

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1162

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1162

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1162

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
1		x	45.8 - end
2	x		0 - 7.5
Committee Clerk Signature <i>Alisa W. [unclear]</i>			

Minutes: **HB 1162**

Chairman Berg opened the hearing.

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

**Oppose:**

Sebald Vetter, of CARE Organization, spoke in opposition to language regarding the seven years only for total permanent disabilities. What needs to be added is temporary or partial disability people should be included in that after seven years. There have been people in the system for 15 or more years and never get a raise.

Chairman Berg closed the hearing

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1162(B)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date Feb 12, 2001

Tape Number	Side A	Side B	Meter #
1		X	0-4.68
Committee Clerk Signature <i>Heidi Lee</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Kelsner, 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.

Chairman Berg: This bill increases the disability rate. It changes from 10 years to 7 years and it has a one to one point five million dollar impact on funds.

Rep M. Klein: I move a do pass.

Rep Froseth: I second.

15 yea, 0 nay, 0 absent

Carrier Rep Kelsner

**FISCAL NOTE**  
 Requested by Legislative Council  
 03/16/2001

Bill/Resolution No.:

Amendment to:            HB 1162

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:** Supplementary Benefit

**BILL NO:** HB 1162 w/ Senate Amendments

**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 changes the supplementary benefit structure to allow payment of supplementary benefits to death benefit recipients or permanently and totally disabled injured workers who have been receiving death or disability benefits for at least seven consecutive years.

The proposed amendments clarify existing language and result in no change to the fiscal impact for the bill as introduced.

**FISCAL IMPACT:** We understand that the proposed legislation will introduce two material changes to the current benefit structure for supplementary benefits:

## Seven-Year Waiting Period

The bill provides a seven-year period for establishing eligibility for supplementary benefits for permanent total disability and death claims effective on August 1, 2006. The change should not have an impact on prospective rate levels because the current benefit structure contemplates a seven-year waiting period for supplementary benefit claims with injury dates on or after August 1, 1999. However, reserve levels associated with prior claims will increase. Based on assumptions consistent with those underlying the June 30, 2000 reserve review completed by Pacific Actuarial Consultants (PAC), we believe that the proposed change will increase the Bureau's discounted liability for unpaid losses by approximately \$1 million to \$1.5 million.

## Supplementary Benefit Structure

Supplementary benefit amounts will change in line with recommendations offered as part of the Interim Long Term Disability Study that was completed by independent claims consultants earlier this year. Two material changes will be introduced to the benefit structure for workers injured on or after August 1, 2001:

- Supplementary benefits will begin at seven years for all PTD and death claims.
- The formula used to establish supplementary benefit amounts will change to match more closely actual pre-injury wages.

We believe that the rate level impact of the change to the benefit structure will be less than 1%. Required reserve levels should not change because this aspect of the new benefit structure will not be applied to claims with injury dates prior to August 1, 2001.

DATE: March 19, 2001

- 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.*
-

<b>Name:</b>	Paul R. Kramer	<b>Agency:</b>	ND Workers Compensation
<b>Phone Number:</b>	328-3856	<b>Date Prepared:</b>	03/19/2001

## FISCAL NOTE

Requested by Legislative Council  
12/26/2000

Bill/Resolution No.: HB 1162

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
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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:** Supplementary Benefit

**BILL NO:** HB 1162

**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 changes the supplementary benefit structure to allow payment of supplementary benefits to death benefit recipients or permanently and totally disabled injured workers who have been receiving death or disability benefits for at least seven consecutive years.

**FISCAL IMPACT:** We understand that the proposed legislation will introduce two material changes to the current benefit structure for supplementary benefits:

## Seven-Year Waiting Period

The bill provides a seven-year period for establishing eligibility for supplementary benefits for permanent total disability and death claims effective on August 1, 2006. The change should not have an impact on prospective rate levels because the current benefit structure contemplates a seven-year waiting period for supplementary benefit claims with injury dates on or after August 1, 1999. However, reserve levels associated with prior claims will increase. Based on assumptions consistent with those underlying the June 30, 2000 reserve review completed by Pacific Actuarial Consultants (PAC), we believe that the proposed change will increase the Bureau's discounted liability for unpaid losses by approximately \$1 million to \$1.5 million.

