# REPORT TO THE LEGISLATURE ON PUBLIC EMPLOYEES

Massachusetts Workers' Compensation
Advisory Council

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## EXECUTIVE SUMMARY

At the outset of our research, we learned that the data necessary to fully study workers' compensation in the public sector, in terms of ascertaining which political subdivisions and employees are covered under the Act and which are not, is not readily available. Nor is it possible to completely discover the extent of coverage, as records apparently do not exist.

In addition, the current statute, while providing notice that benefits have been paid, does not specifically provide for any penalty for the failure to file such notification. From an analytical perspective, this presented problems in investigating if public employees receive their benefits as quickly as private employees. At best, from the data available one can learn which of those that have filed the required forms have complied with the statute. It appears those who file are generally meeting timelines.

In reading some of the recommendations which begin on page 51, one should take into account that a priority is to develop a comprehensive and accurate data base which can define just who is, and is not, covered. There are a number of changes which would entail minor modifications to bring sections of chapter 152, and other laws, into compliance with the amendments of 1985. These can be a mechanism for bringing many of the other issues into a clearer focus and are outlined beginning at page 58. Other issues raised require policy decisions.

While compulsory for the private sector and the Commonwealth, the law is elective for other public employers. It is not only elective as to acceptance. A public employer may choose to provide for the benefits of the act without insurance or group self-insurance. It may choose to cover some groups of employees and not others. In order to achieve a comprehensive understanding as to coverage, it is important for workers, employers and administrators to have a reliable data base for knowing where coverage exists. One does not exist.

In a similar vein, it is important to decide where the recourse lies for employees for whom there is no coverage. Due to the statute's history and promulgation of judicial decrees, this is not clear. We believe that as a matter of public policy all parties should have a comprehensive understanding of just what rights and obligations they may, or may not have.

A final aspect that must be taken into consideration is whether it is cost effective to try to reduce the losses being experienced in light of the current fiscal crisis. As the largest employer in the state, the Commonwealth should examine whether it provides the necessary resources to its administrators for managing its internal safety and workers' compensation system. The hard work and dedication of its employees may not be sufficient to deal with the number of incidents to be addressed. (This may also be applicable to many of the political subdivisions which handle their own cases.)

Clearly this aspect is a difficult one to resolve when there is less money to address it. However, in the event that the long term unfunded liability of workers' compensation becomes a factor to be considered for determining the financial status of any public entity, this issue may take on a more serious tone. Insurance companies and private sector self-insurers handle it by establishing reserves on a case. The budgetary process for the public sector may, in many instances, preclude this approach. (Similar concerns have been addressed in the past with respect to pension funding.) We do not have the expertise to weigh what impact, if any, this possible scenario may have for the ability of political subdivisions to receive credit in the future, but we do believe it is important to be prepared in the event that such factors become an issue in the borrowing of funds. No one may win if the hard work performed by the various officials at all levels of government are curtailed by the lack of necessary resources or certain procedures to address specific problems.

This report is intended as a broad overview. While some of the recommendations contained herein are technical, a number are broader in scope. They will require the thoughtful discussion of many concerned participants in order to promote efficient and equitable results for all. We hope this report can provide the basis for insightful analysis and by no means believe that our possible suggestions form any definite answer to the questions raised. We do believe that with the diligence, experience and knowledge of the entities involved, that any of the possible concerns raised can be resolved.

# INTRODUCTION

As one of the first examples of social legislation, workers' compensation has been in existence in the United States for over seventy-nine years. The country's first workers' compensation laws were enacted as an alternative to the expensive, lengthy, and inconsistent tort actions that injured workers brought against their employers under common law. Massachusetts was one of the pioneers of the new approach when it passed its initial workers' compensation law in 1911. Although the law was frequently amended over the next few decades,[1] the system remained largely unchanged until recently. In 1985, a massive reform bill was passed by the Massachusetts Legislature in response to numerous shortcomings of the workers' compensation system. This bill fundamentally restructured procedural and to a lesser extent substantive aspects of the workers' compensation system in Massachusetts.

In addition to reorganizing the Department of Industrial Accidents and introducing statutory changes, the reform bill also established the Advisory Council on Workers' Compensation as a mechanism for providing continual analysis of the system as well as a forum for the constructive dialogue that was an integral element of the reform process. Due to the complex interdisciplinary nature of workers' compensation, many other jurisdictions have established similar advisory bodies, but the 1985 amendment was the first such successful enactment in the Commonwealth.[2]

The Advisory Council is comprised of sixteen members, ten of whom are voting members. Five voting members represent employers, in a number of classifications, and five (one of whom is a disabled worker) represent employees. The remaining membership consists of nonvoting representatives of the insurance, legal, medical and rehabilitation communities and two ex-officio members from the respective Executive Offices of Labor and Economic Affairs. The Council's primary role is to monitor and report upon various aspects of the workers' compensation system and to act as a sounding board for the various constituent groups that are impacted by the system.

As part of its mandate to provide an ongoing and in-depth analysis of the Massachusetts Workers' Compensation system, the Advisory Council was given the authority by the legislature to:

> "...make a continuous investigation and study of workers' compensation issues involving public employees, including, but not limited to the circumstances of public employees not subject to the workers' compensation law, and problems resulting from the claims processing time periods for public employees."[3]

The purpose of this report is to explore how, if at all, the workers' compensation system affects public employees. In particular, it will examine some of the factors differentiating public employees from their private sector counterparts. We will try to explore some of the different circumstances with respect to employees not covered by the law and to review the possible effects the statute, and the system, has for them in particular. The report will also analyze issues peculiar to the public sector which may have an impact on the administration of workers' compensation for public sector employees which is not experienced by their private sector counterparts.

Finally, the issuance of this report by the Advisory Council is intended to fulfill its obligation under M.G.L. Chapter 23E, §17. Its issuance does not imply complete agreement of its contents and recommendations by each of the voting members of the Council.

## HISTORY

The history of workers' compensation in the Commonwealth is a long and varied one. Like most jurisdictions, Massachusetts initially passed an Employers' Liability Law (Chapter 153 of the Massachusetts General Laws) in 1887 which altered somewhat the relationship between employee and employer in suits for industrial injuries. Over the course of the next twenty years, ongoing discussion at both state and national levels debated the adequacy of such statutes to meet the needs of the general public. In 1910, a five member commission was established by the General Court to investigate existing laws relating to the liability of employers for injuries received in the course of employment. The Massachusetts Legislature stated in establishing the commission that the public good required a change in the prevailing system for determining employee compensation for industrial accidents, and that the Commonwealth ought to provide different and more suitable relief.[4]

As a result of looking at court decisions in other states there was considerable uncertainty regarding the appropriate format for an alternative system.[5] Therefore prior to enactment, the legislature petitioned the Supreme Judicial Court for advice on the constitutionality of the proposed law. Basing its opinion primarily on the voluntary nature of the law, the Court stated that the questions submitted to it concerning the proposed act would not violate any right secured by either the federal or state constitution.[6] The way was thus cleared for passage of the workers' compensation statute in 1911.

While not substantially altered until the 1985 reform, the Commonwealth's workers' compensation law has nevertheless been the focus of a variety of proposed changes and political battles over the years. It has been the subject of both a proposed constitutional amendment[7] and an initiative petition.[8] The law and the system have been the subject of numerous reports and commissions which have been empowered to investigate the system's effectiveness and efficiency.[9] From 1911 to the present there have been innumerable proposals to partially amend the law, many of which were ultimately enacted by the General Court.

There have been many procedural and administrative changes as well. For example, the administrative agency empowered to enforce the law has been changed from a Board to a Department to a Division within a Department to a Department again.[10] The statute also provides a fertile field for political rhetoric, social commentary, and economic prognostication as many groups and politicians have presented their views on the subject. An example of just exactly how far the system has come, and how far it has to go, is epitomized in the following excerpts from the initial report which paved the way for the enactment of the initial workers' compensation act in the Commonwealth:

> "The employer liability law failed to do justice for employees, but greatly increased litigation with all the attendant evils of economic waste, pauperism, and class antagonism."
>
> "The law will operate to prevent injuries."
>
> "The nature of controversies between employers and injured employees under the new law is such that they do not require determination in the courts."
>
> "The loss arising from the present system of determination of controversies with its great waste of money in connection with litigation will be materially reduced. The difficulty under the new law will not be so much in the determination of matters of legal liability as in the ascertainment of physical incapacity of the injured man."
>
> "The successful administration of the act requires the assistance of skilful physicians and surgeons on the highest integrity."
>
> "The Industrial Accident Board can render invaluable service to employers by cooperating with them in the practical study of accident prevention."
>
> "In regard to industrial accidents with which this report is concerned, the lack of definite and reliable information is particularly marked. Every one who is at all acquainted with modern industrial operations knows that disabling accidents are frequent and often distressing in their results, but in the absence of carefully compiled statistics no real measurement of this element in the cost of production is possible."[11]

These comments ring true in many respects today, almost 80 years later. They not only evidence positions that some would claim are equally valid at present, but also show the unfulfilled promise that remains to be met. It is within this multidimensional framework, (political, philosophical, economic, medical, and social) that any analysis of workers' compensation must be explored.

## COVERAGE OF PUBLIC EMPLOYEES

### SPECIFIC CHANGES IN CHAPTER 572 OF THE ACTS OF 1985

The principal change affecting public employees in the 1985 reform was the addition to the third sentence of §69 which states that:

> "No cash salary or wages shall be paid by the commonwealth or any such county, city, town, or district to any person for any period for which weekly total incapacity compensation under this chapter is payable, except that such salary and wages may be paid in full until any overtime or vacation which the said employee has to his credit has been used, without deduction of any compensation herein provided for which may be due or become due the said employee during the period in which said employee may be totally incapacitated, and except that such salary or wages may be paid in part until any sick leave allowance which the employee has to his credit has been used, any other provisions of law notwithstanding, except as otherwise provided in a collective bargaining agreement." (added by §56 of c. 572)

This change allows parties to negotiate for payments in addition to those set forth in the workers' compensation statute. It was a response to situations in which a public employer and a public employee organization had mutually agreed to a clause which provided that the payments of contractual benefits would accrue while the employee was out on compensation and receiving benefits, as set out in §69.

The amendment was a response to a case decided by the Supreme Judicial Court in 1981, School Committee of Marshfield v. Marshfield Teachers Association, 383 Mass 881, where the Court held that payments in excess of the statutory benefits were, as set forth in the collective bargaining agreement, barred by §69 of the workers' compensation law. Since §69 of Chapter 152 was not set forth as one of the enumerated laws (see Massachusetts General Law chapter 150E,

§7(d)) where the terms of the contract would supersede in cases involving a conflict between the statute and the collective bargaining agreement, then §69 of the law was controlling. In Marshfield, the contractual clause provided for payments of the employee's full salary, less the amount of any indemnity payments under the law. An arbitration award granting the payment was vacated by the lower court and subsequently affirmed by the Supreme Court. In another case, argued the day before the reform law was initially approved, the Court stated that §69 contemplates only the payment of vacation benefits (and presumably other benefits) earned, but not used, at the time of the injury.[12] The Court rejected the employee's contention that he receive prorated longevity and vacation pay, as set out in the collective bargaining agreement, during the years in which total incapacity benefits were received as being contrary to the statute. Since this change specifically addresses an exemption for a collective bargaining agreement, it would seem that the case law would still apply where no such contract exists.

## EXTENT OF COVERAGE OF PUBLIC EMPLOYEES

The initial attempt to provide coverage for public employees was passed in Maryland in 1902. It was a cooperative statute, one whereby both the employer and employees contributed to coverage of benefits. It was unique in encompassing public employees engaged in hazardous occupations.[13] Although the law was subsequently declared unconstitutional by a municipal court, it set a precedent by including public employees under its jurisdiction.

Ironically, the first traditional compensation statute passed by a legislative body in the United States to include public employees was enacted as part of the Philippine Act of 1906, and provided benefits for laborers and employees of the Insular Government of the Philippines. Two years later, Congress passed an act to provide coverage to artisans and laborers employed by the federal government in manufacturing establishments, arsenals, navy yards, certain construction projects and work under the Isthmian Canal Commission.[14]

While a narrow act in its scope, it has been considered the first workers' compensation act in the country. Full coverage for all civilian employees of the federal government was enacted in 1916.

Beginning in 1910, a number of states began to enact workers' compensation laws and by 1915 nineteen states had provided for some sort of protection for public employees.[15] The initial Massachusetts Workers' Compensation Act didn't cover public employees. However, within two years, the statute was amended to provide some coverage to workers employed by public entities.[16]

As it is written today, the law allows an individual public entity to determine whether or not it wishes to accept the law. (Appendix A) Unlike the compulsory aspects which exist for private employers, this "home rule" option makes the statute an elective one for political subdivisions of the Commonwealth.[17]

In a similar vein, the statute also allows a public entity to vote on whether it wishes certain elected or appointed officials to be included in its coverage.[18] This is the result of the historical difference in the definition between "public employees" and "public officials". This difference is predicated upon the premise that the concept of a "public official" is repugnant to that of employee. The distinction between the two definitions is often difficult to understand, as decisions interpreting these terms have varied on a case by case and state by state basis.[19]

In many jurisdictions in this country, "public officials" are excluded from coverage of the workers' compensation law. This distinction is outlined in an opinion by the U.S. Attorney General in 1917, which still has merit today. It states:

> **"In its broadest sense, an employee is anyone who is engaged in the service of or is employed by another. In this sense, all who serve the Government, from the highest official to a laborer employed by the day, are employees. But usually it is applied only to clerks, workmen, laborers, etc., and but rarely to the higher officers of a corporation or government. In the usual acceptance**

> of the term it is understood to apply to those, other than officers, in the service of the Government. No one would think of calling a Cabinet Officer, a Senator, or a Justice of the Supreme Court an employee of the Government. They are all civilians in the service of the Government. They can be distinguished from employees only upon the ground that they are officials or officers and, therefore, not employees as the word is commonly understood. In other words, there are two classes of public servants, officers, or those whose functions appertain to the administration of Government and employees, or those whose employment is merely contractual."20

Since that statement, many states have amended their statutes to include public officials in their coverage. However, despite these changes, the inclusion of certain officials is still occasionally subject to question. As an example, one decision determined that a selectmen injured in the process of walking the town boundaries was not an employee, but an "officer of the town" and therefore not entitled to compensation by the town for the injury.[21]

The area between employee and officer is often gray. This is particularly so in the public sector where civic minded individuals offer their time and expertise in formulating policy for little, or no compensation. Since an elected official is charged with formulating policy for any political subdivision, if that person's job is to be included within the coverage of the act, certain safeguards must be considered. It is clear that the impact of any discussion in this area, which rests on public policy considerations, must be explored specifically in order to avoid the potential for conflicts of interest.

## CURRENT LAW

The workers' compensation law for public employees includes a number of exceptions to the blanket statutory requirements for employees of private employers. In particular, certain public safety employees (e.g. police officers and fire fighters), are entitled to leave without loss of wages if incapacitated during the performance of

their duty.[22] In accordance with this law, these employees are paid their full salary rather than a percentage of their average weekly wage.

There are also aspects of the law which may affect a public employee's overall benefit package, such as pension eligibility and long term disability insurance. The act entitles laborers, workmen, mechanics and nurses to compensation and benefits for injuries arising out of or in the course of employment. This language itself has been the subject of much debate and litigation. An important Supreme Court ruling stated that if the intent of the legislature was to include all persons, plain language would have been used by the legislature.[23]

In this opinion, the Court held that the law did not cover a hoseman for the Boston Fire Department, and that the terms "laborers", "workmen" and "mechanics" should be taken in ordinary lexical sense.[24] The Court also interpreted the language to exclude a vocational auto mechanic instructor, even though he occasionally gave practical instructions using manual labor and tools.[25] However, a janitor who worked with his hands was distinguished from a head janitor who supervised others, and was included in the definition of laborer.[26] The Court went further in its reasoning and specifically found that the legislature did not intend to equate the terms in the workers' compensation law with those set forth in the civil service law, so that even though hired under the "official service", and not the "labor service", an employee could still be a laborer in terms of an industrial accident.[27]

Some of the uncertainty involved in public employee coverage is illustrated in a number of additional opinions by the Court. In one, the Court held that an employee of an independent uninsured contractor could not reach a city that was insured through §18 of Chapter 152, in part due to the language in §69 of the law restricting coverage of political subdivisions accepting the act to only those employees "employed by it".[28] In a recent Appeals Court decision, it was determined that a student injured at football practice was not to be regarded as an employee for the purpose of workers' compensation coverage.[29] The decision also stated that for the instant purpose of the negligence action, the high school coach was a public official carrying out

ministerial duties.[30] But this decision itself raises further questions, since a coach may be considered a public official within the context of a negligence suit, but be considered an employee if injured in the course of employment.

The Attorney General of the Commonwealth has been called upon to review a number of issues concerning coverage of employees. In an opinion to the Highway Commission, he stated that civil engineers were not entitled to workers' compensation benefits under the law.[31] Another opinion stated that employees hired under the auspices of a temporary employment act (Emergency Employment Act of 1971) were entitled to coverage under the act.[32] In fact, the opinion stated that the people employed under the act were employees of the municipality for which they worked, and that the liability for any injury of employees under the Employment Act could not be separated from the coverage for the injury of any other municipal employees.[33] This opinion contrasts somewhat with an early decision of the Supreme Court, which held that an employee hired and assigned to work for a city by a federal relief administrator was not an employee of the city for purposes of the Workers' Compensation Act.[34]

The extent of coverage is a significant issue in the administration of workers' compensation in the public sector. In the private sector, the employees of a company are generally easy to identify. However, the critical question of coverage often becomes difficult to interpret in the public sector due to the nature of the services that are provided. Public policy has mandated that certain levels of governmental services are necessary for the good of society in general, while a private enterprise is more or less free to establish its own priorities as to the extent of its expenditures. This issue may be compounded by the diverse revenue sources (e.g. federal, state, local, grants) that are available to provide these services.

Courts in the Commonwealth have held that neither jurors[35] nor prisoners[36] are covered by the law. It was even determined that a call firefighter, who fell from a tree he climbed pursuant to the chief's instructions, and subsequently lost an arm, was not entitled to compensation under the act because he was not a laborer, workman, or mechanic as defined by the law.[37] However, a town laborer who was ordered by his supervisor to assist in putting out

a fire on private property, did not become a member of a fire force, and was thereby not excluded from the law's coverage, when he was injured fighting the blaze.[38] The Supreme Judicial Court also rejected a city's claim that §26 of the act would result in an illegal diversion of public funds where an employee's injury was traced to obedience of a supervisor's order to perform a personal errand.[39]

Still another distinction in the public sector is service involving resident employees. For instance, an employee who voluntarily lived on hospital grounds, and suffered a heart attack as a result of voluntarily assisting people in distress on her day off, was considered to have been in the course of employment when injured.[40] Similarly, a resident state employee who was injured after falling while carrying groceries to his room on his day off was entitled to compensation.[41]

The courts have also held that if a municipality insures at all, it is required to insure all of its obligations under a single policy, to the extent of its acceptance of the act.[42] In other decisions, it has been stated that a municipality is under the same obligation as an insurer to make a payment into the "Special Fund" (§65 of Massachusetts General Law, Chapter 152) in the case of the death of an employee without dependents.[43] Acceptance of the act for all employees, except members of a police and fire force, precluded a correction officer from seeking indemnification from his employer for his injury on the basis of his contention that his position was not included.[44]

As a result of factors endemic to the public sector, the extent of coverage is integral to the analysis of any statute. Ultimately, services such as those provided by volunteer firefighters or vocational education students, and issues concerning reciprocal public safety agreements, must be legislated or litigated. As an example, the definition of employee in §1(4) of Chapter 152 states that a "Special or Reserve Officer" hired and paid directly by a contractor to direct traffic on a public road project is conclusively presumed to be the contractor's employee. The law in this respect varies from state to state, but its impact must at least be recognized as a differentiating element apart from the concerns of the private sector (see Appendix B).

At the present time, all employees of the Commonwealth are covered, as are most employees of the various cities, towns, school committees, public authorities and other public entities. While benefit levels for public employees and private employees are the same, certain public employees may be entitled to additional compensation.[45] There are other differences that are set forth either in Chapter 152 or in other laws that pertain to certain public employees. A public employee who is entitled to paid sick leave can take such paid leave so as to provide him/her with full salary while injured.[46] Employees who are entitled to receive workers' compensation and entitled to receive a pension by reason of the injury must elect to receive workers' compensation, or the pension.[47] Except in limited situations under the state's retirement law, an employee cannot receive both.[48] This principle against a double recovery was enunciated by the Supreme Judicial Court in Mizrahi's Case, 320 Mass 733, 736, 737 (1947). While the decision specifically discussed the obligation of a private employer the Court stated that there was no policy that justified burdening an employer twice. Also, an employee who has been found to have a partial disability may be employed by the public employer, in a position adapted to the partial disability, at a salary predicated upon the employee's reduced earning capacity.[49]

There are additional differences for state employees. The administration of workers' compensation benefits rests with the Public Employee Retirement Administration as a result of changes enacted in 1982. This function was formerly administered by a unit of the Industrial Accident Board known as the Public Employee Section (PES). The unit was supervised by the Supervisor of Workers' Compensation Agents, who also was responsible for supervising the designated agents of public entities who have not provided for the payment of compensation through insurance.[50] No compensation can be paid by the state until the Attorney General has provided written consent or had an opportunity to present a case on behalf of the state.[51]

A final distinction concerns state employees and county correctional employees who receive injuries as a result of violent acts by prisoners or patients in their custody. These employees can receive the difference between compensation benefits and their salary, without such absence being charged to available sick leave credits (See Appendix G).[52] The Attorney General in a June 30, 1988 opinion[53] has

stated that this provision would also be available to court officers in the trial court who are disabled by violent acts of persons in custody. Similar coverage is also provided to emergency medical technicians injured in the line of duty if the municipality accepts the local option law (See Appendix G).[54] This law applies if an employee is covered by chapter 152 and if the employee waives the provisions of the workers' compensation law. The exposure to possible injury from these situations presents a distinct contrast between the public and private sectors, with few exceptions.

There are two significant differences between coverage for private and public employees. The major substantial difference is that coverage for public entities is elective. The political entity determines not only if it will provide coverage, but is also allowed to determine if it wishes to exclude certain employees.[55] The law has been compulsory on most of the private sector since 1943 and almost all of the private sector since 1972.[56] Public entities are nevertheless free to choose if they wish to be covered. This creates a situation where the public employee lacking the certainty of workers' compensation benefits may be forced to seek recourse through the courts. This can create severe economic hardship for a worker with a legitimate industrial accident. At the same time, the public employer must face the lengthy and expensive litigation process as well as the uncertainty of a possible damage award. The economic consequence for an public employer could be inconsistent with the severity of the injury.

Another potential distinction between the public and private sectors is the overall administrative structure of the individual employer organization. Public entities appropriate funds on a fiscal year basis. Long range plans often include short term expenditures. Unlike a profit-making enterprise, the public employer provides a wide variety of services to the community. Each of these services must confront the fiscal realities of the individual political subdivision and the process can create difficult choices for present and future budgetary projections. In addition, Proposition 2½ limits the extent to which a public entity may increase taxes. In this regard it may be difficult from a fiscal, policy, and political basis to implement certain decisions that may be in everyone's long term interest.

The legislature has recognized some of the administrative concerns of the public sector. The law mandates that those public employers who do not provide for the payment of compensation through insurance designate at least one agent to be responsible for furnishing benefits due under the law.[57] At present the statute states that all such agents are to work under the direction and supervision of the Department of Industrial Accidents.[58] In addition, preliminary reports from an agent are to be filed with the Commissioner of Public Employee Retirement within forty eight hours.[59] This information is intended to assist in injury prevention and rehabilitation for public employees. The Department is also required to send to PERA any orders, decisions, or approved memorandums of agreements within fifteen days. These two sections should provide PERA with a large body of data on workers' compensation for public employees.[60] The collection of this data should be able to provide a basis for looking at the process and time necessary to process claims for public employees.

In order to formulate any assessment of the system for public employees it is important to focus on some of the fundamental differences between the two areas, public and private employment. While the two sectors have obvious fundamental goals and purposes, there are some aspects that should be explored in order to establish an analytic framework for discussion. These discussions follow.

## ELECTIVE NATURE OF THE ACT

The first few decades after the workers' compensation act's enactment saw a great deal of debate over the issue of compulsory workers' compensation insurance. The issue was initially addressed by the legislature when it requested an advisory opinion from the Supreme Judicial Court on the constitutionality of the proposed law.[61] The advisory opinion stressed the voluntary nature of the law on employers as a primary factor in determining its constitutionality.

