certain benefits and the employer appealed and ultimately prevailed, the employee is required to repay any benefits he received. Representative Whiteman cited the intent of the entire Workmens' Compensation Act to be social legislation in which the employee gave up the right to sue his employer. She stated the change in this bill would put the cost of error on the employee. If an administrative law judge (ALJ) ruled an employee entitled to compensation and this was later reversed on appeal, the representative contended this to be a system cost. She felt the employee was being "hit" twice - first by giving up his right to sue the employer and then to pay back what was previously awarded by the ALJ. The chairman asserted the employee would not be required to pay back anything. The law has decided the employee is not entitled to compensation so it is not taking away something that was not granted. Representative O'Neal remarked that the right to collect compensation is not the right to be overpaid compensation. This bill assures that the final decision would not result in an overpayment to the claimant. If there are future benefits due there is credit, if there are no future benefits due there is no obligation for the claimant to repay. Representative Whiteman cited an example of an employee being paid before the appeal and the award being adjusted downward. The chairman stated the employee would be given a credit future payments. The employee would not have to repay anything. He stated he would not support any concept whereby an employee would have to repay anything. The motion carried on a unanimous voice vote. Representative O'Neal made a motion, seconded by Representative Acheson to report the bill favorably as amended. The motion carried.

Chairman Douville has requested that H.B.s 2927 and 3020 be held over for discussion and further study.

re: H.B. 2997

Attachment #1 is a printout of from Chris Cowger, Kansas Department of Insurance, regarding the fiscal note discussed at the March 3, 1988, meeting of the committee. (Consult minutes of that meeting for further information.) The issue of additional personnel was discussed. Representative Bideau explained the fund does not operate like an insurance company. Many times the fund is assessed an award or a partial award in the middle of a case. Many times a respondent may have medical information, the wage statement made up and additional information the fund does not have. The testimony had been response from the fund was regarding payment was not as quick as claimant's counsel thought it should.

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Representative Bideau stated there were times when the fund was out of money and if additional responsibilities are added to the fund, it is going to slow down the system. When the fund has been depleted, there are instances where the respondents, the insurance companies or the self-insureds have advanced the money, up front, subject to reimbursement when the workers compensation fund receives funds. Representative Whiteman, recognizing that many cases are impleaded and eventually dismissed, requested the number of current cases that are paid. Chris Cowger responded that in general over 50%. He stated the department has one accountant I who processes all payments. She is the same person who ran the budget for the fund when it was \$400,000.00 - last year it was \$22,000,000.00. The chairman stated he would write a formal letter to the commissioner but would like a formal report from the Insurance Department regarding the fund, expenditures and developments over the last five years. Chairman Douville stated his personal opinion to be the fund should be liable to the same extent as a private employer regarding the employee's benefits being paid on time. Representative O'Neal made a motion to report the bill adversely, seconded by Representative Buehler. Representative Whiteman opposed the motion stating that if there is responsibility involving the workers compensation fund the state should have equal responsibility as the insurance carrier. Representative Patrick voiced concern over imposing a fine on a governmental entity. Representative Bideau cited the two types of cases involving the fund: 1. an insolvent employer and 2. the fund coming in on a second injury provision. He voiced concern as to how matters would proceed when the fund is out of money and/or a carrier is encountered that refuses to "front" the money. He called it bad public policy and supported the motion. Representative O'Neal agreed with the chairman over "playing by the same rules" but did not feel this bill was the appropriate vehicle to accomplish the purpose citing differences between employers and the workers compensation fund. He, too, was concerned with a civil penalty assessed against a state agency. The representative stated that often the reason a payment is late is because the insurance carrier is late getting the information to the department. Representative O'Neal withdrew his motion to report the bill adversely, followed by Representative Buehler's withdrawal of his second. Representative Patrick made a motion seconded by Representative Buehler to table H.B. 2997. The motion carried.

re: 3059

At the request of the chairman, Representative O'Neal reviewed the bill. (See minutes of the March 2, 1988, meeting for bill content and committee discussion.) Representative O'Neal made a motion to report the bill favorably, seconded by Representative Hensley. The motion carried on a unanimous voice vote.

re: 3061

Representative O'Neal gave a brief review of the bill (for detail see minutes of the March 2, 1988, meeting). He recognized the suggestion of Tom Hammond and the K.T.L.A. and supported deletion of the sentence beginning with line 0085 through 0088 of the bill. Chris Cowger briefly stated the workers compensation fund felt this bill would "clear the air" whether the fund had subrogation rights rather than litigating it repetitively. Representative O'Neal made a motion, seconded by Representative Sifers to delete the sentence beginning in line 0085 through 0088 of the bill. The motion carried on a unanimous voice vote. Representative O'Neal made a motion, seconded by Representative Green to report the bill, as amended, favorably. The motion carried on a unanimous voice vote.

