

## F I N A L R E P O R T

### WORKERS COMPENSATION STUDY COMMITTEE

January 1990

#### AUTHORIZATION AND APPOINTMENT

The Workers' Compensation Study Committee was established by the Legislative Council to "assess the operation of the Industrial Commissioner's office, and make recommendations to improve workplace safety and expedite the backlog of workers' compensation cases", and also "develop recommendations to maintain the long-term solvency of the Second Injury Fund."

Members serving on the Study Committee included:

Senator John Peterson, Co-chairperson  
Representative Gary Sherzan, Co-chairperson  
Senator William Palmer  
Senator Al Sturgeon  
Senator Linn Fuhrman  
Senator Richard Vande Hoef  
Representative Mike Peters  
Representative Arthur Ollie  
Representative Ron Corbett  
Representative Phil Tyrrell

#### COMMITTEE PROCEEDINGS

The Study Committee was authorized to hold three meetings, which took place on August 30, September 27, and October 27.

#### MEETING -- AUGUST 30, 1989

The first meeting of the Study Committee was held on Wednesday, August 30, 1989, in Senate Committee Room 22 of the Statehouse. Presentations were made by interested persons concerning the workers' compensation claim process and the operations of the Industrial Commissioner's Office.

Ms. Jean Eakes, a workers' compensation claimant, described her situation and experience relating to the delay in collection of benefits under her employer's workers' compensation insurance coverage.

Mr. Robert Kinsey, Chairperson of the Iowa Bar Association Committee on Workers' Compensation, testified concerning the operations of the Industrial Commissioner's Office. He testified that the Bar Association supports additional staff being added to the Industrial Commissioner's office to help reduce the backlog which currently exists.

Mr. Steve Ort, Workers' Compensation Superintendent, Employers Mutual Companies, testified concerning the backlog in Iowa workers' compensation cases. His testimony noted the increase in contested cases and resulting system overload. He offered several possible remedial measures including creating a public forum for the exchange of ideas and information on issues, a prohibition on litigation while benefits are being provided in a timely manner and in proper amount, and possible examination of agency rules and actions to assist in reducing the time of each case.

Mr. Art Hedberg and Ms. Sandy Pinegar, Hedberg, Ward, Owens & Vonderhaar, testified concerning contested case timeframe and suggested a reduction in the amount of time allowed for certain phases of the contested case proceeding resulting in a reduction in the amount of time necessary for completion from 995 days to 360 days. Also recommended was a shorter judicial review process and a fast docket allowing resolution of certain issues more quickly.

Mr. Chuck Gifford, United Auto Workers, testified that the Industrial Commissioner's Office has placed too much emphasis on processing litigated cases to the detriment of the office's compliance function. He recommended that the compliance function be separated from the office under a separate administrator.

Mr. David Linguist, Industrial Commissioner, reviewed actions taken in the Industrial Commissioner's Office to increase the productivity of the agency since he became Industrial Commissioner. Among other items, these include the adoption of minimum performance standards for deputy industrial commissioners, instituting a study on changing the prehearing study, hiring an eighth deputy, adjusting the hearing schedule to allow hearing cases in each venue every five weeks rather than every ten weeks, and using the courthouse in Des Moines to increase the number of hearings held in Polk County. He recommended the addition of more deputies to assist with the increasing workload and one additional deputy and claims analyst to assist in mediation process.

#### MEETING -- SEPTEMBER 27, 1989

The second of the Study Committee was held on Wednesday, September 27, 1989, in Committee Room 116 of the Statehouse. Presentations were made by interested persons concerning assessment of the operations of the Industrial Commissioner's Office and the Second Injury Fund.

Mr. Barry Moranville, Executive Director of the Iowa Association of Workers' Compensation Lawyers, testified as to the increase in contested workers' compensation files in the Industrial Commissioner's office causing a delay in case finalization. He stated that one solution which would result in a decrease in delays would be to hire additional deputies to assist in case processing.

