

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1127

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1127

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1127

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
1	X		18.5 - 39.1
2	X		13.8 - 18.7
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

HB 1127

Chairman Berg, opened the hearing.

Rep. Keiser testified in favor of and explained the history of bill.

Rep. Jensen, The idea that the fund be self supportive, how does that work?

Rep. Keiser, They were required to set up and establish a safety net that supported a separate category so that if they have claims against their category, the rates increase, then the rates increase primarily for them. The rates won't be spread throughout the entire fund.

Dennis Fracassi, Director of Rough Rider Industries, gave written testimony in favor of the bill.

Chairman Berg, One of our primary concerns now on this is what has your experience been.

Dennis Fracassi, Since we started this program there has been one injury. That was an inmate who, when bringing equipment in, dropped a table on his foot. It was settled for under \$400, paid internally through the penitentiary. The risk manager from Workers Comp came out to audit us has asked if we could use our operation as a show case to show other employers the things that can be done with safety records.

Chairman Berg, Do you know off hand what your premiums are on an annual basis?

Dennis Fracassi, Right now our premiums are about \$125 per year for all employees.

Rep. Froseth, Do you do follow up work on prisoners that are released to see if they use in the private sector any of the skills they learn while they are employed with Rough Rider Ind.

Dennis Fracassi, No not now. However we are working with a couple of business now in trying to see if there are any skills that we have in our industry program that we can put into different business throughout the state. Last year we had 616 inmates released from prison. There are employers all over the state looking for people.

Julie Leer, General counsel for ND Workers Comp, testified in favor of the bill. See written testimony.

Chairman Berg, Give us some background on how this fits in with Workers Comp, and do they have a reinsurance program?

Julie Leer, The way this was originally set up was basically, Workers Comp has become a third party administrator for the Rough Rider Industries modified coverage program. They first went to the risk management fund to get the coverage and then they were looking at some type of umbrella policy beyond that. Then any obligations that are not covered by any insurance that they get other sources are in obligation of the states general funds. The premium that they are paying Workers Comp, that minimum premium is to cover the cost of administering programs.

Chairman Berg, The issue here is that we want to insure that the sure and certain relief that's covered through Workers Comp, rather than having litigation directly to the state for these claims.

Julie Leer, That's correct. I think that according to Workers Compensation reimbursement schedule most of the medical paid through the penitentiary with their contracts from medical services, most of that is taken care of if any of the inmates require medical treatment.

Rep Koppang, When we were introduced to this bill, there was some talk about to qualify for federal funding programs we had to be covered by Workman's Comp. What are those federal funding programs? Have we received any dollars specifically for this kind of activity, or is this going to be self supportive?

Ken Sorenson, Assistant Attorney General, spoke on behalf of the ND Dept. of Corrections and Rehabilitation's Prison Industries Dept., Rough Rider Ind. See written testimony.

To answer your question, there is actually no federal funding here, but Workers Comp program is a requirement under a federal law.

Chairman Berg, closed the hearing.

Tape 2, side A, No. 13.8.

Chairman Berg reopened the hearing.

Rep. Klein made a motion for a Do Pass.

Rep. Kasper second the motion.

Rep. Koppang, Are there other work areas that are self insured in work programs?

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House Industry, Business and Labor Committee
Bill/Resolution Number HB 1127
Hearing Date 01-24-01

Julie Leer, The only entity in ND that is self insured is Rough Rider Industries program. The \$125 premium that they pay is a minimum premium. As far as work study and other programs, there is a law that deals with volunteer coverage's.

Roll call vote: 12 yes, 0 no, 3 absent.

The motion carries.

Rep. Klein will carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/18/2000

Bill/Resolution No.: HB 1127

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

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Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**NORTH DAKOTA WORKERS COMPENSATION
2001 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Inmate Coverage—Remove Expiration Date

BILL NO: HB 1127

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation repeals the expiration date relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries.