## Supplementary Benefit Structure

Supplementary benefit amounts will change in line with recommendations offered as part of the Interim Long Term Disability Study that was completed by independent claims consultants earlier this year. Two material changes will be introduced to the benefit structure for workers injured on or after August 1, 2001:

- Supplementary benefits will begin at seven years for all PTD and death claims.
- The formula used to establish supplementary benefit amounts will change to match more closely actual pre-injury wages.

We believe that the rate level impact of the change to the benefit structure will be less than 1%. Required reserve levels should not change because this aspect of the new benefit structure will not be applied to claims with injury dates prior to August 1, 2001.

**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.*

<b>Name:</b>	Paul R. Kramer	<b>Agency:</b>	ND Workers Compensation
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Phone Number:

328-3856

Date Prepared: 12/27/2000

Date: 2-12-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~Click here to type Bill/Resolution No.~~ HB 1162

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By M. Klein Seconded By Froseth

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) 15 No 0

Absent 0

Floor Assignment Rep Keiser

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

**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2001 12:22 p.m.

Module No: HR-25-3040  
Carrier: Keiser  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1162: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1162 was placed on the Eleventh order on the calendar.**

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1162

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1162

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 05, 2001.

Tape Number	Side A	Side B	Meter #
1		x	11.7 to 26.2
(March 14/01) 1		x	34.3 to 40.7
Committee Clerk Signature <i>Doris E. Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1162 relating to payment of supplementary benefits for certain workers' compensation benefit recipients; and to provide an effective date.

**Bob Indvik**, Vice-Chairman, ND WC Board of Directors. Provided brief description of the bill and the Board's position, in favor.

**Julle Leer**, General Counsel, ND WCB, in support. Distributed copies of the Interim Long-term Disability Study, written testimony and proposed amendment. Intent of the amendment is to clarify language dealing with subsequent supplementary adjustments. Distributed copies of letter from **Timothy Effertz** who has concerns about payment of death benefits. These are not being considered at this point and WCB does not support his views.

**Representative Elwood Thorpe**, District 5 on behalf of **Timothy Effertz**. Distributed copies of his letter and proposed amendments.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1162.

Hearing Date March 05, 2001.

**Brent Edison:** Point of clarification: I haven't seen the proposed amendment but just to speak generally about timelines to bring death claim. Timeline for death claim (statute of limitation) has been pretty much in the same form since 1919, amendment to change it would be substantial change in system. We basically oppose it, the further you get from the time of the event the harder it gets to determine causation.

**Chuck Peterson,** GNDA. Written testimony in support of the bill attached.

**Sebald Vetter,** C.A.R.E. In favor of the bill.

No opposing testimony. Hearing concluded.

March 14, 2001. Tape 1-B-34.3 to 40.7

Committee reconvened. All members present. Discussion held regarding proposed amendments.

**Senator Mathern:** Intent of the amendment is to clarify language, make it easier to understand.

One of the injured workers pointed out to the Bureau that what they intended to say was not what came across on paper, so this is for clarification. There was a second set of amendments submitted by Woody Thorpe to provide supplementary death benefits and to change the effective date. Motion to adopt Julie Leer's proposed amendment.

**Senator Krebsbach:** Second. Roll call vote: 7 yes; 0 no. Motion carried.

**Senator Krebsbach:** Motion: do pass as amended. **Senator Tollefson:** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Mutch.**

PROPOSED AMENDMENTS TO 2001 HOUSE BILL NO. 1162

Page 1, line 17, replace "pay to" with "determine on an annual basis, for"

Page 1, line 18, remove "subsequent annual"

Page 1, line 19, replace "benefits" with "benefit increases"

Page 2, line 7, replace "pay to" with "determine on an annual basis, for", remove "subsequent annual", and replace "benefits" with "benefit increases"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**HB 1162: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1162 was placed on the Sixth order on the calendar.

Page 1, line 17, replace "pay to" with "determine on an annual basis, for"

Page 1, line 18, remove "subsequent annual"

Page 1, line 19, replace "benefits" with "benefit increases"

Page 2, line 7, replace "pay to" with "determine on an annual basis, for", replace "subsequent annual" with an underscored comma, and replace "benefits" with "benefit increases"

Renumber accordingly

2001 TESTIMONY

HB 1162

Fifty-seventh  
Legislative Assembly  
of North Dakota

**House Bill No. 1162**  
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. 1162. The Workers Compensation Board of Directors unanimously supports this bill.

