

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2292

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2292

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2292

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-25-05

Tape Number	Side A	Side B	Meter #
1	x		2400-end
1		xx	0-1400
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2292. All Senators were present.

SB 2292 relates to the creation of an advisory board for Workforce Safety and Insurance.

Senator Heitkamp, introduced the bill.

Senator Heitkamp: SB 2292 comes to you for a response for being in this committee in the past.

One of the things that I have increasingly become frustrated with was the response that the WSI had in relation to injured workers in North Dakota. A lot of the abuses that the Forum put in front of the paper, were abuses that we saw in this community. The young gentlemen from Williston was in this committee before. So through a number of years, we have tried to introduce legislation that would bring that back in to where there is accountability and somebody that the general public can go to when WSI isn't doing their job. With the Governor, you can do that. When I voted to override the Governor's veto, I probably made a mistake. This is an executive branch function of government. But really the way it's set up right now, there's no accountability to the executive branch of government. I believe some level of government, in this case, the

executive branch, has to be accountable for what goes on at WSI. I'm not saying that they aren't making great strides to fix problems. I'm not saying that they are either. When my phone stops ringing, I'll believe it when my phone quits ringing.

Senator Nething : You mentioned this incident from two years ago with the young man from Williston, you recall however, that he refused to sign a waiver for us so we could get information from the board to check his case out.

Senator Heitkamp : Those are personal decisions that those individuals get to make. It is also sometimes based upon the advise of an attorney, because of the fact that they are in an advocarial role.

Senator Nething : As a legislative committee, we are here to gather information and we couldn't even do that.

Senator Heitkamp: Whatever that information may be, I know for a fact that simply giving that leeway to legislators, doesn't mean it's going to stay.

Senator Espegard : I believe the audit didn't address that the injured workers weren't getting paid, I believe it addressed other issues that are being taken care of.

Senator Heitkamp : What I said was that control had gotten out to where we have people investigating people through private detectives and reaching into their personal and private lives and then we expect them to go and sign releases to that very same agency.

Senator Espegard : Where's the solvency of the agency at right at this time?

Senator Heitkamp : I'm not an actuarial person when it comes to the agency but I can assure you that if they have a billion three, there probably pretty sound.

Senator Espegard : What do you base that on?

Senator Heitkamp : I base that on the fact that the audit did say that the fund is doing just fine.

Senator Espegard : I believe it said that they were approaching solvency.

Senator Heitkamp : By who's definition?

Senator Espegard:By the audit.

Senator Heitkamp : All I can tell you is that in a state of 640,000 people, I'm just going to go out on a limb and guess that a billion three is getting pretty close to there.

David Kemnitz, President of the North Dakota AFL-CIO, spoke in support of the bill.

David: We are looking for vehicles to call attention to a lot of different things. The system as it is now, we have problems because we don't have an advisory in place that deliberates these things over time. Claimants come up short. a

Chairman Mutch : How is this going to change the balance? We used to be a quarter of a million dollars in the hole, and switched over to this advisory board and got politics out of it. Now we have money in there and people want to get rid of it?

David: That's the issue. We think that the system is isolated and difficult to adjudicate.

Senator Nething : We got it out of the mess that they were in. Is that fair to say?

David: That's fair, but the mess portrayed to you in 1995 was misapplied to drive benefit cuts.

Senator Krebsbach: I have to correct you. The benefits have been greatly increased since 1995 and record would show that.

David: They have in certain areas. The ability to access legal counsel, they have not.

Senator Fairfield : I am intrigued by the political discussion on this. If the problem were truly political and I can tell you that I don't buy that from this. If it were, didn't we also loose accountability when we took it out of the political process? I know that I don't only represent

Democrats in my district, and as injured workers, I don't know whether they are Democrat or Republicans. How is this then that we restore some accountability?

David: Exactly.

Senator Fairfield: It's a sad day when we are talking about an issue this big and important to so many people and it's an issue that suddenly breaks down into Democrat and Republican and it's a bad idea. That's a crying shame.

Sebold Vetter, President for C.A.R.E (concerned active rights for employees) states his support of the bill.

There were no questions from the committee.

Chairman Mutch allowed opposition at this time.

Bob Indvik, Chair of Workforce Safety and Insurance Board of Directors, spoke in opposition. See attached testimony.

Senator Heitkamp : Do you think that the oversight of WSI is an exercise of the executive branch of government?

Bob: It was and that is where we got into the trouble.

Senator Heitkamp : You believe that there should be no oversight from government in relation WSI?

Bob: We are accountable to the legislature through our biennial performance audits and our reports to this body, which is necessary.

Senator Heitkamp : Is it fair to say that when you find an appeals process so cumbersome that you might feel the deck is stacked against you? Don't you think then it would be safe to say that the amount of law suits might go down?

Bob: I believe the reduction in the number of lawsuits is the fact that we have improved service.

Chairman Mutch : As I recall, I think there was a back law up to about fifteen hundred that drug on into a year or more.

