

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday and Thursday, July 9-10, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Rick Berg, 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, Robert M. Horne, Terry M. Wanzek

Members absent: Representatives Bill Amerman, Tracy Boe; Senators Nicholas P. Hacker, Jerry Klein

Others present: See [Appendix A](#)

It was moved by Representative Froseth, seconded by Representative Clark, and carried on a voice vote that the minutes of the April 28, 2008, meeting be approved as distributed.

WORKFORCE SAFETY AND INSURANCE REVIEW

Chairman Berg said the committee has been and will continue to be discussing the governance of Workforce Safety and Insurance (WSI), the public perception of WSI and the trust placed in the agency, and whether there may need to be legislation prepared to address concerns with WSI. He said after he requested injured workers to contact the Legislative Council office if they had concerns regarding WSI, approximately 50 people contacted him or the office. He said the Legislative Council requested each injured worker who contacted the office to sign a release of information if the injured worker desired to have the committee look closer at the individual's claim. As a result, he said, 15 individuals signed releases. He said the Legislative Council staff sent a letter to 15 members of the committee asking them to visit with a claimant who had signed a release and with a representative of WSI to attempt to get a better understanding of the injured worker's concerns and to recommend to the committee any legislation that may be appropriate to address concerns of injured workers. In addition, he said, the committee members were asked to refer the injured workers to the Legislative Council's Workers' Compensation Review Committee if they believed an injured worker may be eligible for review by that committee.

Chairman Berg said the committee will continue to focus on those issues and other issues such as the workers' compensation fund reserve level. He said individuals from West Virginia and Nevada will provide the committee with information regarding the transition from a monopolistic workers' compensation system to

mutualization and privatization of the systems. In addition, he said, a representative of NCCI Holdings, Inc. (NCCI), will provide the committee with information regarding workers' compensation classifications and ratesetting.

WIRELESS SERVICE STUDY

Chairman Berg said the committee received information at its first meeting regarding wireless coverage in the state and requested wireless providers to make suggestions regarding incentives that may encourage investment in the state and provide information regarding any barriers that may prevent or discourage investment by wireless providers. He said he saw a recent study where North Dakota was recognized as being well-advanced as compared to many other states with respect to connectivity and telecommunications services.

Chairman Berg called on Ms. RaeAnn G. Kelsch, Alltel, for comments regarding the committee's study of wireless service. Ms. Kelsch said Alltel is in the process of being purchased by Verizon Wireless. Although she is unable to discuss the merger, she said, she can assure the committee that Alltel will continue to build its infrastructure within the state as previously planned until the merger is complete.

In response to a question from Representative Berg, Ms. Kelsch said Alltel has been aggressive in building its coverage within the state. She said wireless companies have been attempting to meet the unanticipated expansion in areas of the state in which oil development has increased. She said the oilfields need additional capacity and Alltel has been building out its coverage. She said significant improvement in coverage has been made since she addressed this committee last October. She said Alltel is expected to add 20 new cell sites within the state during 2008.

In response to a question from Senator Behm, Ms. Kelsch said under the federal Telecommunications Act of 1996, states have a limited amount of input and control over the wireless industry. She said there was a desire by the federal government to limit regulation in an attempt to build a competitive and robust industry. She said federal law requires that every state must have at least two carriers.

In response to a question from Representative Zaiser, Ms. Kelsch said carriers were designated as either a Class A or Class B carrier when the licenses were first sold in the 1980s. She said license

acquisition was conducted through a bidding process. She said the industry remains competitive and service providers are reacting to meet customer demands, such as prorating early termination fees and providing options like prepaid service with no contracts. When there is state-by-state regulation, she said, prices generally increase.

In response to a question from Representative Kasper, Ms. Kelsch said after the merger of Alltel and Verizon Wireless, there still will be competition in the state. She said the consolidation of the companies will require divestiture of overlapping markets and require the company to sell one of the licenses held by the two companies.

In response to a question from Representative Froseth, Ms. Kelsch said rural telephone cooperatives providing wireless service partner with Verizon Wireless.

Representative Berg said significant progress in the development of wireless service has been made without regulation. He said competition will allow customers to push for better service and cheaper prices. He said it is important to ensure strong competition in the state to provide consumers with good service and good prices.

Chairman Berg called on Mr. Tony Clark, Public Service Commissioner, for comments regarding the proposed merger of Alltel and Verizon Wireless. Mr. Clark submitted written testimony ([Appendix B](#)) regarding the merger.

In response to a question from Representative Berg, Mr. Clark said the Public Service Commission will provide legislators with its findings from the roundtable conducted with wireless carriers. He said he does not have any recommendations for legislative action at this time with respect to encouraging wireless investment in the state.

In response to a question from Senator Behm, Mr. Clark said the Public Service Commission encourages wireless providers to share towers when feasible. He said companies were initially reluctant to share towers, but there has been a shift in that attitude in recent years.

WORKFORCE SAFETY AND INSURANCE REVIEW

In response to a question from Representative Berg, committee counsel said the Legislative Council staff sent letters to 15 members of the committee requesting each of those members to contact a specific injured worker who had submitted a release of information to the Legislative Council office. He said the correspondence requested the committee member to visit with the injured worker and Mr. Tim Wahlin of WSI to try and get a better understanding of the claim and listen to concerns of the injured worker.

Representative Thorpe said he did not have time to follow up on the request because he was on vacation. He said he is concerned with interviewing the claimant one-on-one and feels it is a significant amount of responsibility for a committee member to

write down what has been discussed and report to the committee. He said he knows many injured workers feel they have been hurt by the handling of their claims by WSI and further investigation is needed.

Representative Berg said there have been many statements made publicly which were not entirely true. He said the objective of this committee is to determine if a claim has been inappropriately handled. He said it is important to get both sides of the story. If a claimant signs a release of information, he said, the committee can have representatives of WSI go through the entire claim. However, he said, he prefers to keep the information private, if possible. He said members of the committee should visit with the injured workers and listen to their stories and provide a general summary for the committee.

Representative Kasper said the role of the members of the committee is to gather information and provide feedback to the committee and not to pass judgment on the validity of the claim. He said members of the committee need to listen to the injured workers and get relevant information from WSI.

Representative Zaiser said claim files may contain information that not all committee members are able to fully understand. He said committee members should have access to a tape recorder so they can record all relevant discussions.

In response to a question from Representative Nottestad, Chairman Berg said if a member of the committee believes that legislation may be necessary to address problems identified in the discussion with injured workers, that committee member may request the Legislative Council staff to prepare a bill draft. He said it is important that committee members make it clear to the injured worker that the committee is unable to change the injured worker's claim status. He said the release signed by each injured worker clearly states that fact.