During this past interim, North Dakota Workers Compensation (NDWC) conducted a Long-Term Disability Study as mandated by 1999 Senate Bill No. 2214. I have distributed copies of the study with my testimony. The study reviewed the advantages and disadvantages of the current system (see Interim Long Term Disability Study, September 11, 2000 at pages 8 -11), and found that the current system favors benefit recipients who were low wage earners at the time of their accident. (Page 8) The study also found the current structure to be very easy to administer. (Page 10) The study recognized that NDWC has established a cyclic review committee that assesses whether an injured worker who has been receiving disability benefits is permanently and totally disabled. Since permanent and total disability is required to be eligible to receive supplementary benefits, NDWC acknowledged the need to have a consistent and timely review of claims of injured workers who have been on disability benefits for an extended time. The committee reviews claims to determine whether there is a course of medical treatment or vocational rehabilitation which may serve the needs of the worker. Based on current medical and vocational information available, the cyclic review committee makes a recommendation on whether to declare the worker permanently and totally disabled. (Page 10)

Of the disadvantages of the current system, perhaps the greatest is that an injured worker who had a higher preinjury weekly wage may not qualify for a supplementary benefit or may have to wait many years before receiving a benefit increase as opposed to the injured worker with a lower preinjury weekly wage. Not only is this a potential concern for injured workers receiving disability benefits in North Dakota, it is also inconsistent with the way other states surveyed in the study handle similar benefits. Of the states providing a benefit similar to NDWC's supplementary benefit, none provided the increase only for lower wage earners; rather the increases are provided to all benefit recipients who meet the duration and type of disability eligibility requirements. (Page 18)

Based on the study results, three options were developed as potential changes to NDWC's supplementary benefit structure. (Pages 18 and 19) House Bill No. 1162 implements option three as set forth in the study. NDWC believes this option is the most fair and equitable option. Everyone who meets the duration and type of benefit requirements will receive a supplementary benefit; however, there are two different levels at which benefits will increase.

**Subsection 1 of section 1 of the bill** provides that the initial increase for an eligible injured worker whose weekly benefit rate is less than 60% of the state's average weekly wage will be equal to the ratio of the injured worker's weekly benefit to the state's average weekly wage on the date of first disability, times the state's average weekly wage in effect at the date of the injured worker's eligibility for supplementary benefits. This is better illustrated with an example.

**Worker A**

Injured in September of 1989, receiving disability benefits since injury

SAWW in 1989-1990	\$313
60% of SAWW (minimum benefit)	\$188
<b>Preinjury Gross AWW</b>	<b>\$100</b>
<b>Weekly benefit</b>	<b>\$ 84.85</b>
<b>Ratio of 1989 benefit rate to 1989 SAWW</b>	<b>.27</b>

**Current law:** this worker becomes eligible for supplementary benefits after receiving ten years of benefits.

**Supplementary benefit** \$177.15 per week

This is the difference between 60% of the state's average weekly wage at the date his eligibility for supplementary benefits begins, \$262, and his weekly benefit of \$84.85.

**Weekly benefit (\$84.85) plus Supplementary Benefit (\$177.15) = \$262.**

**This bill:** this worker would be eligible for supplementary benefits after 7 years.

**Supplementary benefit** \$104.49 per week

This is the ratio of his weekly benefit to the 1989 SAWW (.27) multiplied by the SAWW at the date of his eligibility for supplementary benefits (\$387).

**Weekly benefit (\$84.85) plus Supplementary Benefit (\$104.49) = \$189.34.**

Subsequent supplementary benefit increases would be equal to the percentage change in the SAWW each year.

**Subsection 2 of section 1 of this bill** provides that an eligible injured worker whose weekly benefit rate is greater than or equal to sixty percent of the SAWW will receive a supplementary benefit equal to the percentage change in the SAWW. An example of this would be:

**Worker B**

Injured in September of 1989, receiving disability benefits since injury

**Preinjury Gross AWW** \$450

**Weekly Benefit** \$300

**Current law:** even after ten years, this worker would not be eligible for supplementary benefits because his weekly benefit is greater than 60% of the SAWW (\$262).

Assuming an increase of 3.3% in the SAWW each year, this worker would be eligible for an \$8 per week supplementary benefit beginning in 2004, and annual adjustments subsequently. Note that the first supplementary benefit for this worker is paid 15 years after the date of injury.