Senator Klein : In a lot of states, there is no monopoly. We are one of the few states that has one. What relationship does the governor have in those states, with the private insurer? How can the politics in other states be involved?

Bob: That is how I would view some coverage in other states. They would have to abide by insurance business practices.

Senator Heitkamp : So you are saying that by ruling by whatever the legislature says, that we have taken politics out of it?

Senator Klein : My understanding of other states is that once the laws are created by the legislature, the private insurers who cover them, have to comply by what the legislators design.

Dave MacIver, President of the Greater North Dakota Chamber of Commerce, spoke in opposition to the bill. See attached testimony.

Senator Heitkamp : The people that you represent, pay into WSI. Does it bother you that they need almost ten people in this room to talk about the bill?

Dave: I believe that this bill is important. How they decide to bring their staff in is not my decision.

Dick Johnson, Chair of the Legislative Committee for the North Dakota Motor Carriers Assoc., stated his opposition to the bill, for the record.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2292

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
3	xxx		1687-1890
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened committee discussion on SB 2292. All Senators were present. SB 2292 relates to Workforce Safety and Insurance board of directors.

There was no discussion from the committee members.

Senator Klein moved a DO NOT PASS.

Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 2 no. 0 absent.

Carrier: Chairman Mutch

FISCAL NOTE
Requested by Legislative Council
01/19/2005

Bill/Resolution No.: SB 2292

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

WORKFORCE SAFETY & INSURANCE
2005 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Dissolve WSI Board of Directors and create an Advisory Board

BILL NO: SB 2292

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, 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 replaces the existing WSI Board of Directors with an Advisory Board and makes the Executive Director a Governor appointee.

Fiscal Impact: No significant financial impact anticipated.

Date: January 23, 2005

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:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/24/2005

Date: 1-26-05
Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2292

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass

Motion Made By

Klein

Seconded By

Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield		X
Senator Klein, Vice Chairman	X		Senator Heitkamp		X
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes)

5

No

2

Absent

0

Floor Assignment

Mutch

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

REPORT OF STANDING COMMITTEE (410)
January 27, 2005 7:57 a.m.

Module No: SR-18-1160
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2292: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

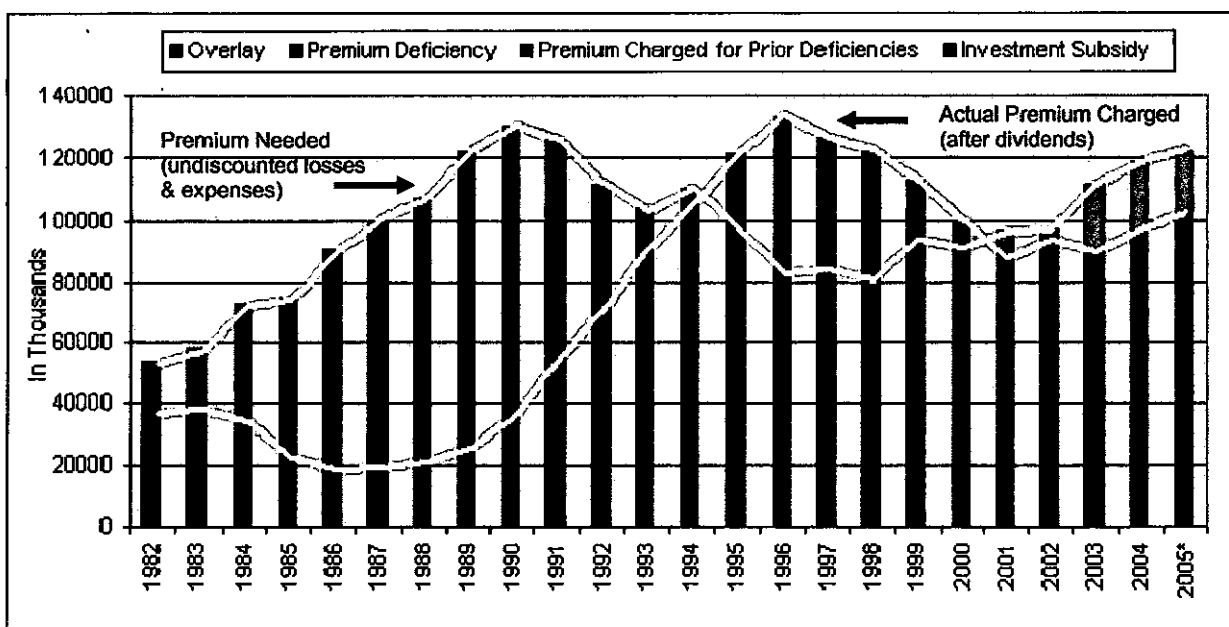
SB 2292

2005 Senate Bill No. 2292
Testimony before the House Industry, Business, and Labor Committee
Presented by: Bob Indvik, Chair of Workforce Safety & Insurance Board of Directors
January 25, 2005

Mr. Chairman and Members of the Committee, good morning, my name is Bob Indvik. I am the Chair of the Workforce Safety & Insurance (WSI) Board of Directors. I am here to testify in opposition to Senate Bill 2292. The WSI Board of Directors unanimously voted to oppose this bill. I will briefly address the Board's concerns.