Although the initial law was elective for all employers, it was clearly the intent of the Commonwealth that its social and public policy advocate coverage for as many employers and employees as possible. In a frequently cited early case, the Supreme Judicial Court described the law as follows:

> **"It was a humanitarian measure enacted in response to a strong public sentiment that the remedies afforded by actions of tort at common law and under the Employers' Liability Act had failed to accomplish that measure of protection against injuries and of relief in case of accident which it was believed should be afforded to the workman. It was not made compulsory in its application, but inducements were held out to facilitate its voluntary acceptance by both employers and employees. It is manifest from the tenor of the whole act that its general adoption and use throughout the Commonwealth by all who may embrace its privileges is the legislative desire and aim in enacting it. The act is to be interpreted in the light of its purpose and, so far as reasonably may be, to promote the accomplishment of its beneficent design."[62]**

There were questions concerning the application of a compulsory statute. The constitutional issues regarding the compulsory nature of compensation laws in other states were soon presented to the federal courts. In two early cases concerning the laws of New York and Washington, the Supreme Court found each statute did not violate any right guaranteed by the Constitution and upheld the compulsory nature of the laws.[63]

The courts in Massachusetts recognized the workers' compensation law as a mechanism which would hopefully encourage employers to elect to provide the coverage that was set forth in the law. This goal was to be accomplished by depriving a business of certain defenses if it chose not to come under the law.[64] While the court recognized the voluntary nature of the law, it also stated that the law's purpose was to place non-insuring employers in a disadvantageous position, so that few employers could afford not to be covered.[65] The legislature intended to make it difficult for either employer or employee to escape from the act's coverage.[66]

The law was amended (§54A added) in 1934 to preclude any type of liability policy which didn't also insure the payment of workers' compensation.[67] This was done to provide greater incentives for employers to insure employees under the law. Since coverage under the law was optional, large employers could risk common law actions by paying smaller liability insurance premiums, thereby gaining protection from common law actions and creating a perception for employers of safety outside the coverage of the Workers' Compensation Act. The court recognized that removal of this pressure to come under the act would jeopardize the public policy of the Commonwealth which was to encourage coverage by all employers.[68] Statutory incentives were enacted to create an atmosphere that would be an inducement to electing to come under the law.

Initially the law was amended to require uninsured employers to report to the department.[69] Ultimately, the law was amended to require that employers post notices for their employees, stating that they were not covered by workers' compensation insurance (see Appendix C). The problem associated with an elective statute, however, was that many employers began to opt for non-coverage. This led to a situation which was directly contradictory to the intent of the law.

In reviewing statistics from the years prior to the act becoming compulsory, it is clear that a higher percentage of employers were not seeking coverage (Appendix D - table 1). The number of tabulated injuries for uninsured employers became almost nonexistent after the act was made compulsory. At the same time, the recovery for certain fatal uninsured cases was minimal.

Over a twenty year period, less than thirty percent of statutorily prescribed sums for fatal cases was paid to the dependents of workers of uninsured employers (Appendix D - Table 2). However, once the law became compulsory for more employers, fatalities for uninsured employers decreased dramatically, although the recovery for those cases was even less (Appendix D-Table 2). All this took place in an economic environment where the average cost per case, as paid by insurers and municipalities electing to come under the act, had basically stabilized and was almost half the average cost in the preceding decade (Appendix D - table 3).

The importance of compulsory coverage is nonetheless indicated by the high number of employers without coverage in certain industries during this period (Appendix D-table 4). Prior to compulsory coverage, the statistics show that the construction industry, usually one of the more hazardous industries, did provide coverage for a much higher percentage of the tabulatable injuries than other lines of employment.

The legislature recognized the serious implications of this problem and addressed it in 1938.[70] A study commission found that many employees in the state were electing not to come under the law, in part due to the increasing cost of coverage.[71] Evidence was presented indicating that nearly one half of Massachusetts employees were not covered because their employers would not voluntarily purchase insurance.[72] In fact, it was often possible for large employers to provide benefits as great as those under the law and run the risk of being sued, even without the use of the defenses removed by §66 of the law. However, even in those instances, the commission noted that the injured employee had no means of securing fair treatment.[73]

The majority report recommended making the payment of workers' compensation benefits compulsory, with certain exceptions, until it could be ascertained how effectively compulsory insurance operated.[74] The minority felt that the listed exceptions of the majority "scuttled" the rights of injured employees by allowing one half of the employers to avoid obtaining insurance policies.[75] The report also stated the following opinion with respect to public employees:

> "The Commonwealth of Massachusetts has been under the act since 1913, but the cities and towns have an option whether to come under the act or not. Many cities and towns have voluntarily come under act, but others have stayed out. There is no reason why all cities and towns should not come under the act. We see no reason why an employee of a private employer should be entitled to the benefits of the compensation act, and the employees of a city and town should not be entitled to it, simply because the city or town does not see fit to carry coverage. As cities and towns can carry their own coverage and need not go to private insurance carriers, there is a special reason why cities and towns should be compelled to pay their injured workmen out of funds set aside for this special purpose."[76]

The minority's conclusion was that changing the term "elective" to "compulsory" in the statute would accomplish its goal.[77] The conclusion reached by the minority echoed the thoughts reached by commentators in 1927 that as long as employers must be persuaded to insure under the act, there would be a social justification for the acquisition costs of insurance paid by businesses for coverage.[78] The initial experience of the act demonstrated over the first few decades that these costs were equal to seventeen and one half cents out of every premium dollar paid. As premiums increased, so too did acquisition costs and as many large employers were choosing not to insure, the competition, and therefore the costs, for the remaining pool of uninsured employers could only increase. With both of these social and economic principles in mind, the legislature moved to enacting a compulsory statute.

In 1941, the legislature asked the Supreme Judicial Court for an advisory opinion on making coverage compulsory. The opinion issued stated that it was constitutionally competent to require employers to obtain insurance for the payment of compensation under the law.[79] Other proposed changes included the potential to fine non-insured employers engaged in hazardous occupations which was held to be within the legitimate police power of the state.[80]

Within a few years the law was amended so that it did become compulsory on a number of employers, while remaining elective for others.[81] Balancing the fact that insurance was being made compulsory on many employers, the statute was also amended to allow employers to self-insure. This was a benefit for many large employers which had the resources to perform the claims adjustment and risk management in-house. In particular, the law specifically exempted public employers from the mandate that every employer shall provide for the payment of compensation to its employees through an insurer or by becoming a licensed self-insurer.[82] During the next few decades the legislature enlarged the scope of compulsory coverage until 1971, when all but a few minor exceptions were excluded, so that currently Massachusetts is considered as having compulsory insurance.[83]

The focus on the elective nature of the law, while stimulating debate in the past, has not been the source of much discussion recently. Although compulsory for private employers, the act still remains elective for employees who provide their employers with the proper notice.[84] The law encourages both parties to avail themselves of the act's coverage by specifically leaving employees who elect not to be covered recourse only to common law actions and requiring coverage for all private employers except those who hire seasonal or casual or part-time (less than 16 hours per week) domestic servants.[85]

Nationally most jurisdictions require that workers' compensation be compulsory for some or all of its public employees. In three jurisdictions the compulsory nature of the statute is limited to public employment.[86] An equal number of jurisdictions make coverage non compulsory as to all or some public employees.[87] In a court decision concerning one of those jurisdictions, the Supreme Court of Mississippi upheld the elective coverage aspect for public employees. The Court rejected the plaintiff's argument that the law was denial of equal protection and stated that there was a rational basis for the exemption where, particularly in education, the financial resources may not be sufficient.[88]

The statute is compulsory upon the Commonwealth and it is elective for the political subdivisions of the state. The Supreme Judicial Court has interpreted the law in such a way as to decree that once a municipality has accepted the

provisions of the law and chosen to insure, that this coverage will be applicable to all eligible employees, to the extent of the political subdivision's acceptance of the act.[89] This rationale follows a long line of decisions and opinions which stand for the proposition that the act does not permit an employer to insure one part of its business and leave another part uninsured.[90] However, despite the long standing reasoning behind this principle, the opinions clearly deal with the purchase of a policy of insurance, and in no way address the prospect of an employer providing partial coverage through some sort of self-insurance mechanism.

Employees who work for a political entity that has not chosen to come under the law must seek recourse in the courts to enforce their rights. Public employees do not have the right to file against the §65 (public) employer trust fund, as the employees of private sector uninsured employers do, pursuant to the rules of the department.[91] These workers must use the judicial process, which is often timely and expensive, in order to obtain compensation. In addition, it is unclear just how these rights would be enforced. It would appear that at a minimum, an injured employee could sue under the Employers' Liability Act, Massachusetts General Law Chapter 153, but the $4,000 cap on damages for personal injuries would not be worthwhile for the vast majority of uninsured public employees. On the other hand, public entities who face these suits risk the potential exposure, absent limits on their liability, to awards that must be paid for out of the municipality's annual appropriation. Also at risk are the possibility of suits under the Torts Claims Act. Under either scenario a municipality may run the risk of paying larger amounts in legal fees than may be recoverable under the claim for damages.

## ADMINISTRATION

In examining the administration of the Workers' Compensation Act in the public sector, it is important to recognize many of the factors endemic to it, particularly the elective nature of the act. The workers' compensation law, in §69, sets forth a number of positions that a public entity is allowed to include in its coverage, but also provides the political subdivision with the authority to expand its coverage to other positions, should the entity vote to do so. During the initial period for acceptance a high percentage of the municipal entities elected to come under the act (See Appendix E). The extent of coverage was to be filed with the Department of Industrial Accidents. Public entities are to file if they desire to include certain elected or appointed officers and if the coverage includes other employees in the statutory definition, as determined by the political subdivision. This coverage may be changed by a mayor or board of selectman by indicating the change in writing to the department. So not only is coverage of the entity wholly elective, but the extent of that coverage may be altered, it appears, without a reason by the chief executives of a city or a town.

The scope of the public landscape has changed during the last decade as a result of Proposition 2½. There were a number of changes that impacted the budgetary levels of cities and towns but one of the primary elements was that school committees no longer had fiscal autonomy. One possible way to limit coverage would be to alter the extent of acceptance for elected and appointed officers. This question appears to have been answered by the Reviewing Board in Owens Case, 2 Mass Workers' Comp. Rep. 219 (1988), where the Board held that once the position has been designated, the individual in that position's right to the benefits of the act cannot be changed by a new administration. This interpretation would appear to foreclose the amendment of the extent of coverage by a political subdivision based upon changes in the political landscape.

At the outset, it must be acknowledged that it is difficult to obtain information on the extent of coverage of public employees in the state. Prior to the formation of the Division of Public Employment Retirement Administration,[92] the Public Employee Section (PES) of the Division of

Industrial Accidents had the responsibility for maintaining certain records and supervising workers' compensation agents of public entities who did not provide for the payment of compensation through insurance.[93] While summary cards indicating acceptance of the law by political subdivisions are still available at the DIA and can provide some information as to what was accepted and when acceptance took place, the preferred source for confirmation of such action would still be the municipality itself. The PES was transferred to PERA as part of its enabling legislation (see Appendix G).[94] Despite the transfer, the language in §75 was never amended. In fact, it has been specifically changed as part of the reform bill in order to conform to the rest of the legislation but in what appears to be an oversight, changes were not made in the last sentence. While the language states that an individual from the department would be supervising these agents, in fact it appears that it was assumed that PERA would provide this function. The Department of Industrial Accident's position is that questions regarding the registry should be addressed to PERA.

This assumption has logic in that the Commissioner of PERA is provided with certain supervisory functions over the agents who have been appointed by the various public entities in the Commonwealth.[95] Since the authority rests with the Commissioner to receive information on injuries within forty-eight hours of their occurrence, it appears that the intent of the statute was to have the Commissioner receive the names of the agents, not the department.[96] This is an oversight that should be corrected.

At the present time, there is no one in the Department of Industrial Accidents that is supervising the workers' compensation agents throughout the Commonwealth. At the same ~~time, much of the information that is technically supposed to~~ be filed with the department is also not filed. In the past years, PERA has attempted to determine how many of the public entities have elected to come under the law, and the extent of their coverage. The response to their inquiries lead to the conclusion that many of the entities are unclear as to the extent of their coverage under the Act, and for that matter, whether or not they have ever elected to come under the act.

Another area that indicates the extent of confusion in the administering of the statute in the public sector involves the interpretation of the law itself. As a basis for our preliminary research we have looked at the system as it effects employees of the Commonwealth. There are three reasons for this approach. The first is, that as the largest

public employer in the state, the Commonwealth can be considered to have a greater stake in the outcome of its compensation claims. The second is that it is the only public employer in the Commonwealth upon which the law is compulsory. Finally, as part of the reform process there were a number of changes implemented by the legislature that impact directly on the state system.

The agency which currently acts as the insurer for state employees is PERA, which in addition to its responsibility for handling workers' compensation claims for all employees of the Commonwealth also administers the retirement system. The state has appeared in the past to have interpreted the law to conform to a definition of a compensable injury that involves the loss of work days, not calendar days. As an example, in a report to the Massachusetts Budget Bureau in 1984, there are a number of references to the fact that an employee must miss six or more days of work before the employee is eligible to receive compensation.[97] At the time that this report was researched and written, the statute called for compensation to begin after the sixth day of disability. In his treatise on workers' compensation published in 1981, Laurence Locke defines the eligibility period for entitlement to compensation as being six calendar days, not work days.[98] While there is no case law cited to support this proposition, the author is generally recognized as one of the most preeminent attorneys who practiced in the area of workers' compensation in Massachusetts. Another source, published by the Legal Information Systems, Inc., in describing the changes made by the reform law, notes that the changes in §29 of the law refer to calendar days, not work days.[99] Subsequent to the amendments set forth in Chapter 572, there were cases decided by Administrative Judges in the Department of Industrial Accidents that support the ~~interpretation of Mr. Locke and the~~ Legal Information Systems, Inc.[100]

From the onset of the reform legislation, PERA advised agencies of their responsibility to file first reports after "5 lost days of work" and to contact the agency when a worker had five days of disability in order to ascertain eligibility for indemnity benefits. There has been a good deal of confusion in both the private and public sectors as to the application of the eligibility for indemnity benefits subsequent to the new law taking effect. This report was

written prior to the 1985 changes and despite the fact that the "assault pay" premiums of Chapter 30 §58 referred to calendar days. This provision provides full pay for state employees who are injured as a result of violence from inmates or patients. This section does call for eight calendar days of absence from employment for entitlement to the supplemental payments and at the time of its enactment (Chapter 602 of the Acts of 1955), the eligibility period for indemnity in §29 of Chapter 152 was also stated as "eight days".

At the time this report for the budget bureau was written, the employees who administered the workers' compensation claims for state employees were besieged with work and administrative tasks.[101] The report notes not only this, but the fact that at the time, the PERA was putting a good deal of its efforts into investigating the disability retirement system.[102] Despite the phrases used in the report to the budget bureau, at present it is our understanding that any confusion concerning this aspect of the law has been clarified. This issue has hopefully been put to rest by Chapter 691 of the Acts of 1987 which inserted into §29 of Chapter 152 the word "calendar" before the word "days".

## FORM OF INSURANCE

The law is very clear as to the obligations of private sector employers who are covered by the statute. Section 25A of the law states that **"in order to promote the health, safety and welfare of employees, every employer shall provide for the payment to his employees of the compensation provided for by this chapter in the following manner"**, either by obtaining coverage from an insurance carrier or by obtaining an annual license as a self-insurer. (emphasis added) In order to be licensed as a self-insurer, an employer must, in addition to other requirements, furnish a bond running to the Commonwealth, or securities, of at least one hundred thousand dollars and make arrangements satisfactory to the department for reinsurance to protect it from extraordinary losses. In addition, the law also empowers the department to revoke or refuse to renew any license because of the failure of a self-insurer to promptly make the payments provided for by the law.[103]

The 1985 reform law permitted employers to also take part in a self-insurance group that is issued a certificate of approval by the Commissioner of Insurance.[104] These sections establish a number of various criteria for each group that must be complied with in order to receive a certificate of approval.[105] To date, eight self-insurance groups have been licensed.

At the same time, the law excludes the application of these sections of the law, with the exception of self-insurance groups, from all of the public entities that are set forth in the law. This leads to the following possibilities. A private sector employer, required to come under the act must either obtain coverage from a carrier, or as a self-insurer, or as part of a self-insurance group. If either of the last two options is chosen, there are a number of checks and balances built into the system prior to allowing an employer to self or group self-insure. These checks include an analysis in order to ascertain that there are sufficient funds to pay losses, and in some cases, require an audit of the entity itself. The Commissioner of Insurance has full authority to license any insurance carrier in the Commonwealth of Massachusetts.

On the other hand, public employers are not mandated to provide coverage. The intention of the General Court to promote the health, safety and welfare of employees by requiring that all employers carry insurance of some kind obviously does not include public employees since public employers are not covered by these sections. While any public employer may seek coverage through group self-insurance, there are presently two licensed self-insurance groups for public entities in the state. The largest is the Massachusetts Interlocal Insurance Association, and that group insures political subdivisions (currently 213) exclusively. Also, at the present time there are only three public entities that have been licensed by the Department of Industrial Accidents as self-insurers.[106]

Since the public entities are not required to become licensed in order to provide the benefits under the law, nor are they required to obtain insurance, the section of the law which precludes a private sector self-insurer from engaging a service company to adjust its cases would appear not to cover the public sector.[107] The constitutionality of this section has been upheld by the courts.[108] The only sanction against a private sector self-insurer for violating this section of the law is to have their license revoked. Since there is no license to revoke, there is no penalty for any public employer who engages in this action. This is an additional difference that separates the public sector employer from the private sector employer.

The law itself seems to establish a distinction between self-insurers and public entities. The second sentence of §1(1) of the statute, as part of the definition for the term "insurer", ~~includes, wherever applicable in the law,~~ a "self-insurer, the Commonwealth and any county, city, town or district which has accepted the provisions of section sixty-nine of this chapter". This distinction however, appears to have been blurred by the Supreme Judicial Court of the Commonwealth. Prior to the amendment which enacted §25A of the law in 1943 (which allowed employers to become self-insurers) the Court appears to avoid referring to municipalities as self-insurers when identifying them in actions before the Court.[109] After the enactment of the changes in 1943, the Court often characterizes public entities as self-insurers, even though by statute they are not covered by that section of the law.[110] Since coverage of the self-insurer section does not apply to public entities,

the method for providing for payment of the benefits set forth by the law did not change. It would appear, however, that the semantic method for describing the process by which public employers came under the law did change.

A decision by the Reviewing Board of the Department of Industrial Accidents has looked at the application of the penalty provisions of M.G.L. Chapter 152 §7(2), which provides for the payment of a penalty of two times the average weekly wage in the state if an insurer fails to commence payment of the benefits under the act within 14 days of the receipt of the notice of injury. In Hepner's Case, 2 Mass Workers' Comp. Rep. 275 (1988) the Board rejected the Commonwealth's position that the compensation agent should be placed in the shoes of the employer and PERA should be construed to be the insurer. The Board stated that the law establishes that the workers' compensation agent at the work site is an agent of the state, which in this case is the insurer. The Board noted that the state has the same rights and obligations in proceedings at the agency as any insurer and therefore the employee was entitled to the penalty set forth in the law.

The Massachusetts Court of Appeals ruled on the matter in September of 1990. The decision rejected the Commonwealth's arguments that section 7(2) of Chapter 152 was inapplicable to it or that in this case the state was precluded from meeting the requirements of section 7. Hepner's Case, 29 Mass App Ct 208, 211, 212 (1990). The holding did state that it is the receipt by PERA, not the designated agent under section 75, which triggers the 14 day requirement under the law. id, at 214. In addition, the department has promulgated a rule which addresses the problem of public employers, which do not have insurance coverage with a carrier, meeting the timeliness requirements for payments under the law. These public employers are not able to get the actual payment to the injured employee within 14 days due to restrictions imposed upon them with respect to the payment of public monies. In these instances, all that is required is the delivery of an official notice to the appropriate authority for the issuance of the check within the timelines to the employee.[111]

## RISK MANAGEMENT

One of the theories that has always operated behind the premise of workers' compensation insurance is that through the use of such mechanisms as experience rating (which impacts on the level of premium an insured will pay based upon the cost of injuries which have occurred during previous policy periods, usually three), the necessary economic incentives to reduce the number of injuries through the implementation of safety and health procedures would be created.

There has been a good deal of anecdotal speculation as to the extent that risk management exists within the public sector. There is documentation and evidence from studies analyzing the private sector which outline the beneficial effects of risk management for decreasing the workers' compensation costs of the employer. Data and studies indicating trends in the public sector are not as current or readily available as in the private sector. In part, the private insurance industry has the benefit of a national organization that can provide data on trends and classifications, the National Council on Compensation Insurance (NCCI).

The previous experience in Massachusetts at the state level appeared to follow other jurisdictions which showed an increase in work related injuries. A 1974 report by the Massachusetts Taxpayers Foundation showed a 56% increase in accident reports from 1966-1973. A New York report for 1970-1975 showed a gain of 71.4% in reported accidents.[112] A California study showed a 22% in the four years from 1964-65 to 1967-68.[113] A 1980 Massachusetts study of the characteristics of occupational injuries and illnesses for state employees showed that over 64% of lost time injuries were occurring in the Departments of Mental Health and Correction.[114]

Part of the reason for the increases in these studies may be attributed to certain occupations which are endemic to the public sector. Injury rates for employees in state facilities for mental health (state schools/hospitals) and corrections are generally higher than those of the system as a whole. Also, public safety personnel are often at a greater risk than other workers and these functions are not performed by the private sector so few, if any, comparisons

exist. Many jobs are inherently dangerous and result in injuries that often incapacitate for longer periods of disability. For example, a recent report for the state of Wisconsin outlined the potentially serious problems it is facing in administering its trust funds which provide disability benefits for protective workers. The system was running an accumulated deficit of 3.4 million dollars over a five year period and the number of new claims and amounts paid were five times greater than the projections when the program was started in 1982.[115] This is one reason why updated information is necessary in order to assess the impact that risk management could produce for a large public entity.

A series of articles concerning the state of Connecticut (The Hartford Courant, Sunday through Tuesday, December 18-20, 1988) outlined in detail many of the problems facing that state. The articles stated that while workers' compensation had grown over 3,500% over the last fifteen years, there was still no plans for future payments that would have to be met, nor were there any comprehensive and coordinated accident prevention and safety programs in place.[116] The articles noted that while a very high percentage of these injuries occur in areas where the private sector does not compete, such as corrections and mental retardation, and therefore cannot provide any legitimate comparisons. Conditions, such as prison overcrowding, often may exacerbate an already high accident rate. In light of the present conditions many states are not only finding it difficult to cope with their current liabilities, but their future payouts are also a source of serious concern. The impact that these unfunded liabilities will have on the ability of any political entity to raise funds, or borrow money, will have to be dealt with in the not too distant future.[117]

The articles note the need not only for greater data development, but also the meaningful use of that data in loss control and effective training in accident prevention. The authors appear to encourage the creation of resources and commitment to the monitoring of the workplace in order to explore creative mechanisms to lessen the impact of this potential problem.

In Massachusetts the PERA has provided seminars in case management and loss control/risk management for the last few years. Also, the Bureau of Human Resource Development offers courses, using the expertise of PERA and the Office of Employee Relations, to provide workshops on the facts and procedures for effectively managing industrial accident claims for state employees. Managers and agencies at the state level are being instructed in how to implement a case management system, which has generated greater interest since the charge back of workers' compensation costs became operational for state agencies in fiscal year 1989. This charge back system requires certain workers' compensation expenditures to be allocated from the existing budgetary allotment of an agency. A greater incentive for departmental managers therefore exists to take an active role in managing claims because the cost may no longer be borne totally by another agency of the state. The use of claims control from the onset of disability permit not only early intervention for medical control but will also hopefully encourage the establishment of a relationship with the injured employee that can possibly lead to alternate work programs. This aspect is one area that departmental managers may begin to explore in lieu of administrative mechanisms that may delay the filling of positions.

Identifying the need for evaluation for vocational rehabilitation in a timely fashion is generally agreed as providing benefits to both society in general, and the parties to a particular case. In the public sector, the law requires that the workers' compensation agents, appointed under §75 of the act, send to PERA preliminary reports on the injury within forty-eight hours and detailed reports within two weeks.[118] If the employee is disabled for three months, the report is sent to the Department of Industrial Accidents's Office of Education and Vocational Rehabilitation for its consideration and recommendations.[119] PERA's duties also include the authority to develop lists of qualified rehabilitation providers and to set up programs for the reemployment of injured workers which are to be available only to employees seeking reemployment.[120]

The state does have medical/vocational specialists available, at the option of the employee, which can be utilized as part of the rehabilitation process. Most cases are also reviewed by PERA within 120 days of disability in

order to ascertain if rehabilitation is appropriate. If referral to a private provider takes place, the appropriate documentation is submitted to the Office of Education and Vocational Rehabilitation at the Department of Industrial Accidents.