Mr. Fred Haas, Chairperson of the Workers' Compensation Committee of the Iowa Trial Lawyers' Association, provided testimony concerning delays in finalizing workers' compensation claims. He stated that employing additional deputies would probably help reduce delays in the system. He also expressed concern about the length of time for the claimant or the claimant's physician to receive payment for a claim.

Mr. Jim Glenn, testified concerning his personal experience in the workers' compensation claim process and expressed his impressions of the inadequacies of the claims process.

Mr. Mike Tramontina and Mr. Brian Schaeffer, State Treasurer's Office provided testimony regarding the workers' compensation second injury fund. Mr. Tramontina expressed four problems with the current system including an inadequate funding mechanism, an increase in the number of claims and the dollar amount paid, problems with receiving notice of job-related deaths, and an inequitable funding mechanism.

Ms. Jerry Morgan and Mr. Al Copenhaver presented testimony regarding the occupational safety program which has been implemented at Iowa Beef Processors.

Mr. Craig Kellinson, Special Assistant in the Attorney General's Office, testified that workers' compensation claim volume will continue to increase and increased awareness of the second injury fund will cause an increase in claims against the fund and amounts paid out.

Mr. Steven Ort, Workers' Compensation Superintendent, Employers Mutual Companies, presented testimony concerning the legislative intent of the second injury fund and the necessity of maintaining the fund.

Mr. William Riley, Workers' Compensation Advisory Committee stated that the Advisory Committee is willing to assist in the effort to alleviate the pressure on the second injury fund, and that a determination must be made concerning the amount of the expected revenue shortfall of the second injury fund.

Mr. Ted Tinlin addressed the Study Committee concerning his work-related injury and his experience with the workers' compensation claim process.

Mr. David Linguist, Industrial Commissioner, provided testimony regarding the second injury fund, and information concerning staffing needs in the commissioner's office.

Co-chairperson Representative Gary Sherzan instructed the Legislative Service Bureau to prepare a bill draft appropriating money for the additional staff requested by the Industrial Commissioner, incorporating the structural changes to the second injury fund recommended by the Treasurer of State's Office, imposing penalties for termination of weekly compensation or medical benefits without good cause, providing for surprise inspections, and relieving an injured worker of financial responsibility when and if the employer exercises choice of care. The Service Bureau was instructed to have the bill draft prepared for discussion at the next meeting of the Study Committee.

MEETING -- OCTOBER 27, 1989

The third and final meeting of the Study Committee was held on Friday, October 27, 1989 in Room 116 of the Statehouse.

The Study Committee received the bill draft requested by the Co-chairperson at its second meeting, and after debate adopted an amendment requiring payment of a worker's medical expenses by an employer or certain insurance carriers pending determination of coverage or employer liability. The original proposal removing an injured worker's financial responsibility for medical expenses when the employer exercises choice of care was deleted. The bill, as amended, was adopted by the Study Committee as its recommendation to the Legislative Council.

A copy of the bill adopted and recommended by the Study Committee is attached to this report.

SENATE FILE \_\_\_\_\_  
BY (RECOMMENDED BY WORKERS'  
COMPENSATION STUDY COMMITTEE)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to workers' health, safety, and welfare, by  
2 providing funding for the second injury fund and an  
3 appropriation for the industrial commissioner, establishing  
4 initial hearing deadlines, requiring certain unannounced  
5 inspections, authorizing certain administrative search  
6 warrants, and imposing certain benefit payment requirements  
7 and penalties for unreasonable denial or nonpayment of medical  
8 benefits, and providing applicability and effective dates.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 85.29A PAYMENT OF MEDICAL  
2 EXPENSES PENDING DETERMINATION OF COVERAGE OR LIABILITY.

3 1. TWO OR MORE INSURANCE CARRIERS POSSIBLY LIABLE FOR  
4 MEDICAL COVERAGE. If an injured employee potentially has  
5 insurance coverage under two or more insurance policies or  
6 other third-party payor contracts, pending a determination of  
7 liability by the commissioner, the employee shall receive  
8 workers' compensation medical benefits. If it is later  
9 determined that the employee's injuries were not work-related,  
10 or that the employer is not liable for workers' compensation  
11 medical benefits, the employer or the employer's insurance  
12 carrier has the right of subrogation to recover medical  
13 expenses paid on the employee's behalf from any other  
14 insurance carrier or third-party payor liable for the medical  
15 benefits received by the employee.