In response to a question from Representative Froseth, Chairman Berg said WSI generally has continuing jurisdiction over all cases. He said the June 30 deadline was established to address the special continuing jurisdiction review that was recently implemented. He said the Workers' Compensation Review Committee can address an injured worker's concerns if the individual's claim is closed.

Senator Behm said the individual he contacted felt it was hopeless to continue to pursue his claim. He said the injured worker was disappointed that out-of-state physicians made decisions regarding his claim. He thanked Mr. Wahlin for providing a significant amount of information to assist him in reviewing the injured worker's claim. However, he said, it is very difficult to make a judgment regarding the handling of the claim.

Chairman Berg called on Mr. Bruce Furness, Interim Executive Director and CEO, WSI, for comments regarding the workers' compensation fund balance. Mr. Furness submitted a written summary ([Appendix C](#)) describing the projected fund balance and the allocation of money from the fund. He also

submitted an analysis ([Appendix D](#)) of the statutorily mandated fund surplus and the calculation of the surplus.

Representative Zaiser said he has concerns with the determination by WSI that the safety and education and the revolving school loan fund, unrealized gains, the information technology transfer project, and capital assets are excluded from the calculation of available fund surplus. He said the agency has a public perception problem. He said the issuance of employee dividends by the agency contributes further to the perception problem of the agency.

Mr. Furness said he disagrees with Representative Zaiser's assessment. He said 92 percent to 93 percent of all claims are paid quickly, accurately, and thoroughly. He said claims adjusters are required to make claim determinations according to the law and the agency is required to use its funds according to statutorily established requirements. He said the system is working well and a small number of contentious claims gather all the publicity. He said the agency cannot use surplus funds for future claims and is required to refund the excess premiums to those who paid the premiums.

Representative Zaiser said the public perception problem may be reduced if the agency were to have legislative approval or review of the issuance of dividends.

In response to a question from Representative Kasper, Mr. Furness said the decision by the WSI Board of Directors to issue \$77 million in refunds was made to comply with state law. He said benefits for injured workers can be changed only by legislative action. He said the agency is doing only what the law allows.

In response to a question from Representative Thorpe, Mr. Furness said if the Legislative Assembly makes changes to benefits, future premiums will be affected.

In response to a question from Senator Behm, Mr. Wahlin said if a claim is denied and the injured worker appeals the denial, the claims handler who initially handled the claim will continue to handle the claim. However, he said, the handler's direct supervisor will review the claim and the order will be prepared by another individual.

In response to a question from Senator Wanzek, Mr. Furness said the reserve is necessary to pay losses for claims incurred that may continue for a number of years.

Representative Berg said the \$250 million liability in 1995 did not provide funding to pay for future claims. He said the bill that addressed the issue was passed by a 79 to 11 margin in the House. He said it is in everyone's best interest to have a solvent fund.

Senator Wanzek said a private insurer would likely be shut down by the Insurance Commissioner if the insurer did not have an adequate reserve.

In response to a question from Representative Berg, Mr. Furness said future unpaid claims losses amount to approximately \$745 million. Because the

fund balance exceeds the statutorily established target, he said, the WSI Board of Directors had no choice but to provide for refunds of premiums. He said because of the questions raised by the State Auditor regarding the calculation of the appropriate reserve, legislation may be necessary to address the appropriate method of calculation.

In response to a question from Representative Thorpe, Mr. Furness said WSI will be looking at providing legislation to enhance benefits for the next legislative session. He said medical expense inflation will be another factor to consider in determining what the appropriate reserve level should be.

Chairman Berg called on Mr. Robert R. Peterson, State Auditor, for comments regarding the WSI reserve level. Mr. Peterson presented written testimony ([Appendix E](#)) regarding his request for an Attorney General's opinion regarding the WSI reserve surplus.

In response to a question from Representative Kasper, Mr. Peterson said his conclusion that WSI is in violation of the law with respect to the financial reserve surplus is correct because he is the State Auditor and knows generally accepted accounting principles. He said an independent certified public accounting firm has also concluded that WSI is in violation of the law. He said he has not contacted an insurance actuary to discuss the appropriate determination of financial reserves with respect to insurers. He said WSI cannot exclude unrealized gains from the determination of the surplus amount. He said excluding unrealized gains is not permitted under generally accepted accounting principles.

In response to a question from Representative Berg, Mr. Peterson said if the Legislative Assembly amends North Dakota Century Code (NDCC) Section 65-04-02 to specifically establish a method for excluding certain items from the calculation of the appropriate reserve level, he would have to deal with the law. However, he said, generally accepted accounting principles do not recognize the types of offsets WSI has concluded are appropriate.

In response to a question from Representative Froseth, Mr. Peterson said although representatives of WSI contend statutorily authorized or directed programs should be excluded from the fund balance for determination of an appropriate reserve level, the Legislative Assembly should have allowed those offsets if it had intended WSI to exclude those in the determination of its appropriate reserve level.

Representative Zaiser said WSI should focus on spending the money in the education fund and promoting the availability of the funds.

Representative Berg distributed a bill draft [[90184.0100](#)] which would define available earned surplus for the purposes of determining the WSI reserves. He said the bill draft would provide that available earned surplus means earned surplus funds derived from realized net profits, but does not include unrealized capital, reevaluation of assets, prepaid assets, and funds allocated or obligated to specific programs or projects. He questioned whether the

reserve level needs to be as high as it is in a monopolistic market. He said he would not want to see funds removed from the safety program and the educational loan program to generate cash to pay claims.

Representative Kasper said the primary purpose of the reserve is to ensure that funds are available to take care of injured workers. If the Legislative Assembly overlooked generally accepted accounting principles in the adoption of NDCC Section 65-04-02, he said, the Legislative Assembly should address it so that the State Auditor does not have to waste time asking for Attorney General's opinions on details.

Ms. Cindy Ternes, WSI, said the WSI Board of Directors has been trying to get in compliance with the law. She said the law should be clarified to specifically address what should be included in the determination of the reserve level.

In response to a question from Representative Berg, Ms. Ternes said generally accepted accounting principles outline what must be included for net determining assets. She said she does not believe that WSI is out of compliance with the principles.

Representative Dosch questioned whether the law should address unrealized gains in the event of future market changes.

In response to a question from Representative Berg, Ms. Ternes said unrealized loss and net gain are combined in the determination of a total. She said net assets would be reduced if the net figure became a loss.

In response to a question from Representative Clark, Ms. Ternes said she can check with the investment manager to determine the value of the agency's investments. She said the amount varies from day to day.

STATE ELECTRICAL BOARD STUDY

Chairman Berg called on Mr. Don Offerdahl, Executive Director, State Electrical Board, for comments regarding the committee's study of the State Electrical Board and the licensing and regulation of electricians. He submitted written information ([Appendix F](#)) comparing state electrical apprentice and journeymen licensing requirements.

