

ENROLLMENT(S)

kwiktag®

103 203 071



COUNCIL OF THE DISTRICT OF COLUMBIA

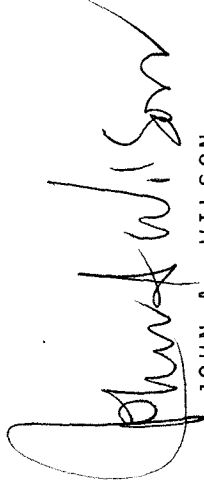
NOTICE

D.C. LAW 8-198

"District of Columbia Workers' Compensation Equity Amendment Act of 1990".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 8-74 on first and second readings, September 25, 1990, and October 9, 1990, respectively. Following the signature of the Mayor on October 24, 1990, this legislation was assigned Act No. 8-261, published in the November 2, 1990, edition of the D.C. Register, (Vol. 37 page 6890) and transmitted to Congress on January 11, 1991 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 8-198, effective March 6, 1991.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 11,14,15,16,17,18,22,23,24,25,28,29,30,31

February 1,4,5,6,7,19,20,21,22,25,26,27,28

March 1,4,5

AN ACT

D.C. ACT 8 - 261

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCT 24 1990

To amend the District of Columbia Workers' Compensation Act of 1979 and title 23 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 in order to promote a fairer system of compensation, facilitate a more expeditious processing of claims, and establish a Commission to study the procedure and method of ratemaking for workers' compensation insurance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Workers' Compensation Equity Amendment Act of 1990".

Sec. 2. The District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Code, sec. 36-301 et seq.), is amended as follows:

(a) Section 2 (D.C. Code, sec. 36-301) is amended as follows:

Section
36-301

(1) A new subsection (q-1) is added to read as follows:

"(q-1) "Physician" means a physician, dentist, or chiropractor licensed in:

"(1) Accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective January 26, 1986 (D.C. Law 6-99; D.C. Code, sec. 2-3301 et seq.); or

"(2) Any state or jurisdiction of the United States, in accordance with the laws of that state or jurisdiction."

(2) A new subsection (r-1) is added to read as follows:

"(r-1) "Utilization review" means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards."

(b) Section 4 (D.C. Code, sec. 36-303) is amended as follows:

Section
36-303

(1) Subsection (a) is amended to read as follows:

"(a) Except as provided in subsections (a-1) through (a-3) of this section, this act shall apply to:

"(1) The injury or death of an employee that occurs in the District of Columbia if the employee performed work for the employer, at the time of the injury or death, while in the District of Columbia; and

"(2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.

(2) The following new subsections are added to read as follows:

"(a-1) No employee shall receive compensation under this act and at any time receive compensation under the workers' compensation law of any other state for the same injury or death.

"(a-2) This act shall not apply if the employee injured or killed was a casual employee except that for the purposes of this act, casual, occasional, or incidental employment outside of the District of Columbia by a District of Columbia employer of an employee regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia.

"(a-3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this act while such employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employment while in the District of Columbia. The benefits under this act or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia."

(3) Subsection (b) is amended by striking the phrase "locality of injury or to".

(c) Section 8 (D.C. Code, sec. 36-307) is amended as follows:

Section
36-307

(1) By striking in the heading the phrase "and supplies" and inserting the phrase ", supplies, and insurance" in its place;

(2) By adding a new subsection (a-1) to read as follows:

"(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance

coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this act.

"(2) For purposes of this subsection the phrase "eligible to receive" means:

"(A) An employee is away from work due to a job related injury for which the employee has filed a claim for workers' compensation benefits under this act; or

"(B) An employer has knowledge of a job related injury of an employee who is away from work due to the job related injury pursuant to which workers' compensation benefits may become due under section 16.

"(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

"(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this act, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

"(5) An employer shall be reimbursed for the provision of health insurance coverage required by this subsection from the special fund established in section 41. If an employer fails to provide health insurance coverage and an employee subsequently procures the insurance coverage and receives reimbursement for the procurement of insurance coverage from the employer pursuant to subsection (d) of this section, the employer shall be reimbursed from the special fund only for the amount that the employer would have paid for the coverage if the employer had provided the coverage."

(3) Subsection (b) is amended as follows:

(A) Paragraphs (1) and (2) are repealed;

(B) Paragraph (3) is amended as follows:

(i) By striking in the 1st sentence the phrase "appointed by the Mayor";

(ii) By striking in the 2nd sentence the phrase "from the panel appointed by the Mayor";

(C) By adding the following new paragraphs to read as follows:

"(5) Each person who provides medical care or service under this act shall utilize a standard coding system for reports and bills pursuant to rules issued by the

Mayor. Medical care and service shall be billed at a usual and customary rate.