**This bill:** this worker would be eligible for supplementary benefits after 7 years.

**Supplementary benefit** \$ 8.70 / week

This is the percentage increase in the SAWW for 1987 (2.9%) multiplied by the injured worker's weekly benefit (\$300).

**Weekly benefit (\$300) plus supplementary benefit (\$8.70) = \$ 308.70 / week**

In 1999 Senate Bill No. 2214, the Legislative Assembly provided that the required duration for eligibility for supplementary benefits be reduced to seven years effective for all claims for injuries occurring after July 31, 1999. Further review revealed that this effective date had inadvertently created a "notch" in benefit recipients. This is discussed in the study at page 11. To correct this "notch", **Section 2 of the bill** amends the effective date of 1999 Senate Bill No. 2214 to provide that the waiting period is effective for all claims as of August 1, 2006, regardless of injury date. Those injured workers for whom 1999 Senate Bill No. 2214 would first take effect will still receive the benefit of the shortened duration requirement of seven years. But this would also make the shortened duration requirement effective for those workers whose injuries occurred in the three years immediately preceding August 1, 1999, who would otherwise be subject to the ten year duration requirement.

**Section 3 of the bill** would make the new supplementary benefit rates applicable to claims for injuries occurring after July 31, 2001.

NDWC requests your favorable consideration of House Bill No. 1162. If there are questions, I'll attempt to answer them at this time. Thank you.

Close

Printable Form

## Review Information

Bill Number	1162
LC Number	18225.0100
	Bill Text
Agency	WORKERS COMPENSATION BUREAU
Authorized Editors	

## FISCAL NOTE

Requested by Legislative Council  
12/26/2000

Bill/Resolution No.: HB 1162.

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:** Supplementary Benefit

**BILL NO:** HB 1162

**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 changes the supplementary benefit structure to allow payment of supplementary benefits to death benefit recipients or permanently and totally disabled injured workers who have been receiving death or disability benefits for at least seven consecutive years.

**FISCAL IMPACT:** We understand that the proposed legislation will introduce two material changes to the current benefit structure for supplementary benefits:

#### Seven-Year Waiting Period

The bill provides a seven-year period for establishing eligibility for supplementary benefits for permanent total disability and death claims effective on August 1, 2006. The change should not have an impact on prospective rate levels because the current benefit structure contemplates a seven-year waiting period for supplementary benefit claims with injury dates on or after August 1, 1999. However, reserve levels associated with prior claims will increase. Based on assumptions consistent with those underlying the June 30, 2000 reserve review completed by Pacific Actuarial Consultants (PAC), we believe that the proposed change will increase the Bureau's discounted liability for unpaid losses by approximately \$1 million to \$1.5 million.

#### Supplementary Benefit Structure

Supplementary benefit amounts will change in line with recommendations offered as part of the Interim Long Term Disability Study that was completed by independent claims consultants earlier this year. Two material changes will be introduced to the benefit structure for workers injured on or after August 1, 2001:

- Supplementary benefits will begin at seven years for all PTD and death claims.
- The formula used to establish supplementary benefit amounts will change to match more closely actual pre-injury wages.

We believe that the rate level impact of the change to the benefit structure will be less than 1%. Required reserve levels should not change because this aspect of the new benefit structure will not be applied to claims with injury dates prior to August 1, 2001.

**DATE:** December 27, 2000

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

<b>Name:</b>	Paul R. Kramer	<b>Agency:</b>	ND Workers Compensation
<b>Phone Number:</b>	328-3856	<b>Date Prepared:</b>	12/27/2000

**ATTACHMENTS**

CONTACT WORKERS COMP FOR COPY OR BORROW  
FROM STATE LIBRARY

North Dakota Workers Compensation  
Interim Long Term Disability Study

September 11, 2000

Prepared by:  
Malcolm Dodge  
Professional Risk Management  
2101 Webster Street, Suite 900  
Oakland, CA 94612

**House Bill No. 1153, 1161, 1162 and 1260  
Engrossed House Bill No. 1419, and 1469  
Re-engrossed House Bill No. 1281**

**Fifty-Seventh Legislative Assembly  
Before the Senate Industry, Business and Labor Committee  
March 5, 2001  
Testimony Regarding Workers Compensation Legislation**

Good morning Chairman Mutch, members of the Senate Industry, Business, and Labor Committee:

My name is Bob Indvik, and I am the Vice-Chairman of the North Dakota Workers Compensation Board of Directors. I am also the Chairman of the Board's Legislative Committee. I am here this morning to testify regarding the Board's position on several pieces of legislation that will affect the state's workers' compensation system.

