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NOTES

THE MINNESOTA WORKERS' COMPENSATION STUDY COMMISSION: ITS IMPACT UPON THE 1979 AMENDMENTS

The Workers' Compensation Study Commission recommended that scores of changes be made in the Minnesota statute. In special session, the 1979 Legislature passed a bill containing many important revisions of the workers' compensation law. Most of the Study Commission's recommendations were adopted, some were to be studied further, and some were omitted from the new legislation. This Note compares the Study Commission's report with the 1979 amendments, indicating what has been accomplished and what will likely be future issues of controversy surrounding the delivery of benefits to workers injured on the job.

I. INTRODUCTION

During the 1979 extra session of the Minnesota Legislature, a series of major revisions to the workers' compensation statute was enacted.¹ This

legislation\textsuperscript{2} was the culmination of a two-year study by the Workers' Compensation Study Commission, which sought to respond, in its recommendations, to the concerns of all constituencies affected by the workers' compensation system. Since nearly all employees and employers are subject to the workers' compensation system, and since the legal, medical, and educational professions are intimately involved in its administration, the impact of the new legislation will be felt by most Minnesotans.\textsuperscript{3}

The workers' compensation statute is amended nearly every session, but the changes in 1979 were more sweeping than any since 1937, when the employer's option to elect tort liability in lieu of liability under the statute was repealed.\textsuperscript{4} The retraining and rehabilitation provisions of the new legislation entirely replaced those of the old statute.\textsuperscript{5} In addition, a mandatory reinsurance association and a new reopened case fund changes in the law were made in 1921, see Act of Mar. 15, 1921, ch. 82, 1921 Minn. Laws 90 (codified in scattered sections of MINN. STAT. ch. 176 (1978)), in 1937, see Act of Mar. 12, 1937, ch. 64, 1937 Minn. Laws 109 (codified in scattered sections of MINN. STAT. ch. 176 (1978)), and in 1953, see Act of Apr. 24, 1953, ch. 755, 1953 Minn. Laws 1099 (codified in scattered sections of MINN. STAT. ch. 176 (1978)).

2. Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256 (codified in scattered sections of MINN. STAT. ch. 176 (Supp. 1979)) was derived from the companion bills, H.F. 946, 71st Minn. Legis., 1979 Sess. [hereinafter cited as H.F. 946] and S.F. 917, 71st Minn. Legis., 1979 Sess. [hereinafter cited as S.F. 917], which were introduced in both chambers soon after the Workers' Compensation Study Commission recommendations were issued. This legislation, amended in House and Senate Committees and further amended by the Joint Conference Committee, passed the Senate just minutes before the midnight adjournment hour on May 21, 1979, see MINN. S. JOUR. 3555 (1979), but failed to come to a vote in the House before adjournment was required. S.F. 1, 71st Minn. Legis., 1979 Ex. Sess. was identical, except for minor technical adjustments, to the conference committee report of S.F. 917 and was passed under a suspension of rules by both houses without amendment on May 24, 1979. See MINN. S. JOUR. 3590 (1979); MINN. H.R. JOUR. 27-28 (Ex. Sess. 1979). The 57 recommendations of the Study Commission, the complete Study Commission report, an abbreviated report, and a summary of chapter 3 are available from the following legislative offices: the House and Senate Research Departments and the Office of Senate Counsel. The reports, together with the session tapes and copies of all testimony, materials received, and staff reports are also on deposit with the Legislative Reference Library.

3. The employees expressly excluded from the workers' compensation law are those covered by the FELA, owner-officers of family farms and their employees, Minnesota Historical Society Volunteers, some veterans' organization delegates, some domestic workers, and some employees of nonprofit associations. Included at their option are officers of closely held corporations, partners, sole owners, and family farm corporation executives. See MINN. STAT. § 176.041(1) (Supp. 1979).

4. The 1937 legislation finally removed the employer's option to elect common-law tort liability, making the workers' compensation system entirely mandatory. See Act of Mar. 12, 1937, ch. 64, § 1, 1937 Minn. Laws 109, 109 (current version at MINN. STAT. § 176.031 (1978)).

5. See Act of June 7, 1979, ch. 3, §§ 36, 70, 1979 Minn. Laws Ex. Sess. 1256, 1278, 1297 (codified at MINN. STAT. § 176.102 (Supp. 1979)).
were created. Though a provision creating a state-operated workers’
compensation insurance company was deleted from the bill, another
commission was charged to study the feasibility of such a fund. The
workers’ compensation insurance rate-making and regulatory sections
were entirely rewritten and rate hearings were brought under the con-
tested-case provisions of the Administrative Procedure Act. The self-
insurance program was modified substantially and transferred to the in-
surance division. A number of benefit provisions were amended and
several changes affecting medical services and opinions also were made,
including a second surgical opinion program. Furthermore, several
changes will affect workers’ compensation attorneys. The purpose of

6. See id. §§ 17-25, 1979 Minn. Laws Ex. Sess. at 1262 (Reinsurance Association)
codified at MINN. STAT. §§ 79.34-.42 (Supp. 1979)); id. § 43, 1979 Minn. Laws Ex. Sess.
at 1285 (Reopened Case Fund) (codified at MINN. STAT. § 176.134 (Supp. 1979)).
7. See id. § 67, 1979 Minn. Laws Ex. Sess. at 1296 (not codified).
8. See id. §§ 1-16, 1979 Minn. Laws Ex. Sess. at 1256 (codified in scattered sections of
MINN. STAT. ch. 79 (Supp. 1979)).
9. See id. § 50, 1979 Minn. Laws Ex. Sess. at 1287 (codified at MINN. STAT.
§ 176.181(2) (Supp. 1979)).
10. See, e.g., id. § 34, 1979 Minn. Laws Ex. Sess. at 1273 (establishing a new permanent
partial disability schedule) (codified at MINN. STAT. § 176.101(3) (Supp. 1979)); id.
§ 44, 1979 Minn. Laws Ex. Sess. at 1285 (requiring employer to furnish surgical treatment
after employee has obtained two surgical opinions; at least one must state that surgery is
reasonably required) (codified at MINN. STAT. § 176.135(1a) (Supp. 1979)).
11. Though the entire Act affects workers’ compensation practitioners, a number of
changes have particular significance for attorneys. These include new provisions on co-
employee liability, id. § 31, 1979 Minn. Laws Ex. Sess. at 1272 (codified at MINN. STAT.
§ 176.061(5) (Supp. 1979)), a change in the size and possibly the direction of the Workers’
Compensation Court of Appeals, see id. §§ 26-27, 1979 Minn. Laws Ex. Sess. at 1268 (codi-
fied at MINN. STAT. §§ 175.006, .08 (Supp. 1979)), prospective disability schedules for
internal organ and certain other injuries, id. §§ 34, 62, 1979 Minn. Laws Ex. Sess. at 1273,
1295 (codified at MINN. STAT. §§ 176.101(3), .105 (Supp. 1979)), more liberal rules for
employer registration of preexisting impairments, id. § 39, 1979 Minn. Laws Ex. Sess. at
1282 (amending MINN. STAT. § 176.131(3) (1978)), a conclusive presumption of depen-
dency for both spouses, id. § 37, 1979 Minn. Laws Ex. Sess. at 1281 (codified at MINN.
STAT. § 176.111(1) (Supp. 1979)), an increase to age twenty-five for student dependency,
id., new notice provisions, id. §§ 46-47, 57-58, 1979 Minn. Laws Ex. Sess. at 1286, 1293
(amending MINN. STAT. §§ 176.141, .241, .271 (1978), adding MINN. STAT. § 176.139
(Supp. 1979)), permissible recovery of mistaken payments, id. § 49, 1979 Minn. Laws Ex.
Sess. at 1287 (amending MINN. STAT. § 176.179 (1978)), authority for a workers’ compensa-
tion judge to consider workers’ compensation expertise in determining attorneys’ fees, id.
§ 32, 1979 Minn. Laws Ex. Sess. at 1272 (amending MINN. STAT. § 176.081(5) (1978)),
several provisions requiring immediate benefit payment with liability and indemnification
determinations to be made later, id. § 52, 1979 Minn. Laws Ex. Sess. at 1290 (amending
MINN. STAT. § 176.191 (1978)), new penalties for failure to make medical or retraining-
related payments, id. § 53, 1979 Minn. Laws Ex. Sess. at 1291 (amending MINN. STAT.
§ 176.221 (1978)), a more limited right to discontinue benefits, id. § 57, 1979 Minn. Laws
Ex. Sess. at 1293 (amending MINN. STAT. § 176.241 (1978)), and installment payments of

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this Note is to examine the important provisions of the 1979 legislation and assess their impact upon the entire workers’ compensation system.