The introduction and maintenance of safety and health procedures for employers and employees alike should decrease the number and the corresponding costs of workplace injuries. Yet in the Commonwealth of Massachusetts, for public employees, there is no statutory protection, such as the federal Occupational Safety and Health Act (OSHA) in the private sector, overseeing the working conditions of public employees. It appears that absent language in the collective bargaining agreements or under coverage of the right to know statute, that it rests with PERA to gather information that will assist in injury prevention.[121] Prior to the establishment of PERA there were attempts to try and establish what appears to be a form of risk management within state administration.[122] Those attempts appear to have intended a narrower focus. Instead, in addition to the difficult and important management of the retirement system, PERA must also perform these diverse tasks.

The number of employees in the workers' compensation section of PERA has increased and the office systems have been computerized. In providing claims control from the onset of the injury through managerial staff and the use of adjusters to follow up once the employee receives benefits, the agency is attempting to provide efficient cost control for the state. The use of the charge back system and an increase of medical bills being filed have strained its resources. Efforts at reducing the backlog of unpaid medical bills had been successful but the receipt of 2,000 bills per week at present has created problems in this area. The department has stated that 94-98% of all cases received prior to October of 1988 were paid within the statutory timeframe. If the necessary resources were available the agency believes that it could make strides in reducing costs.

The only supervision in this area rests with the mandates of PERA. Yet its authority only exists over those appointed agents of the various municipalities and the

Commonwealth. There appears to be no other statutory requirement that may be construed as risk management, as that term is generally defined. The other public entities are left to their own devices to determine if they are to engage in any form of preventative action.

Finally, from a risk management perspective, there are examples of certain steps that can be initiated that reduce costs to the employer in the long run. For example, while not the principal goal of the workers' compensation system, lump summing of a claim is still extremely common in this state. The private sector insurer/employer pays out dollars in the short term in order to cut long term expenses. With the 1985 changes to the law, parties cannot lump sum future medical payments of the injured employee. However, there are instances when lump summing of a case is in the best interests of all parties. The problem that exists for the public employer is the political reality of justifying why a large payment should be appropriated for a specific individual. As a result, what may be settled for $50,000 now, is carried over from year to year in the budget at a cost of $15,000. If this goes on for more than 3 1/3 years, the costs savings will never be realized.

A possible indication of this may be borne out by recent analysis of the §65 trust funds completed in 1989. The report (prepared by Tillinghast, a Towers Perrin Company) noted that public employers continued to show a much higher level of cost of living adjustment (COLA) activity than private employers. The portion of the assessment ratio attributable to COLAs for public employers is ten times greater than private employers. This data may indicate that public employers do not lump sum their cases as frequently as private employers and consequently carry the case for a longer period of time.

## EXTENT OF COVERAGE IN THE PUBLIC SECTOR

While the theoretical application of the mandate of the law to only private employers may be debated, there is another area concerning the extent of coverage of public entities in the state that deserves some attention. As noted in Appendix E, the annual reports of the Department of Industrial Accidents provide data on the effective acceptance of the law by a number of public entities.

In order to update these statistics we mailed to all the municipalities (cities and towns) and 53 regional school committees, a short questionnaire that was geared to ascertain the extent of coverage in the public sector in 1988. A short cover letter and a copy of the questions was mailed, along with a self addressed stamped envelope. A total of 108 replies were received from respondents. The survey itself was designed to be short and to the point and was not intended to place a burden on the staff of the various public entities. We also inquired of the Department of Personnel Administration if a list of appointed agents from the Commonwealth was on file with the agency. They indicated that no such list was on file.

The results of the questionnaire are included as part of Appendix F. In addition to the results of the questionnaire, there were a number of telephone calls in response to the survey which have not been included in the answers but which deserve some comment. To the extent that certain public entities were unaware as to the date on which the act was accepted, it may reasonably be assumed that the purchase of a policy or acceptance in a self-insurance group is a reasonable indication of acceptance. This does not however, obviate the concern over the extent of coverage that any public employer may choose to extend, and consequently it doesn't define the limits of the public employer's potential liability.

The importance of exactly what was voted on by the public entity and when it took place can be of vital importance to the outcome of an industrial accident case. This premise has support in the Supreme Judicial Court decision of Seibolt v. Middlesex County, 366 Mass 411,414 (1974), where the Court cites the actual language of the County Commissioners' vote. In another matter, Goggin's

Case, 305 Mass 309,310 (1940), where a county which had accepted the act had not included inspectors, the issue that was litigated was whether a special act of the legislature authorizing payment of benefits was intended to confer coverage or to establish the amount due. Since the decision stated that the act was meant to determine the amount, it appears that to find coverage for a position, a vote must clearly indicate what is to be covered.

Each public employer should be cognizant of the extent of their liability and should any question exist, should seriously consider addressing the issue at the next town meeting in order to protect itself from the possible exposure of a lawsuit. One area that has created discussion is whether certain public officers are covered as employees under the act. The question of employment status has arisen in the past and decisions have indicated that absent a vote to include such positions that coverage is not available.[123] The decision to include positions by a political subdivision raises issues not only to the extent of coverage, but also as to the level of premium that may be charged if a political subdivision chooses to insure its potential liability with an insurance carrier.[124]

A 1988 decision by the Reviewing Board, Owens Case, 2 Mass Workers' Comp. Rep. 219 (1988), highlights this issue. In that case, the Mayor of a city had sent a written notice which included both the names and titles of thirty-three positions. The Board upheld the Administrative Judge in deciding that the designation by the Mayor was to incorporate positions, not individuals into the coverage of the act. The Board also held that once a position has been designated, coverage cannot depend upon political affiliation or be extinguished simply by a change in administration.

In another decision issued by the reviewing board the question of coverage for a public official was litigated. Judge's Case, Board No. 16678-84, 10/30/90. The employee was a gubernatorial appointee[125] to the Board of Registration of Hairdressers for the Commonwealth who incurred an injury while in the performance of her duties. An administrative judge denied the claim on the grounds that as a public official the employee was excluded from coverage under the act.

The majority opinion of the reviewing board did not overturn the finding that the employee was a public official, but reversed the decision denying benefits. The majority held that a review of the evidence in its totality required a finding that the claimant, although an appointee, was treated by the employer and performed her duties in exactly the same

manner as an employee in state service. The employee's conduct, the restrictions of the appointment statute, the statutory classification plan, and the expectations of the Commonwealth warranted the finding of an implied contract of hire. The majority rejected the reliance on the holding in Attorney General v. Tillinghast, 203 Mass 39 (1909), which established criteria used to determine whether a person was an employee or a public official, which was issued prior to the enactment of the statute which provided workers' compensation benefits to state employees.

In an equally compelling dissent it was stated that it was an antithetical result under either chapter 152 or case law to hold that a claimant is both an appointed official and an employee. In analyzing the criteria set forth in Tillinghast the claimant was an office holder, not an employee. The powers and duties of the members of the Board of Registration of Hairdressers entrusted them with a significant portion of sovereign authority. The dissent also noted the definition of employee under Massachusetts General Law chapter 150E (the public employee collective bargaining law) as seeming to exclude appointed officials from the definition of employee. However case law has determined that such employees are in fact a subset of managerial employees and are only excluded from the coverage of the law if the statutory requirements are met.[126] In addition, the statutory definition under the collective bargaining statute focuses on the responsibility of the position not the title,[127] and is not determined by the fact that an appointment is made by the executive branch of government.[128] This case is currently on appeal to the Appeals Court.

A final decision in the appellate courts should resolve the issue as to if a gubernatorial appointment, whether an administrative judge at the DIA, a sitting justice in the trial court, or the head of a state commission, is covered for work related injuries. It is unknown how many of these individuals have been informed that the Commonwealth does not consider these positions to be covered under chapter 152 for work related injuries.

Response to the questionnaire from the cities and towns was one in four (25%), for a total of 88. Of those responses, 66 indicated that the law had been accepted by the municipality, which amounts to 75% of the respondents. Twenty-two responses did not answer the question in the affirmative. Of those at least 13, or 59%, had accepted the act during the 1913-1915 elections (See Appendix E). Four responses were consistent with the results of their elections on non-acceptance. In addition, from information received from PERA, another 4 of those who indicated non-acceptance, may have accepted the law and have included its employees within its coverage. Two of those responses which have indicated non-acceptance have had cases at the DIA during the

last few years. During those elections, (Appendix E) 319 municipalities voted on whether they would accept Chapter 807 of the Acts of 1913. The results show that during those elections, 279 cities/towns voted in the affirmative, which is equal to 87.5% of those voting on the referendum. While these totals include four towns which no longer exist,[129] the vote for these towns was divided equally on the question and do not dramatically alter the percentages. If these percentages are compared, the only conclusion is either that the record keeping is less than accurate, or a number of towns have rescinded acceptance. However, in none of our questionnaires did any response indicate positively that rescission had ever taken place.

Over one-third of those responding (37%), who indicated acceptance of the law, did not indicate that they knew when it was accepted. The primary method of providing insurance is through group self-insurance (44%), followed by 30% of the public entities which use an insurance carrier. Only 21% decided to provide coverage themselves, and as a rule, these tended to be the larger cities which responded to our survey. The number of those using group self-insurance indicates that the changes brought about by chapter 572 of the Acts of 1985 to permit group self-insurance, have opened up an area that would appear to be beneficial for the public sector.

The response rate for the regional school systems was far greater than that for the municipalities. Twenty responded, 38%, and of those, 85% (17) indicated that the law had been accepted. Once again, no one indicated that the statute had ever been rescinded and each of those accepting the act provided coverage with an insurance carrier. Only 18% of those who responded that the act had been accepted knew when it had taken place. Three of the systems indicated that the acceptance of the act had not taken place. In addition, 3 of the 88 responses by the municipalities indicated that teachers were not covered. These responses indicate that, of those employees eligible for coverage, teachers appear to be excluded from coverage more than other employees.

By way of comparison, there is some information of the number of political subdivisions insured with an insurance carrier in 1967.[130] At that time 6 of the 14 counties and 276 (88.4%) of the 312 towns (at that time, there are now 311) had insurance coverage. Insurance coverage for all employees was purchased by 14 of the 39 cities (currently 40), while 2 insured some of the employees. There were 59 regional/vocational schools, of which 42 were operational at that time. Carriers wrote policies covering all employees for 38, while 3 were partially insured.

Another area of concern addressed by both the questionnaire and some of the telephone inquiries is that there appears to be limited knowledge of both the statute itself and the ramifications of non-acceptance. A number of questions were raised concerning the extent of the law and its application to the public entity. While many potential theories may be raised, this aspect is discussed at greater length in the following pages.

It would appear that the need for a greater availability of educational materials could eliminate some of this confusion, especially for some of the smaller communities whose dedicated and hard working officials often put in long hours, for free, and get little reward for their efforts. It is conceivable that if their coverage is limited, or if no knowledge that there is workers' compensation coverage exists, that there is probably little risk management taking place to curtail these potential costs. As noted earlier, two of those responses to our survey indicated that the public employer had not accepted the law, yet in the last few years each has had a case decided by the Reviewing Board. While this raises questions as to the accuracy of those who have indicated that they have not accepted the act, it provides additional justification for ensuring that the intent of the law is carried out.

The impact on the public sector, as a part of the overall jurisdiction of the act, is significant. Using the figures from the 1987 Employment and Wages, State Summary, published in October of 1988 by the Division of Employment Security, a monthly combined average of 319,985 state and local employees were potentially under the jurisdiction of Chapter 152. This is 11% of the total average number of employees in the state for that year and accounts for a payroll of over 7 billion dollars. Clearly, this is an integral part of the Commonwealth's economy and in light of the fiscal responsibility that the public sector has, it is essential that mechanisms exist for the protection of all parties.

## NON ACCEPTANCE OF THE ACT

In the Commonwealth it is clear that cities and towns are divisions of the state which have been established in the public interest.[131] As such, much of the authority for each of the municipalities emanates from the General Court. As set forth earlier, one of the examples of the exercise of that authority, is the empowerment that enables the various counties, cities, towns, and districts to vote to accept the provisions of Chapter 807 of the Acts of 1913, or §69 of Chapter 152. This method of legislation which permits the local entity to decide whether such a law will be accepted, and therefore be applicable to that political subdivision, is authorized by §8 of article 89 of the amendments to the Massachusetts Constitution (Home Rule Amendment). In assessing our research into this aspect of the law, far more questions were raised than were answered and it is clear that the legal ramifications of this aspect of the law requires additional research.

Upon acceptance of the act, the potential liabilities and responsibilities of the public employer are clear. What is not clear is the extent of potential liability for a municipal employer if the law is not accepted. The statute requires absolutely nothing, and logically so, from any public employer which has not voted pursuant to the law, to come under the act. The effect of non acceptance does raise some issues which the law does not specifically address.

The statute was initially elective as to all private employers in the state. In an effort to provide the incentive to elect to come under the act, the first section of Chapter 751 of the Acts of 1911 stated:

> In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:
>
> 1. That the employee was negligent;
> 2. That the injury was caused by the negligence of a fellow employee;
> 3. That the employee had assumed the risk of injury.

Section 3 (later the basis for §67 of Chapter 152) of that act stated that the above section would not apply to employers who chose to come under the act. This section was later codified as §66 of the act and the loss of the fourth defense was added in 1943, when the legislature began the process of enacting a compulsory statute. This last defense does not apply to employers of seasonal or casual or part-time domestic servants, which have a right of election under §1(4) of the law, but it makes no mention of precluding its use against a political subdivision, which has a right of election under §69 of the act.

The intent of language has always been clear. If an employer did not come under the law, then in a tort suit the employer would be barred from raising the enumerated defenses to the plaintiff's suit. In addition, §68 excludes the application of the Employers' Liability Act (Chapter 153) and the Wrongful Death Statute (Chapter 229) to certain public employees who are subject to §'s 69-75, and who are entitled to benefits under the act. Under the law, political subdivisions are, whenever applicable, insurers [§1(7)], and are not an insured person or a self-insurer. If so, does that mean that §66 applies to actions to recover damages under the Employers' Liability Act or the Wrongful Death Statute, each of which is clearly applicable to political subdivisions which do not come under §69-75? It would appear that as long as employees are not entitled to the benefits of the law, the legal rights set forth by these statutes would be applicable and since there could be actions to recover damages, under §66, the loss of defenses would apply.

What can create additional confusion are §'s 71 and 72 of Chapter 152. In that regard, it is helpful to review the genesis for these two sections as they exist today. Section 71 currently states as follows:

> "Except as provided in the following section, such county, city town or district shall not be liable in any action for a personal injury sustained by a laborer, workman, or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury"

It is based on the last sentence of §3 of Chapter 807 of the Acts of 1913 which stated as follows:

> "Except as provided in section four, a county, city, town or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury."

Whether the deletion of the phrase "which accepts the provisions of this act" was meant to limit rights of employees is unclear. This raises a question , and possibly an incongruous result, as to whether the general court sought to limit liability for all political subdivisions, not just those which had elected to accept the act.

This next section should also be viewed from a historical perspective. The current language in §72 states as follows:

> "A laborer, workman or mechanic entering the service of such county, city town or district who would, if injured, have a right of action against the county, city, town or district by law, may claim or waive his right of action as provided in section twenty-four, and shall be deemed to have waived such right of action unless he claims it."

Section 4 of Chapter 807 of the Acts of 1913 stated, in pertinent part, as follows:

> "A laborer, workman or mechanic entering or remaining in the service of a county, city, town or district, who would, if injured, have a right of action against the county, city, town or district by existing law, may, if the county, city, town or district has accepted the provisions of this act, before he enters its service, or accepts them afterward, claim or waive his right of action as provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it."

NON ACCEPTANCE OF THE ACT

While §24 as noted in §72 is the equivalent of §5 of Part I of Chapter 751, each makes a reference to the waiver of an employee's common law right. Such a waiver by an employee of his/her right of action at common law would preclude that worker from suing. Since a public employee would potentially have no such common law right, (as a result of sovereign immunity) it may be reasonable to interpret the legislative intent as referring to the process, not the substance. In this way a public employee could waive his/her right to sue under whichever statute would be applicable.

What has been deleted raises some interesting questions. The initial language encompassed employees "entering or remaining". The current section only deals with employees beginning service. While this presents no possibility of hardship for employees of political subdivisions which are under the act, as it is equivalent to §24, it is unclear if current employees of a public employer electing in the future could invoke this section. While the deletion of the language limiting the section to political subdivisions which have accepted the act may be internally consistent, the deletion of the phrase "or accepts them afterward" creates additional confusion.

Another change concerns the deletion of the term "existing" before "law". The current language can be construed as encompassing broader rights, although it is unclear as to what they might be beyond the existing statutory actions. The deletion was effective eight years after the initial enactment and we have been unable to uncover any developments during those years to warrant the change.

We have been unable to find any case law which stands for the proposition that an employee who is injured would have a common law cause of action against the public employer. This is due to the fact that it would appear that there is no liability for tort actions by public employees against public employers as a result of the doctrine of sovereign immunity.[132] The Supreme Judicial Court has stated that there is no cause of action for a plaintiff (wife of a deceased special police officer) against a town for alleged tortious conduct.[133] It has also held that a release to the Commonwealth did not bar a claim against one of several joint tortfeasors because for the release to act as a bar, the

plaintiff would have to be able to maintain a suit and in that case, no civil action could be brought against the state for the alleged injury.[134]

Although it has long been clear that a public municipality can sue and be sued[135], there was no common law right of action in Massachusetts for a public employee to sue a public employer for injuries which arose out of or in the course of employment. In general, neither the state nor any city or town is liable for the negligence of officers or employees where they are in the performance of a strictly public function, from which there is no corporate advantage or profit, and no enforced contribution from individuals who benefit, unless there is a law to the contrary.[136] In addition, the abrogation of the doctrine of governmental immunity simply removed the defense of immunity in certain tort actions against the state and the cities and towns, but it did not create any new theory of liability since these actions are governed by the same principles as those between private parties.[137]

Court decisions clearly held that no private action for neglect or nonperformance of duty could be maintained against a municipal employer unless a statute authorized such a suit.[138] One of the legislative mechanisms for eliminating the harshness, time and expense of a common law action was the enactment of an Employers' Liability Act.[139] Employees did not have a private right of action for negligence against a public employer unless a statute specifically authorized such a suit.[140] The law does not remove any common law rights which an employee may have,[141] although the Court has stated that the employee is not entitled to receive a verdict under both the statute and a tort suit, but rather must elect which remedy he/she chooses to opt for.[142]

This statute has been held by the Supreme Judicial Court to be applicable to cities and towns.[143] Under the law the employer is liable for its negligence and that of its superintendents. Recovery is not allowed if the employee had knowledge of the possible danger and failed to report it to the employer. If the defect is brought to the employer's attention, the employee will not be deemed to have assumed the risk which lead to her/his injury. Written notice of the injury must be sent within 60 days and suit brought within two

years with a cap of $4,000 on the limit of damages that can be awarded. Employers may insure against their possible liability under the law.

The other avenue that has traditionally been available to an injured public employee's survivors has been to file an action under the Wrongful Death Act.[144] A suit may be brought by the estate of the deceased within three years from the death of the injured party. In general, there is no minimum or maximum level of possible recovery (§2 of the law), although the statute does set forth the specific parties that are entitled to recover (§1 of the law). However, when an employee is not covered by the Workers' Compensation Act and is killed as a result of the employer's or a supervisor's, negligence then a spouse or other dependent has a cause of action against the employer (§2B of the law). The plaintiff must establish all of the elements of a negligence action: that a duty is owed; a breach of that duty has taken place; that a causal relationship exists between the breach of the duty and the plaintiff's death and that damages should be awarded.[145] The moving party must also show that the employee was in the employer's service when the injury occurred and basically, bring the cause of action within the Employers' Liability Act and its 60 day notice requirement before commencing the suit.[146] Damages are assessed in accordance with the employer's culpability but, unlike under §2 of the act, are limited to a maximum of $20,000.[147]

In terms of present liability for tort actions, it would appear that the Massachusetts Tort Claims Act might apply to injuries received by a public employee where the public employer has not elected to come under the act.[148] Chapter 258 of the general laws was enacted in 1978 and creates liability in public employers for, amongst other actions, personal injury or death caused by the negligent act of any public employee while acting in the scope of her/his employment.[149] This enactment expressly abrogates the defense of sovereign immunity for a public entity.[150] It has not been interpreted to create liability in municipal officers for injuries received by an employee (police officer) during a period for which the employee was paid and performing duties consistent with his job function.[151] While this law was passed to address a myriad of possible actions for damages against public entities, there is no specific statutory

exclusion that would preclude it from being applicable to personal injury actions against public employers who have not elected to come under the act.

While the law establishes a statutory right of action for possible tort actions, it does present a series of procedural elements that differ dramatically from the Workers' Compensation Act. The law caps the potential liability of the public employer at $100,000.[152] A suit cannot be brought unless a written claim is presented to the public employer within two years of the incident which allegedly caused the injury.[153] If no denial is issued by the public employer, or resolution to the claim occurs within six months of receipt of the written notice, the matter is considered denied and the plaintiff can bring suit, as long as the action is brought within three years of the cause of action accruing.[154]

The application of the time frames envisioned by this law are far longer than those of the compensation act. Its focus is to provide public entities with notice of possible law suits and permit resolution of those claims before trial. It clearly is not synonymous with the intent of the Workers' Compensation Act, which is to provide expeditious relief for work related injuries. On the other hand, a successful recovery may exceed in damages that which an employee would be entitled to under the administrative Workers' Compensation Act. In addition, litigation costs would generally be higher in a law suit. While the factor of timeliness weighs heavily against the employee, the costs and uncertain liability can present problems for the public employer. This statute does appear to finally provide employees of those public employers who have not accepted the act the same opportunity that private sector employees have been able to avail themselves of for over a century, and that is to recover in tort in certain instances.

## WHAT IS ACCEPTED?

There are two pieces of legislation involved. One is Chapter 807 of the Acts of 1913 (See Appendix A). This may have been voted on during the initial years after its passage (See Appendix F). There is nothing in the statute that precludes a vote on this law now. A strict reading of the law would appear to mandate that a county or a city can only vote to accept this section, Chapter 807 of the Acts of 1913 (see sentences 1 and 5 of §69 and §74A and §86) and not §69 itself.

The other method of accepting the act is an affirmative vote by a town or a district to accept §69 of Chapter 152 (see sentences 1 and 5 of §69 and §74A and §86). In each instance the enabling legislation permits the acceptance or rejection to be dealt with through the ballot process. However, it is unclear as to whether an initial acceptance incorporates subsequent amendments.

If it was the initial act that was accepted (Chapter 807), and since that was subsequently repealed and codified as §69 of Chapter 152, is the extent of the political subdivision's acceptance limited to the specific language of Chapter 807 of the Acts of 1913? A number of communities have voted to accept the subsequent amendments to §69 as the definition of employee expanded. Both the Supreme Court (Seiboldt v. Middlesex County) and the Reviewing Board (Owens Case) have noted the time of the initial acceptance of the act when certain amendments were subsequently adopted. In each case, the initial act had been accepted years before. The specific reference to the subsequent acceptance must have been relevant to the scope of acceptance because there would be no need for such a finding if the initial acceptance incorporated all later amendments.

For example, in Paccia's Case, 4 Mass App. Ct. 830,831 (1976), in holding that section (28) was applicable to a city, the Appeals Court specifically raised the issue that the essence of the first sentence of §28 of the law, concerning serious and willful misconduct, was in existence at the time of the city's acceptance. This raises the question that if this language had not been in existence, but added by a subsequent amendment, whether the section would have

applied. In another case, Tracy v. Cambridge Junior College, 364 Mass 367, 374 (1973), the Court provides background on the evolution of §69. It held that successive amendments have redefined the terms and, in so doing, broadened the possible options available to political subdivisions. This at least infers that the subsequent amendments may have to be accepted. If so, it may be that what is not accepted is as important as what is accepted.

The issue of whether subsequent acceptance is necessary may depend on the form of the amending legislation. Where the General Court repealed a statute and enacted another in its place requiring acceptance, the Supreme Judicial Court considered the changes to be drastic enough to mandate a new acceptance.[155] In considering the definition of the phrase "currently in effect", the Court stated that it incorporated subsequent changes by the legislature and once accepted by the public entity, could not be rescinded without specific authorization.[156] If the amendment was not germane to the subject of the original it would tend to require a fresh acceptance.[157] However, the Supreme Court has implied that acceptance of the later acts is relevant when it stated in Crowley's Case, 223 Mass 288, 290 (1916),

> "While not disclosed by the record, we assume that the city has accepted the provision of St. 913, c.807, so extending St. 1911 c.751 , and the acts in amendment thereof as to include workmen, laborers and mechanics in the service of the Commonwealth, a county, city, or town, or district having the power of taxation."