Mr. Offerdahl said there are three options for approved electrical training in this state, including training through independent electrical contractors and the State College of Science.

Representative Berg said it appears that the issues leading to this study have been sorted out with time.

WORKFORCE SAFETY AND INSURANCE REVIEW

Ms. Jodi Bjornson, WSI, provided written information ([Appendix G](#)) regarding WSI hearings and appeals.

In response to a question from Representative Berg, Ms. Bjornson said approximately 32,000 informal decisions are made by claims adjusters over a period of one year. She said those decisions affect

benefits in some way. She said about 1,400 of those decisions are appealed and a formal order is issued. She said the Office of Independent Review reviewed approximately 400 cases during the past year. During the last fiscal year, she said, about 160 administrative hearings were requested and 108 hearings were held.

In response to a question from Representative Zaiser, Ms. Bjornson said of the 1,200 claims that may be eligible for review by the Office of Independent Review, approximately 400 were actually reviewed by that office. She said the agency has not done any surveys to determine why claimants do not utilize the Office of Independent Review.

In response to a question from Senator Behm, Ms. Bjornson said the employees at the Office of Independent Review work with the claimant and the claims handlers to attempt to resolve the claim. She said the employees at the Office of Independent Review are employees of WSI but are separate from the claims department.

In response to a question from Representative Berg, Ms. Bjornson said administrative hearings are similar to a judicial proceeding. She said a hearing officer presides and both sides may have counsel, offer witnesses, and provide evidence similar to a judicial proceeding. She said an administrative hearing generally lasts one day.

In response to a question from Representative Zaiser, Ms. Bjornson said state statute allows WSI to reimburse an injured worker when the injured worker prevails in an appeal. She said outside counsel hired by WSI receive pay for services regardless of whether they prevail in the proceeding. In comparison with other jurisdictions, she said, North Dakota is very generous with respect to the payment of attorney's fees for claimants.

In response to a question from Representative Berg, Ms. Bjornson said the reimbursement amount for prevailing after an administrative hearing is approximately \$4,000 to \$5,000. She said the reimbursement rate for prevailing at the district court level is about \$7,000 to \$8,000 and for prevailing at the Supreme Court level is about \$10,000 to \$11,000. She said if WSI appeals a case and loses, the claimant's attorney may receive an additional 25 percent increased payment. Within the last fiscal year, she said, there were 13 appeals to the district court and 9 appeals to the Supreme Court. She said the overall rate of prevailing by the agency at all levels of appeals is 56 percent. However, she said, during the last year the agency prevailed at the Supreme Court 33 percent of the appeals. She said that rate was atypical.

In response to a question from Representative Zaiser, Ms. Bjornson said WSI will appeal decisions to the Supreme Court if it appears the district court decision will have serious implications on the law and the agency. She said an appeal is not undertaken without a long, critical analysis.

In response to a question from Senator Behm, Ms. Bjornson said cost is a factor in determining whether to appeal for WSI and the injured worker.

In response to a question from Representative Thorpe, Ms. Bjornson said in determining whether to appeal, the agency must consider whether the precedent will apply to other cases.

Chairman Berg requested Ms. Bjornson to provide additional information regarding the number of cases appealed to the Supreme Court over the past few years on a year-by-year basis.

In response to a question from Representative Nottestad, Ms. Bjornson said she will provide the committee with additional information regarding which party made the appeals to the Supreme Court and the results of the appeals.

Representative Kasper requested Ms. Bjornson to provide additional information regarding each step in the appeals process.

Ms. Bjornson said during the five-year period from 2003 to 2007, approximately 630 total cases went to the administrative hearing level. Of the decisions issued, she said, WSI reversed 27 decisions, which is approximately 4 percent to 5 percent. She said WSI accepts 87 percent of the losses it incurs at the administrative hearing level.

In response to a question from Representative Berg, Ms. Bjornson said she was not sure how many cases would end up in district court if the agency were not allowed to reverse the decisions of administrative law judges.

Representative Kasper said there is a perception that WSI is reversing all decisions in which the agency loses. He said the information provided by WSI clearly illustrates that the perception is incorrect. He said it is important that legislators and the media look at the facts and become aware that the perception is not true.

Representative Zaiser said WSI should provide legislators and the public with as much detail as possible to establish the truth regarding the handling of claims.

Representative Berg requested Ms. Bjornson to provide the committee additional information regarding the status of the 27 decisions that were reversed, including whether those cases were appealed to the district court.

In response to a question from Representative Kasper, Ms. Bjornson said in paying attorney's fees, the agency does not aggregate the fees for prevailing at each level. She said the amount paid by the agency when a claimant prevails is determined by the level at which the claimant prevails.

Mr. Cade Jorgenson, Office of Independent Review, presented written information ([Appendix H](#)) regarding the Office of Independent Review.

Representative Zaiser said the committee heard testimony at its last meeting suggesting that injured workers rarely meet personally with representatives of the Office of Independent Review or even receive telephone calls from the office.

Mr. Jorgenson said the Office of Independent Review sends a letter to the injured worker after the injured worker receives an order. He said the correspondence advises the injured worker that an

advocate is assigned to the injured worker and informs the injured worker of the outreach representative. He said the advocate reviews the claim file and requests the outreach representative to call the injured worker to see if the injured worker desires to meet personally. He said an advocate will follow up with a telephone call and confers with the claims adjusters and WSI employees. He said the claimant may decline to work with the outreach representative. However, he said, the advocate will attempt to call the claimant. He said the advocate and outreach representatives keep logs of their outreach efforts.

In response to a question from Senator Behm, Mr. Jorgenson said although injured workers occasionally state that they believe the deck is stacked against the injured worker, the injured worker generally indicates satisfaction with the work of the Office of Independent Review.

In response to a question from Representative Kasper, Mr. Jorgenson said as manager of the Office of Independent Review, he reports directly to the WSI Board of Directors. He said if the office were totally independent from WSI, the office may not be as effective. Although the office is not able to change a decision of WSI, he said, the office works closely with WSI to try and get a decision correct, which may result in the modification of a decision. He said making the office totally independent from the agency could lead to a more adversarial process and reduce the effectiveness of the office. He said the office works independently from WSI, does an assessment, and provides an independent assessment to the injured worker regardless of the feelings of individuals at WSI. He said the process is a collaborative process that works well and involves interaction between the advocates and WSI employees.

In response to a question from Representative Zaiser, Mr. Jorgenson said the review process is created to provide an informed review of a decision if the injured worker disagrees with a claims decision. He said the advocates work to educate the injured worker regarding the case and process needed to receive a formal review. He said the advocates have the freedom to provide the injured worker information regarding the basis of a decision and the process, but may not provide the injured worker advice on how to do an appeal.