16 2. EMPLOYER LIABILITY FOR MEDICAL BENEFITS OR SERVICES  
17 RECEIVED UNDER EMPLOYER'S CHOICE OF CARE. If an injured  
18 employee is provided with medical services under the  
19 employer's choice of care, pending a determination of  
20 liability by the commissioner, the employee shall receive  
21 workers' compensation benefits. If it is later determined  
22 that the employee's injuries were not work-related, the  
23 employer's insurance carrier has the right of subrogation  
24 against the employer for the cost of medical services  
25 delivered pursuant to the employer's choice of care. The  
26 employee who received medical benefits or services pursuant to  
27 the employer's choice of care, is not liable for such medical  
28 benefits or services, and shall not be required to pay for or  
29 reimburse the provider, employer, or insurance carrier for any  
30 such benefits or services received.

31 Sec. 2. Section 85.65, Code Supplement 1989, is amended by  
32 striking the section and inserting in lieu thereof the  
33 following:

34 85.65 PAYMENTS TO THE SECOND INJURY FUND -- ASSESSMENT  
35 BASED ON PREMIUM DOLLARS PAID OR SELF-INSURANCE COSTS.

1       1. For the purpose of providing for revenue for the second  
2 injury fund, every authorized self-insurer, and every workers'  
3 compensation policyholder insured pursuant to this chapter,  
4 shall be liable for payment of an annual surcharge in  
5 accordance with this section. The annual surcharge shall  
6 apply to all workers' compensation insurance policies and  
7 self-insurance coverages which are written or renewed on or  
8 after July 1, 1991, including the state of Iowa coverages,  
9 including any coverages for its departments, divisions,  
10 agencies, commissions, and boards, or any political  
11 subdivision coverages which are self-insured or held out to be  
12 in any part self-insured. The surcharge shall not apply to  
13 any reinsurance or retrocessional transaction.

14       2. On January 1, 1991, and each year thereafter, the  
15 treasurer of state shall estimate the amount of benefits and  
16 administrative expenses payable from the second injury fund  
17 during the ensuing calendar year, and shall calculate the  
18 total amount of the annual surcharge to be imposed during the  
19 ensuing calendar year upon all workers' compensation  
20 policyholders and authorized self-insurers. The amount of the  
21 annual surcharge to be imposed upon all policyholders and  
22 self-insurers shall equal the moneys estimated by the  
23 treasurer of state to be payable from the second injury fund  
24 during the calendar year for which the annual surcharge is to  
25 be imposed, except that the surcharge shall not exceed three  
26 percent of the policyholder's or authorized self-insurer's  
27 workers' compensation net deposits, net premiums, or net  
28 assessments, and provided that a minimum annual surcharge of  
29 ten dollars per policyholder or authorized self-insurer shall  
30 be paid. The surcharge shall be collected from policyholders  
31 by each insurer at the same time and in the same manner that a  
32 premium is collected, but an insurance carrier or its agent  
33 shall not be entitled to any portion of the surcharge as a fee  
34 or commission for its collection. The surcharge is not  
35 subject to any taxes, licenses, or fees.

1 3. All surcharge amounts imposed by this section shall be  
2 paid to the Iowa department of revenue and finance and shall  
3 be deposited to the credit of the second injury fund.

4 4. Such surcharge amounts shall be paid quarterly by  
5 insurers and self-insurers, and insurers shall pay the amounts  
6 not later than the thirtieth day of the month following the  
7 end of the quarter in which the amount is received from  
8 policyholders.

9 5. If a policyholder or self-insurer fails to make payment  
10 of the surcharge or an insurer fails to make timely transfer  
11 to the department of revenue and finance of surcharges  
12 actually collected from policyholders, as required by this  
13 section, a penalty of fifteen percent of the surcharge unpaid,  
14 or untransferred, shall be assessed against the liable  
15 policyholder, self-insurer, or insurer. Penalties assessed  
16 under this subsection shall be collected in a civil action by  
17 a summary proceeding brought by the department of revenue and  
18 finance on behalf of the fund.