"(6) Any medical care or service furnished or scheduled to be furnished under this act shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

"(A) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this act and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this act shall be certified by the Utilization Review Accreditation Commission.

"(B) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or employer may initiate review by a utilization review organization or individual.

"(C) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

"(D) Disputes between a medical care provider, employee, or employer on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing on the dispute by the medical care provider, employee, or employer. A party who is adversely affected or aggrieved by the decision of the Mayor may petition for review of the decision by the District of Columbia Court of Appeals.

"(E) The employer shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

"(7) Medical care providers shall not hold employees liable for service rendered in connection with a compensable injury under this act."

(4) Subsection (c) is amended by inserting at the beginning the sentence "Vocational rehabilitation shall be designed, within reason, to return the employee to employment at a wage as close as possible to the wage that the employee earned at the time of injury."

(5) Subsection (d) is amended as follows:

(A) By striking the phrase in the 1st and 2nd lines "services, and supplies required to be furnished by subsection (a)" and inserting the phrase "services, supplies, or insurance coverage required to be furnished by subsections (a) and (a-1)" in its place;

(B) By striking the phrase in the 3rd and 4th lines "such medical or other treatment, services, and supplies and select a physician from the panel appointed by the Mayor" and inserting the phrase "the medical or other treatment, services, supplies, or insurance coverage and select a physician" in its place;

(C) By amending the 2nd sentence to read as follows:

"The employee shall not be entitled to recover any amount expended for the treatment, service, or insurance coverage unless the employee requested the employer to furnish the treatment or service or to furnish the health insurance coverage and the employer refused or neglected to do so, or unless the nature of the injury required the treatment or service and the employer or his superintendent or foreman having knowledge of the injury neglected to provide the treatment or service; nor shall any claim for medical or surgical treatment be valid or enforceable, as against the employer, unless within 20 days following the 1st treatment the physician giving the treatment furnishes to the employer and the Mayor a report of the injury or treatment, on a form prescribed by the Mayor."; and

(D) By inserting in the last sentence the phrase ", medical payments, and health insurance coverage" after the phrase "further compensation".

(6) Subsection (e) is amended by striking the phrase in the 7th line "from the panel".

(d) Section 9 (D.C. Code, sec. 36-308) is amended as follows: Section
36-308

(1) Subsection (c)(20) is amended by striking the phrase "three thousand five hundred dollars (\$3,500)" and inserting the figure "\$7,500" in its place.

(2) Subsection (c)(22) is amended to read as follows:

"(22)(A) In other cases the employee shall elect:
 "(i) To have his or her compensation calculated in accordance with the formula set forth in either subparagraph (B)(i) or (B)(ii) of this paragraph; and
 "(ii) To receive the compensation at the time the employee returns to work or achieves maximum medical improvement.

"(B) The compensation shall be 66 2/3% of the greater of:

 "(i) The difference between the employee's actual wage at the time of injury and the average

weekly wage, at the time of injury, of the job that the employee holds after the employee becomes disabled; or

"(ii) The difference between the average weekly wage, at the time the employee returns to work, of the job that the employee held before the employee became disabled and the actual wage of the job that the employee holds when the employee returns to work.

"(C) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities."

(3) Subsection (f) is amended to read as follows:

"(f)(1) If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of:

"(A) All medical expenses;

"(B) All monetary benefits for temporary total or partial injuries; and

"(C) Monetary benefits for permanent total or partial injuries up to 104 weeks.

"(2) The special fund shall reimburse the employer solely for the monetary benefits paid for permanent total or partial injuries after 104 weeks."

(4) Subsection (g) is amended to read as follows:

"(g) In each case, payment of benefits shall be 66 2/3% of the employees average weekly wage."

(e) Section 10(a) (D.C. Code, sec. 36-309(1)) is amended by striking the phrase "one thousand dollars (\$1,000)" and inserting the figure "\$5,000" in its place.

Section
36-309

(f) Section 29 (D.C. Code, sec. 36-328) is amended as follows:

Section
36-328

(1) By striking the period in the heading and adding the phrase "; penalty for unreasonable delay in payment of compensation." in its place;

(2) By designating the existing text as subsection (a);

(3) By amending subsection (a) by inserting the phrase "trier of fact or" after the phrase "If the";

(4) By adding a new subsection (b) to read as follows:

"(b) If the Mayor or court determines that an employer or carrier has delayed the payment of any installment of compensation to an employee in bad faith, the employer shall pay to the injured employee, for the duration of the delay,

the actual weekly wage of the employee for the period that the employee is eligible to receive workers' compensation benefits under this act. The penalty shall be in addition to any amount paid pursuant to section 16."

