

MINUTES
SENATE FINANCE COMMITTEE
April 11, 2003
9:03 AM

TAPES

SFC-03 # 45, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:03 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Lyda Green, Co-Chair
Senator Con Bunde, Vice Chair
Senator Robin Taylor
Senator Lyman Hoffman
Senator Ben Stevens
Senator Donny Olson

Also Attending: SUSAN COX, Assistant Attorney General, Special Litigation Section, Department of Law; BRAD THOMPSON, Director, Division of Risk Management, Department of Administration; PAUL GROSSI, Director, Division of Workers' Compensation, Department of Labor and Workforce Development

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

The Committee heard testimony from the Department of Law, the Department of Administration, and the Department of Labor and Workforce Development. The bill reported from Committee.

#sb120

SENATE BILL NO. 120

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen;

and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-chair Wilken noted that the Committee would hear Department responses to questions that arose during the first hearing on this bill.

SUSAN COX, Assistant Attorney General, Special Litigation Section, Department of Law responded to Senator Taylor's request for comparison information pertaining to injury and illness claims by State-employed Alaska Marine Highway System (AMHS) employees verses those of other State employees covered through the Alaska Workers' Compensation Act (AWCA). She clarified that, were this legislation adopted, AMHS employee "onboard illnesses" would be covered through the State employee sick leave system rather than through the "no-fault remedies of maintenance and care and unearned wages" system. She affirmed that the State would save money as a result of this shift.

Ms. Cox advised that while the State might not experience a decrease in the number of AMHS injury claims, the State would experience "a decrease in cost relating to the litigation."

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration furthered that the Department has compiled new comparison analysis charts [copies on file] that include FY 1997 through FY 2002 incidence information; as, he clarified, the previous information provided to the Committee was limited to FY 2002 data.

Mr. Thompson continued that the analysis indicates that 42 percent of the 2002 AMHS claims resulted from personal illnesses and 58 percent resulted from accidents. He stated that this relative percent equates to a five-year illness average of 17 per 100 full-time employees (FTEs) and 24 accidents per 100 FTEs.

Mr. Thompson furthered that this equates to a relative percent expense of 16.2 percent for illnesses and 84 percent for occupational accidents for FY 2002 and a five-year illness cost average of \$32,000 per 100 FTEs and \$165,000 for "occupation accident illness."

Senator Taylor asked for further information regarding the expenses, specifically whether the 16.2 percent is the cost of administering the claims.

Mr. Thompson responded that the 16.2 percent figure depicts the total expense associated with illness claims.

Senator Taylor expressed that in order to compare the costs of these programs, the data must be inclusive. He declared that most of the administrative expense incurred by AWCA results from the cost of adjusters and claim personnel rather than from litigation expenses experienced by the AMHS. He mentioned that the State is self-insured and that the Division of Risk Management handles Workers' Compensation claims.

Mr. Thompson verified that the State is 100 percent self-insured for Workers' Compensation incidents and that the State is insured for up to one million dollars per occurrence for AMHS illness and injury claims.

Senator Taylor understood, therefore, that the majority of Workers' Compensation cases would be handled in-house.

Mr. Thompson confirmed that the Department of Law handles litigation resulting from maritime employee situations, and he affirmed that attorney time and litigation expenses, as well as the costs associated with Workers' Compensation cases, are included in the data. He agreed that Workers' Compensation cases do not typically incur litigation expenses.

Senator Taylor interjected that there would be little litigation expense because few attorneys argue Workers' Compensation cases.

Ms. Cox informed that while the Department has approximately two staff attorneys who are responsible for Workers' Compensation litigation cases, she agreed that most of the AWCA program expense results from administrative expenses.

Senator Taylor reiterated that few private attorneys handle Workers' Compensation cases. He voiced the belief that the State's Workers' Compensation system "is failing to adequately compensate," and he spoke against furthering the misconception that shifting maritime employees to the Workers' Compensation system is the best option. He voiced that, in his Workers' Compensation experience, claims are denied and it is difficult to hire attorneys to represent claimants. He asked for clarification that this legislation would apply only to seaman employed by the State.

Ms. Cox clarified that this legislation would impact seaman employed by the State as specified in the bill in Section 1(5) language that reads as follows.

(5) arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS 23.30 provides the exclusive remedy for such a claim and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 688), in admiralty, or under the general maritime law.

Senator Taylor clarified therefore, that any seaman working in the State but not employed by State, would continued to be covered through the Jones Act.

Ms. Cox concurred. She opined that while "there might be similarities between the jobs and occupations" of State-employed and non-State employed seaman, the State employees' benefits which include such things as sick leave, health insurance, and retirement benefits exceed the benefits provided to a private sector employee. She expressed that "this bill would provide the same system of remedy for all State employees."

Senator Taylor argued that shifting State-employed maritime employees to the AWCA would create two systems within the maritime industry: one for State employees and one for everyone else" working in the State's waters.

Ms. Cox responded that is correct.

Senator B. Stevens expressed that two systems currently exist within the Maritime industry as State maritime employees have access to the Jones Act and to the Public Employees' Retirement System (PERS) system, but non-State employees are limited to the Jones Act.

Senator Taylor agreed that "the overall benefit package" provided to State employees is not provided to other maritime workers; however, he avowed that injury remedies are an issue.

Senator Taylor asked for further information regarding union negotiations with the State in respect to the Workers' Compensation program.

