

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday and Thursday, February 6-7, 2008
Pioneer Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 10:10 a.m.

Members present: Representatives Rick Berg, Bill Amerman, Tracy Boe, Donald L. Clark, Mark A. Dosch, Glen Froseth, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigasaa, Steve Zaiser; Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein

Member absent: Senator Terry M. Wanzek

Others present: See [Appendix A](#)

Representatives Merle Boucher, Shirley Meyer, Phillip Mueller, and Bob Skarphol and Senators Dick Dever, Tim Flakoll, and David O'Connell, members of the Legislative Council, also were in attendance.

RENAISSANCE ZONE CONFERENCE

Chairman Berg said the renaissance zone law has proven to be very beneficial for a number of cities. He said House Bill No. 1018 (2007) provided for participation of an interim committee in the Department of Commerce Renaissance Zone Conference to assist in evaluating areas of successes and determine if changes may be necessary in the renaissance zone law. He said the Department of Commerce will report to this committee at a future meeting regarding the results of the Renaissance Zone Conference.

Chairman Berg recessed the meeting so that members of the committee could participate in the Renaissance Zone Conference. He reconvened the meeting at 8:30 a.m. on February 7, 2008.

It was moved by Senator Klein, seconded by Senator Horne, and carried on a voice vote that the minutes of the October 26, 2007, meeting be approved as distributed.

WORKFORCE SAFETY AND INSURANCE REVIEW

Chairman Berg said issues relating to Workforce Safety and Insurance (WSI) have been in the news for quite some time. He said there have been a variety of emotions exhibited as a result of what is going on at WSI and all of those emotions are justified. He said the agency plays a key role in the economic growth of the state and, if the agency is well run and efficient, the agency can help attract businesses and jobs to the state. He said it is imperative that the agency be perceived as fair and balanced, and that is not the case at the moment. Therefore, he said, it is

necessary to deal with the cloud over the agency. He said there has been skepticism expressed regarding this meeting and there are some that want to see the efforts made by this committee fail. He said this committee will attempt to set aside differences over past issues and has a responsibility to identify problems and look at potential solutions that may be creative and innovative. Although the initiative measure relating to WSI will likely be on the ballot before the next legislative session, he said, legislation still will be required with respect to WSI in 2009. He said the purpose of this committee will be to gather facts, receive comments from all parties to identify areas to address, provide an open door toward sharing of concerns, and provide solutions so that the agency will be accountable and have the trust of the public.

Chairman Berg said when the Legislative Council chairman assigned this committee the responsibility to address the issues relating to WSI, he and committee counsel discussed whether the Legislative Council staff should provide another member of the Legislative Council staff to work with the committee because committee counsel is related to a member of the WSI executive staff. He said he concluded that action would not be necessary, but believed it important to make everyone aware of that relationship.

Chairman Berg said the committee welcomes comment from anybody with information relevant to the committee's work, including the employees of WSI. He encouraged committee members to ask questions and talk with anyone they felt could provide information that would identify problems and potential solutions to those problems. He said he did not want any barriers to the free flow of information.

Chairman Berg opened the meeting for public comment.

Mr. David Kemnitz, North Dakota AFL-CIO, submitted written testimony, a copy of which is attached as [Appendix B](#). Mr. Kemnitz also submitted other documents, copies of which are on file in the Legislative Council office.

Mr. Kemnitz said in 42 percent of the cases relating to workers' compensation which go before an administrative law judge, the claimant has no legal representation. He said some of the areas of concern with respect to WSI were raised in a December 1999 letter from Governor Edward Schafer to the agency's board of directors. He said the Governor proposed several suggestions including making the system less

adversarial, considering the imbalance that is created when a claimant has no attorney because the fees are contingent upon the claimant prevailing, revising and relocating the Office of Independent Review to provide the office genuine independence, and establishing a medical advisor as an independent medical expert to consider and follow the opinions of treating physicians when medically justified.

Mr. Ed Christensen said he has been an injured worker advocate for several years. He said during this time he has seen several areas of concern. He said the workers' compensation law has drifted away from the guarantee of sure and certain relief. He said many claims that are litigated require claimants to live for at least two years without any income. He said something must be done to reduce that time as well as level the playing field. He said some claimants beg for a quick denial to shorten the amount of time they have to wait to go to court.