(g) Section 40 (D.C. Code, sec. 36-339) is amended as follows: Section 36-339

(1) Subsection (a) is amended as follows:

(A) By striking the phrase "be guilty of a misdemeanor and, upon conviction thereof shall be punishable by a fine of not more than one thousand (\$1,000) or by imprisonment for not more than 1 year, or by both such fine and imprisonment;" and inserting the phrase "assessed a civil fine of not less than \$1,000 and not more than \$10,000 in its place; and

(B) By striking the phrase "or imprisonment".

(2) Subsection (b) is amended by striking the phrase "not more than one thousand (\$1,000) and inserting the phrase "not less than \$1,000 and not more than \$10,000" in its place.

(h) A new section 43a is added to read as follows:

"Sec. 43a. Establishment of Commission.

"(a) There is established the Workers' Compensation Insurance Study Commission ("Commission").

"(b) The Commission shall:

"(1) Review the history of workers' compensation insurance rate structures in the District of Columbia since the enactment of this act;

"(2) Review the procedure for setting new workers' compensation insurance rates;

"(3) Study alternative structures and mechanisms for setting new workers' compensation insurance rates;

"(4) Study the possibility of the District of Columbia selling workers' compensation insurance to private employers; and

"(5) Report annually to the Mayor and the Council of the District of Columbia on the Commission's findings.

"(c) To the extent feasible, the Mayor shall provide staff support to the Commission from the Department of Employment Services.

"(d)(1) The Commission shall consist of:

"(A) Two ex officio members who shall be the Directors of the Department of Consumer and Regulatory Affairs and the Department of Employment Services.

"(B) Not more than 6 persons from the general public to serve as members who shall be appointed by the Mayor with the advice and consent of the Council within 45 days of enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

New
Section
36-342.1

"(C) The Mayor shall appoint, with the advice and consent of the Council, 1 person from the general public to serve as chairperson of the Commission within 45 days of the enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990".

"(2) Each member of the Commission shall serve a 3-year term.

"(3) The Commission shall appoint other officers and establish rules and procedures as the Commission shall determine.

"(4) Any vacancy on the Commission shall be filled in the same manner as the original appointment.

"(e) The members of the Commission from the general public shall include representatives from labor, business, the medical community, the insurance industry, and consumer advocates. All members of the Commission shall serve without compensation, but may be reimbursed for reasonable actual expenses incurred in the performance of official duties, pursuant to rules issued by the Mayor in accordance with section 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 1-139; D.C. Code, sec. 1-612.8).

"(f) The Commission shall continue in existence for 3 years at which time the Commission shall terminate unless the Council determines that the Commission shall continue in existence or be reestablished."

Sec. 3. Title 23 of the District of Columbia Government Comprehensive Merit Personnel Act, approved March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-624.1 et seq.), is amended as follows:

(a) Section 2301 (D.C. Code, sec. 1-624.1) is amended by adding a new subsection (g) to read as follows: Section 1-624.1

"(g) "Utilization review" means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards."

(b) Section 2303 (D.C. Code, sec. 1-624.3) is amended as follows: Section 1-624.3

(1) Subsection (a)(3) is amended by inserting at the end the sentence "Any medical service provided shall be subject to utilization review pursuant to section 2323."

(2) By adding a new subsection (c) to read as follows:

"(c)(1) If the District of Columbia government provides health insurance coverage for an employee, the District of Columbia government shall maintain the health insurance coverage of the employee while the employee receives or is eligible to receive disability compensation benefits under this title.

"(2) For purposes of this subsection the phrase "eligible to receive" means:

"(A) An employee is away from work due to a job related injury for which the employee has filed a claim for disability benefits under this title; or

"(B) The District of Columbia government has knowledge, pursuant to section 2319, of a job related injury of an employee, who is away from work due to the job related injury, and pursuant to which disability benefits may become due.

"(3) The maintenance of health insurance coverage and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' disability benefits.

"(4) The District of Columbia government shall pay the total cost for the health insurance coverage up to 52 weeks. After 52 weeks, the District of Columbia government shall pay the District of Columbia government share and the employee shall pay the employee share of the cost of the health insurance coverage during the remainder of the time the employee receives or is eligible to receive disability benefits.

(c) Section 2307(a)(21) (D.C. Code, sec. 1-624.7) is amended by striking the phrase "three thousand five hundred dollars (\$3,500) and inserting the figure "\$7,500" in its place. Section 1-624.7

(d) Section 2323 (D.C. Code, sec. 1-624.23) is amended as follows: Section 1-624.23

(1) Subsection (a) is amended by striking the last sentence in its entirety;

(2) By adding the following new subsections to read as follows:

"(a-1) Each person who provides medical care or service under this title shall utilize a standard coding system for reports and bills pursuant to regulations prescribed by the Mayor.