FISCAL IMPACT: Anticipate no change to existing rate and reserve levels.

DATE: December 27, 2000

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and*

fund affected and any amounts included in the executive budget.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	Agency:	North Dakota Workers Compensation
Phone Number:	328-3856	Date Prepared:	01/04/2001

Date: 01-24-01
Roll Call Vote #: 1

HB 1127

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Click here to type Bill/Resolution No.

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Rep. Klein Seconded By Rep. Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	/		Rep. Jim Kasper	/	
Vice-Chairman George Keiser			Rep. Matthew M. Klein	/	
Rep. Mary Ekstorm	/		Rep. Myron Koppang	/	
Rep. Rod Froelich	/		Rep. Doug Lemieux	/	
Rep. Glen Froseth	/		Rep. Bill Pietsch	/	
Rep. Roxanne Jensen	/		Rep. Dan Ruby	/	
Rep. Nancy Johnson	/		Rep. Dale C. Severson		
			Rep. Elwood Thorpe	/	

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep. Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:04 a.m.

Module No: HR-13-1562
Carrier: M. Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1127: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends
DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1127 was placed
on the Eleventh order on the calendar.

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1127

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1127

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 14, 2001

Tape Number	Side A	Side B	Meter #
1	x		0 to 9.4
Committee Clerk Signature <i>Doreen Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1127 relating to elimination of the expiration date of laws relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries.

Rep George Kelser, District 47. Sponsor.: This program works well, prisoners go to work and part of the money they make comes back to the state as room and board payments. With a sunset clause it is hard to negotiate and continue contracts. Urge do pass.

Ken Sorenson, Assistant Attorney General. Written testimony attached.

Senator Klein: We have to maintain this program so the federal program kicks in?

K Sorenson: Yes.

Julie Leer, General Counsel for ND Workers' Compensation Bureau, in favor. Written testimony attached.

Dennis Fracassi, Director, Rough Rider Industries, in favor. Written testimony attached.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1127

Hearing Date February 14, 2001.

Senator Mathern: Why did it take from 1979 to 1997 to enact this?

K Sorenson: Loss of sovereign immunity.

No opposing testimony. Hearing closed. Discussion held.

Senator Every: Motion do pass. **Senator Tollefson:** Second. Roll call vote: 7 yes; 0 no. Floor assignment: **Senator Every.**

Date: 2/14/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1127

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Every Seconded By Sen Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espegard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Every

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 14, 2001 10:49 a.m.

Module No: SR-27-3294
Carrier: Every
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1127: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1127 was placed
on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1127

TESTIMONY ON HB1127
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
REPRESENTATIVE RICK BERG, CHAIRMAN
JANUARY 24, 2001

Mr. Chairman, members of the House Industry, Business, and Labor Committee:

My name is Dennis Fracassi. I am the Director of Rough Rider Industries. I'd like to provide you with a brief overview of our operations and talk about our efforts to build positive relationships with the private sector in hopes of your support for HB1127.

Rough Rider Industries is the industrial work program for the ND State Penitentiary. Although we are a state agency, we do not operate using general fund dollars. All salaries, operating expenses, equipment and capital improvements are funded through self-generated revenues from the sale of products and services we provide to eligible customers. We currently have over 160 inmates working for us each day. This has a huge impact on maintaining peace and order within the prison cell houses. It gives inmates an outlet to release energy and frustration and simultaneously allows them to provide for their own livelihood while incarcerated. It also saves North Dakota taxpayers several hundred thousand dollars each year that would otherwise be needed for additional penitentiary staff and other forms of programming.

While we provide a very valuable service to the North Dakota State Penitentiary, it's no secret that RRI has at times been a focal point before the legislature for what some North

Dakota businesses perceive as being unfair competition. This was never more apparent than during the 1993 legislative session. During that session, many North Dakota businesses joined forces in an attempt to curtail our presence in an already restricted market. Based on the testimony provided by several business leaders it became very clear to me that their perception of how we operate was inaccurate and based on misconceptions. Nevertheless, it served as a wake up call to not only educate the public of what, why and how we operate, but it also served as a warning that the private sector was not going to tolerate our continued growth without some changes being made.