Representative Berg said the review is an informal effort to educate the injured worker regarding a decision. He said it is important that the office be connected to the work of WSI. Although the name may not be entirely appropriate, he said, approximately one-half of the cases in which the office is involved are resolved without having to go to the administrative hearing process.

In response to a question from Representative Horne, Mr. Jorgenson said the Workers' Compensation Review Committee is looking at whether the name of the office is appropriate and may ultimately recommend a change in the office's name.

In response to a question from Representative Zaiser, Mr. Jorgenson said it is always frustrating to an injured worker when a medical provider recommends a test and the test is refused or delayed. However, he said, WSI requires preapproval of certain tests and medications as a standard insurance practice. He said WSI works with medical providers to help improve the process.

In response to a question from Senator Horne, Mr. Jorgenson said the average timeframe for a request for an administrative hearing to the holding of the hearing is about four months.

In response to a question from Representative Nottestad, Mr. Jorgenson said the system works well and serves the intended purpose. He said the amount of litigation in the state is very low and the litigation results indicate that WSI is getting decisions right. He said he is comfortable with the current direction of the agency and the use of the Office of Independent Review. He said he would not mind seeing the office have more informal authority to address claims.

In response to a question from Representative Kasper, Mr. Jorgenson said he expects that the number of injured workers who do not proceed through the process due to the lack of an attorney is low. He said attorneys are allowed at any point in the process. He said approximately 25 percent of the injured workers have attorneys before contacting the Office of Independent Review. He said the administrative hearing process is easy enough for individuals to go through without an attorney. He said the system is user-friendly and he sees good results with unrepresented workers. He said the 30-day deadline for requesting a hearing is set by statute. He said less than 1 percent of requests miss the 30-day deadline.

Representative Zaiser said a bill to extend the period in which a request for a hearing may be made failed during the last legislative session.

In response to a question from Representative Zaiser, Mr. Jorgenson said the average amount of time for a claimant to get through the administrative hearing process is seven months. He said the Office of Independent Review closes out a claim within 35 days to 37 days.

Representative Thorpe said requiring an injured worker to wait seven months to eight months for resolution of a claim can lead to bankruptcy.

Representative Berg said on one hand members of the committee are saying injured workers need more time to request a hearing and on the other hand members are saying that the process takes too long. He said the number of claims that go through the administrative hearing process is relatively low.

Chairman Berg called on Ms. Robin Halvorson, WSI, for comments regarding return-to-work services. Ms. Halvorson submitted written information ([Appendix I](#)) describing the return-to-work services program.

In response to a question from Representative Thorpe, Ms. Halvorson said WSI encourages injured workers to return to work if possible. If it is not safe to

return to work or if the injured worker is unable to return to work, she said, there may be the need to return to a physician to make certain that all options are eliminated. She said WSI may reverse an initial decision requiring an injured worker to return to work. With respect to an injured worker who had a high salary, she said, the worker may have to settle for a lower-wage job if unable to return to the prior employment. She said it is unfortunate that not everyone is able to be made whole, but the law requires going through the rehabilitation hierarchy options. She said temporary partial disability payments may be paid for five years, but there is a cap for the amount that affects injured workers who were making high wages.

Chairman Berg called on Mr. Wahlin for a presentation regarding independent medical examinations. Mr. Wahlin submitted written information ([Appendix J](#)). He said WSI occasionally requires an injured worker to have an independent medical review of the injured worker's chain of care. He said the independent physician does not establish a patient/provider relationship.

In response to a question from Representative Kasper, Mr. Wahlin said WSI reimburses the independent medical provider at a rate agreed upon with the physician. He said the rate is market-driven, especially with respect to subspecialties.

In response to a question from Representative Zaiser, Mr. Wahlin said the expense of being wrong may be very high for WSI. He said the independent medical examination is conducted to provide a correct answer and provide information for defensible decisions. He said it is far more expensive to go to court and lose than to initially pay the claim.

In response to a question from Senator Horne, Mr. Wahlin said WSI requires an objective reason to overturn a decision of a treating physician.

In response to a question from Representative Thorpe, Mr. Wahlin said WSI will not pay the cost of an examination if an injured worker requests another independent medical examination. He said an independent medical examination is scheduled if WSI believes it is necessary to adjudicate the claim.

In response to a question from Representative Berg, Mr. Wahlin said if injured workers and the public can become more educated regarding the independent medical examination process, there may not be as much controversy regarding the process.

Representative Thorpe said the injured worker should have the privilege to choose a qualified physician to perform an independent medical examination.

Representative Kasper said he recently had the occasion to seek a medical opinion. He said he found that he was not qualified to choose an appropriate physician for the second opinion.

Representative Behm said he believes the biggest concern of injured workers relates to independent medical examinations.

Mr. Wahlin said there are differences between the review of an independent medical examination and a

treating physician's report. He said not all treating physicians have the specialty to address work injuries. In addition, he said, the treating physician often knows the injured worker or the injured worker's family and is not always completely objective with respect to the treatment of the individual. He said WSI does a limited number of independent medical examinations and only orders an examination when something does not seem right. He said the conclusions of independent medical examinations generally are correct.

Chairman Berg requested Mr. Wahlin to compile statistics regarding the number of independent medical examinations that have provided differing opinions.

In response to a question from Senator Horne, Mr. Wahlin said the major issue faced in determining claims is the cause of the injury. Although the number of cases in which causation is an issue is relatively small, he said, those cases create difficult situations. He said the claims handlers gather the best information possible to make a fair decision.

Chairman Berg called on Mr. Barry Schumacher, WSI, for comments regarding the status of WSI's safety grant programs. He said the safety grant program is in the transition state. The 2006 safety outreach program, he said, targeted employers and industries that had a high number of claims. He said when the safety program was reduced from 3,300 policyholders to 120 policies, the results were favorable. He said small policyholders generally lack the resources needed. He said the agency has six safety consultants and will be adding six more. He said safety consultants will be located in Dickinson, Devils Lake, Fargo, and Jamestown, in addition to Bismarck. He said the safety outreach program provides for up to a 25 percent discount for the implementation of a safety committee, drug and alcohol screening, and other initiatives. He said a safety assessment may also be used but does not provide a premium discount. He said the ergonomics initiative has been implemented to perform workplace assessments and develop ergonomics plans. He said the safety training and education program provides safety training and education grants from \$25,000 to \$150,000. He said six of the grants are in place and over \$400,000 has been awarded. The help grant program, he said, was suspended in October 2007. He said the program was successful and the agency has modified the program and will wait for recommendations from the performance evaluation. He said the small account discount debit program is based on loss history and may generate a 5 percent to 10 percent discount or surcharge.