Ms. Cox responded that the three ferry worker unions participated in negotiations during an eight-year period between 1983 and 1991 in which "worker's compensation benefits were provided in lieu of traditional maritime remedies including maintenance care, unearned wages, and Jones Act litigation remedies as a result of collective bargaining." However, she informed, the inclusion of the Workers'

Compensation provision in the labor agreements was challenged by an individual in one of the unions, and she continued that although the provision providing for workers' compensation benefits in lieu of Jones Act remedies prevailed in the Alaska Superior Court, it failed in the Alaska Supreme Court, which determined that, as a matter of collective bargaining, "unions could not negotiate away the individual's federal remedies." She concluded that this ruling voided the provision in the contract, and she informed that the current system has been in effect since 1991.

Senator Taylor asked whether the federal remedy issue, specifically the federal "savings to suitors clause," would be affected by passage of this legislation.

Ms. Cox responded that, "the State cannot be sued in federal court under the eleventh amendment; so, the federal remedy applies to State employees under the savings to suitors clause if the State is sued in State court." She specified that the State currently utilizes this clause as a defense against federal maritime litigation in State court. She explained that this bill would withdraw the State's consent to be sued by State employees under the federal maritime remedies for employee claims in any form, and "would instead provide" for the application of workers' compensation remedies. She stated that the US Supreme Court has repeatedly upheld the ruling that a "state's sovereign immunity, constitutionally, can trump the federal interest in the uniformity in the maritime world."

Senator Taylor understood the issue of State sovereignty, but voiced concern that resulting litigation could delay the implementation of the legislation.

Ms. Cox specified that this legislation would have an immediate effective date, and upon its passage, the State "would switch over" to workers' compensation benefits for injuries and illnesses occurring after that effective date. She explained that an employee who is dissatisfied with an injury remedy could file a lawsuit, and she reminded the Committee of the three-year statute of limitation provision in the Jones Act. She specified that the Department currently handles injury lawsuits and would continue to address them after passage of this bill. She expected that the litigation process would include the State Superior Court and, if necessary, the Supreme Court wherein the Department would ask the Court to rule as to whether "this law is, in fact enforceable and valid in the State of Alaska." She stated that this process would be no more involved than the work the Department currently handles.

Senator Taylor predicted that litigation would result from this

bill.

Ms. Cox replied that while it is an unknown, lawsuits could be possible.

Senator Taylor asked whether a final resolve as to whether this legislation "is in fact constitutional," would take approximately one or two years.

Ms. Cox approximated that this action could take that amount of time; however, she advised, in the meantime, the State would provide Workers' Compensation to employees in lieu of the Jones Act remedies until such time that the State might be informed that this action is unenforceable. She informed that three other states have enacted this type of legislation.

Co-Chair Wilken asked for information regarding the \$71,000 increase in funds as specified in the Department of Labor and Workforce Development fiscal note #2, and he asked how the Department would be affected were this funding eliminated.

PAUL GROSSI, Director, Division of Workers' Compensation, Department of Labor and Workforce Development explained that Workers' Compensation is a self-funded, fee-based system, and that these funds would allow the Department to conduct such things as hearings that would occur during the transition of Maritime individuals to the State's Workers' Compensation system.

Senator Taylor asked why the Department of Administration has submitted a zero fiscal note as its analysis indicates that, "very significant cost savings will be realized in future years."

Mr. Thompson explained that the Department has submitted a zero fiscal note with the expectation of savings; however, he explained, the FY 04 projected zero fiscal note is the result of the Department's financial methodology which obligates funds for claims the Department expects to pay within the next year as well as the continuation of payments for existing claims for maritime employees. He expressed that "the cost of risk" premium for each of the departments the Division of Risk Management represents is determined by the department's "experience and exposure," and he continued that over time, the decrease in claims would result in a decrease in the premium paid by the Marine Highway System.

Senator Taylor asked the amount projected to be saved.

Mr. Thompson responded that savings are projected over a five-year period.

Senator Taylor ascertained therefore, that no savings would be expected in FY 04 nor in the following few years because of the three-year statute of limitations for claims.

Mr. Thompson clarified that savings would be expected in regards to illness claims and unearned wages; however, he specified that these expenses are not included in the Risk Management budget. He reiterated that there would be "a lag-time" in the Division of Risk Management's savings being reflected.

Senator Taylor asked whether the projected savings amount would offset the expenses presented in the Department of Labor and Workforce Development fiscal note.

Mr. Thompson answered that the unearned wages component of the Jones Act currently costs the AMHS approximately \$250,000 on an annual basis; however, he clarified, this expense is in the AMHS budget rather than in the Department of Administration's budget. He expected that the savings resulting from this legislation "would be greater than" the increased sum of the Department of Labor and Workforce Development expenses depicted in the fiscal note.

Senator Bunde moved to report the bill from Committee with attached fiscal notes and individual recommendations.

Senator Taylor objected. He voiced that illnesses and accidents would continue to occur; however, he asserted that, by exercising the State's sovereign right, the State would "just pay less" by withholding an employees' right to sue. He avowed that this is "a poor precedence." He declared "little faith" in the existing Workers' Compensation system, and opined that "to force another group of State employees" into "a failed system is an inappropriate way" for the State to address the issue. He questioned the levels of projected savings and expenses that this legislation might produce. He declared that while this issue has been addressed by previous administrations, he declared that "for good reason" no action has occurred.

Senator Taylor WITHDREW his objection.

There being no further objection, SB 120 REPORTED from committee with previous fiscal note #1 from the Department of Labor and Workforce Development and previous fiscal note #2 from the Department of Labor and Workforce Development.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 09:32 AM