Whether the additional amendments to the statute have to be accepted in order to ascertain a political subdivision's extent of coverage is unclear.

Another potential concern which exists in terms of acceptance centers on the method chosen by the political subdivision to provide benefits under the act. The reason behind this is that the opinions for over seventy years have stated that when insurance is provided under the act, it applies to all employees of the employer and there is no reason for excepting employees by their division into departments.[158] These opinions appear to place acceptance and insurance coverage in a different light than acceptance, and

the choice to not purchase coverage with an insurance carrier. The holdings imply that the former must encompass more than the latter, placing less impact on what exactly is accepted if insurance coverage is purchased.

Another aspect that does not appear to have been addressed is whether the extent of acceptance could be a factor in an action seeking recovery under the Doctrine of Common Employment. The Commonwealth has had the Doctrine of Common Employment applied to it.[159] While the state must (emphasis ours) pay compensation, other public entities are not under such a mandate. All public entities which accept the act are defined as insurers under §1(7). Whether a political subdivision can be an "insured person" or a common employer was specifically not answered by the Supreme Court.[160]

In fact, a concurring opinion of the Court stated that a political subdivision is not an insured person or a common employer under the law and is not entitled to immunity from tort actions.[161] While the Court's rejection of the premise that the state was a common employer, and therefore subject to potential liability of uninsured employers, is somewhat moot as a result of the establishment of the §65 Trust Fund, it is possible that the extent of coverage could possibly impact on this holding. Finally, under §68 of the law, the Employers' Liability Act and the Wrongful Death Act do not apply to political subdivisions which are subject to Chapter 152. The converse of this would be that for political subdivisions not under the act, these laws are applicable. Although it is not specifically addressed it would appear logical that if the political subdivision has accepted the law, but chosen not to cover certain workers, that these sections would apply.

Section 66 does not apply to insured persons or self-insurers, but the case law indicates that political subdivisions are neither, but rather are considered insurers. If so, it is plausible that the loss of defenses set forth in §66 would apply to political subdivisions under the Employers' Liability Act and the Wrongful Death Act. In fact, §66 does not reference common law rights, as does §24, so theoretically the loss of defenses may apply for either of these actions, or any other action for damages for personal injury, such as a suit under the Tort Claims Act. There is no case law we have been able to find on these issues, but it may well be that a public employer loses defenses in certain actions if it has not elected to come under the act.

# RECOMMENDATIONS

## GENERAL RECOMMENDATIONS

In terms of overall public policy, thought should be given to trying to arrange for a method of phrasing these sections of the law which, while not altering or amending the substantive rights of any party, attempts to clarify the intent of the law. For example the first and fifth sentence of §69 seems to state that a county or city can only come under the act by acceptance of Chapter 807 of the Acts of 1913. A town or district can accept that statute, or §69 of Chapter 152. Section 86 of Chapter 152, which was added in 1982, mirrors this language but, in terms of towns or districts, states "has accepted or accepts the provisions of section 69". This seems to imply future acceptances only for towns and districts, but not for cities or counties. This may be due to the fact that Chapter 807 of the Acts of 1913 was repealed as of December 31, 1920.

In addition, there have been numerous amendments (at least nineteen) to §69 of the act. It would appear from rulings by the Supreme Judicial Court that once accepted, unless there is an indication in the law that such acceptance can be revoked, a valid acceptance makes the statute operative until repealed or amended.[162] Once a condition precedent has been accomplished, change can only take place by an act of legislation. Once an act has been accepted there is no power to rescind that acceptance where there is no express authorization to rescind, and the law is therefore operative until the legislature acts.[163]

The rescission of laws accepted by communities is governed by M.G.L. c. 4 §4B. Laws may be rescinded three years after acceptance, but not in situations where any law authorizes, but does not require, acceptance by the municipality in order to act [see M.G.L. c.4 §4B(b)]. This would appear to exclude c. 152 which only authorizes acceptance rather than mandating it. Some statutes clearly delineate the method of both acceptance and revocation.[164] The Supreme Judicial Court has examined statutes that do not provide for revocation or rescission and held that a political subdivision is bound by subsequent changes when there is no provision for a separate acceptance of the law.[165] It is unclear how this issue would be applied to chapter 152 §69 for subsequent amendments, such as Chapter 401 of the Acts of 1966.

However, §65(11) of Chapter 152 appears to provide municipalities with the authority to rescind, although we have been unable to discover any public employer which has done so. That section states, in pertinent part, "Nothing in this law

shall be construed to prohibit the rights of any political subdivision of the Commonwealth to rescind acceptance of this chapter pursuant to §69; provided, however, that any such rescinding political subdivision shall be deemed to be an uninsured person and shall be subject to the provisions of §66", (loss of defenses). It is unclear if "nothing is to be construed" is the equivalent of express authorization, or that it just states that the law does not bar rescission.

If §66 does not apply, does this mean that the loss of defenses exists in an action under the Employers' Liability Act or the Tort Claims Act? Section 66 is usually interpreted to refer to common law actions, yet it would appear that there never has been any common law right of action against a political subdivision. Also, this section would put those political subdivisions which accept, then reject, at a greater disadvantage than those which have never accepted.

In any event, this language should be clarified. In addition an accurate data base which includes if the act has been accepted, when it was accomplished, which positions are covered, etc., is essential to any future analysis of coverage in the public sector. It will be much easier to study claims processing problems in the public sector when we know who is covered by the law. For example, a study of late first reports filed with the Department over the latter part of FY '88 indicates the public sector was late approximately 7.5% of the total. If a comparison is made to the estimated percentage of public employees in the state (11%) the late report percentage appears to indicate an understanding of the statutory requirements. However, since all public employees are not covered, these figures can only improve, in comparison to the private sector. Until one knows where to begin in terms of systemic analysis, it is difficult to draw any conclusions from the current experience.

## Compulsory Act for Public Entities

In assessing the advantages and disadvantages that exist for both public employees and public employers, it is difficult to ignore the fact that the public policy of the Commonwealth has been, for many years, one which seeks to redress the injuries suffered by employees in the course of their employment through the administrative agency empowered to adjudicate claims and complaints. The fact that the public sector itself is immune from this stated public policy raises questions concerning the example that public employers should, perhaps, set for their private sector counterparts. This issue is not one that has recently come to light. Fifty years ago a Special Recess Commission Report (minority report), in urging the adoption of a compulsory act noted the anomaly of the situation for political subdivisions. The report noted:

> "The Commonwealth of Massachusetts has been under the act since 1913, but the cities and towns have an option whether to come under the act or not. Many cities and towns have voluntarily come under the act but others have stayed out. There is no reason why all cities and towns should not come under the act. We see no reason why an employee of a private employer should be entitled to the benefits of compensation act entitled to it, simply because the city or town does not see fit to carry coverage. As cities and towns can carry their own coverage and not go to private insurance carriers, there is a special reason why cities and towns would be compelled to pay their injured workmen out of funds set aside for this special purpose."[166]

Nothing has changed since that report.

In light of the fiscal constraints which face the public sector today, it would not be advisable to mandate that public employers provide coverage. It would appear that Proposition $2\frac{1}{2}$[167] might require the state to pick up the cost for public entities if it legislated such a mandate today. The Supreme Court has stated that the plain meaning of the local mandate provision of "Proposition $2\frac{1}{2}$" is that funding be provided at the same time that a mandate is imposed on cities and towns, even if the mandate imposes future obligations.[168] Also unknown is the legal possibility that public entities could reject the act prior to the state mandate in order to have the state pick up the cost. While it is conceivable that an interpretation of Article CXV of the Massachusetts Constitution, which operates to exclude statutes which regulate municipal benefits, could be construed as superseding local mandate requirements, it appears that additional legal research would be necessary prior to reaching any conclusion in this regard. In any event, it is not feasible to recommend such a change at this time and in light of Proposition $2\frac{1}{2}$, perhaps never.

It is important that each and every public entity examine the extent of its acceptance of the act. The problematic fiscal constraints of the present mandate that each public employer be cognizant of its potential liability because this may take on added importance when the future exposure of a public entity to a suit may threaten the fiscal solvency of a community.

On the other side of the coin, those employees whose employers have not elected to come under the act may face the hardship of bringing and prosecuting a suit. The other alternative for the public employee who is injured on the job is an accidental disability retirement. Since it appears that a number of political subdivisions have not brought their educational professionals under the coverage of the workers' compensation statute (the terms "laborers, workmen, mechanics, and nurses do not necessarily include teachers unless the accepting political subdivision has chosen to indicate inclusion in writing with the state), we looked at some of the information available from the Teachers Retirement Board[169] to see what differences might exist for uncovered teachers. Membership is mandatory for all educational personnel who meet the eligibility requirements. Full time personnel begin membership immediately, while part-time (at least halftime) and substitutes have a six month waiting period. Contribution is dependent upon a percentage of the person's salary and the date of entry into the system. Employees hired before 1/1/75 pay 5% while those hired after 1/1/84 pay 8% of their salary into the system.

Eligibility to receive accidental disability benefits is not predicated upon any age or service requirements. If the person is totally and permanently disabled and the disability is causally related to the person's employment, the Teachers Retirement Board is empowered to award disability benefits. The board must find, in accordance with the law, "that the member is substantially unable to perform the duties of his/her particular job; the disability is such that it is likely to be permanent; and finally that the disability is the natural and proximate result of the personal injury sustained or the hazard undergone".[170] Benefits, in addition to an annuity based upon personal contributions and $450 per year (plus a COLA) for dependent children, is equal to 72% of the injured person's yearly compensation on the date of injury.

The report of the accident must be filed within 90 days of the occurrence, by either the employee or the employer, notifying the Board of the cause and the nature of the injury. Employees may be eligible to receive workers' compensation while applying for benefits and continue to accrue service credits during such time. Any applicant must be examined by a regional medical panel, in order to certify disability, and all accidental disability applicants must

appear before the Retirement Board. After approval by the Retirement Board, the case must be approved by the Commissioner of PERA and if either the Board or PERA fails to approve the application, an appeal can be entered before the Contributory Retirement Appeal Board.

While at first glance, the fact that the person is entitled to 72% of their salary appears to be preferable than workers' compensation, there are a number of possible drawbacks. The accidental disability retirement does not include partial disability, or temporary total disability. The booklets we received do not address how medical benefits are handled or payed. There is no loss of function or disfigurement included. The system requires contribution for any applicant, so anyone entitled to benefits is partially paying for it themselves. The notice of the injury can be filed as much as 90 days after the injury. The statute does not cover all employees and there is a waiting period for some employees to be included under the system. The law requires that after approval by the Retirement Board that the application be approved by PERA and it can therefore take up to sixty days after the initial approval before the applicant receives his/her first check. Although the present compensation system has had its justified criticisms for delay, it would appear from the information that we received that a potential applicant can wait a fairly long period of time before receiving any payments. In terms of friction costs and ancillary costs for administering the system, it would be difficult to analyze which format provided benefits at the least cost to the public and the employer. The extent of risk management in this regard must be questioned, in light of the what appear to be different policy perspectives for the program.

The elective nature of the act was described by the Industrial Accident Board in its 1915 Annual Report as follows:

> " The evil effect of this system of discrimination is not only disastrous and unjust to the injured persons and their families, but to society in general. The instances of this injustice and inequality are many".[171]

In fact, immediately after the passage of the act the Industrial Accident Board, while raising concerns over the lax compliance with the act, began to advocate for a statute that would apply equally to all employers.[172] Since the Trust Fund doesn't consider any public employer to be an uninsured employer, [see 452 CMR 3.05 (8) which states under §65 (2)(e) that no public employer shall be considered uninsured] for the purpose of securing benefits, this places these workers in the same position as employees in the Commonwealth prior to 1911. This policy must be applied, inasmuch as the statute does not allow for the state to assess public employers for this type of benefit. Whether this policy is to be continued, whereby certain employees will not be entitled to the justice envisioned by the administration of a workers' compensation system, rests with the legislature.

In any event, it does place these workers in a second class position to their private sector counterparts who have the opportunity to seek redress for their injuries through the existing mechanisms. Section 25B would appear to allow any employer (at the employer's option) to bring workers under the act by providing the compensation set forth by the law. However, for a public employer, absent acceptance of the act, there would appear to be no administrative mechanism to enforce this section.

It is questionable as to whether this even covers public employers since by statute they are defined as insurers [§1 (7)]. Although the law does define them as insurers, there appears to be little doubt that political subdivisions are also employers. It would appear that by providing insurance under §1(6) public employers are "insured or insured persons", yet no direct exclusion from the definition of insured, unless the term "whenever applicable" refers to public employees, appears in §1(7). Finally, since municipal immunity may be capped, recovery may be limited by statute. The legislature should consider whether certain public employees are precluded from a full recovery, and if so, whether there should be an exemption from the immunity sections of Chapter 258.

Notice to Elected/Appointed Officials, Officers and Employees Without Coverage

Most employees believe that if they are injured at work, they will be covered by the law. While the law has certain notice requirements for coverage, or cancellation (§'s 21 & 22) it doesn't address notice of non-coverage. Prior to the act becoming compulsory notices were required to inform workers if there was coverage (See Appendix C).

If a political subdivision has not accepted the law or does not cover all employees, those employees should be informed of the fact prior to the time of hire. Some public employers may do this as a matter of course and if so this is a sound human resource policy. The Commonwealth should also inform those persons which it maintains are not currently covered by the act. While this issue is pending before the Appeals Court as a result of the reviewing board's decision in Judge's Case, noted earlier, it does not negate the fact that some appointees have accepted positions without being informed that the state does not believe the position is included under the act.

Whether such information will alter a employee's decision to take an appointed position is pure speculation but it may be a factor in deciding as to whether some form of long term disability insurance is necessary. At a minimum, informing employees that there is no coverage is good human resource policy and eliminates a potentially unwarranted surprise in the event of an unfortunate work related injury. While it is not the focus of this report, notification to other employees who may not be covered, such as real estate sales people or cab drivers which are not defined as employees under the law, may also be an appropriate topic for discussion if a notification requirement is considered.

## RECOMMENDATIONS FOR CHAPTER 152

### Section 1(4) - Paragraph 3

It may be easier for people reading the law to find out in the initial section that the law is elective for public employers. While this is certainly not a necessary change, it is probably simpler than having to read §25B or §69 in order to discover that the statute is elective.

### Section 21

It may be preferable to add "by group self-insurance", after insurer since some public employers are not statutorily an "insured person" (see §1(6)). This section might also state something similar to the following: "Any political subdivision which elects to accept this act and provide for the payment of benefits without insurance or group self-insurance shall give written or printed notice to all affected employees." Since a political subdivision is not required to cover all positions it may be preferable to have the definition be effective only for those positions so included.

### Section 22

The first sentence should have group self-insurance added. In addition, there should be a requirement that public employers, who do not have insurance coverage or group self-insurance, notify all employees if they are covered. This is particularly true if some classifications or positions have not been included. The second sentence should be construed to include both public and private employers even though political subdivisions are not included under the statutory definition in §1(5) for "employers" but rather under §1(7). If this is not clear, thought should be given to clarifying it.

Section 24

If public employees do not have any common law rights, the statute should make it clear that this section does not apply to public employees. In fact, if there are no common law rights it should be clear that public employees do not have the same right as private sector employee's in this regard and consequently this section has no applicability to public employees. Also since by definition, where applicable, political subdivisions and the state are defined as insurers (§1(7)) one would believe that the section doesn't alter any elective rights a public employee may possess.

This section of the law is best remembered as a result of the decision in Ferriter v Daniel O'Connell's Sons, Inc., 381 Mass 508, 413 NE2d 690 (1980) which concerned the application of a waiver on a private sector employee's spouse and dependents. There have been few cases concerning public employees which have analyzed this section.* In the case concerning the interpretation of the "injured on duty" statute for public safety employees, the Massachusetts Appeals Court held that a fellow employee was not immune from tort liability.[173] The Court reached its conclusion, in part, by reasoning that there was no analogous provision to §24 in Chapter 41 of their General Laws.[174] In noting the express immunities and waivers included in the Workers' Compensation Act, the decision notes the exclusive and comprehensive recovery provided by the law as a result of the abrogation of the employees' common law rights as a result of the quid pro quo set forth in §24.[175] In light of the fact that there is no common law right to be waived for a public employee, it is unclear what result this might create in a suit between co-workers in the public sector. In addition, it may be advantageous to provide for increased public awareness with respect to the notice requirements at the time of the contract for hire. This will not only assist parties in being cognizant of their present rights and obligations, but it may prevent confusion and concerns in the future.

Section 25B

The second sentence allows any employer to voluntarily bring an employee or employees, for whom coverage is not mandated, within the coverage of the act by providing for the payment of compensation. It is clear that if a political subdivision insures with a carrier, it must insure all of its employees. It cannot insure some, and not others. This rationale would not appear to apply to those public entities that do not insure with a carrier.

However this section, if a political subdivision is included in the generic term of "employer" and not just the term as defined in Chapter 152, would allow the political subdivision to possibly pick and choose which employee it would bring under the act. The potential for abuse in the application of this provision should be addressed.

Section 65 (11)

This section states that "Nothing in this section shall be construed to prohibit the rights of any political subdivision of the commonwealth to rescind acceptance of this chapter pursuant to section 69"... . While the section does not prohibit the rights to rescind, the decisions of the Supreme Judicial Court seem to indicate that there must be specific language permitting rescission. If this language meets the statutory requirements set forth in some of the Court's decisions, [see Brucato v. City of Lawrence, 338 Mass 612 (1959), McDonough v. Lowell, 350 Mass 214 (1966), Nugent v. Town of Wellesley, 9 Mass App. 202 (1980)] then it would appear that political subdivisions can rescind at present. However, if the rescinding employer loses its defenses, and a non-accepting employer does not, this places one of the two political subdivisions at a distinct disadvantage. If this in fact is the case, thought should be given to addressing this possible inequity.

The statute should be clarified if it was the intent of the legislature to permit rescission. If that is the intent, then we would suggest that §22 be amended to address the rescission of coverage by providing notice to affected employees of the political subdivision. If it was the intent to give political subdivisions the ability to rescind

acceptance, serious consideration should be forthcoming as to whether such a public employer should be the only public employer to lose its defenses.

Section 67

As noted earlier there is evidence that some public employers insured some, but not all, of their employees. The decision in Stoltz's Case, 325 Mass 692 (1950) does set some parameters for insurance coverage by public employers. This section states that the loss of defenses set out in §66 does not apply to "insured persons" or "self-insurers", both of which are defined in §1 (6) of the law. If this will preclude non-covered employees from using that section in an action against a public employer which may fit the statutory definition, it places such employees in a far different situation than their private sector counterparts. A a result, if this language could be construed as raising this scenario then the principles of equity may warrant consideration of a change.

Section 68

At a minimum, the language should be amended to conform with §69 and each and every other section of the statute which includes the definition of a public employee. While the inclusions of employees into the definitions "laborers, workmen, and mechanics" under §69 have been construed by the courts in a broad fashion[176], it is interesting to note that the phrase in §68 does not include nurses. It is clear that the intent is to limit remedies. The fact that the term has not been included, either in this section, or in subsequent sections, leaves open the possible argument under either of the two statutes mentioned.

In addition, the term "workmen" should be changed to "workers", not only in this section but in every other reference in the statute. Even prior to the change in the title of the act a few years ago, the Supreme Judicial Court had noted that the term was a more appropriate to use.[177]

Section 69 - Paragraph 1

Chapter 807 of the Acts of 1913 was repealed as of December 31, 1920. It is one of the statutes listed in Chapter 282 of the Mass General Laws which was repealed when the revised laws were codified into the general laws. A strict reading of the first sentence appears to limit acceptance by a city or county to this chapter. Since some of the information available indicates that some counties

believe that acceptance of the act has not taken place (despite Appendix A) the repeal of this chapter would appear to foreclose those entities from acceptance. It appears that the intent of the legislature was to allow a public employer to accept §69 and cities and counties should not be barred from that by a potentially narrow interpretation of the statute. It would also seem to limit acceptance to those political subdivisions which have the power of taxation. It is our understanding that counties and districts do not presently have such authority.

The same holds true for the fifth sentence. These two sentences also reference sections 78-90 inclusive of chapter one hundred eleven. Section 88A of chapter one hundred-eleven was repealed by §9 of Chapter 562 of the Acts of 1951 and §88B to 90 inclusive, were repealed by §1 of Chapter 608 of the Acts of 1961. Since these sections may later be used for legislative purposes foreign to the language in §69, it might be best to delete these references.

The last two sentences of the first paragraph of §69 should be amended after the term "mechanics', by adding the term "nurses". This will bring the last two sentences into line with the amendment of chapter 1059 of the Acts of 1971 which added the term to the first sentence of the paragraph. In addition, the scope of acceptance is no longer kept by the Department of Industrial Accidents. Since the information was transferred to PERA, the extent of any acceptance, set forth in writing, by a public employer should be filed there. It may be advisable to also have the information at the Department of Industrial Accidents. The term "division" in the last sentence of paragraph one should be changed to "department".

The last sentence limited the possible inclusion of elected or appointed officials to only cities or towns. It does not cover counties or districts. Unless there are policy reasons for this differentiation, it might provide additional continuity and conformity to give those persons the same rights as city and town employees.

Section 69A

The term "division" should be changed to "department".

Sections 71 and 72

These sections have been included together since they are directly entwined. At a minimum, each should be amended

to conform to the extent of coverage set out in §69. However, even though these sections were a part of the initial act back in 1913, it is unclear as to what they mean. To begin with, it is confusing to start any section with the phrase "Except as provided in the following section", inasmuch as the reader is looking to the exception before reaching the gist of the provision. Secondly, under §72, it speaks of a right of action by law, which can be claimed or waived, as provided in §24. If there is no common law right of action as a result of sovereign immunity, what can be waived or claimed? At another level, since these sections were a part of the initial legislation, did the legislature believe that there was some right of action that existed, such that it could be waived? Does the term by law refer to actions under Chapter 153, the Employers Liability Act?

These sections do not mention commonwealth employees. As employees of an employer which cannot elect, but which is mandated to come under the law, it would appear that if §24 applies for such workers, it would encompass the procedure set out in §24. This would result from the employee's possible lack of common law rights and whether the law of any other jurisdiction would apply to a political subdivision. Finally, §24 applies to employees who may waive their rights. The recent amendments to that section were included to offset the holding in so-called "Ferriter claims" and have been deemed effective as of December 10, 1985.[178] Could the spouse of a nurse (a title not listed in §72) file an action under the applicable law and not be barred by §24? Does it preclude all liability for injuries or just those "in the course of employment" and if so, how does this fit in with the definition for injuries which deals with "arising out of" in §26? Finally, it is assumed the term "such" refers to political entities which have elected to cover the employee who is choosing to waive a right of action to sue. It would not make sense for employees not covered, because a municipality has elected to not come under the act , to have to exercise such a waiver in order to sue. Since there is no notification requirement that there is no coverage the employee has no knowledge when he/she enters the service of the employer upon which to exercise their waiver.

Section 73A

The phrase "industrial accident board or a member thereof" should be changed to the "department of industrial accidents", as a result of the 1985 amendments. This would include a decision by the Reviewing Board, which the current language may not encompass.

Section 74

The last sentence of this section, which reads as follows:

> "For purposes of section sixty-nine to seventy-five, inclusive, all employees of welfare districts, organized under the provisions of section forty-four of chapter one hundred and seventeen, shall be deemed to be employees of such town as the district welfare commission shall determine, and if such town has provided for the payment of compensation required by this chapter, the said welfare district committee shall apportion the expenses of providing such compensation among the towns comprising the said welfare district."

should be deleted inasmuch as §44 of Chapter 117 was repealed by Chapter 908 of the Acts of 1971.

Section 74A

This last sentence of the first paragraph should be changed if §69, sentences one and five are changed.

Section 75

The section concerns the appointment of authorized workers' compensation agents of the various public entities which have elected to come under the act, but have not provided for insurance. The names of these individuals are supposed to be filed with a state agency for notice and supervision purposes. Under the old law, this was handled by the Division of Industrial Accidents, Public Employee Section. As noted above these employees were transferred to PERA. Chapter 572 of the Acts of 1985 did not change this section. Chapter 662 of the Acts of 1986, the corrective change bill, changed "division" to "department" in the second sentence, but not in the third sentence.

In either event, it is irrelevant since the Department of Industrial Accidents does not supervise any of the workers' compensation agents in the state. In view of the responses we received and the extent of information that is available with respect to the public sector it would be worthwhile for there to be some supervision in this area. In light of the fact that the employees who formerly performed

these functions have been transferred to PERA, it would appear to be consistent to have that agency continue in this regard. This may involve additional personnel and resources for the implementation of this recommendation, and in fact the number of employees in the workers' compensation section has increased.