II. THE WORKERS’ COMPENSATION STUDY COMMISSION

The Minnesota Workers’ Compensation Study Commission (WCSC) was created by the 1977 Legislature. The WCSC interpreted its charge as a broad mandate to consider any changes that might reduce workers’ compensation costs. The creation of the WCSC and the legislation of 1979 were spurred by several events. Workers’ compensation costs in Minnesota had risen dramatically since the early 1970s. These expenses had become an increasing burden on employers. Since workers’ compensation costs were significantly lower in several of Minnesota’s neighboring states, these costs became a major “business climate” issue in the 1978 elections. The origin of these increased costs was examined by the WCSC, but no definitive conclusions were reached. Some attributed the

permanent partial disability benefits, id. § 30, 1979 Minn. Laws Ex. Sess. at 1271 (amending MINN. STAT. § 176.021(3) (1978)).

Other legislation during the 1979 session provided that a settlement among parties, all of whom are represented by counsel, will be presumed reasonable, see Act of May 30, 1979, ch. 271, § 1, 1979 Minn. Laws 591, 592 (amending MINN. STAT. § 176.521(2) (1978)), required insurers to provide employers with information about the effect of merit and experience plans on their premiums, id. § 2, 1979 Minn. Laws at 592 (amending MINN. STAT. § 79.21 (1978)), changed rules on transferee employees’ rights, Act of Apr. 3, 1979, ch. 15, § 1, 1979 Minn. Laws 15, 15 (amending MINN. STAT. § 176.041(2) (1978)), modified the provision for optional workers’ compensation coverage for officers of closely held corporations and partners, Act of May 7, 1979, ch. 74, § 1, 1979 Minn. Laws 106, 106 (amending MINN. STAT. § 176.012 (1978)) (amended 1980); Act of May 7, 1979, ch. 74, § 1, 1979 Minn. Laws 106, 106 (amending MINN. STAT. § 176.135(1) (Supp. 1979)), and required payments for podiatric treatment, Act of May 21, 1979, ch. 107, § 1, 1979 Minn. Laws 149, 149 (amending MINN. STAT. § 176.135(1) (Supp. 1979)).


13. The Workers’ Compensation Study Commission [hereinafter cited as WCSC] was charged to study and report to the Governor and the Legislature upon the procedures by which the workers’ compensation premium rates were established, comparative premium levels in Minnesota and in other states, methods of providing workers’ compensation coverage in other states, and the administration of the Minnesota law by the Department of Labor and Industry and the Workers’ Compensation Court of Appeals. Id.

14. See generally MINNESOTA WORKERS’ COMPENSATION STUDY COMMISSION, A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR 164-76 (1979) [hereinafter cited as STUDY COMM’N].

The escalation of workers’ compensation costs from 1974 to 1978 changed Minnesota’s relative position among the states from 21st to 14th in the average workers’ compensation premium. The average premium increased from $1.65 per each $100 of payroll to $2.83 during that period, an increase of 48%. See id. at 165. Fourteen other states had even more dramatic increases, including five whose average premium more than doubled. See id. This fact, however, was of very little comfort to Minnesota employers, who were
increase to what was said to be the “liberal” direction of both new legislation and judicial interpretation of the statute since 1973.\textsuperscript{15} Thus, there

inclined to compare the state with its immediate neighbors. In this comparison Minnesota fared rather badly.

Wisconsin’s average premium in 1978 was $1.44, up from $1.05 in 1974. \textit{See id. But that state’s 1978 average rate was still only 50% of Minnesota’s. Minnesota’s competitive disadvantage with its neighboring states could not be explained by a higher accident rate, either. Wisconsin, for example, had a higher frequency of industrial accidents than did Minnesota during this period. The average accident in Minnesota, however, cost 68% more in benefits and medical expenses than the average Wisconsin accident. \textit{See id. at 173.}}

Iowa’s premiums had increased even more dramatically, from $1.10 to $2.72, just 11 cents under Minnesota’s rate. \textit{See id. at 165. The Dakotas, however, were much lower than Minnesota. North Dakota’s rates were $1.31 in 1974 and $1.80 in 1978 while South Dakota’s were $1.15 and $1.43, increases of 37% and 24% respectively. \textit{See id. The increase in the average premium, however, was only part of the cost problem. The actual workers’ compensation insurance premium for a business is based upon the size and type of business and the company’s accident experience over the previous few years. \textit{See id. at 141-54. The smallest businesses are not eligible for the “premium discount,” as it is called, nor for the “experience-rating” system. Thus, smaller businesses, already at a disadvantage in competition with larger firms, were often saddled with higher workers’ compensation premiums as well. The lowest annual premium payment qualifying a firm for a premium discount is $1,000 and the discount has varied from 9.4% at that level to 16.3% for premiums above $100,000. \textit{See id. at 71. Experience rating, increasing or decreasing a premium based upon actual accident experience, is available only to those with premiums over $750 and the decreases are partially subsidized by those with lower premiums. \textit{See id. at 152-54.}}}

15. These cost increases, with their variable but uniformly disturbing impact on employers, followed in the wake of significant legislative changes during the same period. These changes commenced in 1971 and accelerated with the shift in the political balance in the Legislature in 1973. In that year, the Democratic Farmer Labor Party held the majority of seats in both chambers for the first time in history.

In 1971 there were increases in all types of workers’ compensation benefits, as well as increases in the maximum benefit for survivors. \textit{See Act of May 22, 1971, ch. 475, 1971 Minn. Laws 829 (current version at MINN. STAT. §§ 176.101, .111 (1978 & Supp. 1979)). In addition, the Legislature created a higher supplementary benefit for older claims than the standard formula would otherwise provide. \textit{See Act of May 18, 1971, ch. 383, 1971 Minn. Laws 643 (current version at MINN. STAT. § 176.132 (1978 & Supp. 1979), as amended by Act of Mar. 28, 1980, ch. 389, 1980 Minn. Sess. Law Serv. 104 (West)). Employers’ contributions to the Special Fund were also increased several fold, while the Special Fund’s liability for benefits due to a second work-related injury was postponed to a full year after the employer’s first payment on the second claim instead of the previous 26 weeks. \textit{See Act of May 27, 1971, ch. 589, 1971 Minn. Laws 1094 (current version at MINN. STAT. § 176.131(1)-(2), (4), (8) (1978 & Supp. 1979)); Act of May 27, 1971, ch. 593, 1971 Minn. Laws 1099 (current version at MINN. STAT. § 176.131(10) (Supp. 1979)). The pattern of benefit increases and erosion of the statute of limitations on claims, notice requirements, coverage limits, and employer defenses continued through 1978. All workers’ compensation benefits again were increased by the 1973 Legislature, which also created an additional benefit for peace officers killed in the line of duty. \textit{See Act of May 15, 1973, ch. 248, 1973 Minn. Laws 488 (current version at MINN. STAT. §§ 352E.01-045 (1978 & Supp. 1979)). The provisions that had limited liability for occupational diseases were repealed. \textit{See Act of May 24, 1973, ch. 643, § 11, 1973 Minn. Laws 1584, 1594 (current version at MINN. STAT. § 176.66 (1978)). Permanent partial disability

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was pressure for change in the rules of liability, benefit levels, and even in

benefits were also provided, for the first time, for injuries to internal organs, see Act of May 23, 1973, ch. 600, 1973 Minn. Laws 1398 (current version at MINN. STAT. § 176.101(3) (Supp. 1979)), and a special statute of limitations provision was extended to occupational diseases. See Act of May 24, 1973, ch. 643, § 10, 1973 Minn. Laws 1584, 1593 (current version at MINN. STAT. § 176.151(4) (1978)). The only 1973 legislation likely to reduce costs was a new provision establishing a maximum for workers’ compensation and social security disability benefits in combination. See id. § 7, 1973 Minn. Laws at 1591 (current version at MINN. STAT. § 176.111(21) (1978)).

In 1974 the Legislature increased supplementary benefits once more. See Act of Apr. 10, 1974, ch. 431, 1974 Minn. Laws 919 (current version at MINN. STAT. § 176.132 (1978 & Supp. 1979), as amended by Act of Mar. 28, 1980, ch. 389, 1980 Minn. Sess. Law Serv. 104 (West)). In addition, new legislation responding to the Minnesota Supreme Court’s decisions in Boquist v. Dayton-Hudson Corp., 297 Minn. 14, 209 N.W.2d 783 (1973) and Pramschiefer v. Windom Hospital, 297 Minn. 212, 211 N.W.2d 365 (1973) (per curiam), established that temporary total benefits could be received concurrently with permanent partial benefits, and further required the latter to be paid in a lump sum as soon as ascertainable. The court in Boquist had held that since permanent partial and permanent total benefits were both designed to replace lost earnings, they could not be received concurrently. See 297 Minn. at 18, 209 N.W.2d at 785. Pramschiefer extended this same reasoning to concurrent receipt of temporary total and permanent partial benefits. See 297 Minn. at 215, 211 N.W.2d at 368. The issues presented by these two cases did not arise until Mechling v. Jasper Stone Co., 293 Minn. 309, 198 N.W.2d 561 (1972). Prior to that case an employee whose disability persisted longer than two years was forced to elect either permanent partial benefits or temporary total benefits, since only two years of temporary total healing period benefits could be received in addition to permanent partial benefits, while 350 weeks of temporary total benefits were payable when no permanent partial benefits were claimed. The court in Mechling determined that the statutory sections providing temporary total and permanent partial benefits were to be read as separate and distinct entitlements, so that both forms of benefits could be received. See id. at 317-18, 198 N.W.2d at 566. The court was unwilling, however, to allow these benefits to be received at the same time in the absence of legislative intent to that effect. See id. at 314-15, 198 N.W.2d at 564. The 1974 Legislature provided that language. See Act of Apr. 12, 1974, ch. 486, § 1, 1974 Minn. Laws 1230, 1231 (current version at MINN. STAT. § 176.021(3) (Supp. 1979)). Burns were also newly scheduled for permanent partial benefits and insurer recovery for mistaken benefit payments was denied. See id. §§ 3, 5, 1974 Minn. Laws at 1232, 1237 (current version at MINN. STAT. §§ 176.101, subd. 3(48), 176.101, subd. 4(29) (Supp. 1979)).