In the interest of time, I will provide you with a brief description of the bills you will be hearing this morning and tell you about the recommendations the Board made regarding each of the bills.

The first is House Bill No. 1153, which the Board supports. House Bill No. 1153 does a variety of things. It redefines "fee schedule". It prohibits an employer from requiring an employee to use personal leave during periods of work-related disability. It also allows NDWC to establish incentives for employers who hire previously injured workers in physically appropriate jobs. And it makes a claimant's social security number private and requires an employer to limit the people who have access to its employees' claim files.

The second is House Bill No. 1161. It would increase the awards given for Permanent Partial Impairments. This bill is a result of an independent PPI study that was mandated by the 56<sup>th</sup> Legislative Assembly. The Board agrees with the results of the study and supports the bill and its proposed amendment. House Bill No. 1161 would increase awards given for certain amputations and the loss of one eye. It would also adopt the 5<sup>th</sup> Edition of the AMA Guidelines. The proposed amendment to the bill would reduce the PPI award threshold from 16% to 11% as recommended by the study.

House Bill No. 1162 is also supported by the Board. It changes the supplementary benefit structure to provide for supplementary benefits to be paid to all death benefit recipients or to all permanently and totally disabled workers who have been receiving benefits for an extended period of time.

House Bill No. 1260 would allow an employer with a deductible policy to keep 100% of the recovery in a third-party action if an injured worker and the Bureau chooses not to pursue the third-party for recovery of damages. This bill relates to a small number of employers, and it will not have an impact on rates or reserve levels. The Board supports House Bill No. 1260.

Re-engrossed House Bill No. 1281 would allow the Board to set the workers' compensation budget on an annual basis, and requires NDWC to report to the Legislative Assembly on how its funds were spent. The Board supports Re-engrossed House Bill No. 1281. It is a recommendation from our most recent performance evaluation. The Board believes the authority to set the workers' compensation budget annually would allow NDWC to keep up with industry trends, and to allow most contracted services to be brought in-house and reduce cost.

The Board supports Engrossed House Bill No. 1419. It allocates \$150,000 to the Legislative Council to contract with an industry expert to conduct a study of the effects of opening the state's workers' compensation system to competition. The Board has not taken a position on whether or not competition is appropriate for North Dakota. A study of the pros and cons of competition would be beneficial for the Board and ultimately, will help the Legislative Assembly make an informed decision on this subject.

Finally, the Board has taken a neutral position on Engrossed House Bill No. 1469. It creates exemptions for certain custom agriculture operations. The Board originally opposed this bill when it was introduced, but would have supported a study on the issue.

This concludes my testimony regarding the Board's position on the several pieces of legislation that you have before you this morning. I would encourage you to give favorable consideration to House Bill Numbers: 1153, 1161 with the proposed amendments, 1162, 1260, 1281, and 1419.

NDWC staff will provide you with more details about each of the bills and its effect on the North Dakota Workers Compensation system.

Fifty-seventh  
Legislative Assembly  
of North Dakota

**House Bill No. 1162**  
Before the Senate Industry, Business, and Labor Committee  
North Dakota Workers Compensation Testimony  
March 5, 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. 1162. The Workers Compensation Board of Directors unanimously supports this bill.

During this past interim, North Dakota Workers Compensation (NDWC) conducted a Long-Term Disability Study as mandated by 1999 Senate Bill No. 2214. I have distributed copies of the study with my testimony. The study reviewed the advantages and disadvantages of the current system (see Interim Long Term Disability Study, September 11, 2000 at pages 8 -11), and found that the current system favors benefit recipients who were low wage earners at the time of their accident. (Page 8) The study also found the current structure to be very easy to administer. (Page 10) The study recognized that NDWC has established a cyclic review committee that assesses whether an injured worker who has been receiving disability benefits is permanently and totally disabled. Since permanent and total disability is required to be eligible to receive supplementary benefits, NDWC acknowledged the need to have a consistent and timely review of claims of injured workers who have been on disability benefits for an extended time. The committee reviews claims to determine whether there is a course of medical treatment or vocational rehabilitation which may serve the needs of the worker. Based on current medical and vocational information available, the cyclic review committee makes a recommendation on whether to declare the worker permanently and totally disabled. (Page 10)

