

*Tennessee Advisory Council on Workers' Compensation*  
**MINUTES**  
*February 28, 2013, 1:00 p.m. CST*  
*Legislative Plaza, Room 30*  
*301 Sixth Avenue North*  
*Nashville, Tennessee*

**Members present:**

Voting Members

Chair David Lillard, Jr., Treasurer

Kerry Dove

J. Anthony Farmer

Jack Gatlin

Jerry Lee

Bob Pitts

Gary Selvy

Nonvoting Members

Paula Claytore – on phone

David Davenport – on phone

Sandy Fletchall – on phone

Bruce Fox

Dr. Keith Graves

Abbie Hudgens

Jerry Mayo

Dr. Samuel Murrell

Gregg Ramos – on phone

Lynn Lawyer

Mike Shinnick

Lynn Ivanick, Administrator

At 1:02 p.m., Chairman David Lillard, Jr., State Treasurer, called the meeting to order, introduced himself, spoke of the purpose of the Council and asked for a roll call which resulted in a quorum physically present. Additionally, some members were participating by phone, so a statement allowing for electronic participation via conference call was read into the record, moved to be accepted by Mr. Pitts, seconded by Mr. Lee and voted for unanimously.

The Chair called for the approval of the minutes of the October 1, 2012 Council Meeting. Mr. Selvy made a **motion** to accept the minutes, which was **seconded** by Mr. Lee. The motion to approve the minutes was approved by a roll call vote and the minutes thereby **adopted**.

The Chair called for the first item of new business which was **HB0194/SB0200 & HB1159/SB1275 (McCormick/Norris) Joint Bills and Amendment (Drafting Code 003177)**

Presentation of the bill was made by Ms. Abbie Hudgens, Administrator of the Tennessee Department of Labor and Workforce Development ("TDLWFD") (Council Member TDLWFD Representative).

Afterward, questions regarding the bill were posed to Ms. Hudgens by Mr. Farmer (Council Member Employee Representative), Mr. Pitts (Council Member Employer Representative), Dr. Graves (Council Member Health Care Representative), Dr. Murrell (Council Member Health Care Representative), Mr. Dove (Council Member Employer Representative), and Mr. Fox (Council Member Attorney Representative).

Mr. Landon Lackey (Attorney for the Workers' Compensation Division and prior supervisor of the MIRR program) answered questions from the Council members.

Mr. Farmer acknowledged that the current legislation proposed is the most significant change in the workers' compensation laws in the State of Tennessee since their adoption in 1919 and the most important changes considered by the Advisory Council since 1994 and made the following statement:

- 1 With the impact that these changes will have on all employees and employers as well as the dramatic demands that training, staffing, rulemaking, public education will have on the Division of Workers' Compensation, the Workers' Compensation Advisory Council recommends that an implementation date of July 1, 2014 be attached to this legislation in that it will more likely assure all affected individuals and entities will have a smoother transition to such a radically different system. I want to point out that each of these three parts as part of my motion would be a condition of the recommended position.
- 2 It has been the past practice of the Workers' Compensation Division to provide the Workers' Compensation Advisory Council with any proposed rules or rule revisions prior to initiating the statutory rulemaking process for consideration and comment by the Advisory Council, and the Workers' Compensation Advisory Council recommends that as a condition to this legislation that the current legislation include a provision providing for this practice and that it be made a part of the legislation itself.
- 3 The transition from a court based judicial system to an agency based judicial system under the proposed legislation, will require for the first time, the selection and hiring of a number of judges to preside over the courts and court clerks. It is the recommendation of the Advisory Council on Workers' Compensation that the Advisory Council on Workers' Compensation be included in the selection process to the extent that no appointment of a judge created under this legislation shall be made without review and comment by the Advisory Council on Workers' Compensation.

Mr. Farmer made a **motion** that the Advisory Council **recommend the legislation with these three recommendations thereto**. Mr. Pitts **seconded** the motion. Dr. Murrell asked for comments to be attached to the vote for the Legislative Committees. Roll was called resulting in a **unanimous vote to recommend the bill for passage with the three recommendations**.

The Chair called next item **HB0327/SB0616 (Curtiss/Yager)** for consideration which was presented by Representative Curtiss.