However, both the reform bill and the charge back system have increased the workload and responsibilities of PERA. If sufficient staff and resources are available, greater control over workers' compensation costs and a decrease in the number of injuries may be realized. In light of the fact that the annual costs for workers' compensation increased by 125% from FY'85 ($13,699,336) to FY'88 ($30,777,331), this possibility has the potential for real savings in both fiscal and human terms. This figure is the fifth highest out of a 38 state survey conducted by the Hartford Courant for a series of articles written in 1988 on the status of the workers' compensation system for Connecticut state employees.[179] While initial figures do show an improvement in this area for FY'89, it is still an important element to be reviewed, especially in a climate where fiscal constraints may be inevitable. If the resources are not available, then consideration should be given to repealing this section.

While the recommendation of the Council would be to continue the intent of the law, it also believes that if the act cannot be fulfilled, then sections should be eliminated. The supervision of these agents can be a useful aspect of the statute, inasmuch as many are not full time risk managers, and do not have extensive experience in claims management. In the long run, this supervision may save the cities, towns, school districts and other public entities money. However, if it cannot be implemented, it places false hopes and illusions on the electorate and should therefore be deleted from the law. In addition, it appears that the list of Commonwealth agents is not on file with the personnel administrator as required by the statute. This aspect should be remedied so that the names are available.

There is no question that the state has serious fiscal constraints. However, a sound risk management policy can not only reduce costs, but return injured workers to active, productive employment much quicker. To do so, both PERA and the Attorney General (which defends the Commonwealth cases)

must be provided the necessary resources to operate efficiently and effectively. As an insurer and administrator for over 60,000 workers and many diverse clients, appropriate measures to provide the necessary resources may reduce long term expenditures.

Section 86

The term "division" should be changed to "department". In addition, should changes be made for sections 69 and 74A concerning the language of acceptance, it should be made here as well.

## RECOMMENDATIONS FOR OTHER STATUTORY CHANGES

### Massachusetts General Law, Chapter 6A, Section 32

The phrase "division of industrial accidents in the department of labor and industries" should be deleted and replaced by "department of industrial accidents".

### Massachusetts General Law, Chapter 7, Section 50

The first sentence after §(1) should be amended to delete "division of industrial accidents" and substitute "department of industrial accidents".

### Massachusetts General Law, Chapter 30, Section 58

There are no substantive recommendations for change, but the statute should be brought into conformity with the recent changes to Chapter 152. There are references to "workmen's compensation" and the "industrial accident board" that should be changed. It appears that the last line of the section is meant to be identical to §29 of Chapter 152, and if so, it should be amended accordingly.

### Massachusetts General Law, Chapter 40, Section 13C Establishment of Reserve Funds

In the last few years, legislation was introduced (House Bill 2032 of 1988) and (House Bill 3709 of 1989) that would have permitted, not mandated, that towns that have elected to directly pay the benefits set forth in the act, could establish reserve funds to pay workers' compensation claims. The Council supported these bills. It was signed into law as Chapter 455 of the Acts of 1989 on October 27, 1989 and amended by §97 of Chapter 177 of the Acts of 1990, which was effective August 17, 1990. With this mechanism, towns would be able to set aside reserves much like an insurer does, and would not be dependent upon funding each year to pay its legal obligations. Although this bill directs itself only towards towns, absent compelling financial reasons, it may also be appropriate for regional school committees, counties and other political subdivisions so situated to be permitted to do the same. This approach would require that the public

sector address the impact both of its short term and long term liabilities under the Workers' Compensation Act and allow them to make the necessary monetary allocations to account for those obligations.

Presently, cities or towns which have accepted Chapter 807 of the Acts of 1913 (have elected to come under the Workers' Compensation Law) and which have accepted §13A of M.G.L. Chapter 40 may appropriate, in any fiscal year, up to 1/20th of one percent of its equalized valuation for the purpose of paying compensation benefits. The equalized valuation, as defined in §1 of Massachusetts General Law, Chapter 44 is the aggregate property in a city or town subject to local taxation, as most recently reported by the Commissioner of Revenue to the General Court under the provisions of §10C of Chapter 58.

The Commissioner of Revenue determines and reports to the General Court the equalized valuation of each city and town. As of January 1, 1988, some examples of those figures and the maximum amount available under the law are:

| | Valuation | Amount Available |
|---|---|---|
| Belmont | 2,343,534,000 | 1,171,767 |
| Holyoke | 1,256,007,000 | 628,004 |
| Hudson | 955,802,000 | 477,901 |
| Newton | 8,599,177,000 | 4,299,589 |
| Ware | 281,814,000 | 140,907 |

The amounts in the right hand column are the maximum amounts that could be appropriated.

It is unclear if a town has not accepted Chapter 807 of the Acts of 1913, but §69 of Chapter 152 which the law does permit it to do, if this section would apply if §69 had been accepted by the town. This statute can also limit municipalities which have a low valuation. Nantucket valuation is approximately three times greater than Chelsea's and about 2½ times greater than Holyoke's. This limit has a greater impact on some urban areas than on some suburban districts, particularly since the larger cities are more likely to insure themselves. If there is less to spend, there is an even stronger urgency for risk management and claims review to take place.

Another example of this problem is noted at the state level as well. An article in the Boston Globe (State Struggles to Pay for Several Programs, Tuesday, April 4, 1989, page 18) noted that the Commonwealth had already run out of the funds necessary to pay its workers' compensation claims. A similar concern was addressed in February of 1990 as the account used to pay workers' compensation was reported as near empty. The costs for FY'90 was $56 million dollars, a 24% increase over FY'89.[180] In 1965 $1,322,000 was appropriated for workers' compensation payments while in FY'91 over $60 million was available.[181] In light of the requirements that payments be made in a timely fashion, this could open the state to increased costs if claimants seek the statutory penalties. As a result consideration should be given for other political entities to be able to establish reserve funds for workers' compensation, if such authority does not already exist.

Massachusetts General Law, Chapter 44, Section 31

Consideration should be given to changing the last sentence of paragraph one by deleting "industrial accident board" and replacing it with "department of industrial accidents". This will update the change added by Chapter 832 of the Acts of 1973.

Massachusetts General Law, Chapter 126, Section 18A

As initially enacted, by chapter 355 of the Acts of 1953, there was no mention of any number of days of absence that was to be applicable for injured on duty pay for employees of county jails. Section 58 of the Acts of 1955, which was enacted as chapter 602 of the Acts of 1955, did reference 8 calendar days for the duration of the absence, which was the definition for incapacity under § 29 of c. 152 at the time of the enactment. The existing language in this section was enacted by chapter 1002 of the Acts of 1977 and added the same language that was part of section 58 of chapter 30. At that time the definition of incapacity under §29 of c. 152 was 6 days. As a result it is unclear if the intent was to follow section 58 of chapter 30 or to establish separate criteria for injured on duty pay. If the intent was to make the time period the same as in section 58 consideration should be given to updating the section to conform with the current law, as is noted above in the recommendation for that section.

Chapter 639 of the Acts of 1950, as amended by Chapter 547 of the Acts of 1951, and Chapter 560 of the Acts of 1956. Section 11A-1st Sentence

The language should be amended to conform to the current statute by deleting the "chairman of the industrial accident board" and inserting in place thereof the "commissioner of the department of industrial accidents".

In paragraph 2, third sentence, the term "industrial accident board" should be deleted and replaced by "department of industrial accidents".

Fiscal Compliance

The statute established two trust funds which are funded by an assessment on private and public employers respectively. The solvency and administration of these funds, in light of the integral role that they play, is a serious matter of concern for all involved in the workers' compensation field. The amounts collected and expended by the Public Employer Trust Fund, according to the reports prepared by the Treasurer of the Commonwealth, showed the following for the last four fiscal years:

| | PUBLIC (1) | |
|---|---|---|
| | **FISCAL YEAR 1987** | **FISCAL YEAR 1988** |
| STARTING BALANCE | 0 | 541,465 |
| COLLECTIONS | 541,465 | 857,706 |
| TOTAL | 541,465 | 1,399,171 |
| EXPENDITURES | 0 | 1,364,992 |
| ENDING BALANCE | 541,645 | 34,179 |

| | **FISCAL YEAR 1989** | **FISCAL YEAR 1990** |
|---|---|---|
| STARTING BALANCE | 34,179 | 195,440 |
| COLLECTIONS | 1,050,742 | 3,351.648 |
| TOTAL | 1,084,921 | 3,547,088 |
| EXPENDITURES | 889,481 | 2,758,153 |
| ENDING BALANCE | 195,440 | 788,935 |

(1) This trust fund is utilized for Public Entities (the Commonwealth and its political subdivisions).

As of April of 1989, a total of $285,420 in unpaid public employer assessments for FY'88 was still outstanding. The range of unpaid assessments, for seven public employers, went from a low of $68.31 to a high of $259,722.71. Only two political subdivisions indicated non-acceptance of the act. The unpaid assessments amounted to over twenty-one percent of the total to be collected at that time, and if paid, would have been earning interest for the Trust Fund, which could have helped to alleviate any increase in assessment rates. As of October 30, 1990 the total amount of unpaid assessments for public employers for the four fiscal years 1987-1990 was $1,983,487.25. It is anticipated by the actuaries performing the FY'92 analysis of the §65 funds for the DIA that as of June 30, 1991 $3,540,709 of FY'91 assessments by the public trust fund will not have been paid. This amount is 52% of the FY'91 estimated budget.

Obviously this is a problem that should be addressed, especially in light of the fiscal problems which confront the public sector at this time. Fines for late assessments, as mandated in the law, have not been assessed against any employer. This is a result of both the extreme amount to be charged and confusion over how the calculation should be made. Such fines would be onerous on any public or private entity in a time of decreasing revenues. The fines, if issued, would under the law go into the Special Fund and potentially reduce assessments. Legislation has been proposed to address this issue and is currently before the legislature.

Increased awareness of fiscal liability may take on additional import if the Government Accounting Standards Board adopts certain proposed guidelines for risk management activities. Presently, political entities record current year workers' compensation costs. If such standards were adopted and implemented, it could require a recognition of unfunded liabilities. This in turn could have an impact on bond ratings and the ability of a political subdivision to borrow funds. In light of fiscal problems that currently exist, this is an area that should be watched closely.

A final aspect that might bear examination concerns payments from the Public Employer Trust Fund. Each of the trust funds seeks to spread the cost of these funds over all private and public employers respectively. Since there are fewer public employers, and a higher percentage of which do not have carriers, the possibility is greater that individual public employers may pay in far more, or less, than they receive. In times of fiscal crisis this may have a harsher impact on certain communities. There have been discussions that have centered on providing for political subdivisions that provide for the payment of benefits under the act to choose whether it should be liable for assessments and

consequently eligible for reimbursements. As long as the obligation to provide benefits remains, such as COLA's, this could give certain public entities a far greater control over their costs. It would also maintain the appropriate incentive to provide quality case management of industrial accidents as well as removing the potential that one political subdivision is subsidizing another.

It is unclear what impact this would have on the fund for those who do not choose to opt out of the assessment process. However any review of such an option must provide an acceptable and timely notification process for the department so that it can provide the assessment rates for all other employers in accordance with its statutory requirements. Proposed legislation is currently pending that would permit certain public employers to opt out of the assessment process.

## APPENDIX A

CHAPTER 807 OF THE ACTS OF 1913

SECTION I. The commonwealth shall and any county, city or town, or district having the power of taxation, may pay the compensation provided by Part II of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto to such laborers, workmen and mechanics employed by it as receive injuries arising out of and in the course of their employment or, in case of death resulting from any such injury, may pay compensation as provided in section six, seven and eight of said Part II, and in any amendments thereof, to the person thereto entitled.

SECTION 2. Procedure under this act and the jurisdiction of the industrial accident board shall be the same as under the provisions of said chapter seven hundred and fifty-one, and the commonwealth or a county, city, town or district which accepts the provisions of this act shall have the same rights in proceedings under said chapter as the association thereby created. The treasurer and receiver general, or the treasurer or office having similar duties of a county, city, town or district which accepts the provisions of this act, shall pay any compensation awarded for injury to any person in its employment upon proper vouchers without any further authority.

SECTION 3. Counties, cities, towns and districts having the power of taxation may accept the provisions of this act by vote of a majority of those legal voters who vote on the question of its acceptance at an annual meeting or election as hereinafter provided. In towns and districts which have an annual meeting of the legal voters this act shall be submitted for acceptance to the voters of the town or district at the next annual meeting after its passage. In cities, and in towns which do not have annual meetings this act shall be submitted to the voters at the next municipal election and in counties and in districts which do not have an annual meeting at the next state election after its passage. At every such election, and at every annual meeting where ballots are used the following question shall be printed on the ballot: "Shall chapter 807 of the acts of nineteen hundred and thirteen, being an act to provide for compensating laborers, workmen and mechanics for injuries sustained in public employment and to exempt from legal liability counties and municipal corporations which pay such compensation be accepted by the inhabitants of this (county, city, town water district, fire district, etc.) Yes__ No__

The vote shall be canvassed by the county commissioners, city council or commission, or selectmen, or in the case of a district, by the district commissioners or other governing board of the district. A notice stating the result of the vote shall be posted in the county court house, or city or town hall, or in the case of a district, in the public building where the employees of the district are paid. Except as provided in section four, a county, city, town or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city town or district or for death resulting from such injury.

SECTION 4. A laborer, workman or mechanic entering or remaining in the service of a county, city, town or district, who would if injured, have a right of action against the county, city, town or district by existing law, may if the county, city, town, or district has accepted the provisions of this act before he enters its service, or accepts them afterward, claim or waive his right of action as provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it. Section four of said Part I shall apply to actions by laborers, workmen or mechanics employed by a county, city, town or district which accepts the provisions of this act.

SECTION 5. Any person entitled to receive from the commonwealth or from the county, city, town or district the compensation provided by Part II of said chapter seven hundred and fifty-one, who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both. In case a person entitled to such compensation from the commonwealth or from a county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation, and any compensation received by him or paid by the commonwealth or by the county, city, town or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. Nor further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under this act.

SECTION 6. The act shall apply to laborers, workmen and mechanics in the service of the commonwealth of a county, city, town or district having the power of taxation, under any employment or contract of hire, express or implied, oral

or written, including those employed in work in performance of governmental duties as well as those employed in enterprises conducted for gain or profit. For the purpose of the act all laborers, workmen and mechanics paid by the commonwealth, under boards or commissions exercising powers within defined shall be deemed to be in the service of the commonwealth.

SECTION 7. The provisions of chapter seven hundred and fifty-one of the year nineteen hundred and eleven, and acts in amendment and in addition thereto shall not apply to any person other than laborers, workmen and mechanics employed by counties, cities, towns or districts having the power of taxation.

SECTION 8. This act shall take effect upon its passage.

# APPENDIX B

Examples of other States

## Wisconsin

Chapter 102 of the Wisconsin statutes

102.07 Employee defined. "Employee" as used in this chapter means:

1. Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or without the state. The state and any municipality may require a bond from a contractor to protect it against compensation to employees of such contractor or employees of a subcontractor under.

2. Any peace officer shall be considered an employee while engaged in the enforcement of peace or in the pursuit and capture of those charged with crime.

3. Nothing herein contained shall prevent municipalities from paying teachers, police officers, fire fighters and other employees full salaries during disability, nor interfere with any pension funds, nor prevent payment to teachers, police officers or fire fighters therefrom.

7. Every member of any volunteer fire company or fire department organized under chapter 213 or any legally organized rescue squad shall be deemed an employee of such company, department or squad. If such company, department or squad has not insured its liability for compensation to its employees, the municipality or county within which such company, department or squad was organized shall be liable for such compensation.

12. A student in a vocational, technical and adult education district while, as part of a training program, he or she is engaged in performing services for which a school organization under chapter 38 collects a fee or is engaged in producing a product sold as such a school is an employee of that school.

South Dakota

Title 62-1 of the South Dakota codified laws

SECTION 62-5-6 Exemption of political subdivisions ....This state or any municipality or other political subdivision of the state need not furnish any insurance or security as provided by (the law) ..., but may do so if it desires.

Chapter 62-1 Definitions and General Provisions

SECTION 62-1-3 Employee Defined. As used in this title, unless the context otherwise plainly requires, the term "employee" shall mean every person, including a minor, in the services of another under any contract of employment, express or implied, (and including as to a deceased employee, his personal representative, dependents, and other persons to whom compensation may be payable), except:....(2) Any official of the state or of any subdivision of government elected or appointed for a regular term of office or to complete the unexpired portion of any such term, provided that the governing bodies of the various subdivisions may elect to treat officials of the subdivision as employees for the purposes of this section. ...

SECTION 62-1-4, States not withstanding the above county highway superintendents, deputy sheriffs, constables, marshals, police and firefighters are employees under the law.

SECTION 62-1-4.1 States that in certain circumstances where a school district or postsecondary vocational-technical school provides an off campus work experience educational class, such students are considered school employees of the school district

SECTION 62-1-5 and 62-1-5.1 provides, in certain circumstances for the purposes of computing compensation of volunteer firefighters and volunteers serving the state that they should be considered as earning a wage that would entitle them to the maximum benefits under the law.

**Michigan**

Worker's Disability Compensation Act of 1969

SECTION 418.161 of the Michigan compiled laws states in section (1) (a) as part of its definition of employee, as follows.....

Members of a volunteer fire department of a city, village, or township shall be considered to be employees of the city, village, or township, and entitled to all the benefits of this act when personally injured in the performance of duties as members of the volunteer fire department.....

Members of a volunteer fire department of a city, village, or township shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the village, city, or township for the purpose of calculating the weekly rate of compensation provided under this act....

The benefits of this act shall be available to a safety patrol officer who is engaged in traffic regulation and management for and by authority of a county, city, village or township, whether the officer is paid or unpaid in the same manner as benefits are available to volunteer fire fighters, upon the adoption by the legislative body of the county, city, village or township of a resolution to that effect. A safety patrol officer or safety patrol force when used in this act shall be considered to include all persons who volunteer and are registered with a school and assigned to patrol a public thoroughfare used by students of a school. A volunteer civil defense worker who is a member of the civil defense forces as provided by law and is registered on the permanent roster of the civil defense organization of the state or political subdivision of the state shall be considered to be an employee of the state or the political subdivision on whose permanent roster the employee is enrolled when engaged in the performance of duty.....

A volunteer ambulance driver or attendant shall be considered to be an employee of the county, city village, or township and entitled to the benefits of this act when personally injured in the performance of duties as a volunteer ambulance driver.....

West Virginia

Compulsory Law Chapter 23 of the West Virginia laws Article 2 section 23-2-1

The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five section 15-5-1 et seq. chapter fifteen of this Code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workers' compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner.....

APPENDIX C

I.A.B. 27

# NOTICE TO EMPLOYEES

As prescribed by Chapter 410 of the Acts of 1941 of the General Court of the Commonwealth of Massachusetts entitled

> "An act requiring the posting of notice by certain employers not covering their employees by workmen's compensation insurance."

**THIS WILL GIVE YOU NOTICE THAT I/WE ARE NOT COVERED BY WORKMEN'S COMPENSATION INSURANCE UNDER THE PROVISIONS OF THE MASSACHUSETTS WORKMEN'S COMPENSATION ACT, GENERAL LAWS (TER. ED.), CHAPTER 152 AND ALL AMENDMENTS THERETO.**

Not being protected by workmen's compensation insurance whatever rights, if any, you may have on account of injury are subject to determination by courts of law and not by the Industrial Accident Board.

.....

Name of Employer

# APPENDIX D

## TABLE 1

| YR. | Acc. Rep. | Tab. Inj. | # Ins./ #Not Ins. | % Not Ins. | %Change Not Ins. |
|---|---|---|---|---|---|
| 22 | 139,611 | 51,105 | 46,407/4,698 | 9.2 | +0.2 |
| 23 | 176,588 | 64,890 | 58,938/5,952 | 9.2 | - |
| 24 | 164,746 | 60,439 | 54,941/5,498 | 9.1 | -0.1 |
| 25 | 155,059 | 59,079 | 54,843/4,236 | 7.2 | -1.9 |
| 26 | 162,239 | 59,488 | 55,480/4,038 | 6.8 | -0.4 |
| 27 | 168,057 | 64,167 | 58,946/5,221 | 8.1 | +1.3 |
| 28 | 158,990 | 60,330 | 56,342/3,988 | 6.6 | -1.5 |
| 29 | 160,183 | 60,195 | 57,228/2,967 | 4.9 | -1.7 |
| 30 | 170,633 | 61,741 | 59,083/2,658 | 4.3 | -0.6 |
| 31 | 144,133 | 50,006 | 47,988/2,018 | 4.0 | -0.3 |
| 32 | 123,517 | 42,067 | 40,514/1,553 | 3.7 | -0.3 |
| 33 | 96,144 | 31,769 | 30,562/1,207 | 3.8 | +0.1 |
| 34 | 109,394 | 35,217 | 33,870/1,347 | 3.8 | - |
| 35 | 107,042 | 32,973 | 31,505/1,468 | 4.5 | +0.7 |
| 36 | 118,648 | 34,323 | 32,461/1,862 | 5.4 | +0.9 |
| 37 | 133,086 | 38,460 | 36,069/2,391 | 6.2 | +0.8 |
| 38 | 112,728 | 33,460 | 30,971/2,489 | 7.4 | +1.2 |
| 38* | 61,000 | 18,219 | 16,834/1,385 | 7.6 | +0.2 |
| 39 | 126,871 | 38,151 | 35,658/2,493 | 6.5 | -1.1 |
| 40 | 138,698 | 39,313 | 36,855/2,458 | 6.3 | -0.2 |
| 41 | 178,380 | 54,641 | 50,787/3,854 | 7.1 | +0.8 |
| Tot | 2,905,747 | 990,033 | 63,781 | 6.4 | |

Range of uninsured for a full year: Low: 1,207
High: 5,952

Average: Over 20½ years - 3,111 per year

* The percentage increase is for the period ending 12/31/38. The department went to a calendar year format, beginning in 1939. All of the previous years were compiled on a fiscal year basis, from July 1 of the prior year up through June 30 of the successive year.

TABLE 2

FATAL CASES WHERE THE EMPLOYER WAS NOT INSURED UNDER THE ACT:

| Year Ending | # Fatals | # Uninsured | % | Owed* | Paid* %Owed |
|---|---|---|---|---|---|
| 6/30/22 | 306 | 61 | 19.9 | 171,800 | 24,950/14.5 |
| 6/30/23 | 330 | 71 | 21.5 | 232,600 | 67,682/29.1 |
| 6/30/24 | 336 | 52 | 15.5 | 190,250 | 73,649/38.7 |
| 6/30/25 | 308 | 53 | 17.2 | 226,400 | 46,283/20.4 |
| 6/30/26 | 313 | 48 | 15.3 | 163,700 | 35,770/21.8 |
| 6/30/27 | 317 | 40 | 12.6 | 130,192 | 35,642/27.1 |
| 6/30/28 | 341 | 41 | 12.0 | 140,450 | 19,687/14.2 |
| 6/30/29 | 353 | 38 | 10.8 | 133,150 | 17,211/1[illegible]9 |
| 6/30/30 | 344 | 35 | 10.1 | 108,365 | 20,020/1[illegible]5 |
| 6/30/31 | 282 | 29 | 10.3 | 111,085 | 30,328/27.3 |
| 6/30/32 | 222 | 28 | 12.6 | 99,950 | 31,500/31.5 |
| 6/30/33 | 162 | 18 | 11.1 | 99,950 | 79,095/79.1 |
| 6/30/34 | 231 | 22 | 9.5 | 97,550 | 20,900/21.4 |
| 6/30/35 | 242 | 27 | 11.2 | 91,500 | 20,315/22.2 |
| 6/30/36 | 224 | 26 | 11.6 | 101,850 | 28,600/28.1 |
| 6/30/37 | 232 | 30 | 12.9 | 105,300 | 21,243/20.1 |
| 6/30/38 | 207 | 22 | 10.6 | 101,010 | 37,775/37.4 |
| 12/31/38** | 135 | 11 | 8.1 | 55,468 | 12,250/22.1 |
| 12/31/39 | 190 | 32 | 16.8 | 122,394 | 51,974/42.5 |
| 12/31/40 | 191 | 21 | 11.0 | 78,086 | 38,838/49.7 |
| 12/31/41 | 213 | 30 | 14.0 | 134,728 | 73,400/54.4 |
| TOTALS | 5,479 | 735 | 13.4 | 2,695,598 | 787,112/29.1 |

Available statistics after the law was made somewhat compulsory:

| | | | | | |
|---|---|---|---|---|---|
| 12/31/44 | 210 | 6 | | | |
| 12/31/45 | 213 | 5 | 2.3 | 23,494 | 2,250/9.60 |
| 12/31/46 | 210 | 5 | 2.3 | 8,250 | 0/0.00 |
| 12/31/47 | 235 | 5 | 2.1 | 35,445 | 200/0.01 |
| 12/31/48 | 217 | 4 | 1.8 | 15,100 | 0/0.00 |
| 12/31/49 | 193 | 8 | 4.1 | 60,840 | 0/0.00 |
| TOTALS | 1278 | 33 | 2.6 | 143,089 | 4,450/3.00 |

* The numbers Owed* above refers to the amount that the dependents would have been due, subject to the provisions of the act. The amounts paid is the amount reported through the response to questionnaires or interviews. In some cases figures were unavailable due to the fact that claims had not been settled or adjudicated, or because of the reluctance of the parties to disclose the information. There were no annual reports published for the years 1941-1944.