In response to a question from Representative Berg, Mr. Christensen said a significant factor responsible for some of the delay is the fact that WSI works with out-of-state medical providers to provide independent medical examinations. He said there is something wrong with the medical portion of the system and the agency should be required to use North Dakota medical providers.

Mr. Christensen said he has never seen a board operate in the manner that the WSI Board functions. He said accountability is needed and the Governor could provide accountability if the agency were under the Governor's authority.

Mr. Dave Maclver, North Dakota Chamber of Commerce, submitted written testimony, a copy of which is attached as [Appendix C](#).

In response to a question from Representative Amerman, Mr. Maclver said transferring excess premiums from the workers' compensation fund to the general fund is not a satisfactory solution. He said the surplus funds are employer premium dollars and should be returned to the premium payers. He said the decision to increase benefits is a legislative decision.

In response to a question from Representative Boucher, Mr. Maclver said the North Dakota Chamber of Commerce supported eight bills that raised workers' compensation benefits during the 2007 legislative session. He said the employer pays a premium on behalf of an employee much like purchasing liability insurance to cover the employee's injuries. Therefore, he said, any excess premium should go back to the payer.

Representative Berg noted that the statistical information provided with Mr. Maclver's testimony dated back to 1997. He requested Mr. Maclver or representatives of WSI to attempt to provide similar information back another 10 years to help identify trends.

In response to a question from Representative Berg, Mr. Maclver said he is willing to work with

Mr. Kemnitz to identify problems and present solutions to any problems identified.

Chairman Berg said representatives of medical service providers were invited to present testimony at this meeting, but none were available to testify.

Mr. Sebald Vetter, Concerned Advocates Rights for Employees, said he works with injured employees and has preached for years regarding the issues with WSI. He said Mr. Maclver did not testify for any of the bills supported by his organization. He said this effort is too late to help the numerous lives that have been destroyed over the last 12 years.

In response to a question from Representative Berg, Mr. Vetter said the main problem with the workers' compensation system is injured employees are not receiving the care they need. He said North Dakota doctors have no input and WSI does not recognize the opinion of North Dakota doctors. He said the lawyers make decisions to deny claims. He said he has hundreds of files to show evidence of the concerns he has expressed.

Chairman Berg requested Mr. Vetter to contact some of the injured employees for whom he has those files so they can attend a meeting of the committee and express their concerns.

In response to a question from Representative Skarphol, Mr. Vetter said many doctors in this state want nothing to do with workers' compensation claims. He said the agency denies claims that medical providers diagnose as work-related.

Representative Skarphol said because the law prohibits discussing a claim without a release, it is important that injured employees who have concerns bring those concerns directly to the committee.

In response to a question from Representative Kasper, Mr. Vetter said injured workers were brought before the Workers' Compensation Review Committee during the last interim and nothing was done to help them. He said injured employees do not believe the legislative committees will do anything to help them. He said he is willing to open the files in his office to the committee.

In response to a question from Representative Thorpe, Mr. Vetter said he has not been invited to participate in meetings held by the North Dakota Chamber of Commerce to discuss WSI issues.

In response to a question from Representative Berg, Mr. Vetter said he has not invited Mr. Maclver to attend meetings of his organization. He said WSI is paying the salaries of two chief executive officers and will not give increases to injured employees. He said the workers' compensation laws need to be changed to provide increased benefits to injured employees.

In response to a question from Senator Hacker, Mr. Vetter said the bill during the last session to increase the \$10 per dependent allowance failed.

Senator Hacker said to his knowledge, North Dakota is the only state that provides such a benefit.

Mr. Dan Finneman said the workers' compensation system has gotten away from the idea that the constitution is in place to protect everyone. He said it

is his goal to make the state better for employees. He said if surplus premiums are returned to employers, the additional funds should be shared with employees in the form of their wages.

Mr. Finneman said one area of particular concern is the permanent partial impairment law. He said representatives of WSI do not inform employees of their entitlement to the permanent partial impairment benefits. He said WSI should be subject to regulation by the Insurance Commissioner. He said doctors from Minnesota who are not licensed in this state should not be involved with determining whether an injured employee is entitled to benefits. He said investigators from WSI have broken into homes without warrants and the break-ins have never been investigated. In addition, he said, claimants have had their analysts removed from their case and have not been reassigned new analysts. He said the state is infringing on constitutional, civil, and human rights.