The 1975 Legislature continued this trend favoring more liberal benefits and fewer limits on liability. The fixed maximums for death benefits, temporary total benefits, and temporary partial benefits were removed and those for permanent partial and permanent total benefits were increased. See Act of June 4, 1975, ch. 359, §§ 8, 15, 1975 Minn. Laws 1168, 1174, 1182 (current version at MINN. STAT. §§ 176.101, .111(20) (1978 & Supp. 1979)). For the first time, a percentage adjustment of benefits to compensate for inflation was introduced. See id. § 20, 1975 Minn. Laws at 1188 (current version at MINN. STAT. § 176.645 (1978)). Minimum payments were also increased for temporary total and permanent total benefits. See id. § 8, 1975 Minn. Laws at 1174 (current version at MINN. STAT. § 176.101(1), (4) (Supp. 1979)). Minor survivors’ benefits were increased, see id. § 14, 1975 Minn. Laws at 1182 (codified at MINN. STAT. § 176.111(12) (1978)), as were supplementary benefits, see id. § 18, 1975 Minn. Laws at 1185 (current version at MINN. STAT. § 176.132(2) (Supp. 1979)). Scarring was newly scheduled for permanent partial payments. See id. § 8, 1975 Minn. Laws 1174 (current version at MINN. STAT. § 176.101,
the composition and powers of the workers' compensation courts. Others argued that the cost increases were caused by excessive administrative costs and profits among insurers. The policy this faction sought to implement included new restrictions on insurers, increased regulatory powers, and a combination of more private competition, increased self-insurance, or a new state workers' compensation insurance company. Another view attributed increased costs to inefficiencies in the administration of the law, poor information, inadequate claim processing and rehabilitation services, and unnecessary litigation. The program suggested by this group stressed quick service for the claimant, better information, speedier resolution of disputes, better rehabilitation services, and fewer incentives to litigate. Each of these perspectives was considered

subd. 3(41) (Supp. 1979)). The statute of limitations for reopening or rehearing a claim was abolished too, and those for initial claims and for notice of injury were extended. See id. § 17, 1975 Minn. Laws at 1186 (current version at MINN. STAT. § 176.151 (1978)).

In 1976 the national guard was given workers' compensation coverage. See Act of Apr. 20, 1976, ch. 331, § 36, 1976 Minn. Laws 1282, 1299 (codified at MINN. STAT. § 176.011, subd. 9(11) (Supp. 1979)).

The following year, the Legislature amended the inflation adjustment provisions so that benefits could be increased for inflation beyond the statutory benefit maximums in effect at the time of the injury. See Act of May 27, 1977, ch. 342, § 23, 1977 Minn. Laws 697, 712 (codified at MINN. STAT. § 176.645 (1978)). The time period for notice of injury was doubled to 180 days. See id. § 19, 1977 Minn. Laws at 711 (current version at MINN. STAT. § 176.141 (Supp. 1979)). The year 1977 also saw the continuation and expansion of new exclusions from coverage for certain family farm and closely held corporation employees, see id. § 5, 1977 Minn. Laws at 700 (current version at MINN. STAT. § 176.041(1) (Supp. 1979)), and the enactment of a limit on annual increases in workers' compensation rates. See id. § 25, 1977 Minn. Laws at 713 (repealed 1978).

In 1978, however, the rate increase limit was repealed. See Act of Apr. 7, 1978, ch. 797, § 1, 1978 Minn. Laws 1245, 1245. Instead, the Administrative Procedure Act was extended to the workers' compensation rate-making process in the hope that additional procedural requirements would assure lower rates. See id. (codified at MINN. STAT. § 79.071 (Supp. 1979)). Several other classes of employees were also added to workers' compensation coverage by statute in 1978. See Act of Mar. 28, 1978, ch. 702, 1978 Minn. Laws 614 (amending MINN. STAT. § 176.011(9) (Supp. 1977)) (amended 1979, 1980). Smaller employers in the same industry were given the option of self-insuring for workers' compensation liability through trade associations or other joint efforts. See Act of Apr. 7, 1978, ch. 797, § 4, 1978 Minn. Laws 1245, 1247 (current version at MINN. STAT. § 176.181(2) (Supp. 1979)). Coverage for executive officers of closely held corporations also was made optional in 1978. See Act of Apr. 5, 1978, ch. 757, § 2, 1978 Minn. Laws 925, 926 (amending MINN. STAT. § 176.012 (Supp. 1977)) (amended 1979, 1980). The supplementary benefit was reduced by five percent in the expectation of a social security increase covering the same individuals. See Act of Apr. 7, 1978, ch. 797, § 3, 1978 Minn. Laws 1245, 1246 (current version at MINN. STAT. § 176.132(2) (Supp. 1979)).


17. For a comparative analysis of self-insurance in Minnesota and in other states, see id. at 245-72. For material on state funds in workers' compensation, see id. at 273-95.


19. For a study of the effect of extensive litigation on workers' compensation costs, see

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during the deliberations of the WCSC and each was, to some degree, reflected in the final legislation. In addition, the work of the National Commission on State Workers' Compensation Laws had an influence upon the WCSC and the final legislation.20

In summary, the history of legislative changes generally favorable to the employee and relentless increases in premium costs formed the backdrop for the deliberations of the WCSC. Therefore, the core agenda of the WCSC was not whether to cut costs, but simply how to do so.

The members of the WCSC were appointed in August 1977 and the Commission held its first meeting on September 1, 1977.21 The WCSC was chaired by Senator Steve Keefe, who gavalled forty WCSC meetings

20. The essential recommendations of the National Commission on State Workers' Compensation Laws (hereinafter cited as NCSWCL) were reflected in the WCSC recommendations that surviving children who were full-time students receive benefits until age 25 (Recommendation 12) and that workers' compensation coverage for appointed and elected officials be mandatory (Recommendation 13). See STUDY COMM’N, supra note 14, at 21-22. The former was adopted in Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (codified at MINN. STAT. § 176.111(1) (Supp. 1979)).

The NCSWCL was created by President Nixon in 1971 in response to a congressional mandate for a study of the adequacy and uniformity of the state workers' compensation laws. See STUDY COMM’N, supra, at 93. The NCSWCL's final report, issued in July 1972, found the states' workers' compensation laws neither adequate nor uniform and offered 84 recommendations for changes in the state statutes, 19 of them described as “essential.” See id. Senators Harrison Williams and Jacob Javits offered legislation that would impose these essential recommendations as mandatory federal standards for state laws, see id. at 93-94, on the pattern of the federal conformity requirements for state unemployment compensation statutes. See Federal Unemployment Tax Act, 26 U.S.C. §§ 3301-3311 (1976 & Supp. II 1978) (amended 1979, 1980). Although this proposed legislation has been controversial, the prospect of federal intervention has given the NCSWCL's “advisory” recommendations considerable force at the state level, see STUDY COMM’N, supra, at 94, Minnesota was in compliance with 10 of the 19 essential recommendations in 1972 and 13¼ at the time the WCSC first met. See id. Though far less significant as an impetus to the WCSC than the cost pressure felt by employers, the need to consider adoption of at least some of the NCSWCL recommendations was a factor in the initiation of this comprehensive study of Minnesota’s workers' compensation law. See id. at 93-99.

21. The legislative appointees to the WCSC included Representatives Leo Adams, Dick Kaley, and Wayne Simoneau, and Senators Nancy Brataas, Steve Keefe, and Roger Laufenberger. The gubernatorial appointees included Patrick Newlin, an actuary with St. Paul Fire and Marine Insurance Company, Wendy Borsheim, President of the Minnesota Retail Merchants Association, Laurence Koll, a workers' compensation defense attorney, Neil Sherburne, former Secretary-Treasurer of the Minnesota AFL-CIO, C. Arthur Williams, Professor and former Dean of the University of Minnesota College of Business Administration, Nadine James, a workers’ compensation judge, and W. Preston Shepard, Regional Vice President of Employers Insurance of Wausau. E.I. “Bud” Malone, then Commissioner of the Minnesota Department of Labor and Industry, and Tom O'Malley, Assistant Commissioner of the Insurance Division of the Minnesota Department of Commerce, also served as members of the WCSC. See STUDY COMM’N, supra note 14, at 2-6.
to order between September 1977 and February 1979. At its final meeting, the WCSC approved fifty-seven recommendations for legislative or administrative action and concluded its work by issuing a 320 page report explaining the recommendations and examining twenty-one separate workers' compensation subject areas. Sixteen minority recommendations from the WCSC also appeared in the report.