re; H.B. 3062

Referring to testimony presented March 3, 1988 (refer to minutes of that meeting), Representative O'Neal made a motion to conceptually delete lines 0103-0107, page 3, the substance of the amendment to the statute that would provide a procedure where the workers compensation fund was impleaded by a certain date. He stated the 91st day after a written claim for compensation is served is probably impractical. He suggested the procedure be: the workers compensation fund be impleaded no later than the 10th day before the first setting of the regular hearing. Further, by first day that is set to address the problem of having a continuance of that first regular hearing for the sole purpose

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of getting the fund involved. On a point of clarification, (a) is being deleted (b) is being amended to the date the regular hearing is actually held. Representative O'Neal stated he would add to that the date the first regular hearing is first scheduled. Representative Hensley seconded the motion which carried on a unanimous voice vote. Representative O'Neal made a motion, seconded by Representative Acheson to report the bill, as amended, favorably. The motion carried on a unanimous voice vote.

re: H.B. 3069

This bill involves principals and subcontractors (see minutes of March 2 and March 3, 1988, meetings for committee discussion). Representative O'Neal suggesting amending the bill to read that once the workers compensation fund has impleaded the responsible principal the fund then be entitled to dismissal from the action. The chairman asked if there would be circumstances, even though they had been impleaded, whereby they shouldn't be discharged. The representative responded it would only be the case if the subcontractor and principal were both insolvent. Chris Cowger stated this has occurred before and if it is a blanket dismissal then it is because the subcontractor has brought in the principal and it is deemed inappropriate. The chairman cited the complexity of this issue and stated he would ask for a rereferral on the bill. Representative Bideau suggested permitting the fund to file a motion at that time and have the judge rule on solvency.

re: 3058

Representative O'Neal reviewed the intent of the bill. He then moved to report the bill favorably, seconded by Representative Whiteman. Jim Wilson pointed out this bill and 3060 amend the same section of the statute and could be presented as one bill unless policy considerations dictated two bills. Representative O'Neal amended his motion to further amend the policy changes in H.B. 3058 into H.B. 3060 so there is one bill amending the existing statute. Representative Acheson seconded the motion which carried on a unanimous voice vote.

re: H.B. 3059 & 3061

Jim Wilson drew the attention of the chairman and committee to the fact these two bills also affect the same statute although different sections and made the same recommendations as regarded the previous bill(s). Representative Hensley made a motion to amend the provisions of H.B. 3059 be amended into H.B. 3061 and that it be reported favorably as amended. Representative Green seconded the motion which carried on a unanimous voice vote.

re: H.B. 2998

(Refer to committee minutes of March 2, 1988, for introduction and committee discussion of the bill). Representative O'Neal moved to report the bill favorably for passage, seconded by Representative Gjerstad, motion carried on a unanimous voice vote.

re: H.B. 3004

Representative Patrick moved to amend the bill by striking the word "only" from line 0041. Representative Acheson seconded the motion which carried on a unanimous voice vote. Representative Patrick moved to report the bill, as amended, favorably for passage. Representative Hensley seconded the motion which carried on a unanimous voice vote.

re: H.B. 3016

(Refer to minutes of the March 3, 1988, meeting for introduction and discussion of this bill). Director Rathmel supported the bill. Representative Green made a motion to report the bill favorably for passage. Representative Buehler seconded the motion which carried on a unanimous voice vote. Representative O'Neal pointed out this would prevent the fund paying temporary total disability (TTD) by warrant. Chris Cowger stated it only pays TTD by warrant in the case of an insolvent employer. Representative Bideau stated the specific language prohibits payment by warrant. He stated it would be easily repaired, if all state agencies pay by warrant to add an exception for the State of Kansas.

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Representative Bideau made a motion to reconsider the committee action on H.B. 3016, seconded by Representative Hensley. The motion carried unanimously. Representative Bideau moved that conceptually the provision for payment by warrant not apply to any agency of the State of Kansas even if the workers compensation fund or the State of Kansas is paying as a self-insured. Representative Buehler seconded the motion which carried unanimously. Representative Patrick moved to report H.B. 3016, as amended, favorably for passage. Representative Whiteman seconded the motion which carried unanimously.

The meeting was adjourned at 9:40 a.m. Next meeting of the committee will be March 15, 1988, 9:00 a.m., Room 526-S.



House Bill 2997

Salaries and Wages

Accountant I	\$ 23,555.00
Paralegal	<u>22,497.00</u>
Total	<u>\$ 46,052.00</u>

Other Operating Expenditures

Communications	\$ 1,800.00
Office supplies	700.00
Furniture and Equipment	<u>5,400.00</u>
	<u>7,900.00</u>
Total Estimated Expenditures	<u>\$ 53,952.00</u>