** This report covers a six month period. Subsequent reports covered calendar years, not fiscal years.

Source: Annual Report of the Department of Industrial Accidents, Public Document Number 105.

TABLE 3

| YR | 1<br>Tot. ins.<br>Payments | 2<br>Pub. Er.<br>Payments | 3<br>% Ann.<br>Payments | 4<br>Avg Cost<br>Per Case | 5<br>% Ann.<br>Avg. Cost |
|---|---|---|---|---|---|
| 22 | $6,050,152 | $288,374 | 4.8 | $118.38 | +11.3 |
| 23 | $7,336,765 | $336,185 | 4.6 | $113.06 | - 4.5 |
| 24 | $7,410,905 | $195,752 | 2.6 | $122.61 | + 8.4 |
| 25 | $7,329,693 | $183,691 | 2.5 | $124.01 | + 1.1 |
| 26 | $8,023,991 | $218,311 | 2.7 | $134.71 | + 8.6 |
| 27 | $8,018,634 | $267,873 | 3.3 | $124.96 | - 7.2 |
| 28 | $8,976,147 | $302,358 | 3.4 | $148.78 | +19.1 |
| 29 | $9,461,962 | $281,577 | 3.0 | $157.18 | + 5.6 |
| 30 | $9,861,383 | $335,326 | 3.4 | $159.71 | + 1.6 |
| 31 | $8,978,058 | $410,704 | 4.6 | $170.53 | + 6.8 |
| 32 | $7,820,044 | $381,655 | 4.9 | $ 81.58 | -52.1 |
| 33 | $5,856,868 | $306,432 | 5.2 | $ 74.07 | - 9.2 |
| 34 | $6,159,612 | $330,436 | 5.4 | $ 68.02 | - 8.2 |
| 35 | $6,397,753 | $381,210 | 6.0 | $ 67.95 | - 0.1 |
| 36 | $7,115,547 | $370,951 | 5.2 | $ 62.40 | - 8.2 |
| 37 | $7,502,571 | $414,961 | 5.4 | $ 60.30 | - 3.4 |
| 38 | $6,588,699 | $368,675 | 5.6 | $ 62.70 | + 4.0 |
| 38* | $3,581,821 | $263,065 | 7.3 | $ 66.75 | + 6.5 |
| 39 | $7,139,126 | $333,102 | 4.7 | $ 61.85 | - 7.3 |
| 40 | $7,365,199 | $281,695 | 3.7 | $ 65.04 | + 5.2 |
| 41 | $9,279,145 | $234,144 | 2.5 | $ 61.95 | - 4.8 |
| 44 | $11,858,347 | $327,336 | 2.8 | $ 46.94 | |
| 45 | $12,761,005 | $333,815 | 2.6 | $ 47.38 | + 0.1 |
| 46 | $17,224,900 | $355,117 | 2.0 | $ 63.87 | +35.0 |
| 47 | $19,401,522 | $507,105 | 2.6 | $ 83.73 | +31.0 |
| 48 | $21,853,388 | $573,277 | 2.6 | $125.05 | +49.3 |
| 49 | $21,740,729 | $777,727 | 3.6 | $139.40 | +11.5 |

1. This column is from figures compiled by the Board, upon its request under s. 63 of the law, by licensed insurers and public entities which have accepted the act.

2. This column is the amount paid by the Commonwealth and other public employers to employees and dependents under the act. Chapter 403 of the Acts of 1936 permitted the extension of the act to additional or all employees of the Commonwealth and public employers which have accepted the act.

3. This column is the percentage of the amount paid by public entities as a part of the total amount paid.

4. This column is the average cost per case, whether tabulatable or not, for compensation and medical benefits paid and estimated outstanding in all cases in which payments were made.

5. This column is the percentage change in the average cost per case from one year to the next.

* Based upon 6 month report 7/1-12/31/38. Susequent reports cover calendar years, while the earlier reports cover fiscal years.

TABLE 4

NUMBER OF INJURIES BY SELECTED OCCUPATIONS:

Tabulatable injuries insureds/Tabulatable injuries non-insured

| Yr | Transport-ation | Bldg. Trades | Iron/Steel | Trade | Textiles |
|---|---|---|---|---|---|
| 22 | 3,484/2,424 | 4,685/30 | 5,472/540 | 6,830/141 | 9,021/23 |
| 23 | 3,988/3,406 | 6,489/29 | 8,267/461 | 7,666/153 | 9,977/77 |
| 24 | 3,955/3,107 | 7,165/78 | 8,350/471 | 7,443/144 | 7,174/47 |
| 26 | 3,941/2,319 | 8,113/30 | 7,337/257 | 8,237/106 | 7,111/68 |
| 27 | 4,141/2,746 | 8,722/165 | 7,269/289 | 8,963/270 | 7,377/162 |
| 28 | 4,148/2,421 | 8,768/60 | 6,219/175 | 8,325/116 | 6,679/78 |
| 29 | 4,946/1,547 | 7,698/39 | 6,970/208 | 8,953/89 | 6,059/75 |
| 30 | 5,488/1,178 | 7,979/21 | 6,640/171 | 9,495/200 | 5,291/54 |
| 31 | 5,651/575 | 6,273/24 | 4,335/132 | 8,610/386 | 3,514/45 |
| 32 | 5,398/525 | 4,892/19 | 3,198/110 | 7,892/282 | 2,802/24 |
| 33 | 4,041/349 | 2,477/13 | 1,883/138 | 6,446/235 | 2,697/55 |
| 34 | 3,916/354 | 2,052/15 | 2,640/194 | 6,939/260 | 3,510/73 |
| 35 | 3,376/267 | 2,246/28 | 2,456/279 | 6,293/340 | 2,984/72 |
| 36 | 3,098/347 | 2,254/22 | 2,740/296 | 6,212/380 | 3,313/83 |
| 37 | 3,013/383 | 2,861/17 | 3,667/387 | 6,104/469 | 3,524/173 |
| 38 | 2,648/348 | 2,719/28 | 2,730/372 | 5,878/539 | 2,056/144 |
| 38* | 1,667/196 | 1,651/6 | 1,155/186 | 2,879/290 | 1,263/102 |
| 39 | 3,697/354 | 2,944/19 | 2,864/380 | 6,343/535 | 2,810/167 |

* Based upon 6 month report 7/1/38-12/31/38. Subsequent reports cover calendar years while the earlier reports covered fiscal years.

## APPENDIX E

Return of votes cast upon the question of the acceptance or rejection of Chapter 807 of the Acts of 1913, "An Act to provide for compensating Certain Public Employees for Injuries sustained in the course of their Employment", submitted to the voters of the cities and towns of the Commonwealth in the municipal elections of 1913-1915. This information is compiled in the Second Annual Report of the Industrial Accident Board, Public Document 105, pages 169-179.

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Abington | 3/9/14 | Accepted | 379 | 114 |
| Acton | 3/30/14 | " | 107 | 28 |
| Acushnet | 3/1/15 | " | 55 | 27 |
| Adams | 3/2/14 | " | 916 | 191 |
| Agawam | 3/2/14 | " | 198 | 59 |
| Alford | 3/23/14 | Rejected | 13 | 18 |
| Amesbury | 3/1/15 | Accepted | 538 | 310 |
| Amherst | 3/2/14 | " | 515 | 189 |
| Andover | 3/2/14 | " | 393 | 135 |
| Arlington | 3/2/14 | " | 643 | 203 |
| Ashburnham | 3/1/15 | " | 96 | 47 |
| Ashby | 4/15/14 | " | 1 | 0 |
| Ashfield | 3/2/14 | " | 40 | 20 |
| Ashland | 3/1/15 | " | 134 | 65 |
| Athol | 3/1/15 | " | 845 | 355 |
| Attleboro | 3/2/14 | " | 1213 | 370 |
| Auburn | | | | |
| Avon | 3/3/14 | " | 122 | 32 |
| Ayer | 4/6/14 | " | 217 | 68 |
| Barnstable | 3/1/15 | " | 328 | 141 |
| Barre | 3/1/15 | " | 119 | 70 |
| Becket | 3/17/14 | " | 52 | 30 |
| Bedford | 3/2/14 | " | 104 | 46 |
| Belchertown | 3/2/14 | " | 81 | 55 |
| Bellingham | 3/2/14 | " | 67 | 33 |
| Belmont | 3/2/14 | " | 324 | 104 |
| Berkley | | | | |
| Berlin | 3/2/14 | Rejected | 0 | 37 |
| Bernardston | | | | |
| Beverly | 12/9/13 | Accepted | 1721 | 452 |
| Billerica | 3/28/14 | Rejected | 150 | 278 |
| Blackstone | 3/21/14 | Accepted | 60 | 14 |
| Blandford | | | | |
| Bolton | 3/2/14 | " | 40 | 31 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Boston | 1/13/14 | " | 45547 | 12614 |
| Bourne | 3/2/14 | " | 19[illegible] | 52 |
| Boxborough | 2/1/15 | " | 1 | 0 |
| Boxford | 3/2/14 | " | 26 | 1 |
| Boylston | 3/2/14 | Rejected | 15 | 25 |
| Braintree | 3/2/14 | Accepted | 439 | 143 |
| Brewster | 3/1/15 | " | 6 | 1 |
| Bridgewater | 3/7/14 | " | 289 | 101 |
| Brimfield | 3/23/14 | " | 45 | 29 |
| Brockton | 12/8/14 | " | 6083 | 2381 |
| Brookfield | | | | |
| Brookline | 3/5/14 | " | 1547 | 480 |
| Buckland | 3/2/14 | " | 108 | 44 |
| Cambridge | 3/10/14 | " | 7808 | 1323 |
| Canton | 3/2/14 | " | 306 | 116 |
| Carlisle | 3/2/14 | " | 34 | 24 |
| Carver | 3/2/14 | " | 19 | 17 |
| Charlemont | | | | |
| Charlton | 3/1/15 | " | 125 | 92 |
| Chatham | 2/1/15 | " | 7 | 3 |
| Chelmsford | 3/23/14 | " | 197 | 130 |
| Chelsea | 12/9/13 | " | 3017 | 497 |
| Cheshire | 3/23/14 | " | 141 | 45 |
| Chester | 3/1/15 | " | 71 | 26 |
| Chesterfield | 3/2/14 | " | 21 | 4 |
| Chicopee | 12/8/14 | " | 1911 | 325 |
| Chilmark | 3/9/14 | Rejected | 0 | 3 |
| Clarksburg | 1/26/15 | " | 17 | 19 |
| Clinton | 3/2/14 | Accepted | 1012 | 335 |
| Cohasset | 3/2/14 | " | 191 | 91 |
| Colrain | 3/2/14 | " | 89 | 50 |
| Concord | 3/30/14 | " | 414 | 181 |
| Conway | 3/2/14 | " | 66 | 36 |
| Cummington | 3/1/15 | " | 39 | 37 |
| Dalton | 2/8/15 | " | 332 | 93 |
| Dana* | 3/2/14 | " | 38 | 33 |
| Danvers | 3/23/14 | " | 563 | 301 |
| Dartmouth | 3/2/14 | " | 193 | 135 |
| Dedham | 3/2/14 | " | 647 | 265 |
| Deerfield | 3/2/14 | " | 103 | 37 |
| Dennis | 3/15/15 | Rejected | 4 | 35 |
| Dighton | | | | |
| Douglas | 3/16/14 | Accepted | 139 | 59 |
| Dover | | | | |
| Dracut | 3/2/14 | " | 182 | 121 |
| Dudley | 4/6/14 | " | 201 | 68 |
| Dunstable | 3/2/14 | Rejected | 13 | 16 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Duxbury | 3/7/14 | Accepted | 132 | 56 |
| E. Bridgewater | 3/14/14 | " | 94 | 22 |
| E. Longmeadow | 3/9/14 | " | 60 | 22 |
| Eastham | 2/1/15 | Rejected | 0 | 20 |
| Easthampton | 3/9/14 | Accepted | 563 | 222 |
| Easton | 3/2/14 | " | 259 | 99 |
| Edgartown | 2/18/15 | " | 90 | 45 |
| Egremont | | | | |
| Enfield* | 3/16/14 | " | 53 | 19 |
| Erving | 3/2/14 | " | 46 | 0 |
| Essex | 3/2/14 | " | 59 | 17 |
| Everett | 12/9/13 | " | 2204 | 594 |
| Fairhaven | 3/2/14 | " | 305 | 144 |
| Fall River | 12/2/13 | " | 6624 | 2804 |
| Falmouth | 2/17/14 | " | 270 | 74 |
| Fitchburg | 12/2/13 | " | 3112 | 994 |
| Florida | | | | |
| Foxborough | 3/2/14 | " | 190 | 64 |
| Framingham | 3/2/14 | " | 1110 | 360 |
| Franklin | 3/2/14 | " | 329 | 86 |
| Freetown | 3/30/14 | " | 29 | 27 |
| Gardner | 3/2/14 | " | 963 | 210 |
| Gay Head | 3/17/14 | " | 14 | 0 |
| Georgetown | 3/9/14 | " | 119 | 48 |
| Gill | 3/2/14 | Rejected | 0 | 18 |
| Gloucester | 12/2/13 | Accepted | 1712 | 679 |
| Goshen | 3/2/14 | " | 1 | 0 |
| Gosnold | 3/8/15 | Rejected | 0 | 42 |
| Grafton | 3/2/14 | Accepted | 209 | 85 |
| Granby | 2/15/15 | Rejected | 38 | 42 |
| Granville | 3/8/15 | Accepted | 26 | 16 |
| Great Barrington | 3/16/14 | " | 438 | 169 |
| Greenfield | 3/30/14 | " | 1180 | 184 |
| Greenwich* | 3/30/14 | Rejected | 18 | 22 |
| Groton | | | | |
| Groveland | 3/8/15 | Accepted | 80 | 31 |
| Hadley | 3/1/15 | " | 54 | 36 |
| Halifax | 3/1/15 | " | 32 | 11 |
| Hamilton | 3/9/15 | " | 160 | 54 |
| Hampden | 3/16/14 | " | 28 | 23 |
| Hancock | 3/2/14 | " | 26 | 11 |
| Hanover | 3/2/14 | " | 79 | 26 |
| Hanson | 3/1/15 | " | 107 | 47 |
| Hardwick | 3/7/14 | " | 44 | 29 |
| Harvard | 3/16/14 | Rejected | 20 | 56 |
| Harwich | 2/8/15 | " | 0 | 101 |
| Hatfield | 3/16/14 | " | 57 | 67 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Haverhill | 12/2/13 | Accepted | 4035 | 1280 |
| Hawley | | | | |
| Heath | 3/1/15 | Rejected | 0 | 40 |
| Hingham | 3/1/15 | Accepted | 231 | 81 |
| Hinsdale | 3/30/14 | " | 52 | 30 |
| Holbrook | 3/1/15 | " | 181 | 71 |
| Holden | 3/16/14 | " | 116 | 52 |
| Holland | 2/8/15 | Rejected | 0 | 22 |
| Holliston | 3/2/14 | Accepted | 228 | 103 |
| Holyoke | 12/2/13 | " | 4448 | 1337 |
| Hopedale | 3/2/14 | Rejected | 14 | 41 |
| Hopkinton | 3/2/14 | Accepted | 161 | 61 |
| Hubbardston | | | | |
| Hudson | 3/2/14 | " | 506 | 150 |
| Hull | 3/1/15 | " | 20 | 0 |
| Huntington | 3/2/14 | " | 120 | 31 |
| Ipswich | 3/2/15 | " | 375 | 141 |
| Kingston | 3/7/14 | " | 128 | 58 |
| Lakeville | 3/2/14 | " | 40 | 30 |
| Lancaster | | | | |
| Lawrence | 12/9/13 | " | 5749 | 1964 |
| Lanesborough | 3/23/14 | " | 83 | 30 |
| Lee | 3/9/14 | " | 339 | 100 |
| Leicester | 3/2/14 | " | 189 | 116 |
| Lenox | 3/2/14 | " | 233 | 64 |
| Lowell | 12/9/13 | " | 8422 | 3063 |
| Leverett | 3/2/14 | " | 44 | 3 |
| Lexington | 3/2/14 | " | 191 | 81 |
| Leydon | 3/1/15 | " | 17 | 6 |
| Lincoln | | | | |
| Littleton | 3/30/14 | " | 44 | 43 |
| Longmeadow | 3/16/14 | " | 75 | 15 |
| Ludlow | 3/9/14 | " | 152 | 63 |
| Lunenburg | 3/1/15 | " | 74 | 68 |
| Lynn | 12/9/13 | " | 9102 | 3189 |
| Lynnfield | 3/8/15 | " | 118 | 39 |
| Malden | 12/9/13 | " | 3539 | 1001 |
| Manchester | 3/2/14 | " | 231 | 98 |
| Mansfield | 3/2/14 | " | 282 | 138 |
| Marblehead | 3/16/14 | " | 469 | 151 |
| Marlborough | 12/2/13 | " | 1312 | 491 |
| Marion | 3/2/15 | Rejected | 3 | 25 |
| Marshfield | 3/2/14 | Accepted | 124 | 54 |
| Mashpee | | | | |
| Mattapoisett | 2/1/15 | Accepted | 72 | 57 |
| Maynard | 3/9/14 | " | 379 | 121 |
| Medfield | 3/1/15 | " | 152 | 60 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Medford | 12/9/13 | " | 1805 | 491 |
| Medway | 3/2/14 | " | 167 | 61 |
| Melrose | 12/9/13 | " | 1530 | 608 |
| Mendon | 3/2/14 | " | 63 | 17 |
| Merrimac | 3/1/15 | " | 125 | 51 |
| Methuen | 3/2/14 | " | 654 | 250 |
| Middleborough | 3/2/14 | " | 380 | 252 |
| Middlefield | 3/1/15 | Rejected | 4 | 10 |
| Middleton | | | | |
| Milford | 3/2/14 | Accepted | 777 | 233 |
| Millbury | 3/16/14 | " | 231 | 112 |
| Millis | 3/1/15 | " | 111 | 38 |
| Milton | 3/2/14 | " | 626 | 176 |
| Monroe | 3/19/14 | " | 10 | 5 |
| Monson | 4/6/14 | " | 292 | 113 |
| Montague | | | | |
| Monterey | 3/30/14 | " | 21 | 13 |
| Montgomery | 3/30/14 | Rejected | 0 | 17 |
| Mt.Washington | 3/23/14 | " | 0 | 9 |
| Nahant | 3/21/14 | Accepted | 118 | 56 |
| Nantucket | 2/9/14 | " | 267 | 83 |
| Natick | 3/1/15 | " | 1183 | 413 |
| Needham | 3/2/14 | " | 363 | 115 |
| New Ashford | 3/30/14 | " | 9 | 0 |
| New Bedford | 12/2/13 | " | 5943 | 2952 |
| New Braintree | 3/1/15 | Rejected | 4 | 12 |
| New Marlborough | 3/16/14 | Accepted | 73 | 52 |
| New Salem | 3/2/14 | " | 33 | 9 |
| Newbury | 3/2/15 | " | 81 | 71 |
| Newburyport | 12/9/13 | " | 1254 | 513 |
| Newton | 12/9/13 | " | 2954 | 912 |
| Norfolk | | | | |
| North Adams | 12/16/13 | " | 1712 | 586 |
| Northampton | 12/2/13 | " | 1364 | 549 |
| N. Attleborough | 3/16/14 | " | 731 | 268 |
| North Brooksfield | 2/8/15 | " | 181 | 55 |
| North Reading | 3/2/14 | " | 84 | 33 |
| Northborough | 3/1/15 | " | 120 | 66 |
| Northbridge | 3/6/14 | " | 404 | 76 |
| Northfield | | | | |
| Norton | 3/2/14 | " | 126 | 61 |
| Norwell | 3/2/14 | " | 82 | 30 |
| Norwood | 3/2/14 | " | 547 | 120 |
| Oak Bluffs | 3/3/14 | " | 73 | 19 |
| Oakham | | | | |
| Orange | 3/2/14 | " | 477 | 160 |
| Orleans | 2/1/15 | " | 17 | 11 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Otis | 3/9/14 | " | 14 | 1 |
| Oxford | 3/1/15 | " | 210 | 119 |
| Palmer | 3/23/14 | " | 84 | 12 |
| Paxton | 3/2/14 | Rejected | 18 | 23 |
| Peabody | 3/9/14 | Accepted | 1258 | 416 |
| Pelham | 3/9/14 | Rejected | 14 | 25 |
| Pembroke | 3/2/14 | Accepted | 95 | 18 |
| Pepperell | | | | |
| Peru | 3/2/14 | " | 7 | 2 |
| Petersham | 3/1/15 | " | 49 | 36 |
| Phillipston | 3/2/14 | " | 16 | 0 |
| Pittsfield | 12/2/13 | " | 2266 | 836 |
| Plainfield + | 3/9/14 | Rejected | | |
| Plainville | 3/1/15 | Accepted | 92 | 59 |
| Plymouth | 3/7/14 | " | 789 | 197 |
| Plympton | | | | |
| Prescott* | 3/9/14 | Rejected | 0 | 1 |
| Princeton | 3/2/15 | Accepted | 12 | 11 |
| Provincetown | 2/9/14 | " | 116 | 65 |
| Quincy | 12/2/13 | " | 2436 | 1010 |
| Randolph | 3/1/15 | " | 457 | 101 |
| Raynham | 3/9/14 | " | 45 | 35 |
| Reading | 3/2/14 | " | 353 | 110 |
| Rehoboth | 3/2/14 | Rejected | 44 | 38 |
| Revere | 3/2/14 | Accepted | 2004 | 359 |
| Richmond | 3/30/14 | Rejected | 18 | 20 |
| Rochester | | | | |
| Rockland | 3/9/14 | Accepted | 608 | 139 |
| Rockport | 3/2/14 | " | 130 | 47 |
| Rowe | 3/1/15 | Rejected | 1 | 17 |
| Rowley | 3/9/14 | Accepted | 83 | 38 |
| Royalston | 3/2/14 | " | 18 | 4 |
| Russell | 3/3/14 | " | 74 | 10 |
| Rutland | 2/1/15 | " | 54 | 52 |
| Salem | 12/9/13 | " | 3714 | 1337 |
| Salisbury | | | | |
| Sandisfield | | | | |
| Sandwich | 3/1/15 | " | 110 | 60 |
| Saugus | 3/2/14 | Accepted | 318 | 109 |
| Savoy | 2/1/15 | Rejected | 2 | 17 |
| Scituate | 3/2/14 | Accepted | 224 | 87 |
| Sharon | 3/3/14 | " | 158 | 71 |
| Sheffield | 3/30/14 | " | 132 | 67 |
| Shelburne | 3/2/14 | " | 113 | 67 |
| Shirley | 3/12/14 | " | 74 | 37 |
| Shrewsbury | 3/2/14 | " | 100 | 79 |
| Shutesbury | 3/16/14 | " | 2 | 0 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Somerset | 3/2/14 | " | 108 | 50 |
| Somerville | 12/9/13 | " | 5561 | 1524 |
| South Hadley | 3/16/14 | " | 292 | 86 |
| Southampton | | | | |
| Southborough | 3/1/15 | " | 104 | 52 |
| Southbridge | 3/2/14 | " | 830 | 204 |
| Southwick | 3/30/14 | " | 59 | 40 |
| Spencer | 3/6/14 | " | 462 | 188 |
| Springfield | 12/2/13 | " | 5715 | 1241 |
| Sterling | 3/2/14 | " | 96 | 34 |
| Stockbridge | 2/1/15 | " | 131 | 48 |
| Stoneham | 3/2/14 | " | 425 | 122 |
| Stoughton | 3/2/14 | " | 523 | 113 |
| Stow | 3/16/14 | " | 30 | 27 |
| Sturbridge | 3/2/14 | " | 53 | 40 |
| Sudbury | 3/23/14 | " | 58 | 51 |
| Sunderland | 3/2/14 | Rejected | 0 | 45 |
| Sutton | 3/16/14 | Accepted | 115 | 68 |
| Swampscott | 2/15/15 | " | 624 | 223 |
| Swansea | 3/2/14 | Rejected | 39 | 49 |
| Taunton | 12/2/13 | Accepted | 2649 | 1174 |
| Templeton | 3/2/14 | " | 173 | 61 |
| Tewksbury | 3/2/14 | Rejected | 72 | 77 |
| Tisbury | 3/3/14 | Accepted | 57 | 21 |
| Tolland | 3/2/14 | Rejected | 0 | 10 |
| Topsfield | 3/2/15 | Accepted | 86 | 43 |
| Townsend + | 3/21/15 | Rejected | | |
| Truro | 2/9/14 | Accepted | 22 | 11 |
| Tyngsborough | 3/2/14 | " | 56 | 25 |
| Tyringham | 3/8/15 | Rejected | 8 | 11 |
| Upton | 3/2/14 | Accepted | 79 | 40 |
| Uxbridge | 3/2/14 | " | 280 | 69 |
| Wakefield | 3/31/14 | " | 87 | 55 |
| Wales | 4/6/14 | " | 27 | 13 |
| Walpole | 3/2/14 | " | 292 | 73 |
| Waltham | 12/2/13 | " | 2409 | 857 |
| Ware | 3/30/14 | " | 609 | 135 |
| Wareham | 3/3/14 | " | 206 | 78 |
| Warren | 3/2/14 | " | 218 | 88 |
| Warwick | 3/2/14 | " | 8 | 3 |
| Washington | 3/23/14 | " | 16 | 3 |
| Watertown | 3/2/14 | " | 1003 | 316 |
| Wayland | 2/1/15 | " | 229 | 84 |
| Webster | 3/2/14 | " | 710 | 146 |
| Wellesley | 3/2/14 | " | 277 | 69 |
| Wellfleet | | | | |
| Wendell | 3/1/15 | Accepted | 34 | 7 |

| MUNICIPALITY | DATE | RESULT | YES | NO |
|---|---|---|---|---|
| Wenham | 3/2/14 | " | 36 | 15 |
| West Boylston | 3/22/15 | Rejected | 36 | 53 |
| W.Bridgewater | 3/2/14 | Accepted | 62 | 30 |
| W.Brookfield | 2/8/15 | " | 87 | 38 |
| W.Newbury | 3/2/14 | " | 105 | 63 |
| W.Springfield | 3/23/14 | " | 792 | 181 |
| W.Stockbridge | | | | |
| W.Tisbury | | | | |
| Westborough | 3/1/15 | " | 323 | 121 |
| Westfield | 3/9/14 | " | 1225 | 373 |
| Westford | 3/16/14 | " | 74 | 37 |
| Westhampton | 3/2/14 | " | 20 | 14 |
| Westminster | | | | |
| Weston | 3/30/14 | " | 68 | 12 |
| Westport | 3/9/14 | " | 103 | 100 |
| Westwood | 3/2/14 | " | 71 | 32 |
| Weymouth | 3/2/14 | " | 649 | 214 |
| Whately | 2/1/15 | " | 23 | 17 |
| Whitman | 3/7/14 | " | 538 | 158 |
| Wilbraham | 3/9/14 | " | 86 | 28 |
| Williamsburg | 3/2/14 | " | 115 | 74 |
| Williamstown | 3/23/14 | " | 235 | 78 |
| Wilmington | 3/2/14 | " | 66 | 26 |
| Winchendon | 2/214 | " | 303 | 175 |
| Winchester | 3/2/14 | " | 546 | 199 |
| Windsor | 3/9/14 | " | 13 | 7 |
| Winthrop | 3/23/14 | Rejected | 25 | 51 |
| Woburn | 12/9/13 | Accepted | 1640 | 444 |
| Worcester | 12/9/13 | " | 11055 | 3154 |
| Worthington | 2/1/15 | " | 38 | 27 |
| Wrentham | 3/1/15 | " | 96 | 46 |
| Yarmouth | 2/9/14 | " | 72 | 33 |