A. The Concerns of the Constituencies Affected by Workers' Compensation Legislation

The recommendations of the WCSC do not readily fall into any particular legal theory of employment disability compensation. While the WCSC seriously studied the issues within its purview, it did not conduct itself merely as an academic study group, still less as a court. Instead, the WCSC was a political body, in the sense that its deliberations represented an attempt to respond to dissatisfaction with the workers' compensation system and to impose the burdens of reform equitably on each affected group. This was far from an easy task, given the divergent perspectives that existed.

Employers voiced concern to the WCSC over premium increases, inadequate rehabilitation, high benefits, impediments to self-insuring, "liberal" administration of the law by the courts, malingering claimants, insufficient service by insurers, lack of information from both insurers and the Department of Labor and Industry, and the disproportionate impact of cost increases on small business. Labor focused on preventing reductions in benefit levels and on raising the maximum benefit. Employee representatives favored expansion of joint self-insurance by groups of employers and a state-run workers' compensation insurance company, as well as increased regulatory authority for the Commissioner of Insurance. Both employers and labor tended to agree on the neces-

22. See id. at 7-15.
24. See id. at 68-92.
27. See, e.g., Letter from John E. Diehl, Attorney, to Senator Steve Keefe (Feb. 8, 1978).
sity for increased procedural formalities and broader participation in the rate hearings.29

The insurance industry was on the defensive throughout the deliberations of the WCSC, since labor and employers in varying degrees attributed increased premium rates to the insurers' inefficiency and "excess profits." The representatives of the insurance industry nonetheless sought to reduce the large amounts and long periods of potential liability arising from each injury, arguing that these, and expanded benefits, were the reasons for the increase in premium levels.30 Medical practitioners were also in a reactive position, especially regarding the issues of second medical opinions, disability schedules, neutral medical testimony, rehabilitation, and fee limitations.31 Attorneys were divided between the plaintiffs' and defense bar, and their viewpoints generally followed those of their clients. Attorneys focused on the rules of liability, benefit levels, settlement procedures, fees, rehabilitation, apportionment of liability, and the several proposals affecting medical evidence and fact finding.32

B. The Recommendations of the WCSC

The fifty-seven recommendations of the WCSC were adopted in outline form in the two penultimate sessions of the WCSC, though nearly all were the subject of extensive testimony and staff work during the previous two and one-half years. The first thirteen recommendations dealt with benefits.33 Eight recommendations were intended to prevent the receipt of overlapping or excessive benefits. Claims for both retraining and temporary total or other weekly benefits, or for permanent partial benefits, were to be denied, but benefits were to be increased uniformly by fifteen percent in retraining situations.34 In addition, as an incentive to return to work, permanent partial benefits were to be withheld until employment resumed.35 The third WCSC recommendation was that the minimum temporary total benefit be repealed so that no employee would receive benefits in excess of the usual sixty-six and two-thirds per-

33. For an explanation and analysis of these 13 recommendations, see STUDY COMM'N, supra note 14, at 16-22.
34. See id. at 16 (Recommendation 1).
35. See id. at 16-17 (Recommendation 2).
Other recommendations permitted recovery of benefits paid by mistake and required reduction of benefit amounts when a previously compensated disability contributed to the new injury. Recommendations 8 and 9 provided for a specific schedule of benefit amounts for internal organ injuries and removed the presumption that certain peace officers' conditions were work related. The most significant benefit reduction was Recommendation 7, which limited inflation adjustments to claims at least two years old.

While these recommendations would reduce costs, four other benefit recommendations would tend to increase costs. The most significant of these was the proposal to increase the maximum benefit payment from 100% to 200% of the statewide average weekly wage. The other three benefit increases provided that a student could receive survivor benefits to age twenty-five, extended mandatory workers' compensation coverage to elected and appointed public officials, and required currently due benefits to be paid to relatives after the unrelated death of an injured employee. WCSC Recommendation 10 extended the irrebuttable presumption of dependency for wives of deceased employees to husbands, but limited its application to two years from the injury, after which time fifty percent of any earned income would be subtracted from death benefits. Recommendation 40 also indirectly affected benefits by limiting the potential for duplicative recoveries by the injured worker from fellow employees to cases of intentional or grossly negligent acts.

Recommendation 14, the most detailed, involved a systematic revamping of workers' compensation retraining and rehabilitation procedures. The essential features of this proposal were its stress on employer-provided rehabilitation and on-the-job training, specific procedures for approval of rehabilitation plans and rehabilitation providers, central administration of the rehabilitation system by the Department of Labor and Industry, and clear allocation of specific costs of rehabilitation to the

36. See id. at 17 (Recommendation 3).
37. See id. at 18 (Recommendation 6).
38. See id. at 17 (Recommendation 4).
39. See id. at 19-20 (Recommendation 8).
40. See id. at 20 (Recommendation 9).
41. See id. at 18-19 (Recommendation 7).
42. See id. at 17-18 (Recommendation 5).
43. See id. at 21-22 (Recommendation 12).
44. See id. at 22 (Recommendation 13).
45. See id. at 21 (Recommendation 11).
46. See id. at 20-21 (Recommendation 10).
47. See id. at 40-41 (Recommendation 40).
48. See id. at 49 (Recommendation 57).
Recommendations 15 through 28 involved the administration of the workers' compensation statute by the Department of Labor and Industry and the workers' compensation courts. Three recommendations dealt with notice by the employee and employer of the fact of injury. These were intended to accelerate the processing of claims by requiring employer notice to the insurers, providing that routine medical carrier treatment forms are not notice of a work-related injury when work relatedness is not indicated, and exempting severely incapacitated employees from the 180 day notice requirement. Recommendation 41 also provided for a preliminary notice by employees to employers when changes in benefits were sought.

Several recommendations considered changes in the workers' compensation courts. Recommendation 25 mandated expansion of the Workers' Compensation Court of Appeals from three to five members, two representing employers, two representing employees, and one representing the public. Two members could be nonattorneys. Another recommendation provided that the appeals court be physically separate from the offices of the Department of Labor and Industry, and the last permitted consideration, in the judge's discretion, of an attorney's workers' compensation expertise in fee determination.

Recommendations 29 and 47 were both responses to the problem of the "long tail" in workers' compensation liability. The extensive duration and potential expense of liability for individual injuries exacerbates cost pressure because insurers, under standard actuarial procedures, must anticipate this potential future expense by reserving the necessary funds in the present. The WCSC responded by recommending the creation of two new funds: the Reopened Case Fund and the Reinsurance Fund. The two funds were designed to limit the exposure of insurers to definite time periods without imposing a short statute of limitations on claims. The Reopened Case Fund was to be responsible for benefits when a

49. See id. at 22-27 (Recommendation 14). The rehabilitation proposal came before the WCSC after it was adopted by the Worker's Compensation Advisory Council, a permanent statutory body which monitors the workers' compensation system and offers its own periodic recommendations for statutory or other changes. See id. at 22.

50. For an explanation and analysis of these recommendations, see id. at 28-35 (Recommendations 15-28).

51. See id. at 30 (Recommendation 19).

52. See id. (Recommendation 20).

53. See id. (Recommendation 21).

54. See id. at 41 (Recommendation 41).

55. See id. at 33 (Recommendation 25).

56. See id.

57. See id. at 33-34 (Recommendation 26).

58. See id. at 34-35 (Recommendation 28).

59. See id. at 35 (Recommendation 29), 44-45 (Recommendation 47).
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claim was reopened after seven years from the injury or three years from
the last benefit payment, with a final statute of limitations eighteen years
after the injury or eight years after the last payment, whichever date was
later.60 The Reinsurance Fund was to be responsible for payments on
claims that continued for five years after the date of injury, without time
limitation.61 The Reopened Case Fund would be funded by a flat assess-
ment on premium, as is done with the Special Fund,62 while the Reinsur-
ance Fund would be funded by premiums to be paid by all insurers and
self-insurers.63

Recommendations 30 through 33 affected the Special Fund, which
pays benefits when certain preexisting conditions are aggravated by a
work injury.64 The WCSC proposed removal of the requirement that
employers register an employee's preexisting condition before the aggra-
vating second injury occurs65 and recommended that investment income
from monies in the fund be retained rather than be directed to the gen-
eral fund.66 The liability of the fund was also to be extended to aggrava-
tion of any previous injury when the employee was enrolled in an on-the-
job training program.67 The fund would also pay any benefits due on a
claim when liability between insurers or employers was disputed, and be
reimbursed after that determination.68