Looking back, that session proved to be one of the best things to have ever happened to RRI. It forced us to develop a dialogue with business, and it forced business to take a closer look at our operations. We started talking to each other across the table instead of from behind a lectern. We asked business leaders to visit our operations to see if there were areas where we could work together. We did indeed find common grounds and ways to work together. Some of the businesses who opposed us during the 1993 session have since become customers of ours. As a matter of fact, in the past two and a half years, RRI has done business with over 70 North Dakota private sector businesses, reaching sales of 1.7 million dollars and providing work for an additional 50-60 inmates.

Unfortunately, that is not enough. As the penitentiary population continues to grow, so too does the need to find more work for inmates. This brings us to the heart of the matter of HB1127. The Prison Industries Enhancement Certification Program (more commonly referred to as PIE) presents the best opportunity to provide meaningful work to inmates

without stepping on the toes of North Dakota private sector business. This program enables us to be an asset to the business community rather than an adversary. In order for us to continue working in this direction, we must remain compliant with the certification requirement to provide workers compensation coverage to inmates who participate in the program.

We are currently working with three North Dakota businesses in the PIE program. The companies are Acceleration Products, Inc. and Global Electric Motors, Inc. both of Fargo, and Soaring Eagle Outerwear of Minot. All three of these companies have needs for cut and sew products, and they have all experienced frustrations trying to find someone in North Dakota to provide for their needs. By working together, these companies gave us much needed inmate jobs, while we in turn provided them with their product needs. For the first eighteen months of operations ending December 31, 2000, we have provided jobs for 40 inmates and have generated \$632,015 in sales. From these revenues inmates have been paid a total of \$310,193. From these inmate earnings the following deductions have been made:

Victims Compensation:	\$ 20,249
Federal Income Tax:	\$ 30,532
ND State Income Tax:	\$ 4,274
Fines, Restitution and	
Child support:	\$ 18,883
Institutional Costs:	\$162,756

Institutional costs may appear to be excessive or out of line with other deductions, but one of the intentions of the PIE program is to make the inmates contribute to their own cost of incarceration. The institutional costs are currently retained by RRI to help defray the cost of startup for the Jamestown operation. As with any new startup business, it often takes several years to become profitable and financially stable. Once this is achieved, our hope would be to use the deductions to help defray the cost of incarceration in the form of room and board. But for now, it makes sense to let the inmates who benefit from this program share in the responsibility of building the business.

Although the sunset clause does not take effect until 2003, the business partners we are currently working with, and businesses that have expressed an interest to work with us, must be informed that this law exists. They must also be informed that unless this clause is repealed, we would have to discontinue our business arrangement effective June 30, 2003. The closer we get to 2003, this becomes a greater negotiating obstacle.

In closing, you told us in 1993 that things must change with the way Rough Rider Industries does business. In 1997 you gave us the tools we needed to form partnerships by authorizing workers compensation coverage to inmates. We have worked hard to gain your trust and support by reaching out to private sector business to grow through them - not around them. Accordingly, I ask that you support HB1127 and allow us to move forward in meeting our goals together with North Dakota business.

Fifty-seventh
Legislative Assembly
of North Dakota

House Bill No. 1127
Before the House Industry, Business, and Labor Committee
North Dakota Workers Compensation Testimony
January 24, 2001

Mr. Chairman, Members of the Committee:

My name is Julie Leer. I am General Counsel for North Dakota Workers Compensation and I am here to testify in support of 2001 House Bill No. 1127. The Workers Compensation Board of Directors supports this bill.

In 1997, the Legislative Assembly created modified workers' compensation coverage for the prison industries of Roughrider Industries. North Dakota Workers Compensation (NDWC) essentially became a third-party administrator for this program, all of the costs of which are borne by the Department of Corrections. The expiration date was added as a safeguard because of the uncertainties surrounding this coverage.