19 Sec. 3. NEW SECTION. 85.65A CARRIERS WITHDRAWING FROM  
20 STATE LIABLE FOR SURCHARGE IMPOSED -- DEPARTMENT OF REVENUE  
21 AND FINANCE EMPOWERED TO COLLECT.

22 If an insurance carrier withdraws from doing business in  
23 this state before the tax becomes due according to section  
24 85.65, or fails or neglects to pay the surcharge imposed, the  
25 department of revenue and finance shall at once proceed to  
26 collect the surcharge, and the department may employ such  
27 legal process as may be necessary for that purpose and when so  
28 collected the department shall pay the surcharge into the  
29 second injury fund. The suit may be brought by the department  
30 of revenue and finance, in any court of this state having  
31 jurisdiction, and reasonable attorney's fees may be taxed as  
32 costs in the suit.

33 Sec. 4. NEW SECTION. 85.65B DELINQUENT SURCHARGE,  
34 INTEREST, RATE -- OVERPAYMENT OF SURCHARGE, CREDIT.

35 1. If the surcharge imposed by section 85.65 is not paid

1 or transferred when due, the policyholder, self-insurer, or  
2 insurer responsible for the failure shall be required to pay,  
3 as part of the surcharge, interest on the surcharge at the  
4 rate of one and one-half percent per month for each month or  
5 fraction of a month delinquent. If the state prevails in any  
6 dispute concerning an assessment of surcharge which has not  
7 been paid or transferred, interest shall be paid upon the  
8 amount found due to the state at the rate of one and one-half  
9 percent per month for each month or fraction of a month  
10 delinquent.

11 2. In any legal contest concerning the amount of the  
12 surcharge imposed under section 85.65 for a calendar year, the  
13 quarterly installments for the following year shall continue  
14 to be made based upon the amount assessed by the director of  
15 revenue and finance. If after the end of any year, the amount  
16 of the actual surcharge due is less than the total amount of  
17 the installments actually paid, the excess amount paid shall  
18 be credited against the tax for the following year and  
19 deducted from the quarterly installment otherwise due on June  
20 first.

21 Sec. 5. Section 85.66, unnumbered paragraph 1, Code 1989,  
22 is amended to read as follows:

23 When the total amount of the payments provided for in the  
24 preceding section, together with accumulated interest and  
25 earnings, equals or exceeds five seven hundred thousand  
26 dollars no-further-contributions-to surcharge assessments for  
27 the fund shall be required suspended commencing with the next  
28 quarter; but when, thereafter, the amount of the sum is  
29 reduced below three five hundred thousand dollars by reason of  
30 payments made to employees pursuant to this division,  
31 contributions surcharge assessments shall be resumed  
32 commencing with the next quarter and shall continue until the  
33 sum, together with accumulated interest and earnings, again  
34 amounts to five seven hundred thousand dollars. The treasurer  
35 of state shall determine when contributions surcharge

1 assessments shall be made ~~to~~ for the fund and when they shall  
2 be suspended and the treasurer of state or the department of  
3 revenue and finance may enforce the collection of  
4 ~~contributions~~ the surcharge.

5 Sec. 6. NEW SECTION. 85.68A EXPENSES OF ADMINISTRATION  
6 PAYABLE FROM FUND.

7 The expenses incurred by the treasurer of state, the  
8 attorney general, or the department of revenue and finance, in  
9 connection with the second injury fund, are chargeable to the  
10 second injury fund and may be made paid from the fund. The  
11 treasurer of state may enter into one or more agreements  
12 authorized under chapter 28E with the department of revenue  
13 and finance and the attorney general to provide compensation  
14 for the administrative functions provided by those departments  
15 in connection with the fund.