The WCSC made several medical recommendations.69 One provision
was that either party have the right to a neutral physician's evaluation of
the medical issues.70 Another recommendation was that a second med-
cal opinion should be required before certain elective surgical procedures
are used.71 A related recommendation was that health insurance carriers
provide medical treatment when disability was disputed between the
health and workers' compensation carriers, with reimbursement if work-
ers' compensation liability was established.72

Recommendations 37 through 39 and 42 through 57 relate to the rate-
making process and the regulatory role of the Commissioner of Insurance
in that process.73 Additional professional staff were to be provided to the

60. See id. at 35 (Recommendation 29).
61. See id. at 44-45 (Recommendation 47).
62. See id. at 35.
63. See id. at 44.
64. See id. at 36-37 (Recommendations 30-33). For an analysis of the Special Fund, see
Ehlmann, Minnesota's Second Injury Fund, 6 Wm. Mitchell L. Rev. 709 (1980).
65. See id. at 36 (Recommendation 30).
66. See id. (Recommendation 31).
67. See id. at 36-37 (Recommendation 32).
68. See id. at 37 (Recommendation 33).
69. See id. at 37-38 (Recommendations 34-36).
70. See id. (Recommendation 34).
71. See id. at 38 (Recommendation 35).
72. See id. (Recommendation 36).
Commissioner⁷⁴ and the salary ceiling in effect for the actuary's position was to be removed.⁷⁵

Among the last recommendations were several that addressed specific rate and classification practices. Many of these were recommendations to the Commissioner of Insurance, rather than proposals for statutory action. The traditional insurance practice of allocating cost increases due to changes in benefit levels back to the period of premium coverage was to be halted⁷⁶ and replaced by a premium increase to take effect the same date as the benefit changes, January 1 of each year.⁷⁷ The WCSC also concluded that employers should be permitted to divide an individual employee's wages between different rating classifications when different duties were involved so an employer could take advantage of lower rates in one of the classifications.⁷⁸ One proposal, designed to assist small employers, provided that the experience-rating system of modifying premiums be extended to those paying less than a $750 annual premium.⁷⁹ Another recommendation sought to provide some workers' compensation relief to employers who paid higher wages than others in the same industry by establishing a minimum wage base for calculation of premiums, as with social security.⁸⁰

Another group of WCSC recommendations affected the manner in which case reserves and claim expenses were handled by insurers. The WCSC recommended that the Commissioner of Insurance require insurers to utilize life expectancy tables that are modified to take account of disabilities.⁸¹ Similarly, the filing of additional details about claim reserves⁸² and the reporting of every claim reserve above $50,000 were recommended.⁸³ Recommendation 56 provided that investment income on reserves be considered in establishing premium rates.⁸⁴ Another recommendation was that insurance company administrative expenses for assigned-risk pool premiums and for regular premiums be equalized to avoid any incentive to deny regular coverage.⁸⁵

The WCSC also recommended several changes in the regulatory role of the Commissioner of Insurance and in the rate-making and classification determination processes. Recommendation 49 sought proposals

⁷⁴. See id. at 39 (Recommendation 38).
⁷⁵. See id. (Recommendation 37).
⁷⁶. See id. at 42 (Recommendation 42).
⁷⁷. See id. (Recommendation 43).
⁷⁸. See id. at 43 (Recommendation 45).
⁷⁹. See id. at 47 (Recommendation 51).
⁸⁰. See id. (Recommendation 50).
⁸¹. See id. at 47-48 (Recommendation 52).
⁸². See id. at 48 (Recommendations 53-54).
⁸³. See id. at 48-49 (Recommendation 55).
⁸⁴. See id. at 49 (Recommendation 56).
⁸⁵. See id. at 45-46 (Recommendation 48).
from the Commissioner of Insurance to the Legislature on the appropriate manner of conducting the rate hearings themselves. Another procedural recommendation provided for employer appeal from an occupational classification determination by the Rating Association. Recommendation 44 permitted the Commissioner of Insurance, during the rate-making process, to review the propriety of any automatic premium increase generated under Recommendation 43.

There were a number of minority recommendations endorsed by different members of the WCSC. One of the most controversial was a proposal for the creation of a nonprofit, state-run workers' compensation insurance company that would compete with private workers' compensation insurance carriers. The WCSC itself had declined to recommend such a “state fund.” Other minority recommendations that responded to WCSC proposals included opposition to the Reinsurance Fund, proposals for apportionment of liability when a previous condition contributed to a new disability, reduction of permanent partial benefits for workers over age fifty-two, and retention of the state average weekly wage as a workers’ compensation benefit maximum. Others opposed all WCSC benefit reduction proposals and suggested that the Commissioner of Insurance, rather than the Rating Bureau, prepare the actual workers’ compensation premium rates.

Additional minority proposals included a presumption of reasonableness for settlements between parties represented by counsel, permission for a workers’ compensation judge to enter a medical finding of fact at variance with those offered in evidence, removal of the inflation adjustment for permanent partial benefits, and calculation of benefits to the nearest dollar. Other minority proposals suggested that the rating bureau be representative of employers, employees, and the public, as well as insurers, that the National Council of Compensation Insurers be ex-
cluded from involvement in rate making, that Congress be asked to remove the antitrust immunity of the insurance industry, that the former statutory maximum for insurer administrative expenses and profits be reinstated, and that vacation, holiday, and sick time be excluded from workers' compensation premium calculations.

A final group of proposals were those offered for consideration, defeated by the WCSC, and not offered as minority recommendations. Several of the proposals were considered anew by the Legislature. These defeated motions included proposals to limit death benefits to 1000 weeks, to permit insurer competition in premiums generally or in the amount of the administrative expense allowance, to allow payment of attorney's fees from supplemental benefits in all cases, and to allow reimbursement of a claimant's attorney's fees when he intervenes in a liability dispute between the Special Fund and an insurer or employer.

III. The Variance Between the House and Senate Bills

The report of the WCSC was formally issued to the Legislature and the Governor on February 19, 1979, and identical legislation embodying its recommendations was introduced in both houses shortly thereafter. The 1979 Workers' Compensation Act, however, was not finally passed by the House and Senate until May 24, 1979. The intervening weeks of committee, floor, and conference action saw many significant changes in the original WCSC recommendations. In the course of this legislative process, the House and Senate bills came to differ in some important respects.

One significant difference between the House and Senate involved the state-run workers' compensation insurance company proposal, which the Senate supported and the House opposed. Ultimately the Senate conceded and the House proposal for a study commission to consider the

103. See id. (Minority Recommendation 11).
104. See id. at 90 (Minority Recommendation 13).
105. See id. (Minority Recommendation 14).
106. See id. at 92 (Minority Recommendation 16).
107. See id. at 50-55 (Defeated Motions 1-10).
108. See note 130 infra and accompanying text.
109. See STUDY COMM'N, supra note 14, at 51-52 (Defeated Motion 3).
110. See id. at 53-54 (Defeated Motions 7-8).
111. See id. at 52 (Defeated Motion 4).
112. See id. at 52-53 (Defeated Motion 5).
113. See id. at 1-15.
114. See MINN. S. JOUR. 8 (Ex. Sess. 1979); MINN. H.R. JOUR. 3677-78 (Ex. Sess. 1979).
feasibility of such a fund was adopted. The House also sought to increase the WCSC recommendation that retraining benefits equal 115% of temporary total benefits to 125%, to which the Senate agreed. The House version of the rehabilitation section, which increased employee control over the rehabilitation provider, permitted greater job mobility through rehabilitation, and lessened the role of on-the-job training, was also reflected in the final legislation.

The House increased supplementary benefits from sixty to sixty-five percent of the state average weekly wage, removed the WCSC-recommended statute of limitations from the Reopened Case Fund, and extended existing penalties for unwarranted failure to pay medical and retraining expenses. These positions all prevailed, though the Senate insisted on allowing discontinuance of benefits prior to a hearing when reasons for discontinuance were offered.

The Senate convinced the House that the Workers' Compensation Court of Appeals should be increased from three to five members and that the two new members need not be attorneys. The House also conceded that each party could solicit the opinion of a neutral physician. The Senate prevailed on several provisions related to rate making and rate application: insurers were to provide additional


123. See id. § 26, 1979 Minn. Laws Ex. Sess. at 1268 (codified at MINN. STAT. § 175.006(1) (Supp. 1979)).

information on losses, reserves, and investment income,\textsuperscript{125} assigned-risk policies were to be treated equally with other policies in expense allowances,\textsuperscript{126} and independent contractors were to be permitted an alternative rate when payroll could not be ascertained.\textsuperscript{127} Finally, there were differences between the two chambers in the details of the Reinsurance Association.\textsuperscript{128}

IV. THE VARIANCE BETWEEN THE WCSC RECOMMENDATIONS AND THE FINAL LEGISLATION

The 1979 Workers' Compensation Act ultimately included forty-six of the fifty-seven WCSC recommendations in substantially the same form in which they were proposed. Three recommendations were significantly modified\textsuperscript{129} and eight recommendations were not enacted. Two minority recommendations were passed and another provision of the statute was related to a proposal that was not adopted by the Commission.\textsuperscript{130}

One minority recommendation is to be studied further.\textsuperscript{131}

\textsuperscript{125} See Act of June 7, 1979, ch. 3, § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at MINN. STAT. § 79.171 (Supp. 1979)).