The program seems to be working as intended and NDWC remains insulated from incurring any costs associated with this coverage. With those safeguards remaining in place, NDWC supports the removal of the expiration date for the modified workers' compensation coverage for Roughrider Industries' prison industries programs. NDWC requests your favorable consideration of this bill. Thank you. I'll be happy to answer your questions.

FISCAL NOTE

Requested by Legislative Council

12/18/2000

Bill/Resolution No.: HB 1127

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

NORTH DAKOTA WORKERS COMPENSATION 2001 LEGISLATION SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Inmate Coverage—Remove Expiration Date

BILL NO: HB 1127

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation repeals the expiration date relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries.

FISCAL IMPACT: Anticipate no change to existing rate and reserve levels.

DATE: December 27, 2000

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Paul R. Kramer	Agency:	North Dakota Workers Compensation
Phone Number:	328-3856	Date Prepared:	01/04/2001

Fifty-seventh
Legislative Assembly
Of North Dakota

House Bill No. 1127
House Industry, Business, and Labor Committee
Representative Rick Berg, Chairman
January 24, 2001

Mr. Chairman, members of the House Industry, Business, and Labor Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am presenting this testimony on behalf of the North Dakota Department of Corrections and Rehabilitation's Prison Industries Department, Pough Rider Industries.

In 1997, the Legislative Assembly approved a modified program of workers compensation coverage for inmates employed at Rough Rider Industries. Following the passage of this act, the United States Department of Justice, through its Bureau of Justice Assistance, certified Rough Rider Industries as eligible to participate in the Prison Industries Enhancement Certification Program (PIECP). PIECP exists by virtue of a 1979 amendment to a federal law, the Ashurst-Sumners Act, 18 United States Code Section 1761, which previous to the amendment prohibited the manufacture and marketing of prison-made goods in interstate commerce, subject to certain exceptions.

The Ashurst-Sumners Act was a 1935 federal response to unregulated inmate labor and perceived unfair competition. Following a major prison riot in Pontiac, Illinois, in 1978, the Congress, recognizing that one of the principal problems leading to the riot was inmate idleness, amended the Ashurst-Sumners Act in 1979 to allow the manufacture and marketing of prison made goods in interstate commerce, provided that the prison industries program could comply with statutory certification requirements and

safeguards that assure that prison industries will not engage in unfair competition with private sector business and labor. To further assure that prison industries do not engage in unfair competition, the Congress has limited the number of certificates that may be issued to not more than 50 non-federal prison work projects.

Mandatory requirements to receive and maintain certification include: 1) participating prison industries must pay wages that are comparable for similar work in the locality; 2) participating prison industries must consult with local union organizations and business; 3) participating prison industries must ensure that there will not be displacement of employed workers or that prison industries employment will not be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; and 4) the participating prison industries must provide workers compensation coverage to inmates that does not have to be same, but is comparable, to coverage available to private sector employees.

The 1979 amendments to the Ashurst-Sumners Act also provides for various deductions, such as taxes, child support, restitution, and for contribution to a Crime Victims Compensation Fund.

The provision of workers compensation coverage was one of the mandatory requirements Rough Rider had to meet under the 1979 amendments to the Ashurst-Sumners Act, before it could apply for PIECP certification.

In 1997, the Legislative Assembly approved a modified program of workers compensation coverage for inmates at Rough Rider Industries. The modified program is found at chapter 65-06.2 of the North Dakota Century Code.