Of the disadvantages of the current system, perhaps the greatest is that an injured worker who had a higher preinjury weekly wage may not qualify for a supplementary benefit or may have to wait many years before receiving a benefit increase as opposed to the injured worker with a lower preinjury weekly wage. Not only is this a potential concern for injured workers receiving disability benefits in North Dakota, it is also inconsistent with the way other states surveyed in the study handle similar benefits. Of the states providing a benefit similar to NDWC's supplementary benefit, none provided the increase only for lower wage earners; rather the increases are provided to all benefit recipients who meet the duration and type of disability eligibility requirements. (Page 18)

Based on the study results, three options were developed as potential changes to NDWC's supplementary benefit structure. (Pages 18 and 19) House Bill No. 1162 implements option three as set forth in the study. NDWC believes this option is the most fair and equitable option. Everyone who meets the duration and type of benefit requirements will receive a supplementary benefit; however, there are two different levels at which benefits will increase.

**Subsection 1 of section 1 of the bill** provides that the initial increase for an eligible injured worker whose weekly benefit rate is less than 60% of the state's average weekly wage will be equal to the ratio of the injured worker's weekly benefit to the state's average weekly wage on the date of first disability, times the state's average weekly wage in effect at the date of the injured worker's eligibility for supplementary benefits. This is better illustrated with an example.

**Worker A**

Injured in September of 1989, receiving disability benefits since injury

SAWW in 1989-1990	\$313
60% of SAWW (minimum benefit)	\$188
<b>Preinjury Gross AWW</b>	<b>\$100</b>
<b>Weekly benefit</b>	<b>\$ 84.85</b>
<b>Ratio of 1989 benefit rate to 1989 SAWW</b>	<b>.27</b>

**Current law:** this worker becomes eligible for supplementary benefits after receiving ten years of benefits.

**Supplementary benefit** \$177.15 per week

This is the difference between 60% of the state's average weekly wage at the date his eligibility for supplementary benefits begins, \$262, and his weekly benefit of \$84.85.

**Weekly benefit (\$84.85) plus Supplementary Benefit (\$177.15) = \$262.**

**This bill:** this worker would be eligible for supplementary benefits after 7 years.

**Supplementary benefit** \$104.49 per week

This is the ratio of his weekly benefit to the 1989 SAWW (.27) multiplied by the SAWW at the date of his eligibility for supplementary benefits (\$387).

**Weekly benefit (\$84.85) plus Supplementary Benefit (\$104.49) = \$189.34.**

Subsequent supplementary benefit increases would be equal to the percentage change in the SAWW each year.

**Subsection 2 of section 1 of this bill** provides that an eligible injured worker whose weekly benefit rate is greater than or equal to sixty percent of the SAWW will receive a supplementary benefit equal to the percentage change in the SAWW. An example of this would be:

**Worker B**

Injured in September of 1989, receiving disability benefits since injury

**Preinjury Gross AWW** \$450  
**Weekly Benefit** \$300

**Current law:** even after ten years, this worker would not be eligible for supplementary benefits because his weekly benefit is greater than 60% of the SAWW (\$262).

Assuming an increase of 3.3% in the SAWW each year, this worker would be eligible for an \$8 per week supplementary benefit beginning in 2004, and annual adjustments subsequently. Note that the first supplementary benefit for this worker is paid 15 years after the date of injury.

**This bill:** this worker would be eligible for supplementary benefits after 7 years.

**Supplementary benefit** \$ 8.70 / week

This is the percentage increase in the SAWW for 1987 (2.9%) multiplied by the injured worker's weekly benefit (\$300).

**Weekly benefit (\$300) plus supplementary benefit (\$8.70) = \$ 308.70 / week**

In 1999 Senate Bill No. 2214, the Legislative Assembly provided that the required duration for eligibility for supplementary benefits be reduced to seven years effective for all claims for injuries occurring after July 31, 1999. Further review revealed that this effective date had inadvertently created a "notch" in benefit recipients. This is discussed in the study at page 11. To correct this "notch", **Section 2 of the bill** amends the effective date of 1999 Senate Bill No. 2214 to provide that the waiting period is effective for all claims as of August 1, 2006, regardless of injury date. Those injured workers for whom 1999 Senate Bill No. 2214 would first take effect will still receive the benefit of the shortened duration requirement of seven years. But this would also make the shortened duration requirement effective for those workers whose injuries occurred in the three years immediately preceding August 1, 1999, who would otherwise be subject to the ten year duration requirement.