\textsuperscript{126} See id. § 15, 1979 Minn. Laws Ex. Sess. at 1262 (codified at MINN. STAT. § 79.25(2) (Supp. 1979)).

\textsuperscript{127} See id. § 14, 1979 Minn. Laws Ex. Sess. at 1262 (codified at MINN. STAT. § 79.221 (Supp. 1979)).


\textsuperscript{130} Compare STUDY COMM'N, supra note 14, at 80 (Minority Recommendation 4) with Act of June 7, 1979, ch. 3, §§ 33-35, 1979 Minn. Laws Ex. Sess. 1256, 1273-78 (retaining maximum disability benefit of 100% of state average weekly wage) (codified at MINN. STAT. § 176.101(1), (3)-(4) (Supp. 1979)); compare STUDY COMM'N, supra, at 92 (Minority Recommendation 16) with Act of June 7, 1979, ch. 3, § 12, 1979 Minn. Laws Ex. Sess. 1256, 1261 (excluding vacation, holiday, and sick leave wages from computation of insurance premiums) (codified at MINN. STAT. § 79.211(1) (Supp. 1979)); compare STUDY COMM'N, supra, at 54 (Defeated Motion 8) (recommending that insurance rates be determined by open competition) with Act of June 7, 1979, ch. 3, § 11, 1979 Minn. Laws Ex. Sess. 1256, 1261 (permitting insurers to offer rates lower than those approved by Commissioner of Insurance) (codified at MINN. STAT. § 79.21 (Supp. 1979)).

\textsuperscript{131} Compare STUDY COMM'N, supra note 14, at 68 (Minority Recommendation 1) (recommending establishment of competitive state insurance fund) with Act of June 7, 1979, ch. 3, § 67, 1979 Minn. Laws Ex. Sess. 1256, 1296 (creating study commission to examine feasibility of state fund) (not codified).
The major differences between the WCSC report and the final legislation involved benefit provisions. The WCSC opposed the concurrent payment of permanent total and partial benefits in order to encourage a return to work, but such payments are still permissible under the new legislation.\textsuperscript{132} The WCSC sought to repeal the temporary total minimum benefit, since it provided some part-time employees with tax-free benefits greater than their actual earnings, but this minimum was retained in the 1979 law.\textsuperscript{133} The WCSC proposal that a benefit award be reduced by the amount of any workers' compensation, tort, or other reimbursement for any previous injury that contributed to the new disability was also deleted from the new legislation.\textsuperscript{134} The two-year "waiting period" recommended by the WCSC before the cost-of-living adjustment would operate to increase a claimant's benefits also was not adopted by the Legislature.\textsuperscript{135}

Another benefit recommendation rejected by the Legislature concerned the rebuttable presumption that heart disease and pneumonia among firemen and peace officers are work related and thus compensable. The WCSC recommended that this presumption be repealed, but the Legislature retained it and added state forest officers to those enjoying the benefit of the presumption.\textsuperscript{136} The original WCSC recommendation for deleting sexual reference in death benefits involved two provisions: both husbands and wives conclusively would be presumed dependent on an employee who suffered a work-related death and, after two years, benefits would be reduced by fifty percent of any earned income.\textsuperscript{137} The Legislature, however, dropped the offset provision.\textsuperscript{138}

The Legislature also rejected two WCSC recommendations that would have increased benefit costs. The Commission had recommended that the maximum benefit of 100% of the state average weekly wage be increased to 200%, so that those earning more than 150% of the state average weekly wage would receive benefits equal to sixty-six and two-thirds percent of their actual earnings, as do employees earning less.\textsuperscript{139} This


\textsuperscript{133} \textit{Compare Study Comm'N, supra note 14, at 17 (Recommendation 3) with Act of June 7, 1979, ch. 3, § 33, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at Minn. Stat. § 176.101(1) (Supp. 1979)).}

\textsuperscript{134} \textit{See Study Comm'N, supra note 14, at 17 (Recommendation 4).}

\textsuperscript{135} \textit{See id. at 18-19 (Recommendation 7).}


\textsuperscript{137} \textit{See Study Comm'N, supra note 14, at 20-21 (Recommendation 10).}


\textsuperscript{139} \textit{See Study Comm'N, supra note 14, at 17-18 (Recommendation 5).}
would have been a very costly item, however, and the Legislature, con-
curring with a minority recommendation, struck that provision.\textsuperscript{140} The
Legislature also omitted the WCSC recommendation that workers’ com-
ensation coverage for public officials be mandatory, rather than op-
tional.\textsuperscript{141}

There were five other significant differences between the WCSC report
and the final legislation. While the Legislature increased the number of
Workers’ Compensation Court of Appeals judges from three to five and
provided for no more than two lay judges,\textsuperscript{142} as the WCSC had recom-
mended, it did not institute the proposed restoration of the represent-
ative character of the court.\textsuperscript{143} The WCSC proposal that the court consist
of one public, two employer and two employee judges\textsuperscript{144} was rejected by
the Legislature. The WCSC had also recommended that notice to an
employer of treatment of an employee by a medical carrier not be
deemed notice of a work-related injury, unless the work-related nature
was made explicit.\textsuperscript{145} This proposal was rejected by the Legislature,\textsuperscript{146}
apparently because some of its members thought that penalizing the em-
ployee for the medical carrier’s omission was unfair.

Another WCSC recommendation that was not incorporated in the
statute was the proposal that a maximum wage base be established for
workers’ compensation premium purposes to avoid extra cost to those
paying higher wages when no additional accident-exposure time was in-
volved.\textsuperscript{147} It was feared, however, that this would tend to shift workers’
compensation costs from larger to smaller employers. The Legislature,
however, did adopt two minority recommendations: exclusion of vaca-
tion, holiday, and sick time from payroll for premium purposes,\textsuperscript{148} and
retention of 100% of the state average weekly wage as the benefit maxi-

\textsuperscript{140}. See id. at 80-81 (Minority Recommendation 4).
\textsuperscript{141}. See id. at 22 (Recommendation 13).
\textsuperscript{142}. See Act of June 7, 1979, ch. 3, § 26, 1979 Minn. Laws Ex. Sess. 1256, 1268 (codi-
fied at Minn. Stat. § 175.006 (Supp. 1979)).
\textsuperscript{143}. See Study Comm’n, supra note 14, at 33 (Recommendation 25).
\textsuperscript{144}. See id.
\textsuperscript{145}. See id. at 30-31 (Recommendation 20).
\textsuperscript{146}. Cf. Act of June 7, 1979, ch. 3, § 47, 1979 Minn. Laws Ex. Sess. 1256, 1286 (retain-
ing notice provision of prior law) (codified at Minn. Stat. § 176.141 (Supp. 1979)).
\textsuperscript{147}. See Study Comm’n, supra note 14, at 47 (Recommendation 50).
\textsuperscript{148}. Compare id. at 92 (Minority Recommendation 16) with Act of June 7, 1979, ch. 3,
1979)).
\textsuperscript{149}. Compare Study Comm’n, supra note 14, at 80-81 (Minority Recommendation 4)
with, e.g., Act of June 7, 1979, ch. 3, § 33, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified
at Minn. Stat. § 176.101(1) (Supp. 1979)).
tion also incorporated what came to be known as the "Robinson Amendment," a provision permitting workers' compensation insurers to charge lower premiums than the rates approved at the rate hearing.\footnote{150} The WCSC had rejected two similar proposals. One of these sought full scale competition in workers' compensation insurance premiums instead of regulated rate making.\footnote{151} The other provided for competition in the expense allowance but retained the rate-making process.\footnote{152}

In other respects, the final legislation was consistent with WCSC recommendations. The benefit recommendations relating to overpayments,\footnote{153} the scheduling of internal organ\footnote{154} and other disabilities, children's survivor benefits,\footnote{155} and payment of accrued benefits\footnote{156} were all enacted. Though these were modified, the Legislature also enacted the recommendations dealing with retraining benefits,\footnote{157} spousal death benefits,\footnote{158} and delay in payment of permanent partial benefits.\footnote{159} The comprehensive rehabilitation and retraining section was incorporated with only slight changes.\footnote{160} Most of the WCSC recommendations deal-

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\footnote{150} See Act of June 7, 1979, ch. 3, § 11, 1979 Minn. Laws Ex. Sess. 1256, 1261 (codified at MINN. STAT. § 79.21 (Supp. 1979)).

\footnote{151} See STUDY COMM’N, supra note 14, at 54 (Defeated Motion 8).

\footnote{152} See id. at 53 (Defeated Motion 7).

\footnote{153} Compare id. at 18 (Recommendation 6) with Act of June 7, 1979, ch. 3, § 49, 1979 Minn. Laws Ex. Sess. 1256, 1287 (codified at MINN. STAT. § 176.179 (Supp. 1979)).