In response to a question from Representative Kasper, Mr. Schumacher said specific information relating to grants under the safety training and education program may be confidential because the information is part of the policyholder's file.

Representative Berg said the Legislative Assembly would like to encourage safety programs, but needs more data. He said WSI should reconsider the

confidentiality policy and make the program transparent and accountable. He said it may be necessary to require an employer to provide information to measure the success of the program.

Mr. Furness said the agency would like to find a way to make additional information available.

Representative Zaiser said the safety programs are critical elements of the workers' compensation system and the project fund balance is substantial. He said the programs are underutilized.

Mr. Schumacher said \$35 million has been allocated for safety programs. He said WSI has expended \$13 million through the help grant program. He said within the next two years after reinstatement of the program, he is confident that another \$13 million will likely be allocated.

In response to a question from Representative Kasper, Mr. Schumacher said in the two completed reports on the safety grant program, the results have shown a significant decrease in claims in the targeted populations, while the number of total claims has increased as a whole. With respect to the help grant program, he said, a 12-month review indicated that there was a total decrease of 136 claims for 96 policyholders. He said policyholders with less than a \$25,000 premium showed an increase in claims.

In response to a question from Representative Berg, Mr. Schumacher said the majority of policyholders are under the \$25,000 premium level. He said 85 percent to 90 percent of the workforce is within the top 3,300 policyholders. He said the experience rating is a consequence and an incentive that the small account debit program will address.

DISCRETIONARY EXPENDITURES

Chairman Berg said the recent decision of the North Dakota Supreme Court to reverse the dismissal of criminal charges against the former CEO of WSI raises issues relating to discretionary expenditures by state agencies. He said the inconsistencies in the application of approval of certain expenses may be illustrated by the fact that this committee was served lunch by the Department of Commerce during the first day of a committee meeting and the next day, when the committee met at WSI, WSI was not permitted to provide lunch for the committee.

Chairman Berg distributed copies of Office of Management and Budget Policy 207 ([Appendix K](#)), which relates to promotional expenses. He said there are inconsistencies throughout state government, and the Legislative Assembly may need to examine the issue and determine what is appropriate. In addition, he said, a number of state agencies pay for service club and other membership dues for state employees. He distributed a document ([Appendix L](#)) that summarizes professional dues and memberships paid by state agencies. He distributed a copy of a spreadsheet prepared by the Legislative Council staff for the Employee Benefits Programs Committee entitled [Employee Benefits Programs Committee Benefits Survey Results](#). He distributed a document ([Appendix M](#)) prepared by WSI which details spending

from July 2001 through March 2006 for purposes that were questioned by the State Auditor. He said an audit of the Veterans Home also indicated questionable spending.

In response to a question from Representative Berg, Mr. Gordy Smith, State Auditor's office, said it is extremely difficult to identify inappropriate spending. He said the scope of a performance audit varies, and the audits do not always specifically address all expenditures. He said each expenditure would have to be examined and invoices may need to be examined to determine if an expenditure was appropriate. He said the Constitution of North Dakota requires that public funds be spent for a public use. He said providing an employee a day off with pay as a reward would not be authorized by law.

Representative Berg said legislators are often asked to serve on executive branch committees and it would be helpful to have a uniform policy with respect to pay and reimbursement.

Mr. Smith said it may be best addressed by having all reimbursement for legislators be handled through the Legislative Council.

In response to a question from Representative Kasper, Mr. Smith said WSI used public funds for the purchase of items beyond those authorized by the North Dakota Administrative Code. He said the audit questioned the public use of those items.

Representative Kasper said many state agencies are likely doing the same thing. He said more data is needed to address this issue. He said many other state officials could be subject to felony charges for misuse of public funds.

Mr. Smith said he does not think other agencies are doing what WSI did by buying gift certificates beyond service awards.

Representative Berg said the practice of providing gift certificates for service awards had gone on for a long time at WSI. He questioned why someone did not tell the agency to cease that practice before felony charges were filed.

Representative Froseth said the committee should consider a bill draft to address the issue of discretionary spending and benefits allowed by statute or rule. He said inappropriate spending of taxpayer money on gifts, incentives, and payment of dues to organizations should be addressed through more structured guidelines. He questioned how many agency heads could be subject to felony charges for spending that may be similar to that resulting in the charges filed with respect to spending at WSI.

Representative Berg said what was done at WSI had been a practice for a number of years. He said more uniformity should be developed.

Representative Kasper said he is concerned with the felony charges filed and the potential for other charges due to similar spending. He said he did not think that anyone in state government intentionally violated state law.

Chairman Berg recessed the meeting at 4:35 p.m. and reconvened the meeting at 8:35 a.m. on July 10, 2008.

Chairman Berg said except for about four states which have monopolistic state workers' compensation funds, most states have competition with privatization or mutualization. He said he invited representatives from West Virginia and Nevada to provide the committee information regarding transition from a monopolistic system in those states to mutualization and a competitive market. He said the objective of providing this information to the committee is to see how the process evolved in those states and provide information for discussion with respect to the appropriate direction of workers' compensation in this state.

Chairman Berg called on Mr. Bill Kenny and Ms. Mary Jane Pickens, West Virginia Offices of the Insurance Commissioner, for a review of the privatization of the West Virginia workers' compensation system. Mr. Kenny and Ms. Pickens submitted written information ([Appendix N](#)) summarizing the privatization of the workers' compensation system in West Virginia.

In response to a question from Representative Froseth, Mr. Kenny said there are approximately 39,000 employers in West Virginia.

In response to a question from Representative Kasper, Ms. Pickens said the state has no liability with respect to the risk pool. She said carriers doing business in the state may be assessed to cover liabilities of the risk pool.

In response to a question from Senator Behm, Ms. Pickens said rules adopted by the Workers' Compensation Industrial Council address what is necessary to obtain self-insured status. He said an employer seeking self-insured status must post security to ensure payment of claims.

In response to a question from Representative Kasper, Ms. Pickens said benefits are determined by statute.

In response to a question from Representative Berg, Ms. Pickens said she is not sure whether any carriers provide benefits beyond the statutory base level.

In response to a question from Representative Zaiser, Ms. Pickens said the driving force for the change of the system in West Virginia was the unfunded liability. She said the 2003 statutory changes also amended the benefits structure.

Mr. Kenny said the system was broken and claimants were not getting proper care. He said employers were not paying appropriate amounts of premiums and the entire system needed to be changed.

In response to a question from Representative Froseth, Ms. Pickens said the litigation system has improved and rulings have come quicker under the new system. She said employers are reporting claims more quickly and the decisions are being made sooner. Previously, she said, there was a significant amount of administrative delay in claims handling and a high degree of litigation.