"(a-2) Any medical care or service furnished or scheduled to be furnished under this title shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

"(1) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this title and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this act shall be certified by the Utilization Review Accreditation Commission.

"(2) When it appears that the necessity, character, or sufficiency of medical care or service to an

employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or District of Columbia government may initiate review by a utilization review organization or individual.

"(3) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

"(4) Disputes between a medical care provider, employee, or District of Columbia government on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing by the District of Columbia government, employee, or medical provider. The decision of the Mayor may be reviewed by the Superior Court of the District of Columbia. The decision may be affirmed, modified, revised, or remanded in the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence on the record.

"(5) The District of Columbia government shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

"(a-3) Medical care providers shall not hold employees liable for services rendered in connection with a compensable injury under this title."

(e) Section 2324 (D.C. Code, sec. 1-624.24) is amended by adding a new subsection (c) to read as follows: Section 1-624.24

"(c) If compensation awarded under subsection (a) of this section is not paid within 20 days after the compensation becomes due, the amount of compensation owed shall increase by 20% unless:

"(1) A hearing or review is held pursuant to subsection (b) of this section or section 2328 and the Mayor or court, in connection with the hearing or review, issues an order that stays the payment of compensation; or

"(2) A hearing examiner or court waives payment of the 20% penalty upon a showing by the Mayor that, due to conditions beyond the Mayor's control, the award could not be paid within the 20 days."

(f) Section 2334(a) (D.C. Code, sec. 1-624.34(a)) is amended by striking the phrase "eight hundred dollars (\$800)" and inserting the figure "\$5,000" in its place. Section 1-624.34

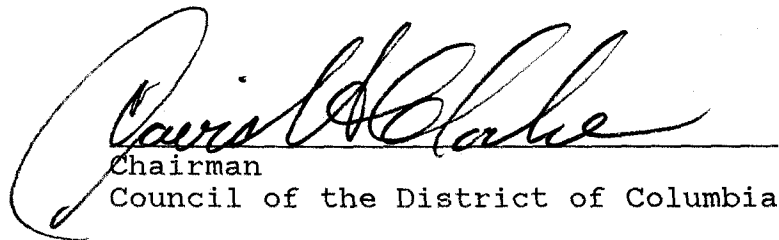
Sec. 4. Rules.

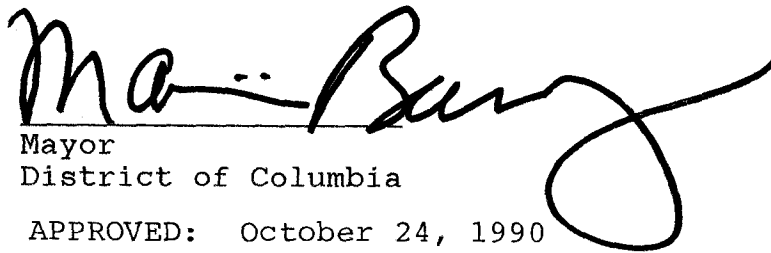
(a) The Mayor shall, pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1024; D.C. Code, sec. 1-1501 et seq.), issue rules to implement the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period the proposed rules shall be deemed approved.

Note,
Sections
36-301,
36-303,
36-307,
36-308,
36-309,
36-328,
36-329,
36-342.1,
1-624.1,
1-624.3,
1-624.7,
1-624.23,
1-624.24,
1-624.34

- (b) The proposed rules shall include standards for:
(1) A coding system for medical reports and bills; and
(2) The implementation of utilization review.

Sec. 5. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.


Chairman
Council of the District of Columbia


Mayor
District of Columbia
APPROVED: October 24, 1990



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Eight

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B8-74

Item on Consent Calendar

ACTION & DATE: Adopted, First Reading, September 25, 1990

VOICE VOTE: Approved

Recorded vote on request

Absent: All Present

ROLL CALL VOTE: -- RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X -- Indicates Vote A.B. -- Absent N.V. -- Present, not voting

CERTIFICATION RECORD

[Signature]
 Secretary to the Council

10-12-90
 Date

Item on Consent Calendar

ACTION & DATE: Adopted, Final Reading, October 9, 1990

VOICE VOTE: Approved

Recorded vote on request

Absent: All Present

ROLL CALL VOTE: -- RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X -- Indicates Vote A.B. -- Absent N.V. -- Present, not voting

CERTIFICATION RECORD

[Signature]
 Secretary to the Council

10-12-90
 Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: -- RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X -- Indicates Vote A.B. -- Absent N.V. -- Present, not voting

CERTIFICATION RECORD

 Secretary to the Council

 Date