\footnote{154} Compare STUDY COMM’N, supra note 14, at 19-20 (Recommendation 8) with Act of June 7, 1979, ch. 3, § 34, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at MINN. STAT. § 176.101, subd. 3(40) (Supp. 1979)).

\footnote{155} Compare STUDY COMM’N, supra note 14, at 21-22 (Recommendation 12) with Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (codified at MINN. STAT. § 176.111(1) (Supp. 1979)).

\footnote{156} Compare STUDY COMM’N, supra note 14, at 21 (Recommendation 11) with Act of June 7, 1979, ch. 3, § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271 (codified at MINN. STAT. § 176.021(3) (Supp. 1979)).

\footnote{157} Compare STUDY COMM’N, supra note 14, at 16 (Recommendation 1) (recommending payment of 115% of temporary total disability benefits in lieu of compensation during retraining) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (providing payment equal to 125% of temporary total disability benefits in lieu of compensation during retraining) (codified at MINN. STAT. § 176.102(11) (Supp. 1979)). For a comprehensive discussion of retraining benefits under the Minnesota workers' compensation statute, see Walsh, Employees' Claims for Concurrent Payment of Temporary Disability and Retraining Benefits, 6 WM. MITCHELL L. REV. 731 (1980).

\footnote{158} Compare STUDY COMM’N, supra note 14, at 20-21 (Recommendation 10) with Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (Act removed offset for spousal income) (codified at MINN. STAT. § 176.111(1) (Supp. 1979)).

\footnote{159} Compare STUDY COMM’N, supra note 14, at 16-17 (Recommendation 2) with Act of June 7, 1979, ch. 3, § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271 (Act provides for payment of permanent partial benefits in monthly installments rather than a single lump sum upon return to work) (codified at MINN. STAT. § 176.021(3) (Supp. 1979)).

\footnote{160} Compare STUDY COMM’N, supra note 14, at 22-27 (Recommendation 14) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at MINN. STAT. § 176.102 (Supp. 1979)).
ing with the administration of the workers’ compensation system by the Commissioners of Labor and Industry, and Insurance, were passed. These included a proposal for consideration of workers’ compensation expertise in determining attorneys’ fees. The recommendation relating to medical fee review was also enacted after some modification.

Though the details of their structure and liability thresholds were modified, both of the major new funds, the Reopened Case Fund and the Reinsurance Association, came through the legislative process largely intact. This was also the case with the WCSC-proposed expansion of the liability of the existing Special Fund to cases of on-the-job training injuries, unregistered preexisting disabilities, and disputes of liability.

The Commissioner’s recommendation that investment income be retained in the Special Fund also survived. The proposals for neutral physicians’ opinions, second surgical opinions, and temporary payments by a health insurance carrier when liability is disputed with a workers’ compensation carrier were also enacted. The limitation on


171. Compare Study Comm’n, supra note 14, at 38 (Recommendation 36) with Act of
coemployee liability to instances of intentional or grossly negligent acts was passed as well.\textsuperscript{172}

The WCSC had offered the Commissioner of Insurance several recommendations directed at the rate-making process and the Commissioner responded with statutory proposals. The Legislature then enacted several of these proposals, so that most of the WCSC recommendations relating to rates were more than fully implemented. Enacted were the substitution of prospective for retroactive rate adjustments for legislated benefit changes,\textsuperscript{173} simultaneous adjustments in rates and benefit changes,\textsuperscript{174} the division of an individual employee’s wages among separate rating classifications when appropriate,\textsuperscript{175} the development of actuarial tables suitable for the disabled,\textsuperscript{176} and the reporting of more detailed loss and reserve information by insurers.\textsuperscript{177} The Commissioner was also empowered to study the expansion of experience-rating plans to smaller employers.\textsuperscript{180} The most comprehensive statutory changes involved enactment of the Commissioner’s proposal for new procedures, based on contested-case provisions, rather than the existing rule-

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\textsuperscript{173} Compare \textit{STUDY COMM’N, supra} note 14, at 43 (Recommendation 45) \textit{with} Act of June 7, 1979, ch. 3, § 12, 1979 Minn. Laws Ex. Sess. 1256, 1261 (codified at \textit{MINN. STAT. §§ 79.211(2) (Supp. 1979)} (amended 1980)).

\textsuperscript{174} Compare \textit{STUDY COMM’N, supra} note 14, at 47-48 (Recommendation 52) \textit{with} Act of June 7, 1979, ch. 3, § 16, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at \textit{MINN. STAT. § 79.33} (Supp. 1979)).

\textsuperscript{175} Compare \textit{STUDY COMM’N, supra} note 14, at 48 (Recommendations 53-54) \textit{with} Act of June 7, 1979, ch. 3, § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at \textit{MINN. STAT. § 79.171} (Supp. 1979)).

\textsuperscript{176} Compare \textit{STUDY COMM’N, supra} note 14, at 45-46 (Recommendation 48) \textit{with} Act of June 7, 1979, ch. 3, § 15, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at \textit{MINN. STAT. § 79.25(2) (Supp. 1979)}).

\textsuperscript{177} Compare \textit{STUDY COMM’N, supra} note 14, at 47 (Recommendation 51) \textit{with} Act of June 7, 1979, ch. 3, § 16, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at \textit{MINN. STAT. § 79.33} (Supp. 1979)).
making hearings. The Commissioner received the power to review rate changes attributed to legislative benefit increases, to make decisions on an employer's occupational classifications, and to consider investment income accruing to reserves in the rate-making process. The statute did not incorporate the maximum workers' compensation insurance wage base proposal and the expansion of experience rating to smaller employers was to be studied rather than made mandatory.

V. ANALYSIS OF THE FINAL LEGISLATION IN LIGHT OF THE GOALS OF THE WCSC

It is perhaps too early for any comprehensive analysis of the legal and economic impact of the 1979 workers' compensation legislation, but it may be useful to attempt a provisional assessment of the compromises embodied in this legislation and their effect on the competing demands heard by the WCSC for higher benefits, lower costs, more regulatory safeguards, increased competition, less "liberality" in administration, decreased litigation, and a direct role for the state in the workers' compensation insurance business.

The points of identity between the WCSC recommendations and the final legislation may suggest relatively settled policy, while the points of divergence perhaps indicate areas in which policy is unsettled. In any case, a comparison of the two, together with an assessment of the workers' compensation issues unresolved by the legislation, gives a fairly good indication of the future direction of the law in this area, given the relatively intense study and debate on workers' compensation that characterized the WCSC and the 1979 legislative hearings.

The benefit recommendations of the WCSC fared worst in the legisla-

183. Compare STUDY COMM'N, supra note 14, at 43-44 (Recommendation 46) with Act of June 7, 1979, ch. 3, § 9, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at MINN. STAT. § 79.10 (Supp. 1979)).
185. See STUDY COMM'N, supra note 14, at 47 (Recommendation 50).
187. See notes 26-32 supra and accompanying text.
188. The Workers' Compensation Study Commission held 40 meetings in the course of its study. See STUDY COMM'N, supra note 14, at 7-15. For a summary of the testimony offered at these meetings, see id.
The political pressure to decrease costs, the analysis of serious disincentives to return to work in the current law, the orthodox wage replacement theory, the perception that abuses were possible in the benefit system, and particularly, the adverse reaction to "double-dipping," led the WCSC to recommend several changes that would have reduced benefits in some cases. The Legislature, however, rejected most of these, while it enacted all but one of the benefit increases or expansions of coverage and liability that were recommended, together with some others.

Though some claimants under the new legislation will receive decreased workers' compensation benefits as compared to the unamended statute, more will receive greater payments. In addition, new groups will qualify for benefits for the first time. The contrast between the 1979 law and the WCSC recommendations, which would have reduced previous statutory benefit levels and provided offsets against some of the new increases, is even more dramatic. It is difficult to estimate the cost of a provision such as the 200% state average weekly wage benefit maximum, which would have increased benefit levels for those earning between roughly $18,000 and $30,000. It does seem likely that actual benefit payments to these workers would be much less than their proportion in the work force since the risk of physical injury tends to be far less at these income levels than for the largely blue-collar jobs at lower income levels. Thus, even considering the 200% maximum, which most observers assumed would quickly be deleted from the bill, it seems safe to say that the WCSC benefit recommendations would have moderately reduced benefit costs when compared to the previous statute. Without the

189. See notes 132-38 supra and accompanying text.
190. See notes 34, 49, 157-60 supra and accompanying text.
191. Reductions are likely only for a minority of recipients of retraining benefits and for recipients of benefits paid by mistake. Increases will result for most retrainees, all recipients of supplementary benefits, some survivors of deceased employees, and employees or their survivors with very late claims. See generally Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256.
192. The new coverage is that of husbands under the presumption of spousal dependency and students between the ages of 21 and 25 who are dependents of deceased employees. See id. § 37, 1979 Minn. Laws Ex. Sess. at 1281 (codified at Minn. Stat. § 176.111(1) (Supp. 1979)).
193. See Study Comm'n, supra note 14, at 17-18 (Recommendation 5). The maximum of 200% of the state average weekly wage would have meant that those now earning between $339 and $678 weekly would receive two-thirds of their weekly incomes (between $225 and $452) as benefits, as do employees with less income, rather than a flat $226. Those earning over $678 would only receive $452. The insurance rating service for workers' compensation estimated that this proposal would increase workers' compensation costs by 4.9%, but this estimate did not consider the relative risk exposure of higher income workers. See Letter from J.P. Hildebrandt, General Manager, Minnesota Compensation Rating Bureau, to Senator Steve Keefe (Mar. 15, 1979) (on file at William Mitchell Law Review office).
200% maximum, the WCSC recommendations would have effected a significant reduction. The benefit provisions in the final legislation, in contrast, involved a moderate increase in benefit costs.