In response to a question from Representative Thorpe, Mr. Kenny said under the new system,

homebuilders have seen an increase of 80 percent in premiums while coal mines have seen rates decrease. He said government was underpaying premiums under the monopolistic system. He said the political system that oversaw the workers' compensation program was the problem.

In response to a question from Senator Wanzek, Mr. Kenny said the setting of rates has become more realistic over the last several years. He said the mutual company has to follow insurance laws and the old fund is using the same requirements. He said tremendous progress has been made and better medical care is being provided more quickly. He said protests have been reduced substantially. He said employers have choices in carriers and may have varying deductibles. He said 28 companies have already written policies in West Virginia.

Representative Zaiser said it is clear the West Virginia system was broken. However, he said, the committee has received information indicating that the North Dakota system works very well.

Representative Berg said the representatives of West Virginia and Nevada are present to share their experiences. He said the committee has heard people say over and over that the system is broken in this state and the public perception is that the system is broken. He said the committee has heard contradictory evidence.

Representative Kasper said the committee is seeing what a true broken system looks like. He said the perception of the North Dakota system being broken is nothing like what was experienced in West Virginia.

In response to a question from Senator Behm, Ms. Pickens said workers were unsatisfied with the system in West Virginia. She said the new system is using best practices for administering old claims and handling new claims better.

Representative Berg said employers want injured employees to be satisfied with the treatment they receive. He said if an employer is dissatisfied with the workers' compensation coverage in a state that allows competition, the employer may go elsewhere for coverage.

In response to a question from Representative Berg, Mr. Kenny said the mutual company started implementing safety initiatives and all other carriers have safety programs and risk management tools.

Chairman Berg called on Mr. Barry Llewellyn, NCCI, for comments regarding NCCI and workers' compensation insurance system models. Mr. Llewellyn submitted written information ([Appendix O](#)) summarizing the structure of NCCI, its data collection capabilities, classification systems, and ratemaking. He said NCCI performs claims research and adopts rating classifications. He said the organization does not lobby, but serves as an independent technical resource for policymakers. He said NCCI provides residual market administration in West Virginia and Nevada. He said it is important to have the infrastructure in place before privatizing a

workers' compensation system, including the establishment of classification systems.

In response to a question from Representative Berg, Mr. Llewellyn said Ohio, Washington, and Wyoming are the three other states that have a monopolistic workers' compensation system. He said surveys rating the level of satisfaction with workers' compensation carriers are not widely available. He said some states publish insurance complaint ratios. In addition, he said, information regarding timeliness of first payments is generally collected on a state-by-state basis.

In response to a question from Senator Behm, Mr. Llewellyn said over the last 40 years, only West Virginia and Nevada have moved from a monopolistic system toward privatization. He said a ballot initiative in Ohio to privatize its workers' compensation system failed miserably.

In response to a question from Representative Zaiser, Mr. Llewellyn said a state fund in Montana provides coverage for over 50 percent of the market while private carriers cover the remainder. He said that fund has seen some financial difficulties. He said the state fund in Washington requires employees to pay part of their coverage. He said a number of factors must be considered by policymakers in determining whether it is appropriate to privatize. In other states, he said, the role of oversight is generally shared among the insurance regulator, workers' compensation administrators, and legislators. With insurance regulation, he said, accountability is provided through published financial statements.

In response to a question from Representative Dosch, Mr. Llewellyn said state legislative bodies establish benefit structures to be followed by all carriers within those states. He said some states allow collective bargaining agreements to specify a different benefits structure.

In response to a question from Representative Kasper, Mr. Llewellyn said a private system must include active state agency oversight of the claims process. He said insurers seek to get injured workers back to work to manage cost-savings even if the upfront cost is higher. If a private insurer unreasonably denies a case, he said, litigation may be likely. In addition, he said, insurers must be responsive to remain competitive.

In response to a question from Representative Froseth, Mr. Llewellyn said although legislative bodies set the benefits structure, insurance carriers and trade associations may be involved in lobbying on benefit legislation.

Representative Zaiser said WSI has a public perception problem and systematic problems in top management. He said all of the old managers have not been removed.

Senator Wanzek said the review conducted of WSI shows efficiency. He said of 22,000 claims handled on an annual basis, only about 7 percent are denied. He said 1 percent of the number of claims cause a significant amount of the problems. He said much of

the perception problem is due to the monopolistic system being placed in a political fishbowl.

Representative Berg said a move to a nonmonopolistic system may eliminate some of the internal management issues. He said the focus of WSI is to reduce injuries and take care of injured workers to get them back to work. He said competition seems to take care of issues with respect to access to coverage.

Chairman Berg called on Mr. Douglas D. Dirks, Employers Holdings, Inc., Reno, Nevada, for comments regarding the transformation of the monopolistic workers' compensation system to a privatized system in Nevada. Mr. Dirks said Employers Holdings, Inc., is a successor to the Nevada monopolistic state fund. He said the state fund was created in 1913 and ran well for a long time. However, he said, the fund ran into financial difficulties which led to the transition from the monopolistic fund. He said Employers Holdings, Inc., is traded on the New York Stock Exchange. He said the monopolistic fund was restructured in the 1950s to have three commissioners appointed by the Governor to control the workers' compensation system. In 1979, he said, larger employers went to self-insurance plans. A three-way system which added private carriers was created in 1983. However, he said, legislation that would have opened the market to compensation was vetoed. Despite significant medical inflation from 1983 through 1987, he said, workers' compensation rates were not raised and the state fund became insolvent.

In response to a question from Representative Kasper, Mr. Dirks said the regulation of the system was transferred to the Division of Industrial Relations in 1983. He said the head of the division was appointed by the Governor. He said ratemaking was determined by a seven-member board appointed by the Governor. He said the workforce in Nevada increased substantially and the state fund did not react quickly to the changes. When the state fund went to the Insurance Commissioner in 1992 to file for new rates, he said, the Governor ordered a solvency investigation. He said the audit of the state fund revealed a \$2.2 billion liability and indicated the state fund was 18 months from complete liquidation. In 1993, he said, the Nevada Legislature changed the benefit levels and placed full responsibility with the Governor. He said the fund was removed from the budget process and was allowed to operate more like a private business. In 1995, he said, the deficit was reduced to approximately \$2 billion. However, he said, it was determined that the fund may never achieve the desired outcome and it may be necessary to open the system up to competition. He said the legislature passed legislation to change to a competitive state fund with private carriers allowed as of July 1, 1999. In January 1999, he said, a new Governor requested the legislature to change the state fund to a private mutual insurance company. He said the deficit at the time was about \$600 million. He said the fund purchased reinsurance which allowed

the fund to become solvent under the change to a mutual company. After the signing of the legislation on May 29, 1999, he said, it took six months to convert to a private mutual insurance company. He said the workers' compensation insurance market was open to competition within 32 days of the signing of the legislation. He said all the assets and liabilities of the state fund were transferred to the mutual fund. He said the mutual fund acquired a private insurer in California in 2002 and began providing coverage in California, Colorado, Montana, and Utah. He said the company demutualized in 2007 and distributed \$850 million to its policyholders. He said Employers Holdings, Inc., currently does business in 11 states and will likely increase to 28 states when the acquisition of another company becomes final.