Key provisions of the modified workers compensation program are as follows:

- a. The Workers Compensation Bureau is the modified program administrator. The Bureau, working together with the Risk Management Division of the Office of Management and Budget and the Department of Corrections and Rehabilitation, developed administrative rules and fee schedules to provide for classification, payment of claims charges against the classification, payment of claims charges, excess coverage or reinsurance, and reimbursement for claim benefit costs, allocated adjustment costs, and administrative expenses, including the expense of issuing the coverage.
- b. The Workers Compensation Fund does not actually pay for any inmate claims. The inmate still must file a claim with the Bureau, and the Bureau will administer the claim, but the North Dakota State Penitentiary is responsible for the actual medical costs.
- c. If the inmate were to suffer a disabling injury, the inmate would not be entitled to any disability benefits while incarcerated. This is no different than for any other injured worker. If there were any permanent partial impairment, payment would only be made after the inmate is released from incarceration.
- d. If, as a result of the injury, the inmate may need vocational retraining while incarcerated, the penitentiary, with the assistance of the Workers Compensation Bureau, may provide vocational

rehabilitation services to the inmate in order to minimize any potential disability period after release from incarceration.

- e. Any modified workers compensation program costs in excess of medical expenses and premium are covered through excess and reinsurance coverage through the Risk Management Division of the Office of Management and Budget.

After the 1997 Legislative Assembly enacting legislation for a modified program of workers compensation coverage for inmates, Rough Rider Industries began the application process for a certificate under the PIECP program. The Bureau of Justice Assistance reviewed the application and in 1991, it issued a certificate to Rough Rider Industries.

There has only been one prison industries inmate work-related injury since the program of modified workers compensation coverage was first implemented. The injury occurred when an inmate dropped a table on his foot. The total medical costs were under \$400.00, the inmate had an uneventful recovery and he was able to return to work. The Penitentiary covered the costs.

The Bureau of Justice Assistance has audited the Rough Rider Industries PIECP program since it first certified the program and determined that Rough Rider has maintained compliance with the mandatory requirements since certification.

The sunset clause, while not effective until the year 2003, will effectively negate Rough Rider's certificate. For that reason, the North Dakota Department of Corrections and Rehabilitation and Rough Rider Industries requests that the sunset provisions be repealed.

Fifty-seventh
Legislative Assembly
of North Dakota

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Before the Senate Industry, Business, and Labor Committee
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February 14, 2001

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The program seems to be working as intended and NDWC remains insulated from incurring any costs associated with this coverage. With those safeguards remaining in place, NDWC supports the removal of the expiration date for the modified workers' compensation coverage for Roughrider Industries' prison industries programs. NDWC requests your favorable consideration of this bill. Thank you. I'll be happy to answer your questions.

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C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Paul R. Kramer	Agency:	North Dakota Workers Compensation
Phone Number:	328-3856	Date Prepared:	01/04/2001

Fifty-seventh
Legislative Assembly
Of North Dakota

House Bill No. 1127
Senate Industry, Business, and Labor Committee
Senator Duane Mutch, Chairman
February 14, 2001

Mr. Chairman, members of the Senate Industry, Business, and Labor Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am presenting this testimony on behalf of the North Dakota Department of Corrections and Rehabilitation's Prison Industries Department, Rough Rider Industries.

In 1997, the Legislative Assembly approved a modified program of workers compensation coverage for inmates employed at Rough Rider Industries. Following the passage of this act, the United States Department of Justice, through its Bureau of Justice Assistance, certified Rough Rider Industries as eligible to participate in the Prison Industries Enhancement Certification Program (PIECP). PIECP exists by virtue of a 1979 amendment to a federal law, the Ashurst-Sumners Act, 18 United States Code Section 1761, which previous to the amendment prohibited the manufacture and marketing of prison-made goods in interstate commerce, subject to certain exceptions.

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Act in 1979 to allow the manufacture and marketing of prison made goods in interstate commerce, provided that the prison industries program could comply with statutory certification requirements and safeguards that assure that prison industries will not engage in unfair competition with private sector business and labor. To further assure that prison industries do not engage in unfair competition, the Congress has limited the number of certificates that may be issued to not more than 50 non-federal prison work projects.