The Council members discussed whether, having recommended approval of the administration's bill, recommending approval of this bill would create confusion. Representative Curtiss stated that this bill would not be needed if the administration's bill resolves the issue. Chairman Lillard stated with the Representative's approval and without objection **HB0327/SB0616 is rolled to the next meeting.**

The Chair called the next item **HB0439/SB1185 (Marsh/Tracy)** and Mr. Dave Broemel (American Insurance Association) stated he had discussed the bill with Representative Marsh, who informed him it was a caption bill to be used in the event that the Governor's bill did not move. Chairman Lillard suggested that the bill be **rolled to the next meeting, which was done without objection.**

The Chair called the next item **HB0549/SB0519 (Curtiss/Burks)** and Representative Curtiss presented the bill.

Questions were posed to Representative Curtiss from Mr. Farmer (Council Member Employee Representative) and Mr. Pitts (Council Member Employer Representative). Mr. Farmer **moved** that the Council vote against recommendation, which was **seconded** by Mr. Lee (Council Member Employee Representative). Chairman Lillard called for the vote which was **unanimous against recommendation of the bill.**

The Chair called the next item **HB0626/SB1174 with Amendment (Evans/Bowling)** which was presented by Representative Joshua Evans.

Mr. Pitts (Council Member Employer Representative) asked for input from the Department of Labor and Workforce Development and Ms. Hudgens (Council Member TDLWFD Representative) explained that the bill stems from an actual case involving a minor and that the issue appeared to be insurance-related, so deferred to Mr. Shinnick (Council Member Tennessee Department of Commerce & Insurance Representative) who explained that this would bring into coverage some new job classifications that had not been covered before.

Mr. Jerry Mayo (Council Member Insurance Representative) indicated that optionality would be problematic for insurance companies and Mr. Dove (Council Member Employer Representative) inquired about potential unforeseen circumstances. Mr. Mark Bowery (Volunteer Firemen's Insurance Services) addressed the inquiries on behalf of the bill.

Mr. Pitts moved to **recommend that the bill move out** with an assurance that staff will include in its report the concerns that have been raised and the potential implications. Mr. Lee (Council Member Employee Representative) **seconded** the motion.

Chairman Lillard called the roll. The Council voted **unanimously to recommend the bill** move forward and asked the report reflect all of the comments asserted during discussion.

The Chair called the next item **HB0864/SB0432 with two Amendments (Lollar/Overbey)** which was presented by Attorney John Lyell. Mr. Farmer (Council Member Employee Representative) made a **motion that the Council recommend approval of this legislation. Second** by Mr. Pitts (Council Member Employer Representative) to recommend the bill. Chairman Lillard called the roll, and the Council voted **unanimously in favor of recommending passage.**

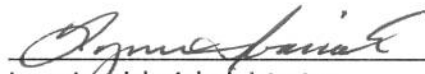
The Chair called the next item **HB1102/SB1364 (Odom/Tate)** which addressed psychologists providing impairment ratings and penalties for the misclassification of employees.

Mr. Pitts (Council Member Employer Representative) **moved** that the Council **recommend against** this legislation. Mr. Farmer (Council Member Employee Representative): **seconded** the motion. Chairman Lillard called the roll, and the Council voted **unanimously to recommend against adoption of HB1102/SB1364.**

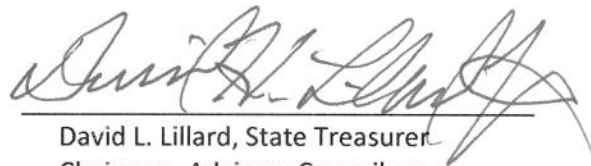
The Chair called the next item **HB1149/SB0509 (Pody/Hensley)**

The Council discussed the bill based on what it understood to be the summary and voted to recommend passage, but has since expressed a desire to reconsider its action and will be meeting March 7, 2013 to do so.

A **motion** to adjourn was made by Mr. Pitts, **seconded** by Mr. Farmer, and the Council was **adjourned** at 3:14 p.m., subject to the call of the chair. The chair thanked everyone for their participation and attendance.



Lynn Ivanick, Administrator  
Advisory Council on Workers'  
Compensation



David L. Lillard, State Treasurer  
Chairman, Advisory Council on  
Workers' Compensation