In response to a question from Representative Berg, Mr. Dirks said the vision of the company is to expand from coast to coast. He said the average account served by the company is \$10,000 and averages 10 or fewer employers. He said the company has about 34,000 policyholders.

In response to a question from Senator Behm, Mr. Dirks said the claim satisfaction rate for the company has improved over the rate of the state fund. He said the state fund did not have adequate staff to handle claims and did not have adequate technology.

In response to a question from Representative Kasper, Mr. Dirks said Employers Holdings, Inc., has about 16 percent or 17 percent of the market share in Nevada. He said the company strategy is to write small business policies. He said there are about 175 companies that write workers' compensation coverage in Nevada, which is down from about 250 companies that were licensed when the market was opened to competition.

In response to a question from Representative Dosch, Mr. Dirks said Nevada has a guarantee fund to assume responsibility for any failed insurance company. He said insurance companies are assessed to generate money for the fund.

In response to a question from Representative Berg, Mr. Dirks said the top 10 insurance writers generally cover the entire market. However, he said, there are a number of niche writers in the industry. He said the insurance market is large and carriers are vying for business. He said the only businesses that may have had trouble finding coverage are businesses that are extremely poor risks. He said the private market raises attention to safety. He said the marketplace is very competitive for employers across the spectrum. He said market pressures drive better claims management.

In response to a question from Representative Zaiser, Mr. Dirks said because a residual pool is available, all businesses are guaranteed coverage. Although some competitive state funds may act as a residual insurer, he said, no single approach has been adopted nationwide.

In response to a question from Representative Vigasaa, Mr. Dirks said workers' compensation is a social compact between labor and management. He

said the determination of benefits is not up to the insurer, but is the responsibility of the legislative body to know the impact of ratemaking on the benefit levels which are set by law.

In response to a question from Representative Berg, Mr. Dirks said the transition from a monopolistic system in Nevada has been very successful. He said there was clear political leadership to address issues and the management of the state fund was fully onboard with the changes. He said it is difficult to make changes if management is not supportive of the proposed changes. He said employees of the state fund should be considered in a decision to mutualize or privatize. Allowing employees to continue participation in the state public employees retirement system, he said, is one method to alleviate the fears of the employees. Because of the significant detail in making a transition, he said, it is necessary to have a clear vision of where you want the fund to be.

In response to a question from Representative Zaiser, Mr. Dirks said employees were surveyed about their greatest concerns with the transition. He said the two major concerns were whether the employees will continue to have jobs and what will happen to their benefits.

In response to a question from Representative Kasper, Mr. Dirks said he has never seen an unwillingness by insurers to move into new markets. He said issues to be considered in making the transition are the appropriate regulatory environment, whether the legal system is overly litigious, and the demographics of the state.

In response to a question from Senator Wanzek, Mr. Dirks said there are already companies operating in North Dakota which could provide workers' compensation coverage.

Senator Wanzek said he has had good results with an insurance company that his farm has used to provide workers' compensation coverage for the farm employees.

In response to a question from Representative Berg, Mr. Dirks said the worst thing that could happen to a monopolistic system is to have political influence over ratemaking.

Mr. Patrick Ward distributed written testimony ([Appendix P](#)) from Ms. Rita Nowak, Property Casualty Insurers Association of America.

Mr. Ward said insurance companies would be willing to come to the state to provide workers' compensation coverage. Although the workers' compensation fund is in good shape due to the changes made in the mid-1990s, he said, a competitive market will ensure better service and better products. He said the state could mutualize or privatize workers' compensation and allow WSI to compete in the market.

Chairman Berg recognized Mr. Edward D. Grossbauer, WSI Board of Directors. Mr. Grossbauer said he is not speaking for the board, but can speak as an injured worker. He said he had a good experience with WSI and received all of the medical procedures necessary to address his work injury. He

said the medical case management system was very effective for him. He said the committee should continue to look at all sides of the issue, including the experience in other monopolistic states.

Representative Zaiser said if the objective of the committee is to look at all possible changes to the governance structure of WSI, the committee should hear from other state funds that operate as monopolies. He said there is not clear accountability or oversight in this state and it appears the committee is being steered in one direction. He said the committee should examine how employees at WSI feel about mutualization or privatization.

Representative Berg said the information provided at this meeting was generated to allow committee members to see if mutualization or privatization is worthy of further consideration. He said members of the committee are encouraged to seek additional information to aid in consideration of the issue.

DEPARTMENT OF COMMERCE STUDY

At the request of Chairman Berg, committee counsel distributed a copy of a memorandum entitled [Commerce Department Organization, Powers, Duties, and Effectiveness - Background Memorandum](#).

Chairman Berg called on Mr. Shane C. Goettle, Department of Commerce, for comments regarding the committee's study of the Department of Commerce. Mr. Goettle said he became Commissioner of Commerce on November 30, 2005. He said the number of programs implemented under the department has doubled since the creation of the department. He said the department has approximately 50 programs and services in place.

Mr. Goettle distributed written information ([Appendix Q](#)) describing the programs and services of the Department of Commerce's strategic plan for 2008-09 and the organizational structure of the department. He said the creation of the department has made it easier for clients to access all programs and services that are offered by the department and its divisions. He said collocation of the various departments and divisions into the Department of Commerce has helped provide additional teamwork and immediate access to personnel who can provide expertise. He said the four divisions share a common purpose and coordinate economic development and community development activities. In addition, he said, the divisions portray a common image for tourism, business, and workforce attraction. He said the divisions allow the sharing of knowledge and provide for uniformity in marketing. Furthermore, he said, administrative efficiencies have resulted from the consolidation. He said the North Dakota Economic Development Foundation helps keep the commissioner accountable with the establishment of benchmarks.

Ms. Pamela Schmidt, North Dakota Economic Development Foundation, reviewed a PowerPoint presentation ([Appendix R](#)) regarding the North Dakota Economic Development Foundation strategic plan for growth and prosperity.

In response to a question from Representative Froseth, Mr. Goettle said the department is making efforts to gain more media attention for the state. He said a continuous effort is needed in this area.

In response to a question from Representative Kasper, Mr. Goettle said the department attempts to highlight topics in which a reporter or a publication may be interested. He said television media often pick up on items that first appear in print. He said representatives of the department continuously pitch stories to the media.