Mandatory requirements to receive and maintain certification include: 1) participating prison industries must pay wages that are comparable for similar work in the locality; 2) participating prison industries must consult with local union organizations and business; 3) participating prison industries must ensure that there will not be displacement of employed workers or that prison industries employment will not be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; and 4) the participating prison industries must provide workers compensation coverage to inmates that does not have to be same, but is comparable, to coverage available to private sector employees.

The 1979 amendments to the Ashurst-Sumners Act also provides for various deductions, such as taxes, child support, restitution, and for contribution to a Crime Victims Compensation Fund.

The provision of workers compensation coverage was one of the mandatory requirements Rough Rider had to meet under the 1979 amendments to the Ashurst-Sumners Act, before it could apply for PIECP certification.

In 1997, the Legislative Assembly approved a modified program of workers compensation coverage for inmates at Rough Rider Industries. The modified program is found at chapter 65-06.2 of the North Dakota Century Code.

Key provisions of the modified workers compensation program are as follows:

- a. The Workers Compensation Bureau is the modified program administrator. The Bureau, working together with the Risk Management Division of the Office of Management and Budget and the Department of Corrections and Rehabilitation, developed administrative rules and fee schedules to provide for classification, payment of claims charges against the classification, payment of claims charges, excess coverage or reinsurance, and reimbursement for claim benefit costs, allocated adjustment costs, and administrative expenses, including the expense of issuing the coverage.
- b. The Workers Compensation Fund does not actually pay for any inmate claims. The inmate still must file a claim with the Bureau, and the Bureau will administer the claim, but the North Dakota State Penitentiary is responsible for the actual medical costs.
- c. If the inmate were to suffer a disabling injury, the inmate would not be entitled to any disability benefits while

incarcerated. This is no different than for any other injured worker. If there were any permanent partial impairment, payment would only be made after the inmate is released from incarceration.

d. If, as a result of the injury, the inmate may need vocational retraining while incarcerated, the penitentiary, with the assistance of the Workers Compensation Bureau, may provide vocational rehabilitation services to the inmate in order to minimize any potential disability period after release from incarceration.

e. Any modified workers compensation program costs in excess of medical expenses and premium are covered through excess and reinsurance coverage through the Risk Management Division of the Office of Management and Budget.

After the 1997 Legislative Assembly enacting legislation for a modified program of workers compensation coverage for inmates, Rough Rider Industries began the application process for a certificate under the PIECP program. The Bureau of Justice Assistance reviewed the application and in 1991, it issued a certificate to Rough Rider Industries.

There has only been one prison industries inmate work-related injury since the program of modified workers compensation coverage was first implemented. The injury occurred when an inmate dropped a table on his foot. The total

medical costs were under \$400.00, the inmate had an uneventful recovery and he was able to return to work. The Penitentiary covered the costs.

The Bureau of Justice Assistance has audited the Rough Rider Industries PIECP program since it first certified the program and determined that Rough Rider has maintained compliance with the mandatory requirements since certification.

The sunset clause, while not effective until the year 2003, will effectively negate Rough Rider's certificate. For that reason, the North Dakota Department of Corrections and Rehabilitation and Rough Rider Industries requests that the sunset provisions be repealed.

TESTIMONY ON HB1127
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATOR DUANE MUTCH, CHAIRMAN
FEBRUARY 14, 2001

Mr. Chairman, members of the Senate Industry, Business, and Labor Committee:

My name is Dennis Fracassi. I am the Director of Rough Rider Industries. I'd like to provide you with a brief overview of our operations and talk about our efforts to build positive relationships with the private sector in hopes of your support for HB1127.

Rough Rider Industries is the industrial work program for the ND State Penitentiary. Although we are a state agency, we do not operate using general fund dollars. All salaries, operating expenses, equipment and capital improvements are funded through self-generated revenues from the sale of products and services we provide to eligible customers. We currently have over 160 inmates working for us each day. This has a huge impact on maintaining peace and order within the prison cell houses. It gives inmates an outlet to release energy and frustration and simultaneously allows them to provide for their own livelihood while incarcerated. It also saves North Dakota taxpayers several hundred thousand dollars each year that would otherwise be needed for additional penitentiary staff and other forms of programming.