16 Sec. 7. NEW SECTION. 86.17A DEADLINE FOR INITIAL  
17 HEARING.

18 The industrial commissioner or a deputy industrial  
19 commissioner shall conduct the initial hearing for a contested  
20 case within six months of the filing of the initial report of  
21 injury required by section 86.11, unless the deadline is  
22 waived by the claimant employee.

23 Sec. 8. Section 88.6, Code 1989, is amended by adding the  
24 following new subsection:

25 NEW SUBSECTION. 8. COMPULSORY PROCESS FOR INSPECTION --  
26 ADMINISTRATIVE SEARCH WARRANTS. The commissioner or the  
27 commissioner's agent may apply to the court for compulsory  
28 process for enforcement of the department's inspection  
29 authority, in the form of an administrative search warrant  
30 pursuant to section 808.14, if one or more of the following  
31 conditions is satisfied:

32 a. FOLLOW-UP INSPECTIONS. The person or site to be  
33 inspected was previously cited for a violation, and either a  
34 subsequent inspection revealed that one or more violations had  
35 not yet been corrected, or a subsequent inspection had not yet

1 been conducted. The filing of an abatement statement by the  
2 employer cited for a violation is not grounds for denial of an  
3 administrative search warrant.

4 b. NEUTRAL SELECTION. The person or site to be inspected  
5 was selected through a neutral selection process according to  
6 the state enforcement plan approved by the United States  
7 occupational safety and health administration, and entry has  
8 been denied after request pursuant to subsection 1, or entry  
9 has previously been denied upon prior requests to permit an  
10 inspection.

11 c. COMPLAINT OF AN EXISTING VIOLATION. A complaint has  
12 been submitted to the commissioner alleging the existence of  
13 an existing violation. The application for an administrative  
14 search warrant shall to the extent constitutionally  
15 permissible protect the identity of the complainant.

16 d. PROBABLE CAUSE. Probable cause sufficient to justify  
17 an administrative search warrant is otherwise shown.

18 Sec. 9. NEW SECTION. 88.6A UNANNOUNCED COMPULSORY  
19 INSPECTIONS OF RECENT VIOLATORS.

20 The commissioner of labor shall include as part of future  
21 proposed state enforcement plans, provisions to require  
22 annually reinspection or follow-up inspections of at least  
23 five percent of the employers cited for a violation within the  
24 immediately preceding three years, based upon a neutral system  
25 of random selection. An inspection pursuant to this section  
26 shall be performed unannounced and the commissioner shall seek  
27 to obtain in advance an administrative search warrant pursuant  
28 to section 88.6, subsection 8, to permit a compulsory  
29 inspection in the event that the employer refuses voluntary  
30 access.

31 Sec. 10. Section 86.13, unnumbered paragraph 4, Code 1989,  
32 is amended to read as follows:

33 If a delay in commencement or termination of weekly  
34 compensation or medical benefits occurs without reasonable or  
35 probable cause or excuse, the industrial commissioner shall

1 award weekly compensation or medical benefits in addition to  
2 those weekly compensation or medical benefits payable under  
3 this chapter, or chapter 85, 85A, or 85B, up to fifty percent  
4 of the amount of weekly compensation or medical benefits that  
5 were unreasonably delayed or denied. In addition, interest at  
6 the rate provided in section 535.3 for court judgments and  
7 decrees shall be awarded based upon the amount of weekly  
8 compensation or medical benefits that were unreasonably  
9 delayed or denied.

10 Sec. 11.

11 There is appropriated from the general fund of the state to  
12 the department of employment services for the fiscal year  
13 beginning July 1, 1989, and ending June 30, 1990, the  
14 following amount, or so much thereof as is necessary, for the  
15 purpose designated:

16 For the division of industrial services for salaries,  
17 support, maintenance, miscellaneous purposes, and for not more  
18 than the following full-time equivalent positions:

19 .....	\$ 234,700
20 .....	FTEs 11.00

21 The division shall employ for the fiscal period beginning  
22 January 1, 1990, and ending June 30, 1990, five additional  
23 deputy industrial commissioners, one additional insurance  
24 program specialist, three additional data entry operators, and  
25 two additional word processor/clerical staff. Of the amount  
26 appropriated in this section, \$54,600 shall be used for  
27 support and equipment for these additional full-time  
28 equivalent positions. This division shall employ these  
29 individuals to expedite the administrative hearing process for  
30 workers' compensation cases and to reduce case backlog.