**Section 3 of the bill** would make the new supplementary benefit rates applicable to claims for injuries occurring after July 31, 2001.

Finally, NDWC is also requesting an amendment to clarify the language in subsections 1 and 2 of section 1 of the bill, dealing with subsequent supplementary adjustments. The language proposed in the amendment is to clarify that supplementary benefits will be adjusted on an annual basis to determine the amount of supplementary benefits that will be paid to an injured worker every twenty-eight days. The language as drafted suggested that the benefit would be paid on annual basis rather than calculated on an annual basis.

NDWC requests your favorable consideration of the proposed amendments and of House Bill No. 1162. I will respond to any questions at this time. Thank you.

Timothy Effertz  
11600 20 Ave. SE  
Minot, ND 58701-2635

Dear Attorney Leer:

I have tried to get the House to consider an amendment to HB 1162, but I was too late. Representative Thorpe suggested that you might be willing to help me out in Senate IBL if it is possible. I have sent a similar request to Senator Mathern.

I have taken the initiative to write a proposed amendment to HB 1162. The aim is to cure the problem that there are no Workers compensation death benefits available to my wife of 40 years should I precede her in death. We have had little opportunity to build any retirement because I have been disabled since 1962, and we have lived on less than poverty since. I have used HB 1162, as though it were passed, as a framework, without the markers for new or deleted text. It would simply add the sentence "Supplementary death benefits shall be paid as though the six-year limitation in subsection 65-05-16(1)(c) does not exist." to 1999 Subsection 65-05.2-02. This is more employer-friendly than to change 65-05-16(1)(c), in order to avoid the adverse effect on the employer's injury history which determines the premium.

I have further concern that the language used in HB 1162 is at least confusing as follows: "*The bureau shall pay to a claimant who receives a supplementary benefit under this subsection, subsequent annual supplementary benefits equal to a percentage of that claimant's combined weekly benefit*)... *The bureau shall pay to that claimant subsequent annual supplementary benefits equal to a percentage of that claimant's combined weekly benefit. (In bold below.*" That seems to provide an annual benefit rather than a weekly supplementary benefit, and the annual benefit is less than what is usually paid for a week. I do not think that is the intent of the Legislature, and will certainly waste lots of resources to sort it out in court. I suggest that you offer a fix for that too. The serious limits placed on the benefits to be paid to part-time and very young workers who have not developed their potential earnings capacity make the intent of this bill rather dubious. It is not my decision to make, but at least the language needs to be cleaned up. Woody has talked to Attorney Julie Leer about this.

I suggest the following draft amendment to any version of HB 1162 or a "hoghouse bill" to provide death benefits for my wife: I hope you will get it into bill form and try to get it passed. Please let me know if you will help.

Thanks

Tim

18225.0100  
Fifty-seventh

Legislative Assembly **HOUSE BILL NO. 1162 amendment**  
of North Dakota

Introduced by

Industry, Business and Labor Committee

(At the request of the Workers Compensation Bureau)

A BILL for an Act to amend and reenact section 65-05.2-02 of the North Dakota Century Code and sections 4 and 6 of chapter 556 of the 1999 Session Laws, relating to payment of supplementary benefits for certain workers' compensation benefit recipients; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 65-05.2-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-02. Supplementary benefits - Amount.**

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year, equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. **The bureau shall pay to a claimant who receives a supplementary benefit under this subsection, subsequent annual supplementary benefits equal to a percentage of that claimant's combined weekly benefit.** That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.

2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. **The bureau shall pay to that claimant subsequent annual supplementary benefits equal to a percentage of that claimant's combined weekly benefit.** That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

**SECTION 2. AMENDMENT.** Section 4 of chapter 556 of the 1999 Session Laws is amended and reenacted as follows:

**65-05.2-02. Supplementary benefits - Amount.** A claimant who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly

supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year. **Supplementary death benefits shall be paid as though the six-year limitation in subsection 65-05-16(1)(c) does not exist.** An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

**SECTION 3. AMENDMENT.** Section 6 of chapter 556 of the 1999 Session Laws is amended and reenacted as follows:

**SECTION 6. EFFECTIVE DATE.** Sections 2 and 3 and the reduction in the waiting period in section 4 of this Act are effective for all claims for injuries occurring after July 31, 1999. The reduction in the waiting period in section 4 of this Act is effective August 1, 2006, for

all claims, regardless of the date of injury. The remainder of section 4 of this Act is effective

August 1, 1999, for all claims regardless of the date of injury.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act is effective for all claims for injuries occurring after July 31, 2001. Section 2 is effective July 31, 2001 for all claimants regardless of the date of injury.