In response to a question from Representative Berg, Mr. Finneman said two areas that must be addressed are the requirement of notification of eligibility for permanent partial impairment benefits and the need to recognize North Dakota physicians for independent medical examinations.

Representative Berg requested Mr. Finneman to provide the committee with more information regarding the allegation of WSI investigators breaking into homes.

In response to a question from Representative Froseth, Mr. Finneman said the law should be changed to provide benefits to an injured employee until the employee is able to get back to work and not require the employee to go to school for job training.

Chairman Berg said he requested representatives of WSI to provide the committee with information regarding the history of the agency, the determination of premiums, and the benefit structure. He called on Mr. Tim Wahlin, Workforce Safety and Insurance, to provide information regarding a historical overview of workers' compensation in North Dakota.

Mr. Wahlin submitted a written overview of his testimony, a copy of which is attached as [Appendix D](#).

In response to a question from Representative Skarphol, Mr. Wahlin said he is not aware of any indemnity payments that are taxable.

In response to a question from Senator Hacker, Mr. Wahlin said all medical costs stemming from an injury are covered. He said he has not heard any specific information regarding any injured employee having difficulty getting health coverage for other medical issues not related to a work injury. He said WSI works with health insurers to deal with coverage issues. Nonetheless, he said, some gaps could result in coverage under unique circumstances.

In response to a question from Representative Kasper, Mr. Wahlin said although WSI may be the primary payer with respect to a work injury, an injured employee may receive Medicare or Medicaid coverage for other health care.

Chairman Berg requested Mr. Wahlin to provide some examples of the handling of a particular injury and provide information regarding permanent impairment awards. Representatives of WSI submitted written information, a copy of which is attached as [Appendix E](#).

In response to a question from Representative Amerman, Mr. Wahlin said no permanent partial impairment award is provided for bodily impairment below 16 percent. He said awards for amputations are scheduled under statute and other impairments are based upon a percentage.

Representative Berg said the permanent partial impairment law was voted upon by the people of the state.

Representative Froseth said part of the reason for changing the base threshold to 16 percent was because the natural aging process causes everyone to experience some reduction in bodily functions.

In response to a question from Representative Berg, Mr. Wahlin said not all states have permanent partial impairment laws like this state.

Representative Berg requested Mr. Wahlin to provide the committee with additional information regarding impairment laws from other states and provide additional information regarding the changes in the North Dakota law and the amount of specific awards.

In response to a question from Representative Amerman, Mr. Wahlin said the average weekly wage is based on the individual worker's wage at the date of injury. He said the statewide average weekly wage is based on a determination by Job Service North Dakota.

In response to a question from Senator Dever, Mr. John Halvorson, Workforce Safety and Insurance, said the current maximum benefit is \$653 per week based upon the average weekly wage of \$980 or higher. He said about 10 percent of the wage loss claims are subject to the maximum weekly wage cap. He said the annual maximum benefit is approximately \$33,900.

Representative Kasper said the lack of supplemental retirement funds for an injured worker who is unable to build a retirement fund during disability appears to be a flaw in the system.

Representative Boucher said the \$10 per week dependent allowance benefit has been in place since 1987 and should be increased.

In response to a question from Representative Kasper, Mr. Wahlin said an injured worker generally determines who the treating provider will be. He said WSI chooses an independent provider for further review of a condition if further review is needed. He said WSI does not intervene with the treating provider but does work to determine the effectiveness of treatment. He said if the treatment is not determined to be the most able to treat the injury, WSI may refer the claimant for other treatment.

In response to a question from Representative Nottestad, Mr. Wahlin said he is aware of four or five doctors in the state who will not treat work injuries.

Representative Berg said he has heard some concern expressed by medical providers with respect to the bureaucracy of treating work injuries. He said he would like to get further information at a future meeting regarding that issue.

In response to a question from Representative Froseth, Mr. Wahlin said the medical fee schedules are agreed to by the providers. He said WSI is the primary payer for work-related injuries.

Representative Boucher said he is aware of individuals who have work injuries and who are covered by private insurance that had medical bills turned over for collection as a result of disputes between the private insurer and WSI with respect to payment obligations.

Mr. Wahlin said Blue Cross Blue Shield will not pay for work-related injuries. He said WSI pays if an injury is compensable, but will stop payment if fraud is involved. In such a case, he said, Blue Cross Blue Shield will not pick up the claim.