For two years prior to enactment of the 1979 law there had been a sustained clamor over the rising cost of workers' compensation, focusing on the decidedly unpopular practice of "double-dipping." Workers' compensation costs were also a significant component of the "business climate" issue in the 1978 elections and a number of legislators who were expected to favor benefit stabilization were elected in that year. Benefits, in fact, had been increasing steadily since 1973. The most comprehensive study of Minnesota's workers' compensation system since the 1920s had offered the conclusion that some benefits should be reduced. If ever there had been a time in which a reduction in workers' compensation benefits seemed likely it was in the 1979 legislative session. Nonetheless, few of those reductions materialized and several new increases did. A more appropriate moment for benefit "reform" will not reappear for some time. This suggests that the old legislative maxim—things previously granted are never taken away—still controls when workers' compensation issues are concerned, and that it is likely to control for a considerable time to come.

Despite the debacle suffered by proponents of benefit "reform," there are signs of a decrease in the rate of premium increases. The current Rating Association rate increase proposal, for example, is 28.6%, as compared to the 67.5% increase sought in 1978.\textsuperscript{194} The source of this moderation in the upward pressure on workers' compensation costs is to be found in several of the nonbenefit provisions of the new legislation.

The rehabilitation and retraining system recommended by the WCSC, in contrast to the benefit recommendations, was adopted with few alterations by the Legislature.\textsuperscript{195} The WCSC retraining and rehabilitation proposals were the central item in the employers' program for workers' compensation reform. These proposals increased employer initiative and control over the retraining process and diminished the role of the state Division of Vocational Rehabilitation, which employers disliked, in favor of private providers. The WCSC recommendations were designed to increase the quality of retraining services and to increase incentives for realistic retraining, especially on-the-job programs, and for returning to work. The legislation retained these characteristics, but enhanced the employee's role in the selection of a rehabilitation provider and the development of the plan, increased the latitude for economic mobility

\textsuperscript{194} See BenAnav, Workers' Compensation Actions of the 1979 Minnesota Legislature, 6 WM. MITCHELL L. REV. 743, 778 n.161 (1980).

\textsuperscript{195} Compare STUDY COMM'N, supra note 14, at 22-27 (Recommendation 14) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at MINN. STAT. § 176.102 (Supp. 1979)).
through rehabilitation, and lessened the stress placed upon on-the-job training.\(^{196}\) The retraining benefit was also increased from 115% to 125% of temporary total benefits in the legislation.\(^{197}\) Rehabilitation, despite these changes, was the one area in which employers achieved more or less what they had hoped for. It seems likely that the changes in this area will have the effect of reducing costs through more effective training, reduced employee dissatisfaction, and a speedier return to work.

The Reopened Case Fund\(^ {198}\) and the Reinsurance Association\(^ {199}\) are another likely source of decreased premium pressure. Though these provisions will have no effect on workers' compensation claims, they obviate the need for insurers to anticipate workers' compensation claim payments as far into the future as they otherwise would have to do. Rather than each insurer providing for every possible catastrophe and assuming the worst future development of every claim, these two funds allocate the actual current cost of catastrophes and long-term claims.\(^ {200}\) The result, even considering the assessments of the funds themselves, should be lower overall costs. The same result should be felt from the shift of liability from the insurer to the Special Fund for many preexisting injuries.\(^ {201}\)

The miscellany of administrative changes incorporated in the 1979 law will also have a beneficial effect on workers' compensation costs. Better information and recordkeeping and speedier claims service have lessened litigation and reduced costs in other states and should do the same in Minnesota.\(^ {202}\) The objective scheduling of most disabilities should reduce both litigation and unnecessary benefit payments.\(^ {203}\)

The medical provisions of the new law are not easy to assess in terms of cost. Second surgical opinions, however, have generally reduced surgical incidence.\(^ {204}\) In the workers' compensation context, this would cause a reduction in both medical and benefit payments. The option of neutral

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196. See Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at MINN. STAT. § 176.102 (Supp. 1979)).
197. See id.
198. See id. § 43, 1979 Minn. Laws Ex. Sess. at 1285 (codified at MINN. STAT. § 176.134 (Supp. 1979)).
200. For an analysis of this effect, see STUDY COMM’N, supra note 14, at 35, 44-45.
201. See Act of June 7, 1979, ch. 3, § 38, 1979 Minn. Laws Ex. Sess. 1256, 1282 (codified at MINN. STAT. § 176.131 (1a) (Supp. 1979)).
202. For an analysis of litigation and workers’ compensation costs in California, see California Workers’ Compensation Institute, supra note 19. For an analysis of this effect in Wisconsin, see STUDY COMM’N, supra note 14, at 199-213.
204. For an assessment of second medical opinion programs, see STUDY COMM’N, supra note 14, at 236-41.
medical opinions may also help to moderate unrealistic disability assessments and thus reduce costs.

The many changes in the rate-making process and the regulatory powers of the Commissioner of Insurance will have no direct effect on actual workers' compensation costs. But to the degree that more participation by employers and more power in the Commissioner makes it less likely that increases will be approved except when absolutely necessary, the changes may assist in moderating increases. Many new provisions have the effect of allocating the existing costs in a perhaps more equitable and efficient fashion, even when costs are not actually reduced. The additional information required of insurers and the requirement that investment income be considered in rate making could also result in more rational rate decisions. The statutory provisions that govern expansion of the option of self-insurance and which permit price competition among insurers also may generate competitive expense reductions by insurers themselves. Among the most difficult effects of the 1979 Act to assess are the political repercussions of the extended debate on the workers' compensation issue. The two and one-half year inquiry into the sources of high premiums, slow services, "liberal" decisions, benefit abuses, lack of competition, and excessive profits will certainly have a sobering effect on the participants in the workers' compensation system, which may tend to reduce costs apart from the objective impact of the new rules themselves.

VI. CONCLUSION

The 1979 Workers' Compensation Act may be regarded as an attempt to reduce the costs of the workers' compensation system through every possible means except the reduction of benefits. There is no doubt that there is considerable fat in any mandatory 400 million dollar system administered by governmental agencies and by private insurers who are

205. Employers, under the 1979 Act, have increased opportunities for participation in the rate hearings, clearer standards for challenging rates, and improved means of challenging classification and rate decisions. In addition to particular changes in the 1979 Act, provisions of the Administrative Procedure Act applicable to contested cases are now to be applied to the rate hearings. The Commissioner's powers of inquiry, rate review, oversight, and regulation are also expanded. See Act of June 7, 1979, ch. 3, §§ 1-16, 1979 Minn. Laws Ex. Sess. 1256, 1256-62 (codified in scattered sections of MINN. STAT. ch. 79 (Supp. 1979)) (amended 1980).

206. See, e.g., id. § 6, 1979 Minn. Laws Ex. Sess. at 1259 (codified at MINN. STAT. § 79.075 (Supp. 1979)).

207. See id. § 2, 1979 Minn. Laws Ex. Sess. at 1256 (codified at MINN. STAT. § 79.071 (Supp. 1979)) (amended 1980); id. § 10, 1979 Minn. Laws Ex. Sess. at 1260 (codified at MINN. STAT. § 79.171 (Supp. 1979)).

208. See id. §§ 11, 50, 1979 Minn. Laws Ex. Sess. at 1261, 1287 (codified at MINN. STAT. §§ 79.21, 176.181(2) (Supp. 1979)).
relatively insulated from competition. The changes adopted by the 1979 Minnesota Legislature were carefully considered and they address most of the areas in the workers’ compensation system in which these unnecessary costs can be found. Thus, there is cause for moderate optimism that cost pressure will abate in the immediate future because of the legislation. But there is a limited amount of superfluous administrative expense in the workers’ compensation system. These types of reductions can only go so far, and probably not much further than is provided in the new law. If the current rate proposal is any indication, costs will continue to rise, though at a less fearsome rate. It therefore seems inevitable that the deferred issues of what types and amounts of compensation should be provided through workers’ compensation, and whether more competition should be introduced by ending rate regulation or creating a new state workers’ compensation fund, will emerge again once the cost-saving potential of these administrative reforms is exhausted.