In response to a question from Representative Nottestad, Mr. Goettle said the recent *National Geographic* story on the state was an opportunity to turn lemons into lemonade. He said the department gathered over 70 responses to the article and shared those responses with local media. Ultimately, he said, ABC News did a story from North Dakota.

In response to a question from Senator Wanzek, Mr. Goettle said representatives of the department try to help set up television interviews such as the 15-minute spot the Today Show did with a farmer in his wheatfield.

In response to a question from Representative Vigesaa, Mr. Goettle said the department is working to get out the message that there are jobs available in the state. He said the department is trying to recruit former North Dakotans who live in areas such as Chicago, Denver, and Minneapolis. He said representatives of the department will be in Michigan in October to try to take advantage of attracting the skilled workforce from that state. He said the department works with private sector partners to get contributions to pay for the outreach efforts. He said the department attempts to drive traffic to the Job Service North Dakota job listings. In addition, he said, the department is targeting youth to attempt to get young people to look at beginning careers in the state.

Mr. Goettle said he believes the department is organized in the manner in which it needs to be. He said the four divisions work well. However, he said, the department is a little short on administrative staff and has been relying upon temporary employees to fill its needs. He said the department will look to address the staffing issue during the next legislative session. He said the commissioner has the flexibility to change the structure of the department if necessary. Although an interim study during the last interim recommended the establishment of an office or division dedicated to science and technology, he said, the creation of that type of office was not approved by the Legislative Assembly. However, he said, the Office of Innovation and Strategic Initiatives was established within the department in May 2007. He said the office administers the centers of excellence and the InnovateND program. He said the department has hired staff to help build science and technology expertise. He said other science and technology functions are carried out at the University of North Dakota and North Dakota State University and through the centers of excellence programs. He said

he is not advocating for the statutory creation of a specific science and technology office.

Mr. Goettle said employees of the department were asked to review an internal strategic plan and go through a goalsetting process. He said the department looks at the success in achieving the goals when reviewing performance goals and salary increases. He said 63 employees set 424 goals. Of those goals, he said, 108 were exceeded, 291 were met, and 25 were not met.

In response to a question from Representative Zaiser, Mr. Goettle said the state had the largest increase in wage growth in the country in 2006-07. He said measuring productivity is often more valuable than looking at job numbers. He said productivity ultimately leads to higher wages.

In response to a question from Senator Horne, Mr. Goettle said housing and child care shortages are a concern in many communities. He said the low-income housing assistance program and the renaissance zone program have helped in some communities. In addition, he said, the Rural Development Council received some funding to address those issues. He said child care is especially a concern in smaller communities, and the department will continue to work to address that issue.

In response to a question from Representative Sukut, Mr. Goettle said the department works internally and with regional development organizations to develop new businesses. He said the development of a business counts toward the achievement of a departmental goal if a significant amount of staff time by the department was devoted to the project development. However, he said, if a local development organization takes the lead on a project, that project does not count toward the achievement of the departmental goals. He said if a local developer requests assistance, the department may play a backup role. He said larger cities often take the lead on projects while smaller cities may need more expertise or staff to assist. He said site selectors may call the department looking for a potential business site. If that happens, he said, the department sends an electronic request for proposal to local development organizations and assembles the responses. He said the purpose of the department is to facilitate the development and try to be a one-stop shop. He said the department has established an allocation formula to provide local governments with community development block grants. He said the amount of the community development block grants is decreasing while there are increasing demands on infrastructure. He said the department is trying to adjust to the reduced federal funding.

Representative Sukut said a significant amount of the groundwork for development comes from the local level. He said it is necessary to have a level of support to facilitate that development and the state should examine methods to provide more support at the local level.

Representative Berg said there may be a need for flexibility for the department to assist in areas of the state where growth is happening.

Mr. Goettle said the level of community development block grants is relatively small. He said the state retains about \$3 million of the grants, and he can provide the committee with additional information regarding the amount distributed to local development organizations and communities.

In response to a question from Representative Zaiser, Mr. Goettle said he will look at the formula for determining the distribution of grants. He said population and other factors are included within the formula.

In response to a question from Senator Wanzek, Mr. Goettle said there is some animal agricultural development in the state with outside investment through partnerships. He said the corporate farming law may be a barrier to development with respect to a couple of recent project proposals.

Senator Wanzek said the state is missing opportunities due to the law and he would like to see a change to allow some opportunity that may combine bioscience and agriculture.

Representative Kasper said the department should consider having meetings with farm groups to get those groups involved in making needed changes to the law.

Representative Berg said before 2000, there were over 200 economic development efforts in state government. He said the biggest concern with the merger that created the Department of Commerce was related to the impact of the merger on tourism. He said the merger has been a good change. Although the North Dakota Economic Development Foundation was designed to be a nonpartisan effort to establish a long-term strategic vision for the state, he said, the state may need more frequent updates of the strategic plan to address growth barriers and areas of competitive advantage. He said the foundation could take a stronger role in developing a strategic focus.

Mr. Goettle said the consolidation has been effective and he has no recommendations for reorganization of the department at this time.

DEPARTMENT OF FINANCIAL INSTITUTIONS STUDY

Chairman Berg called on Mr. Timothy Karsky, Commissioner, Department of Financial Institutions, for comments regarding the outcome of the commissioner's study of how the state's building and

loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks. Mr. Karsky submitted written testimony ([Appendix S](#)) summarizing his report.

In response to a question from Representative Berg, Mr. Karsky said he believes the credit union that requested the change in the law still would like to convert to a building and loan association. He said a bill draft prepared by his agency would update the law and allow the conversion and provide for regulation. He said he originally intended to repeal the law during the last legislative session, but the credit union requested permission to convert. He said the proposed bill draft would adopt new provisions to allow the conversion. Although he will likely introduce the proposed legislation during the next legislative session, he said, he is not likely to support it.

In response to a question from Representative Vigesaa, Mr. Karsky said it is not clear what the advantage to the credit union would be to convert.

Representative Dosch said changing the law for one institution appears to be a significant amount of work. He said the cost of the regulation of that institution should be factored into the assessment of fees for that institution. He said other avenues are available for that institution and he would encourage repeal of the law as originally proposed or the establishment of fees to recover the cost incurred by the Department of Financial Institutions.

In response to a question from Representative Berg, Mr. Karsky said the expansion of credit unions has been substantial and some are very similar to banks.

Representative Berg said it would be interesting to know what the fees and taxes for credit unions would be if the credit unions were treated like banks.

Mr. Karsky said he can provide additional information regarding the size of credit unions.

Chairman Berg said the next meeting of the committee will be on August 21, 2008. There being no further business, Chairman Berg adjourned the meeting at 2:40 p.m.

John Bjornson
Committee Counsel

ATTACH:19