Representative Boucher said he is aware of many situations where there has been a dispute simply regarding whether an injury is work-related.

Mr. Wahlin said he believes there are very few of those types of claims. He said WSI has the tools to share information with insurers to address those cases.

Representative Berg said a creative approach to address some of the problems may be to find a method through which health insurance coverage can be combined with workers' compensation coverage.

In response to a question from Senator Behm, Mr. Wahlin said WSI pays the attorney's fees of an injured employee to the extent the appeal of a claim yields results for the claimant.

Representative Berg said if there are attorneys who have concerns with the payment of attorney's fees by WSI, the committee should attempt to hear from those individuals.

In response to a question from Representative Skarphol, Mr. Wahlin said WSI does not require the electronic filing of claims. However, he said, most claims are filed electronically. He said the changes in the provider fee schedule were made through the administrative rules process. He said a physician may choose not to treat an injured worker if the physician does not agree with the fee schedule.

In response to a question from Representative Skarphol, Mr. Wahlin said WSI will pay for an attorney consultation for a claimant when in the process of discussing a settlement. He said the claimant is permitted to pick the claimant's attorney.

In response to a question from Representative Amerman, Mr. Wahlin said every employee meeting the statutory definition of an employee is covered by WSI. He said if an employer has not secured coverage or has lied about an employee, the

employee is still covered by workers' compensation and WSI will address the issue with the employer.

In response to a question from Representative Dosch, Mr. Wahlin said there has been a significant amount of change within the special investigations unit at WSI. He said the unit originally dealt with every referral as if it were fraud. He said inquiries are now handled to seek more information, then address the issue if there appears to be fraud involved. He said the head of the unit recently left employment with the agency and other employees have left over the last few months. He said an attorney--Rob Forward--at the agency is now in charge of the unit and WSI will hire employees to fill the vacant positions so that investigations can be conducted in-house rather than on a contract basis.

In response to a question from Representative Froseth, Mr. Wahlin said representatives of WSI will attempt to prepare a statistical summary regarding expenditures for attorney's fees and the number of cases litigated for years before the figures provided in the document entitled *Workforce Safety & Insurance 2000-2007 Quick Facts* ([Appendix F](#)).

Representative Berg said before the change in the law with respect to the payment of attorney's fees, most claimants obtained representation up to the \$2,000 limit which slowed the entire process.

Representative Skarphol requested representatives of WSI to provide the committee information regarding the number of employee hours committed to fraud investigations from 2002 through 2007.

In response to a question from Representative Kasper, Mr. Wahlin said there is some value in keeping employees of the Office of Independent Review as employees of WSI. He said it allows the Office of Independent Review employees greater access to other employees of WSI and provides for a less antagonistic relationship. He said there is a difficult balance to maintain between the independence of the employees of the Office of Independent Review and the connection with WSI.

In response to a question from Representative Amerman, Mr. Wahlin said claimants typically will seek legal representation after the denial of benefits but before the administrative hearing stage.

Representative Berg said it is important to keep in mind that in states where workers' compensation coverage is provided by private insurers, the first step after the denial of benefits is directly into the court system. He said an advantage of having WSI independent of an elected official is that the agency makes its premium determinations on an actuarial basis rather than on political concerns. In addition, he said, there is likely less political influence over claims decisions.

Mr. Glenn Evans, Pacific Actuarial Consultants, distributed information relating to the WSI ratemaking process, a copy of which is attached as [Appendix G](#); information relating to the WSI fund, claims, and benefits, a copy of which is attached as [Appendix H](#);

and information comparing North Dakota with neighboring states with respect to claims, a copy of which is attached as [Appendix I](#).

Mr. Evans said he began providing consultant services to the Workers' Compensation Bureau around 1989. He said an actuarial analysis of the workers' compensation fund indicated that upward movement in premiums was necessary. He said there was a 60 percent rate increase in premiums after his first year working with the agency, a 35 percent premium increase after the second year, and a 40 percent increase in premiums after the third year. He said the fund was bringing in \$20 million to \$25 million in premiums and paying out \$60 million in benefits.