While we provide a very valuable service to the North Dakota State Penitentiary, it's no secret that RRI has at times been a focal point before the legislature for what some North

Dakota businesses perceive as being unfair competition. This was never more apparent than during the 1993 legislative session. During that session, many North Dakota businesses joined forces in an attempt to curtail our presence in an already restricted market. Based on the testimony provided by several business leaders it became very clear to me that their perception of how we operate was inaccurate and based on misconceptions. Nevertheless, it served as a wake up call to not only educate the public of what, why and how we operate, but it also served as a warning that the private sector was not going to tolerate our continued growth without some changes being made.

Looking back, that session proved to be one of the best things to have ever happened to RRI. It forced us to develop a dialogue with business, and it forced business to take a closer look at our operations. We started talking to each other across the table instead of from behind a lectern. We asked business leaders to visit our operations to see if there were areas where we could work together. We did indeed find common grounds and ways to work together. Some of the businesses who opposed us during the 1993 session have since become customers of ours. As a matter of fact, in the past two and a half years, RRI has done business with over 70 North Dakota private sector businesses, reaching sales of 1.7 million dollars and providing work for an additional 50-60 inmates.

Unfortunately, that is not enough. As the penitentiary population continues to grow, so too does the need to find more work for inmates. This brings us to the heart of the matter of HB1127. The Prison Industries Enhancement Certification Program (more commonly referred to as PIE) presents the best opportunity to provide meaningful work to inmates

without stepping on the toes of North Dakota private sector business. This program enables us to be an asset to the business community rather than an adversary. In order for us to continue working in this direction, we must remain compliant with the certification requirement to provide workers compensation coverage to inmates who participate in the program.

We are currently working with three North Dakota businesses in the PIE program. The companies are Acceleration Products, Inc. and Global Electric Motors, Inc. both of Fargo, and Soaring Eagle Outerwear of Minot. All three of these companies have needs for cut and sew products, and they have all experienced frustrations trying to find someone in North Dakota to provide for their needs. By working together, these companies gave us much needed inmate jobs, while we in turn provided them with their product needs. For the first eighteen months of operations ending December 31, 2000, we have provided jobs for 40 inmates and have generated \$632,015 in sales. From these revenues inmates have been paid a total of \$310,193. From these inmate earnings the following deductions have been made:

Victims Compensation:	\$ 20,249
Federal Income Tax:	\$ 30,532
ND State Income Tax:	\$ 4,274
Fines, Restitution and	
Child support:	\$ 18,883
Institutional Costs:	\$162,756

Institutional costs may appear to be excessive or out of line with other deductions, but one of the intentions of the PIE program is to make the inmates contribute to their own cost of incarceration. The institutional costs are currently retained by RRI to help defray the cost of startup for the Jamestown operation. As with any new startup business, it often takes several years to become profitable and financially stable. Once this is achieved, our hope would be to use the deductions to help defray the cost of incarceration in the form of room and board. But for now, it makes sense to let the inmates who benefit from this program share in the responsibility of building the business.

Although the sunset clause does not take effect until 2003, the business partners we are currently working with, and businesses that have expressed an interest to work with us, must be informed that this law exists. They must also be informed that unless this clause is repealed, we would have to discontinue our business arrangement effective June 30, 2003. The closer we get to 2003, this becomes a greater negotiating obstacle.

In closing, you told us in 1993 that things must change with the way Rough Rider Industries does business. In 1997 you gave us the tools we needed to form partnerships by authorizing workers compensation coverage to inmates. We have worked hard to gain your trust and support by reaching out to private sector business to grow through them - not around them. Accordingly, I ask that you support HB1127 and allow us to move forward in meeting our goals together with North Dakota business.