31 The industrial commissioner shall submit a report to the  
32 legislative fiscal bureau on or before the first Monday of  
33 every fiscal quarter detailing the following information:

34 1. Progress over the immediately preceding fiscal quarter  
35 in reducing case backlog, including reports for the entire

1 state and for each district of the state, detailing average  
2 time periods to prehearing, initial hearing, filing of initial  
3 opinion, and filing of final appeal decisions, total number of  
4 cases in each stage of the process, and total new cases filed  
5 since the last quarterly report.

6 2. Estimates of progress to be made in case backlog  
7 reduction in the current quarter, the fiscal year, and over  
8 the next four fiscal quarters.

9 3. Any other information relating to case backlog  
10 reduction and expedition of the administrative hearing process  
11 which is requested by the legislative fiscal bureau.

12 Sec. 12.

13 Section 11 of the Act, being deemed of immediate  
14 importance, is effective upon enactment.

15 Sec. 13.

16 Section 7 of this Act is effective July 1, 1991, and  
17 applies to all contested cases originally filed on or after  
18 that date.

19 EXPLANATION

20 Section 1 of the bill provides for payment of medical  
21 benefits to an injured employee pending determination of  
22 liability when either of two situations exist, when two or  
23 more possible insurance carriers are obligated to provide  
24 coverage, or when the employer exercises choice of care.

25 Sections 2 through 4 change the funding mechanism for the  
26 workers' compensation second injury fund and provide  
27 procedural and enforcement authority for collecting the newly  
28 imposed surcharge. Currently the second injury fund is  
29 financed by a payment to the fund from each death benefit paid  
30 under the workers' compensation system. The bill replaces the  
31 assessment upon death benefits paid with a surcharge or  
32 assessment based upon premium dollars or self-insurance costs.

33 Section 5 increases the minimum and maximum cap for the  
34 fund's balance and makes conforming changes with sections 2  
35 through 4.

1 Section 6 allows administrative expenses incurred in  
2 connection with the fund to be paid from the second injury  
3 fund rather than the general fund.

4 Section 7 imposes a six-month deadline for initial hearing  
5 unless waived by the claimant employee. This section is given  
6 a delayed effective date of July 1, 1991, by section 13 of the  
7 bill.

8 Section 8 details the ground for permitting the labor  
9 commissioner to obtain an administrative search warrant from  
10 the district court in limited circumstances to allow  
11 compulsory inspection for enforcement of occupational health  
12 and safety standards. Section 8 is not intended to alter or  
13 limit the scope of administrative search warrants issued  
14 pursuant to section 808.14.

15 Section 9 requires surprise compulsory searches be  
16 performed of a limited number of employers randomly selected  
17 from a list of violators within the immediately preceding  
18 three years.

19 Section 10 amends Code section 86.13 to permit imposition  
20 of penalties for unreasonable delay in commencement or  
21 termination of medical benefits. Current law only permits a  
22 penalty in connection with weekly compensation benefits. The  
23 amendment does not alter current law which provides that an  
24 employer may voluntarily undertake to provide medical benefits  
25 without an admission of liability, but once undertaken, a  
26 delay or termination without reasonable or probable cause or  
27 excuse could give rise to imposition of a penalty.

28 Section 11 makes an appropriation for the second half of  
29 fiscal year 1990 for the industrial commissioner to employ  
30 five additional deputy industrial commissioners and required  
31 support staff in order to reduce the backlog of workers'  
32 compensation cases before the industrial commissioner. The  
33 section requires certain progress reports to be made by the  
34 industrial commissioner to the legislative fiscal bureau.

35 Section 12 provides that the appropriation contained in

1 section 11 is effective upon enactment.

2 Section 13 provides that section 7's new six-month deadline  
3 for holding the initial hearing is effective July 1, 1991.

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