In response to a question from Representative Skarphol, Mr. Evans said 1994 was the year of the largest funding deficit for the agency. He said the fund reached solvency in 1997. Although claim frequency is decreasing at about 25 percent per year, which is a higher rate than other states, he said, liabilities will grow with time due to increased costs. He said the average claim loss will grow as salaries increase and medical cost growth continues at an accelerated rate. Although there has been a small decrease in the frequency of medical-only claims, he said, there has been approximately a 9 percent increase in the average size of claims due to increased medical costs.

In response to a question from Representative Skarphol, Mr. Evans said he will attempt to provide the committee with more information regarding costs before 1995.

In response to a question from Representative Berg, Mr. Evans said the workers' compensation fund reserves are adequate and reasonably stable.

In response to a question from Representative Boucher, Mr. Evans said he will attempt to provide additional information regarding comparison of the statewide average wage in North Dakota with neighboring states as well as the cost-of-living and other variables.

In response to a question from Representative Meyer, Mr. Evans said South Dakota has few permanent total disability claims. He said he is not sure why the number of those claims in South Dakota is so much lower than other states.

In response to a question from Representative Berg, Mr. Evans said North Dakota has fewer indemnity claims per 1,000 workers than surrounding states. He said the state has a comparatively low claim frequency and permanent total disability and death claims are a bit above average.

In response to a question from Representative Skarphol, Mr. Evans said this state arguably has the lowest premium rates in the nation. He said an employer coming to this state would look at the relative premium cost of workers' compensation coverage, not how the premium funds are spent.

In response to a question from Representative Berg, Mr. Evans said increased costs are not unique

to this state. He said the number and the frequency of claims are decreasing. Because most other states allow private carriers, he said, it is difficult to make benefit comparisons and to evaluate costs.

Representative Amerman said he has seen information indicating that this state has the lowest level of statutory benefits.

In response to a question from Representative Skarphol, Mr. Evans said the WSI Board has followed his actuarial recommendations closely in recent years. In the early 1990s, he said, the agency concluded that it was best to eliminate the rate level deficiency over a period of years. He said the agency now has better data to use in determining rates.

In response to a question from Representative Amerman, Mr. Evans said the statutorily required fund balance for WSI would be viewed as wholly inadequate for a private insurance carrier. He said if WSI were a private carrier, higher premiums would be necessary to maintain a higher surplus.

In response to a question from Representative Berg, Mr. Evans said the ratesetting process is patterned after industry standard experience rating plans. In addition, he said, there are other adjustments to the process, including credits, safety incentives, and participation in a risk management program. He said he sees no issues of concern with respect to maintaining adequate and accurate rates under the current system.

In response to a question from Representative Boucher, Mr. Evans said workers' compensation coverage in other states does not include general liability insurance, and coverage in this state is similar to workers' compensation insurance in other states.

Representative Skarphol requested Mr. Evans to attempt to provide additional information regarding the distribution of costs from other states.

Chairman Berg called on Ms. Jennifer Clark, Legislative Council staff, for comments regarding the Workers' Compensation Review Committee. Ms. Clark said the committee was established in 2005 and in 2007 the Legislative Assembly removed the expiration date for the committee. She said the committee consists of six members and has met once during this interim. Although 14 applications for a claims review have been mailed to requesters, she said, no completed applications have been received by the Legislative Council office. Of the two applications that were submitted, she said, one was not eligible because the case was not final and the other applicant decided to pursue the continuing jurisdiction review process recently announced by WSI.

Ms. Clark said the Legislative Council sent a letter regarding the committee to legislators and provided information to the State Bar Association for distribution to attorneys. She said labor organizations also have been informed of the committee's existence and mission. She said the committee met seven times during the last interim and reviewed 11 applications at four separate meetings.

In response to a question from Representative Berg, Ms. Clark said the committee is allowed to review only claims that have received a final decision from WSI. During the last interim, she said, most of the cases reviewed were older cases.

In response to a question from Representative Zaiser, Ms. Clark said the Legislative Council staff has responded to each applicant who has contacted the office.

In response to a question from Senator Dever, Ms. Clark said individuals seeking information regarding the claims review process are also provided information regarding the WSI continuing jurisdiction review process.

Mr. Halvorson distributed additional information regarding WSI claims and premiums, copies of which are attached as [Appendix J](#).

In response to a question from Representative Zaiser, Mr. Halvorson said the request for proposals for the independent reviews of WSI requested by the Governor and the WSI Board were developed in conjunction with the Office of Management and Budget procurement office. He said the procurement professionals selected individuals to review the vendors and selected Marsh USA and Henry Neal Conolly. He said the request for proposals was structured so that vendors could not have done business with WSI during the last five years.