+ Actual vote total not recorded
* Former towns which were covered by Quabbin Reservoir

Return of the total votes on Chapter 807 of the Acts of 1913 for 11/4/13 election

| County | Yes | No |
|---|---|---|
| Barnstable | 1614 | 616 |
| Berkshire | 6210 | 2059 |
| Bristol | 17656 | 6786 |
| Dukes | 280 | 116 |
| Essex | 33277 | 11700 |
| Franklin | 2811 | 956 |
| Hampden | 16149 | 4423 |
| Hampshire | 4127 | 1603 |
| Middlesex | 53049 | 16704 |
| Nantucket | 246 | 66 |
| Norfolk | 14168 | 4329 |
| Plymouth | 11363 | 2926 |
| Suffolk | 52073 | 12777 |
| Worcester | 26992 | 7911 |

# APPENDIX F

| | |
|---|---|
| Questionnaires mailed to Cities and Towns | 351 |
| Returns | 88 |
| Affirmative acknowledgment of acceptance | 66 |
| Non-affirmative response to question 1 | 22 |
| A. Number who did not indicate acceptance, but had voted in 1913-15 elections to accept. Of these, two municipalities had cases before the reviewing board in the last 2 years. | 13 |
| B. PERA data indicates acceptance | 4 |
| C. Rejected during 1913-15 elections (of these, 1 town showed rejection for PERA, 1913-15 elections and our survey) | 4 |
| D No record of vote 1913-15/ no response to PERA | 1 |

Date of acceptance- 24/66, or 37%, didn't indicate knowledge of the date of acceptance of the act.

| Types of Insurance | | |
|---|---|---|
| Group Self Ins. | 29/66 | 44% |
| Insurance Carrier | 20/66 | 30% |
| Provide coverage without insurance | 14/66 | 21% |
| No Response | 3/66 | 5% |

None of the respondents have indicated that the statute has been rescinded, although 13 of the 66 indicating acceptance did not answer this question.

## Schools

Mailed to the Academic Regional Schools listed by the Massachusetts Department of Education in its 1986-1987 list of schools in the Commonwealth.

| | |
|---|---|
| Questionnaires Mailed | 53 |
| Responses Received | 20 |
| Affirmative acknowledgment of acceptance | 17 |

| | |
|---|---|
| Percentage of affirmative responses that indicated knowledge of date of acceptance | 18% |
| Percentage of total responding | 38% |
| Percentage responding that the act was accepted | 5% |

Types of Insurance
All with insurance carriers

Other Information-
2 Counties responded to PERA that acceptance had never taken place

Exclusions- Three of municipalities which responded to our survey indicated that teachers were not covered. Three of the responses to the PERA requests indicated that teachers are not covered.

1913-1915 Elections

| | | |
|---|---|---|
| Total votes on issue | 319 | |
| Votes to Accept | 279 | 87.5% |
| Votes to Reject | 40 | 12.5% |

Of the totals to accept and reject, were the four towns which were flooded in order to create the Quabbin Reservoir. The vote for these towns was split evenly for acceptance/ rejection.

| Regional School Responses | #1 | #2 | #3 | #4 | #5 | #6 |
|---|---|---|---|---|---|---|
| Acton<br>Acton-Boxborough | Y | | N | I | N | |
| Ashburnham<br>Ashburnham-Westminister | Y | | N | I | N | |
| Barre<br>Quabbin | Y | | N | I | N | |
| Bolton<br>Nashoba | Y | | N | I | N | |

| School Responses | #1 | #2 | #3 | #4 | #5 | #6 |
|---|---|---|---|---|---|---|
| Kingston<br>Silver Lake | Y | | N | I | N | |
| Mattapoisett<br>Old Rochester | Y | | N | I | N | |
| Miller Falls<br>New Salem-Wendell | N | | | | | |
| Sturbridge<br>Tantasqua | Y | | N | I | N | |
| Sheffield<br>Southern Berkshire | Y | | Y | I | N | |
| Sudbury<br>Lincoln-Sudbury | Y | | N | I | N | |
| Turner Falls<br>Gill-Montague | N | | | | | |
| Townsend<br>North Middlesex | Y | | N | I | N | |
| Topsfield<br>Masconomet Reg.School | Y | | N | I | N | |
| Upton<br>Mendon-Upton | Y | | | I | N | |
| Vineyard Haven<br>Marthas Vineyard | Y | | N | I | N | |
| Westhampton<br>Hampshire | Y | | N | I | N | |
| Wilbraham<br>Hampden-Wilbraham | Y | | N | I | | |
| Williamstown<br>Mount Greylock | Y | | N | I | N | |
| Wrentham<br>King Philip | N | | | | | |
| Whitman<br>Whitman-Hanson | Y | | N | I | | |

QUESTIONNAIRE

1. Has your Municipality/School Committee accepted, and is it currently under, the provisions (sections 69 through 75 inclusive) of the State Workers Compensation Act, Massachusetts General Law Chapter 152?

YES_____ NO_____

2. If **NO**, please skip to question **6**.
If YES, what was the date of the Municipality's/School Committee's acceptance?

_____

Do you cover all Municipal/School Committee employees?
YES_____ NO_____

If NO, which employees are not included in your coverage?

3. In voting to accept the provisions of the act, did your municipality vote to include any elected or appointed officials, as outlined in section 69 of M.G.L. chapter 152?
YES_____ NO_____

If YES, which elected or appointed officials were included and are they still included?

4. Do you insure with an insurance company or with a self insurance group and if so what is the name of your insurer?

If you do not insure with an insurance carrier or as part of a self-insurance group, who has been designated to act as your agent, pursuant to section 75 of M.G.L. chapter 152?

5. Has the acceptance of the law ever been rescinded?
Date of Rescission: _____

6. If you have not accepted the act, can you please provide us with the following data, if available, for the period 1980-present:

Average number of claimed injuries per year _____
Number of civil actions filed _____
Number of civil actions litigated _____
Number of decisions issued for the plaintiff _____
Number of decisions issued in your favor _____

Thank you again for your cooperation in this study.

## APPENDIX G

### MISCELLANEOUS STATUTES

Chapter 630 of the Acts of 1982, sections 51 and 52 provided the following:

SECTION 51: Notwithstanding the provisions of any general or special law to the contrary the person holding the office of supervisor of workman's compensation benefits prior to the effective date of this act and the employees of the division of industrial accidents constituting the public employees section, so-called, working under his supervision immediately prior to said effective date shall be transferred to the division of public employee retirement administration established by section two of this act without impairment of civil service status, seniority, retirement, and other employment rights, and without interruption of service within the meaning of chapter thirty-one or section nine A or nine B of chapter thirty, and without reduction in their compensation and salary grade, notwithstanding any change in their titles or duties made under this act.

Section 52. The commissioner of administration shall, on the effective date of this act, be charged with the orderly implementation of the provisions of this act. The said commissioner shall provide for the transfer of all personnel property, including files, records, equipment and any other items which are used by or under the control of the public employee section of the industrial accident board or of the division of insurance which constitute the retirement section and which are used in the administration of chapter thirty-two of the General Laws, prior to the effective date of this act.

Massachusetts General Law Chapter 7 section 50, states as follows:

The commissioner of public employee retirement, established under section four A, shall have general responsibility for the efficient administration of the public employee retirement systems, under chapter thirty-two. The commissioner's power and duties shall include, but not be limited to...

i) developing and maintaining a list of facilities qualified to recommend or furnish rehabilitation services to injured or disabled workers;

j) developing and effective program and procedures for the reemployment of injured or disabled workers and shall make said programs available to any employee seeking reemployment;

k) developing and maintaining information concerning occupational injuries sustained by employees entitled to compensation under the provisions of section sixty-nine of chapter one hundred and fifty-two, and concerning persons who

have applied for or who have been granted disability benefits under the provisions of chapter thirty-two and requiring reports from the workers's compensation agents and from the retirement boards;

l) certify agreements for compensation for the payment of medical or other expenses or fees to or on behalf of injured employees of the commonwealth and no such compensation shall be paid without his certification.

The commissioner shall make available to the division of industrial accidents such information as it may require concerning employees who are or may be entitled to compensation under the provisions of section sixty-nine to seventy five, inclusive, of chapter one hundred and fifty-two.

Chapter 30, Section 58

Any employee of the commonwealth eligible to receive workmen's compensation under chapter one hundred and fifty-two who sustains injuries while in the employ of the commonwealth and who has sufficient sick leave credits shall be granted a leave of absence with pay for each working day he is absent from his duties because of such injuries until he returns to work or until the case has been approved by the industrial accident board.

Workmen's compensation for such period must be refunded to the state treasurer or spending agency of the commonwealth. The payment by the industrial accident board for such period will constitute the total refund, and the employee shall be credited with the proportionate part of sick leave credits represented by the workmen's compensation paid by the industrial accident board.

If the industrial accident board refuses to accept jurisdiction over the case the employee shall not be granted leave with pay in excess of his accumulated sick leave credits or vacation leave.

Notwithstanding the provisions of this section, an employee who, while in the performance of duty, receives bodily injuries resulting from acts of violence of patients or prisoners in his custody, and who as a result of such injury would be entitled to benefits under chapter one hundred and fifty-two, shall be paid the difference between

the weekly cash benefits to which he would be entitled under said chapter one hundred fifty-two and his regular salary, without such absence being charged against available sick leave credits, even if such absence may be for less than eight calendar days duration.
Added St. 1955, c. 602

Chapter 40 Section 13C
Workers' compensation claims reserve funds.

In any city or town which accepts the provisions of this section that has elected to self insure its worker's compensation may establish reserves to pay worker's compensation claims until said claims are fully paid. Said claims reserves shall be segregated by fiscal year and all funds so reserved shall be managed by a designated fiscal officer of such city or town. Any funds remaining after all claims are paid for a particular year, may be placed in another fiscal year's claim reserve fund, if needed, or returned to general funds. Costs of reinsurance, if used, and outside claims and safety services may be disbursed from said funds.

Chapter 41 §111M
Emergency medical technicians; leave without loss of pay while incapacitated

In any city or town which accepts this section, an employee of a city or town or fire or water district who is responsible for delivering emergency medical services under the provisions of chapter one hundred and eleven C, and who is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own shall be granted leave without loss of pay for the period of such incapacity; provided that no such leave shall be granted for any period after such emergency medical personnel has retired or pensioned in accordance with law or for any period after a physician designated by the board or personnel authorized to appoint emergency medical personnel in such city, town or district determines that such incapacity no longer exists. All amounts payable under this section shall be paid at the time and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such emergency medical personnel. This section shall also apply to any such employee who is subject to the provisions of chapter one hundred and fifty-two if he is injured while delivering emergency medical services and if he waives the provisions of said chapter.

Where the injury causing the incapacity of an emergency medical personnel for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section, was caused under circumstances creating legal liability in some person to pay damages in respect thereof, either the person so injured or the city, town or fire or water district paying such compensation may proceed to enforce the liability of such person in any court of competent jurisdiction. The sum recovered shall be for

the benefit of the city, town or fire or water district paying such compensation, unless the sum is greater than the compensation paid to that person so injured. For the purposes of this section, "excess" shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section as compensation to the person so injured. The party bringing the action shall be entitled to any costs recovered by him. Any interest received in such action shall be apportioned to the amounts received by them respectively, inclusive of interest and costs. The expense of any attorney's fees shall be divided between the city, town, or fire or water district and the person so injured in proportion to the amounts received by them respectively.

Whoever intentionally or negligently injures an emergency medical personnel for which he is granted a leave without loss of pay and paid compensation in accordance with the provisions of this section shall be liable in tort to the city, town or fire or water district paying such compensation for all costs incurred by such city, town, or fire or water district in replacing such injured emergency medical personnel which are in excess of the amount of compensation paid.

Chapter 126 Section 18A

An employee in a jail or house of correction who, while in the performance of duty, receives bodily injuries from acts of violence of patients or persons in his custody, and who as a result of such injury is entitled to benefits under chapter one hundred and fifty-two, shall be paid, in addition to the benefits of said chapter one hundred and fifty-two, the difference between the weekly cash benefits to which he is entitled under said chapter one hundred and fifty-two and his regular salary, without such absence being charged against available sick leave credits, even if such absence may be for less than eight calendar days duration. Added by St. 1953, c 355, amended by St. 1977, c 1002.

1948 rules of the DIA

X. Compensation to Public Employees
Appointment and Duties of Agents Generally

1. Compensation agents of departments, boards and commissions of the commonwealth , of the several counties and of cities towns and districts appointed under section 75 of the chapter shall familiarize themselves and comply with the provisions of sections 69 to 75 both inclusive thereof, with the provisions of the rules adopted and promulgated by the department under said chapter and with the requirements contained in the circular letters of instruction published to them by the department from time to time. Such agents shall make certain that their correct names and addresses and date of appointment are on file with the department.

2. Agents shall maintain a permanent case record of every claim of personal injuries under the chapter, containing copies of all papers relating thereto, which shall at all times be open to the inspection of the department.

3. Compensation agents shall immediately make full and complete investigation of every case.

Additional rules listed in 1979.

Where parties reach an agreement

4. Where the compensation agent and the injured employee reach an agreement in regard to compensation, a memorandum of agreement, as provided by section 6 of the chapter and Rule II-A above, shall be executed and a copy thereof forwarded to the division. In addition to the foregoing, in the case of commonwealth employees, the agent shall forward a copy of such agreement together with report of his investigation to the attorney general for his information and action under section 69A of the chapter.

Where the parties fail to reach an agreement

5. Where the parties fail to reach an agreement, the agent shall promptly notify the claimant and the division. In the case of commonwealth employees the agent shall notify the attorney general in addition thereto.

Fees of physicians and charges of hospitals.

6. Under section 13 and 30 of the chapter, the division has authority to determine fees of physicians and charges of hospitals for services under the chapter. In the case of commonwealth employees all bills for medical and hospital services shall be submitted to the attorney general for his action under section 69A, and thereafter such bills shall be submitted to the division for approval before they are scheduled for payment by the agent.

7. In cases where it is alleged that death is the result of an injury arising out of and in the course of employment by the commonwealth, agents shall furnish full information to the attorney general promptly.

This information is also outlined in the Massachusetts Practice Series, v. 5B, Methods of Practice, by Robert Rodman, 3d edition, 1987, §2242, p 483, 484.

FOOTNOTES

1. Senate 580, February, 1949, Report of the Special Commission established to make an Investigation and Study Relative to the Workmen's Compensation Law, enacted as Chapter 81 of the Acts of 1948. In particular, at page 5 of the Majority Report, the study indicates that by this time the Act had been amended some four hundred times.

2. House 1986 of 1955 provided for a nine member commission (three each representing labor, employers, and the public) and advising the governor on changes in the workers' compensation law. House 948 of 1958 provided for a six member body (two each representing employers, employees, and the public) to consider and advise the Industrial Accident Board on all matters relating to workers' compensation. While neither of the bills made much headway, the first at least was passed by the house before coming to an end in the senate. Other proposed advisory groups were included in House 986 of 1957 and House 2131 of 1963.

3. Chapter 572 of the Acts of 1985, section 17 (amending Mass. General Law Chapter 23c)

4. Chapter 120 of the Resolves of 1910

5. Ives v. South Buffalo Railway, 201 NY 271, 94 NE 431 (1911)

6. Opinion of the Justices, 209 MA 607 (1911)

7. Senate 565 of 1917, proposing an amendment to make the act compulsory on employers.

8. House Bill 2034 of 1941 which was an initiative petition for the establishment of a state fund which was supported by 24,190 signatures of qualified voters. See also Opinion of the Justices, 309 Mass. 571, (1941).

9. See generally, S-346 of 1912, S-543 of 1915, S-370 of 1917, S-334 of 1919, H-999 of 1927, Senate 580 of 1949, Senate 760 of 1954, in addition to the Task Force which brought about Chapter 572 of the Acts of 1985.

10. From 1912-1919 the law was administered by the Industrial Accident Board; from 1919-1953 as a result of Chapter 350 of the Acts of 1919, it became the Department of Industrial Accidents. In 1953, as result of Chapter 314 of the Acts of 1953, it became the Division of Industrial Accidents within the Department of Labor and Industries. Chapter 572 of the Acts of 1985 made the agency the Department of Industrial Accidents once again.

11. Report of the Commission for Compensation for Industrial Accidents, 1912. These quotes are taken from the report and are listed on pages 14,46,50,51 (3 of them) and 109 respectively. This commission was established by Chapter 120 of the Resolves of 1910 and subsequently extended by Chapters 66 and 110 of the resolves of 1911. The Commission was established study how to implement a workers' compensation law in Massachusetts. The Commission had already stated, in House Bill 300 of 1911 that an act could be devised which could provide adequate and speedy relief at a cost not greatly in excess of the present expenditures of employers for legal liability and voluntary aid to injured employees, at p.21. the culmination of their work was Chapter 751 of the Acts of 1911.

12. School Committee of Medford v. Medford Public School Custodians Association, 21 Mass App. 947, 487 NE2d 540 (1986).

13. A cooperative statute provides for payment into a fund by both employees and employers. For a concise explanation of the law see Workmen's Compensation for Public Employees, Leifur Magnusson, Public Administration Services #88, Chicago, Illinois, 1944 at pg.2. Also Workmen's Compensation Coverage of Public Employees, U.S. Dept. of Labor, Arthur Goldberg, Secretary, Bulletin #210, May 1962, pg.4.

14. Goldberg, id, at page 5

15. id, at page 7 and also Magnusson, at page 3

16. Chapter 807 of the Acts of 1913 (see Appendix A) Nationally, approximately forty eight states make workers' compensation compulsory for all or some of their public employees. Larson, Arthur, The Law of Workmens Compensation, Matthew Bender, N.Y. 1986 356.10 p.9-267

17. This type of statute is not uncommon in the Commonwealth of Massachusetts. Other examples that impact on the employment of public workers which are subject to local option are: Civil Service, Mass. General Law chapter 31; Group Medical Insurance, Mass. General Law chapter 32B; the so called "Heart Law", and Mass. General Law chapter 32, section 94. The local community is provided with the opportunity to vote at its town meeting as to whether or not it will accept or repeal it acceptance of a particular law.

18. Chapter 401 of the Acts of 1966, amending section 69

19. Corpus Juris Secundum Workmens Compensation s.115, pg.400

20. Goldberg, id at page 11 citing an opinion of the U.S. Attorney General John W. Davis, 31 OP. Attorney General 184 (1917)

21. Bruno's Case, 340 Mass 420, 165 NE2d 93 (1960)

22. M.G.L. c. 41, section 111f. Among other differences are that there are health and fitness standards which may be applicable for public safety personnel (M.G.L. c. 31 §61A) and wellness programs which may be implemented (M.G.L. c. 31 §61B). Also, pursuant to c. 41 §101A, (approved 1/12/88 as §117 of c. 697 of the Acts of 1987) a person who smokes is not eligible for appointment as a police officer or firefighter after 1/1/88. The application of this statute may still be under review by the courts. In addition, other differences are $5,000 for burial expenses for firefighters if the public employer votes to accept §100G 1/4 of chapter 41 (enacted by c. 176 of the Acts of 1987 and approved 6/25/87) and a number of presumptions for disabilities that deal with heart disease for police and firefighters (c. 32 §94); respiratory ailments for firefighters (c. 32 §94A) and cancer for firefighters (c. 32 §94B as set forth by chapter 100 of the Acts of 1990, effective 7/5/90)

23. Devney's Case, 223 Mass. 270 (1916)

24. id, at 272

25. Leseur's Case, 227 Mass 44 (1917)

26. White's Case, 226 Mass 517 (1917)

27. id, at 520

28. Saxe's Case, 242 Mass 290, 291 (1922)

29. Marcy v. Town of Saugus, 22 Mass App. Ct 972, 495 NE2d 569 (1986), reh. denied, 398 Mass 1104, 498 NE2d 124 (1986).

30. id, at 972, 495 NE2d 570.

31. 5 Opinion of the Attorney General, 280 (1918)

32. 1971-1972 Opinion Of The Attorney General, No.31

33. id, at p.16

34. Donnelly's Case, 304 Mass 514 (1939).

35. O'Malley's Case,361 Mass 504, 281 NE 2d 277 (1972)

36. Greene's Case,280 Mass 506, 508 (1932). At the time of the plaintiff's 1929 injury, the court held that Greene was not an employee of the county, under any contract of hire, expressed or implied. Chapter 159 of the Acts of 1930 amended section 74 of M.G.L. chapter 152 to exclude inmates of institutions performing labor.

37. Randall's Case, 279 Mass 85 (1932)

38. Castagna's Case, 310 Mass 325 (1941).

39. Collin's Case, 342 Mass 389 (1961)

40. Canavan's Case, 364 Mass 762 (1974).

41. Kilcoyne's Case, 352 Mass 572 (1967).

42. Stoltz's Case, 325 Mass 692, 695 (1950)

43. Hurley's Case, 302 Mass 46,48 (1938). The court stated that the city was not an insurer within the meaning of chapter 152 but that the city was entitled to all the benefits that may accrue to an insurer, as well as responsible for all of its obligations. Section (1)(7) of M.G.L. defines "Insurer" as any insurance company reciprocal, or inter-insurance exchange authorized to do so, which has contracted with an employer to pay the compensation provided for by this Chapter. The term "insurer" within this definition shall include, wherever applicable, a self-insurer, the Commonwealth, and any city, town or district which has accepted the provisions of section 69 of this Chapter.