Timothy Effertz  
11600 20 Ave SE  
Minot, ND 58701

Dear Legislator:

I need your help. I am a person who has been totally disabled from a work injury in 1962. Subsection 65-05-16(1)(c) prohibits my wife of 40 years from receiving any death benefits after I die. The reason is that I have lived past 6 years after my injury date. It seems particularly cruel for the Legislature to have abolished all of her rights to recover from my employer for her very substantial loss due to my work injury, then not pay benefits after I die. Many spouses receive death benefits if their partners die within 6 years.

I intended to come to testify when HB 1162 was to be heard on Monday March 5. Instead I must go back to the hospital in Minnesota. I have asked some of the IBL Committee members to consider an amendment to add language that would cure the problem without disrupting the employer history and rates. I have not heard of any effort to get this changed. It seems reasonable to use Supplementary Benefits as a vehicle to provide the necessary help.

I propose that a sentence should be added to 1999 NDCC Subsection 65-05.2-02 that says "**Supplementary death benefits shall be paid as though the six-year limitation in subsection 65-05-16(1)(c) does not exist.**" Even if HB 1162 would otherwise fail, the bill description would fit if you would use it for a vehicle to help me.

It is simply not fair to leave my wife destitute after she has spent so many years taking care of my needs as a disabled person. Common decency dictates that she deserves death benefits even after I was so selfish as to live past 6 years after my injury! She is a real person who has given a good deal of her life mopping up the aftermath of my injuries in lieu of an effort that should have been made by my employer or his insurance company. My employer should provide these minimal death benefits to her in return when she is old after I die!

Please make an effort to get this social injustice corrected.

Thank you.

Tim

Proposed Amendments – HB 1162  
Industry, Business and Labor Committee

Page 1 – line 2 overstrike “section” add “sections 4 and”

Page 2 – line 14 SECTION 2. AMENDMENT. Section 4 of chapter 556 of the 1999 session laws is amended and reenacted as follows:

**65-05-02. Supplementary benefits – Amount.** A claimant who is eligible for supplementary benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year. Supplementary death benefits shall be paid as though the six-year limitation in subsection 65-05-16 (1) does not exist. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

Renumber accordingly

**Section 4. EFFECTIVE DATE.** Section 1 of this Act is effective for all claims for injuries occurring after July 31, 2001. Section 2 is effective July 31, 2001 for all claimants regardless of the date of injury.

3-5-01 STATEMENT BY CHUCK PETERSON, REPRESENTING GNDA,  
REGARDING HB 1162 WORKER'S COMPENSATION LEGISLATION.

Chairman Mutch and members of the Senate Industry, Business, and Labor Committee. I am Chuck Peterson, a member of GNDA, and a North Dakota businessman. Thank you for the opportunity to provide testimony in support of HB 1162.

The Greater North Dakota Association is the voice of business and the principle advocate of positive change in North Dakota. As a member of GNDA we represent over 1000 business and professional organizations from all areas of North Dakota. GNDA is governed by a 25 member Board of Directors elected by our membership.

I also speak for the Associated General Contractors, the North Dakota Petroleum Council, the North Dakota Retail Petroleum Marketers Association, the North Dakota Motor Carriers Association, the Automobile Dealers and Implement Dealers Association, North Dakota Grocers Association, the Bismarck-Mandan Chamber of Commerce, and the North Dakota Hospitality Association.

We have reviewed the proposed legislation and wish to support it. We understand that HB 1162 will change the supplementary benefit structure for permanently and totally disabled worker or to death benefit recipients who have been receiving benefits for at least 7 years. It will increase benefits for both workers with a low preinjury wage and those with a high preinjury wage. This bill will modify the increase for the worker with the lower

preinjury wage and allow the more highly paid worker to receive an increase in benefits after 7 years. Under present law the more highly paid worker might not receive an increase for over 10 years.

We view the changes brought about by HB 1162 are beneficial and ask for your support.