Representative Zaiser said he recently read a *New York Times* article regarding a \$950 million settlement reached between the New York Attorney General and the Marsh company.

Chairman Berg requested committee counsel to seek further information regarding the settlement mentioned by Representative Zaiser.

In response to a question from Representative Berg, Mr. Halvorson said additional information regarding the request for proposals process can be provided to the committee at the next meeting. He said the request was drafted by the Office of Management and Budget, and the WSI Board worked with Mr. Ryan Bernstein of the Governor's office to develop the scope of review. He said the State Auditor declined an invitation to participate in the request for proposals process. He said three submissions were received for each proposal. He said two independent groups evaluated the submissions and made a recommendation. He said the board accepted the recommendation and issued contracts.

In response to a question from Representative Amerman, Mr. Halvorson said representatives of WSI have requested additional information from Mr. Jim Long regarding his continued employment status with the agency. He said he is unsure when that situation will be resolved.

In response to a question from Representative Zaiser, Mr. Halvorson said one member of the Neal Conolly business worked with another vendor that was associated with WSI approximately eight or nine years ago. He said that association was far outside

the five-year threshold placed in the request for proposals.

In response to a question from Representative Boucher, Mr. Halvorson said a former employee of WSI, Mr. Dave Spencer, administered a safety grant program. After Mr. Spencer left employment with WSI, he said, Mr. Spencer began operation of a consulting business that helped businesses apply for safety grants. He said the situation was awkward and WSI assessed whether the agency could prevent Mr. Spencer from providing consulting services to businesses applying for safety grants. However, he said, WSI had no policy to prevent a consultant from assisting in preparing grant applications and there is no state law that would prevent a state employee from providing consulting services related to the employee's prior employment.

Representative Berg said the safety program is quite unique. He said he would prefer that grant funds not be used for paying consultant fees and the committee may consider examining whether it is feasible to prohibit grant funds from being used to pay a consulting fee.

Representative Boucher said he has a problem with an individual having an unfair advantage or an application having an unfair advantage due to a business association with a former employee of the agency providing the grant.

In response to a question from Representative Zaiser, Mr. Halvorson said he is unsure of the percentage of safety grants that have been provided to clients of Mr. Spencer. He said the grant writer is generally not identified in a grant application and is generally information that is readily known only by the consultant and the business applying for the grant. He said the grant applications must meet certain requirements and WSI is continually striving to improve the program.

Representative Skarphol said there is nothing unique about the situation being discussed. He said there are likely a number of former state employees who are now working in the private sector and providing services to state agencies.

In response to a question from Senator O'Connell, Representative Berg said the committee needs to look forward at finding solutions to problems identified relating to WSI. He said he does not believe the committee should spend time examining the whistleblower law.

Representative Kasper said the WSI legal counsel prepared an opinion relating to the situation with Mr. Spencer. He distributed a copy of the memorandum, a copy of which is attached as [Appendix K](#).

In response to a question from Senator Horne, Mr. Halvorson said he is not sure who is on the list of individuals to be interviewed in the reviews conducted by the Marsh and Conolly businesses. He said he is aware that the reviewers are interviewing all management personnel at WSI and a number of legislators.

In response to a question from Representative Thorpe, Mr. Halvorson said representatives of WSI frequently meet with public officials and stakeholder groups. He said part of the role of the agency is to provide information to individuals or groups regarding the functions of the agency.

Chairman Berg requested Mr. Halvorson to provide the members of the committee with contact information for WSI Board members. He encouraged committee members to present questions to board members or WSI staff.

Representative Dosch requested Mr. Halvorson to provide a copy of the WSI morale assessment.

In response to a question from Representative Berg, Mr. Halvorson said the WSI continuing jurisdiction review is addressing claims dating back to 1995. He said the agency will continue to accept applications through June 30. He said the agency has received approximately 120 requests and will begin reviewing the requests within a week.

Mr. Robert Peterson, State Auditor, said he is willing to work with the committee and provide any information that may be requested.

In response to a question from Senator Horne, Mr. Peterson said his office generally reviews the status of the response to recommendations presented in an audit approximately 18 months to 22 months after the report is issued. Thus, he said, his office will review the response of WSI to the State Auditor's audit in May or June.