44. Seibolt v. County of Middlesex, 366 Mass 411 (1974).

45. M.G.L. c. 152 s.69 provides a benefit level equal to the employees average weekly wage, plus thirty dollars ($30.00) when a public employee receives full maintenance.

46. M.G.L. c.152 s.69

47. M.G.L. c.152 s.73

48. M.G.L. c.32 s.14. The offset is applicable against a pension payable for the same injury but is not applicable against the accumulated total deductions or any annuity payable from such deductions.

49. M.G.L. c.152 s.73A. See also M.G.L. c. 31 s. 39 which states that a permanent employee separated from work due to a disability shall be subsequently capable of employment as determined by the retirement board pursuant to c. 32 s.8. This latter section applies to the reexamination of employees receiving a disability retirement, although s.39 of c. 31 does not differentiate between a work related disability and a disability retirement. Even so, it would appear that such a procedure, as set forth in the retirement law, would not impair any rights under c. 152 or the jurisdiction of the DIA.

50. M.G.L. c.152 s.75

51. M.G.L. c.152 s.69A

52. M.G.L. c.30, s.58 (for state employees) and M.G.L. c. 126 s. 18A (for employees of county jails).

53. Opinion of the Attorney General, 6/30/88, Pub. Doc. No.12, p.72 which stated that the provisions of c. 30, s. 58 did apply to court officers who became disabled by bodily injuries resulting from acts of violence of prisoners in their custody during or awaiting court sessions. The opinion notes that the language of the law leads to the conclusion that the assault pay provision applies to any state employee as long as they are injured in the specified manner and entitled to benefits under c. 152. The opinion cites two additional Attorney General opinions dealing with this statute, 1966/1976 Op. Att'y Gen., No.68, Rep. A.G., Pub. Doc. No.12, at 133, and No. 69, at 134 (1967).

54. M.G.L. c. 41 s. 111M

55. M.G.L. c.152, s.69

56. See Chapter 529 of the Acts of 1943 and Chapter 374, of the Acts of 1972 - only private employers of seasonal, casual, or part time domestic servants (one who works less than 16 hours per week) are permitted to elect (M.G.L. chapter 152, section 1 (4) to come under the law. Other exclusions from the definition of employee are set forth in section 1 (4)

57. M.G.L. c.152, s.75

58. M.G.L. c.152, s.75

59. M.G.L. c.152, s.69 B

60. M.G.L. c.152, s.86

61. See note 6, supra

62. Young v. Duncan, 218 Mass 346,349,(1914)

63. N.Y. Central Railroad Company v White 243 US 188, 37 S.Ct 247 (1917). This statute was different than the one interpreted in Ives, note 5, supra, and defined certain hazardous occupations required to provide benefits. Also, in Mountain Timber Co. v. State of Washington 243 US 219, 37 S. Ct. 260 (1917) the court held (at 265) that a state can pass laws reasonably deemed to be necessary to promote health, safety, and the general welfare of the people and may regulate industrial occupations that regularly result in injuries.

64. Chapter 751 of the Acts of 1911, Part I section 1, later section 66 of MGL chapter 152. The defenses lost are that the

employee was negligent, that a fellow employee was negligent, that the employee had voluntarily or contractually assumed the risk of the injury, and that the employee's injury didn't result from the negligence or fault of the employer if it arose out of and in the course of employment. The loss of a fourth defense was added by chapter 529 of the Acts of 1943.

65. Locke, Laurence, Massachusetts Practice, Vol. 29, Workmen's Compensation, 2nd Edition, West Publishing, 1981, page 24, section 24 and also footnote 33, citing Greem v. Cohen, 298 Mass 439, 443, 11 N.E. 2d 492, 494 (1937).

66. Clark v. M.W. Leahy Co. Inc.,300 Mass. 565,569 (1938).

67. See Chapter 425 of the Acts of 1935, enacting section 54A of Massachusetts General Law Chapter 152.

68. Aleck's Case, 301 Mass 403 (1938).

69. Chapter 359 of the Acts of 1935, established section 19A of M.G.L. c.152. It was repealed by c.158 of the Acts of 1948.

70. Chapter 62 of the resolves of 1938 created a special recess commission which examined, in part, the problems associated with employers choosing not to be covered by the law.

71. Senate Document 456 of 1939.

72. id, at page 19.

73. id, at page 9.

74. id, at page 12.

75. id, at 20.

76. id, at 21, 22.

77. ibid

78. House Bill 999 of 1927 - Report of the Special Commission to Investigate the Operation of the Workmens Compensation Law Minority Report of Charles Curtis, Jr. and James Tansey, page 50.

79. Opinion of the Justices, 309 Mass 562, 566 (1941)

80. id, at 568.

81. Chapter 529, s.7 of the Acts of 1943. This added section 25A through D to chapter 152. The law was effective 11/15/1943 and inserted the caption for the new section, Compulsory Compensation and Self Insurance.

82. Also added by chapter 529, section 7 of the Acts of 1953. As section 25B of MGL, chapter 152 "Section twenty-five A shall not apply to the commonwealth or the various counties, cities, towns and districts provided for in sections sixty-nine to seventy-five inclusive. Any employer may bring an employee or employees for whom he is not required by this chapter to provide for the payment of compensation within the coverage of this chapter by providing for the payment of compensation to such employee or employees as provided by this chapter.

83. Chapter 811 of the Acts of 1971

84. M.G.L. 152 section 24 states that an employee shall be deemed to have waived his/her right of action under common law for a compensable work injury unless a written notice claiming such right is given to the employer at the time of hire or within 30 days of the employer becoming an inured person. The 1985 amendments changed section 24 to abolish the ruling in Ferriter's Case, 381 Mass 508, 413 NE2d 690 (1980), which permitted a tort action by family members for negligence against an employer stating that the exclusivity of the act applied only to the injured employee. This change applies to injuries arising after December 10, 1985. This amendment has not to date been litigated before the Supreme Judicial Court although questions as to its constitutionality have been raised in published accounts (see Mass. Lawyers Weekly of 12/15/89 p. 31). In addition a recent Superior Court ruling of 6/12/90, a motion to dismiss an action brought by non-dependent parents of an injured employee under c. 231 §85X was denied (see 18 M.L.W 1932). The denial held that §24 bars only common law rights and this action was created by statute. In addition it would appear from the ruling that if the plaintiff is not dependent upon the injured person that the bar against a common law action might not apply. This raises the potential for a seemingly incongruous result if the family member who is dependent cannot sue, but one who is not dependent can sue.

85. See Locke, Section 24 where he cites McDonnell v. Berkshire Street Railway,243 Mass 94 (1922). The Court held at page 95 that it is only the common law rights which the employee can retain by serving the notice set forth in the law. By insuring under the act, an employer is relieved of all statutory liability and any claim by an employee raising a statutory issue can not be raised by election under M.G.L. chapter 152. See also Section 1 (4) for the definition of employees for which the act is elective.

86. Larson, section 56.10, page 267 lists New Jersey, South Carolina, and Texas

87. ibid, Mississippi, Tennessee and Delaware. In Mississippi and Tennessee all public coverage is voluntary.

88. Adams v. Petal Municipal Separate School System 487 So.2d 1329 (Miss 1986)

89. Note 42 supra

90. Cox's Case, 22Mass 220, 223(1916). The court stated, at 225 that all terms of the Act deal with the employer being wholly included or outside of the Act altogether. See also 5 Opinion of The Attorney General, 73,76, 1917, where the opinion stated that the enabling legislation for didn't contain any suggestion that employees of one employer can be divided into classes where some are protected and others are not. This reasoning is followed in Opinion Of the Attorney General, #31, p.113, (1972)

91. 452 CMR 3.02 (8), which involves claims against uninsured employers and specifically excludes public employers under M.G.L. c. 152, s. 65 (2) (e)

92. Chapter 630 of the Acts of 1982

93. M.G.L. c 152, §75

94. Section 51 of Chapter 630 of the Acts of 1982 provided for the person holding the office of Supervisor of Workers' Compensation Benefits and the employees of the Public Employee Section to be transferred to PERA. Section 52 of that act gave the Commissioner the authority to transfer the files, records, equipment, and other items by or under the control of the Public Employee Section to PERA.

95. Section 46, of Chapter 662 of the Acts of 1986, amended the term "commissioner" in section 69B, of M.G.L. c. 152, to "commissioner of public employee retirement

96. Section 48 of Chapter 662 of the Acts of 1986, amended section 75 of the law by changing the term division to department the first time it is mentioned in the law. It was not changed the second time.

97. Finney, Carol J., Workers' Compensation for Massachusetts State Employees: An Evaluation of the Claims Process, prepared for the Massachusetts Budget Bureau, 1984, see page 8, where the report states "The employee must be injured at work, miss six or more days of work...: page 14, where it states "If an employee is unable to work for more than six days"...; page 20, which begins with "Most employees who do miss six or more days of work, and thus are eligible for compensation, return to work fairly quickly." and page 36, which states "Example 1. When first reports of injury are received, they are xeroxed, then one set of copies is sent to the IAB, and the other is sorted as to whether it seems likely that there will be any lost time (six or more days out of work) or not."

98. See Locke, section 307 Waiting Period, pages 364, 365, where he states , in part, " Is the waiting period five days or is it six? The conservative reading would require the employee to be out of work for six days before he becomes entitled to compensation, paid from the first day. This refers to calendar days, not working days. Thus, if an employee is injured on Tuesday, starts losing time on Wednesday, and is unable to work until the following Tuesday, he is considered to have been incapacitated for the necessary minimum, even if he would have been off duty on Saturday and Sunday."

99. Legal Information Systems Inc., Rights Duties & Obligations Under the New Workers' Compensation Act, §9, 1987. The manual goes through an excellent analysis of the problems concerning the confusion over the employers reporting requirement and the eligibility for compensation. While the analysis does cite a number of cases which illuminate the issue, none of the cases specifically state that the definition of days in section 29 refers to calendar days. However the cases do show the Supreme Judicial Court and the Appeals Court as strongly indicating that the criterion for determining eligibility clearly rests with the premise of whether the employee could have worked, not actually worked.

100. Jose Gibau v. Cigna Insurance, Board # 210973, decided 5/30/87, decided by Judge Rosalind Brooker

101. See Finney, note 82 supra, at page 32

102. id, at page 38.

103. M.G.L. C. 152 §25A (3).

104. Section 36 of Chapter 571 of the Acts of 1985, setting forth sections 25E-25U inclusive of M.G.L.A. 152

105. Section 25E to Section 25U of c. 152 inclusive

106. As of 10/11/88 the only public entities licensed out of the DIA's Office of Insurance are the Massachusetts Bay Transit Authority, Massachusetts Turnpike Authority, and the Massachusetts Water Resource Authority.

107. Section 25D of the M.G.L.c.152 states: "No self-insurer or attorney acting in its behalf shall engage a service company or like organization to investigate, adjust, or settle claims under this chapter or to represent it in any matter before the division. Any violation of this chapter or to represent it in any matter before the division. Any violation of this section shall constitute reasonable cause for revocation of the license of a self-insurer under section twenty-five A of this chapter. Added by St. 1943, c.529, Section 7. Amended by St. 1955, c.174, Section 5."

108. Independent Service Corp., v. Tousant, 149 F. 2d 204, (1st Cir. 1945), aff'g 56 F. Supp 75 (DC MA 1944). This case reviews both the history of the amendment and the intent of the legislature to bar the use of service companies in the adjustment of industrial accident claims. One of the primary reasons cited by the court was that service companies would promise employers that the amounts paid directly to employees would be less than under an insurance policy. These companies would also attempt to convince injured workers to sign away their rights for the lowest amounts possible.

109. Hurley's Case, 302 Mass 46 (1938), where the public employer is referred to as the city. Goggin's Case, 305 Mass 309, where Suffolk County is referred to as the employer.

110. Collin's Case, 342 Mass 389 (1961), where the appellant, the city of Quincy, is referred to as a self-insurer. Canavan's Case, 364 Mass 762,763, where the city is described as a self insured employer.

111. 452 CMR 1.02 Definition of Payments of Benefits in a Timely Fashion.

112. Legislative Committee on Expenditure Review, Workmen's Compensation for State Employees, Program Audit ,p.S-2, 7/30/76.

113. A Pilot Study of California State Employee Workmen's Compensation and Other Work-Related Disability Benefits, Commission on California State Government Organization and Economy, A-39, 1970.

114. Characteristics of Occupational Injuries and Illnesses of State Employees 1980, Department of Labor and Industries, p.4, 1980.

115. Legislative Audit Bureau, State of Wisconsin, An Evaluation Of The Duty Disability Benefits Program For Protective Workers, p.2, 1987.

116. Workers Comp - A Fiscal Runaway, The Hartford Courant, December 18. 1988 p 1, A 30

117. id, at 31 where the article notes that in Connecticut cost in the past fiscal year was $37.2 million, but the unfunded liability was $94 million. Other states show the following ratios of current costs to estimates of future costs.

| | | |
|---|---|---|
| Pennsylvania | $28.7 million | to $100 million |
| Arizona | 6.9 million | to 45 million |
| Maine | 8.3 million | to 75 million |

Arizona is one of the two states in the articles' survey which has shown a decrease in costs in recent years.

118. M.G.L. C.152, section 69B.

119. id.

120. M.G.L. C.7, section 50 (l) and (j)

121. M.G.L. C 152, 69B and M.G.L. C7, section 50(k)

122. See Senate bill 917 of 1978 and 1930 of 1977

123. See Degnan's Case, Brd. # 7781-77 where in a decision by the reviewing board filed 4/23/81 the claim was dismissed because a vote to include the position had not been taken by the city. The same result was arrived at in Faulkner's Case, Brd. # 81680-76n, filed 1/11/80 where a single member dismissed the claim because there was no evidence of a vote to include the position of an officer.

124. This issue became pertinent with the passage of Chapter 401 of the Acts of 1966 which amended §69 of c. 152 to permit the inclusion of elected or appointed officers within the definition of a public employee if the political subdivision designated such positions. The Massachusetts Workmen's (so name at the time) Compensation Rating and Inspection Bureau issued a number of memorandums to deal with this issue. In a 2/7/67 document it would appear that for the new language to be applicable the political entity had to vote on its acceptance and the executive branch had to designate the positions. This was followed by the Bureau's circular letter # 1036, dated 3/17/67, which discussed this process and included notification to the department and the insurer. Bulletin #385, issued the same day, described the approval by the Commissioner of insurance of an amendment to the Rate Manual for a minimum payroll computation of $50 per week and a maximum of $300. Circular letter 1039, dated 6/21/67, provides an extensive background as to how public risks were classified at that time. Circular letter #1043, dated 9/14/67, outlined the endorsement procedure for policies. In addition, the Massachusetts Selectman's Association prepared a memorandum, dated 8/3/67, which was intended to eliminate confusion with respect to this process. Each of these documents, as well as the decisions noted in the above footnote, were furnished to the Council by Richard Wall, Esq., and were extremely helpful in gauging some of the problems which took place with respect to this amendments. As a result of the 1990 premium rate filing by the Workers' Compensation Rating and Inspection Bureau of Massachusetts the payroll levels were increased. Circular letter 1557, dated 1/2/91, set the minimum payroll at $200 and the maximum at $1,000 for elected or appointed officers of a town or city.

125. In an Opinion of the Attorney General, Public Document 12, dated 2/14/84, page 106,108, the following requirements were enunciated. " In Massachusetts, a gubernatorial appointment is complete upon the written or oral appointment of the governor. The only requirement remaining is the

"qualification" of the appointee established by the taking of the qualifying oaths prescribed by the laws of the Commonwealth." The opinion cites both the Massachusetts Constitution, Part 2, c.6, art. 1, and M.G.L. c. 30 §8. The opinion goes on to state that there is no form prescribed by law for such appointments which can be made orally, in writing, or in some other manner.

126. Town of Dartmouth, 1 MLC 1257 (1975); Town of Duxbury, 3 MLC 1733 (1977) and Town of Tyngsboro, 5 MLC 1600 (1979).

127. Town of Agawam, 13 MLC 1364 (1986)

128. City of Lawrence, 13 MLC 1157 (1986). In this CAS petition (which is a mechanism to clarify or amend an existing recognized or certified bargaining unit) the Labor Relations Commission held that the mere fact that a position is filled by an executive appointment, or is denominated a department head, is insufficient to require its exclusion unless job responsibilities meet the statutory criteria, id at 1160.

129. The towns of Greenwich, Prescott, Dana, and Enfield were flooded in order to create the Quabbin Reservoir.

130. Circular Letter 1039 of the Massachusetts Workers' Compensation Rating and Inspection Bureau, dated 6/21/67. Other figures on insurance coverage include the following; 55 of the 95 identified districts having the power of taxation; 17 of the 33 welfare districts (since the employees were considered employees of the political entity before the state assumed this function, some may have been covered by policies of the town, city, etc.); 125 of the 148 Housing Authorities; 30 of the 65 Redevelopment Authorities, although many at that time were in the formative stages; and of the 11 other authorities, 6 had coverage, 1 was a licensed self-insurer, and the rest were dormant or in the planning stages.

131. Opinion of the Justices, 303 Mass 631, 639 (1939)

132. George Gardner, Liability Insurance for Cities and Towns, 2nd Annual Survey of Mass Law, Boston College, 181 (1955).

133. Mathews v. Carr, 271 Mass 362,364 171 NE 660 (1930).

134. Pickwick v. McCauliff, 193 Mass 70,75 (1906).

135. National Shawmut Bank of Boston v. City of Waterville Me., 285 Mass 252, 189 NE 92 (1934).

136. Moschella v. Quincy, 347 Mass 80,86 (1964) Concurring opinion.

137. Dinsky v. Town of Framingham, 386 Mass 801,804 438 NE2d 51,53 (1982).

138. Fisher v. Boston, 104 Mass 87,92 (1870).

139. Chapter 270 of the Acts of 1887, presently M.G.L. chapter 153

140. Pettingill v. Chelsea, 161 Mass 368,369 (1894).

141. Dumas v. Meyer, 296 Mass 57,59, 5 NE2d 14 (1936).

142. Clare v. N.Y. & N.E. Railroad Co., 172 Mass 211,212, 51 NE 1083 (1898).

143. Coughlan v. Cambridge, 166 Mass 268 (1896). See also Connolly v. Waltham, 156 Mass 368 (1892), and Conroy v. Clinton, 158 Mass 318 (1893).

144. Mass General Law chapter 229

145. Joseph Nolan, Tort Law, Massachusetts Practice Series, v. 37, §340, p.505 (1987).

146. id, at page 506

147. Massachusetts General Law chapter 229, §6E

148. Monahan v. Town of Methuen, 408 Mass 381, 558 NE2d 951 (1990). This decision dealt, in part, with an action under c. 258 by a firefighter injured in the line of duty and receiving "injured on duty pay" pursuant to M.G.L. c. 41 §'s 100 and 111F. The Court rejected the plaintiff's claim based upon the exclusivity provisions of the Tort Claims Act, c.258, §2. This states that the remedy under the law is exclusive of any other civil actions or proceedings and was the basis for the ruling, not because the plaintiff as a public employee had no standing to sue. This leads to the possible conclusion that an employee who has no recourse under c. 152 could bring an action under the Tort Claims Act. The decision in this case would appear to preclude a suit under the Tort Claims Act by an EMT if the employee collects under c. 41 §111M.

149. Massachusetts General Law chapter 258 §2

150. Alexander Cella, Administrative Law, Massachusetts Practice Series, v. 39, §1057, p.420 (1986).

151. Gardner v. City of Peabody, 499 NE 2nd 1220, 1224 23 MA.App.Ct 68 (1986)

152. Note 150, supra.

153. Massachusetts General Law chapter 258 §4

154. id.

155. Dudley v. Cambridge, 347 Mass 543 (1964)

156. McDonough v. Lowell, 350 Mass 214 (1966)

157. Broderick v. Mayor of Boston, 375 Mass 98, 102 (1978).

158. 5 Opinion of the Attorney General, 73, 76, (1917), Stoltz's Case, 325 Mass 692, 92 NE2d 260 (1950); Opinion of the Attorney General, #31, (1972).

159. Pettiti v. Edward J. McHugh & Sons Inc., Mass 566, 571 (1960)

160. Moschella v. Quincy, 347 Mass 80,84 (1964)

161. id at 88.

162. Brucato v. City of Lawrence, 338 Mass 612, 616, 152 NE2d 676 (1959)

163. Labor Relations Commission v. Board of Selectmen of Dracut 374 Mass 619, 373 NE2d 1165 (1978) see also Olesak v City of Westfield, 342 Mass 50, 172 NE2d 85 (1961).

164. See for example the statute covering Municipal Personnel Systems, Chapter 31A. In §3 the method of acceptance is outlined and in §11 the method of revocation is established.

165. Broderick v. Mayor of Boston, 375 Mass 98 (1978). In this case the Court examined a local option statute, c. 32B §7A, which dealt with the provision of certain types of insurance by local government units. Chapter 32B §10 stated that acceptance once given could not be revoked or rescinded. The Court rejected the City's argument that since it became subject to the law only by its assent that it would not be bound by a subsequent amendment unless it manifested its assent once again, at p.100. The Court stated that article 89 §8, the Home Rule Amendment to the state Constitution, did not place such power in the hands of local government.

166. Report of the Special Recess Commission Appointed for the Purpose of Investigating Workmen's Compensation, Silicosis, and Hazardous Employments, Senate Bill 456, p.21,22 (1939).

167. Massachusetts Teachers Association v. Secretary of the Commonwealth, 384 Mass 209 (1981). This decision, at p.245, upheld "Proposition 2 1/2" stating that it was lawfully adopted through the initiative process. The initiative amended c. 59 §31 to place limits on the total taxes permitted to be assessed annually on real or personal property, at p.215. The total annual assessment may not exceed 2 1/2% of the full and fair cash valuation of property unless the percentage is increased by a majority vote at a general election [M.G.L. c. 59 §21 (c)(1)].

168. Town of Lexington v. Commissioner of Education,473 NE2d 673 (1985).

169. Q & A As A Disability Applicant, Massachusetts Teachers Retirement Board, 2nd Ed. June 1988; Q & A As A New Member, Massachusetts Teachers Retirement Board, 2nd Ed. March 1988

170. Q & A As a Disability Applicant, Massachusetts Teachers Retirement Board, 2nd edition, June 1988 p5,6.

171. Second Annual Report of the Industrial Accident Board, Public Document 105, p.87, 1915

172. id, at 99,87. See also the First Annual Report, 1914, p.43, and the Fourth Annual Report, 1917, p.54.

173. Foley v. Kibrick, 12 Mass App Ct 382, 388 (1981)

174. id.

175. id.

176. Tracy v. Cambridge Junior College, 364 Mass 367,374,375 (1973).

177. Zerofski's Case, 385 Mass 590, 433 NE2d 869, fn 1 (1982).

178. Powell v. Cole Hersee Co., Mass App. Ct. No 87 1269 (1988).

179. Note 113, supra, at A30.

180. Alicia H. Munnell and Lynn E. Browne, Massachusetts in the 1990's: The Role of State Government, Federal Reserve Bank of Boston, Research report No. 72, p.208, Nov. 1990. In addition, House 1 of 1991 (The Administration's proposed budget for FY'92) lists the appropriation for FY'90 at $43,267,650 and expenditures of $55,489,028 (v. 2, p. B-26). The amounts set forth in the proposed budget for FY'92 were $38,337,120 in account 1108-0060 and $22,000,000 as a retained revenue ceiling in the chargeback account of 1108-0065 (v. 2, p.B-25).

181. Chapter 824 of the Acts of 1965 and Chapter 150 of the Acts of 1990, approved 8/1/90. This latter figure is a combination of two line items 1108-6200 which was Workers' Compensation Paid to Public Employees for which $38,890,976 was appropriated and account 1108-6201 which had a retained revenue ceiling of $22,000,000 for the chargeback by state agencies for workers' compensation in the Intergovernmental Service Fund. The amount in account 1108-6200 could include up to $300,000 for an investigation unit. In addition the language in account 1108-6201, setting the ceiling on the chargeback program, references section 34 of chapter 150 of the Acts of 1990 as setting out the program. This appears to be an error since the chargeback program is set forth in section 31 of the law.

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The opinions expressed in this report are just that, opinions. Much of the conjecture we have engaged in has been forced by the dearth of case law in these areas. We are not legal scholars, and have no pretensions as such. To the extent that readers find the information informative, we will be satisfied. To the extent that they disagree with our analysis, we welcome their thoughts and opinions inasmuch as we fully believe that this topic will require additional thought and consideration by all involved in this area and we recognize that we hold no monopoly on how best to approach the problems raised.