Mr. Gordy Smith, State Auditor's office, said a performance evaluation of WSI is conducted every two years. He said he can report to the committee regarding the progress in the performance evaluation process. He said the permanent partial impairment law and independent medical examinations appear to be areas of concern for injured workers which may be included in the evaluation. He said the evaluation will look at the financial situation of the agency and examine the legal division. He said the report should be completed by the end of August.

Mr. Smith said the testimony of Mr. MacIver was incorrect in that there have been four chief executive officers of WSI since 1997, and during part of the period for which Mr. MacIver stated there were 14 directors of the agency, there were three-person teams. Furthermore, he said, the agency has not spent a significant amount of time responding to audits. He said there has been only one audit of the agency. He said other reviews of the agency were not audits. He said nothing in the auditor's performance audit has been shown to be inaccurate.

In response to a question from Representative Meyer, Mr. Smith said the performance evaluation is required every two years.

Representative Berg said the requirement put in the law by the Legislative Assembly was intended to provide for a biennial review of the agency. He said it is important that employees of the agency get back to doing what they should be doing and not having barriers to performing their jobs.

Mr. Bernstein said in 1997 the Legislative Assembly removed responsibility for oversight of the workers' compensation agency from the Governor. He said the long-term solution for proper accountability of WSI is to return the agency to the responsibility of the Governor. He said the Governor supports the initiative that proposes to require the Governor to appoint the head of the agency.

In response to a question from Senator Dever, Mr. Wahlin said the application form for the continuing jurisdiction review mirrors the language used by the Workers' Compensation Review Committee with respect to the authorization of the release of claimant file information. He said WSI must be able to report the results of the reviews to the Workers' Compensation Review Committee.

In response to a question from Senator Klein, Mr. Wahlin said the agency will review all applications to the extent the claims are reviewable in the order of receipt. He said the applications will then be grouped into prevalent areas, and WSI will make available whatever information the Workers' Compensation Review Committee desires.

Chairman Berg called on Mr. Adam W. Hamm, Insurance Commissioner, for comments regarding a proposal to authorize regulation of WSI by the Insurance Commissioner. Commissioner Hamm submitted a written summary of his testimony and proposed bill draft, a copy of which is attached as [Appendix L](#).

In response to a question from Representative Berg, Commissioner Hamm said there is a need for a new and fresh look at the WSI issue. He said insurance companies generally are required to submit to a financial examination at least every five years and a market conduct review as needed.

In response to a question from Senator Hacker, Commissioner Hamm said his proposal would apply to WSI the same standards used with private insurance companies.

In response to a question from Representative Zaiser, Commissioner Hamm said he is not aware of any other specific proposals for Insurance Commissioner regulation of WSI.

In response to a question from Representative Kasper, Commissioner Hamm said the audits and reviews conducted of WSI are not of the same type as the financial examination he proposes. He said he is not looking at duplicating what is being done. He said he is unsure whether the financial examination that he has proposed would affect the reserve levels required to be maintained by WSI.

In response to a question from Representative Boucher, Commissioner Hamm said the enforcement and compliance provisions in the bill draft are designed to provide flexibility. He said the bill draft contemplates reporting to the Governor. He said if the initiative relating to WSI does not pass, the bill draft may need to be revised to provide more authority to the Insurance Commissioner.

In response to a question from Representative Amerman, Commissioner Hamm said the added responsibilities provided by the bill draft would likely require two additional full-time employees. Initially, he said, he would likely consider contracting for the services.

Representative Berg said entities such as the Bank of North Dakota and WSI are unique and do not have the same type of risk that similar private entities have. He said the key is to look at whether claims are being handled fairly. He said he was surprised to learn that the WSI reserves would be considered to be inadequate if WSI were a private insurer.

Representative Skarphol requested Mr. Halvorson to provide information regarding workers' compensation premium rate determinations and the recommendations of the agency's actuary dating back to 1985, if possible.

Representative Dosch said the committee should seek testimony from employees of WSI and the Office of Independent Review.

Representative Kasper requested the Legislative Council staff to invite representatives of medical providers to attend the next meeting of the committee.

Chairman Berg said the next meeting of the committee likely will be on March 4, 2008. There being no further business, Chairman Berg adjourned the meeting at 4:15 p.m.

John Bjornson
Committee Counsel

ATTACH:12