I will start my testimony today with the issue that broke the back of the proverbial camel and caused significant legislative reform in the early 1990's. For many years in the 1980's and early 1990's, the premium collected from employers was grossly inadequate and did not begin to cover the actual expenses being paid. The then North Dakota Workers Compensation (NDWC) reserve fund was 250 million dollars in the red and there was not enough money to guarantee the payment of all the injured workers' medical and wage replacement costs. The agency was actuarially insolvent.

The chart below identifies the historic annual costs of North Dakota's workers' compensation system for the past 24 years. The yellow line represents the dollars needed in order to meet the fund's actual obligations, while the white line identifies the actual premium dollars collected.



Had NDWC been forced to close its doors in the early 1990's (as the chart suggest should have been done), the sure and certain relief promised to injured workers would not have been in the bank to pay them. Any private insurance carrier in this position would have been taken over and liquidated by regulators. However, because North Dakota has an exclusive system, the legislature had a better idea.

Legislation enacted in 1997 by the 55th North Dakota Legislative Assembly created a 10 member, customer-based Board of Directors. This legislation was amended in 2003 to reflect the Governor appointing 11 members to the Board. Under the 1997 bill, the organization's executive director was designated to be hired by and report directly to the Board. The role of the Board is to ensure continuity of leadership at WSI and to ensure WSI operates efficiently and effectively. The Board has adopted the Carver Model of Board governance, which provides a clear structure for Board leadership and organizational accountability to the Board. This structure includes regular performance monitoring reports and an internal auditor that reports to the Board so they can ensure continued improvements are being made in all key areas of WSI operations and services. Audits are reported to the interim Legislative Audit and Fiscal Review Committee (LAFRC) committee as well as the House and Senate Industry, Business, and Labor committees.

While WSI has achieved tremendous improvements, it also recognizes the need to ensure that every aspect of its operation meets or exceeds private industry standards. Recognizing that no competition exists in the North Dakota workers' compensation market that would force WSI to "operate efficiently or cease to exist," WSI and its Board believe they have a special obligation to maintain the highest standards of performance and efficiency.

As the chart I reviewed earlier shows, for the last several years WSI has had premiums plus investment returns that adequately cover losses and expenses. Through the Board's management of the reserve fund, there are positive net assets instead of a \$250 million shortfall.

However, operating WSI responsibly does not just mean running it financially stable. It also means running it to best serve its customers –North Dakota's workforce. Under the Board, the system is less adversarial and more injured worker and employer friendly. Don't just take my word for it, take the customer's opinion instead. WSI's customer surveys, conducted by the independent research group DH Research, show that on a scale of 1 to 5, injured workers rate WSI's service at 4.39 and employer at 4.21.

Development and implementation of risk management programs which encourage safety programs and utilization of safety grants has also contributed to this decline in injuries. Employers have joined WSI in making their workplaces safer for workers resulting in fewer claims overall and a smaller number of wage-loss claims.

Under the old system there were 7.47 injuries per 100 workers covered. Today, that figure is 6.30.

Wage-loss claims have been reduced by 30% --from 1.18 per 100 covered workers to 0.81. This is very significant when you realize that an average wage-loss claim now exceeds \$40,000 per claim.

The number of litigation requests under the prior system (in the early 1990's) were as high as 1,400 requests per year. Today, there are less than 170 requests per year meaning less than 1% of all claims request litigation. Under the old system as much as \$1.1 million a year was paid to injured workers' attorneys. Last year, we spent about \$224,000.

Another reason today's system is less adversarial than the system of old is improved service. Through Board oversight, operational performance monitoring, and other accountability mechanisms, benefit delivery and customer service has improved tremendously. Claims processed within 14 days has improved from 44% ten years ago to 76% today. Medical bills processed within 30 days has increased from 39% to 94%. The number of injured worker claims pending over 60 days has been reduced from 443 to 9.

Improved service has resulted in less delays, fewer disputes, less costs and more satisfied customers. Board governance and monitoring, independent performance audits, incentives for participation in safety and return to work programs, operational performance monitoring and a special investigations program have resulted in a more effective and efficient operation which ultimately has contributed to a stable premium environment. Premiums have been reduced from \$133 million to \$96.8 million.

Under the old system the Executive Director was appointed by the Governor. The appointment was typically an individual with little or no workers' compensation or insurance expertise. This led to premium levels, claims decisions, and planning being based on the whims of politics rather than sound business principles. Today, the Executive Director/CEO reports directly to the Board and is hired based on experience and not who they know.

Additionally, the Board adopted a governance model, governance manual, and bylaws. The governance model lays out Board outcomes or expectations for the organization to achieve. The governance manual requires a standing Board Audit Committee which reviews operational performance measures to ensure organizational compliance with Board outcomes. To independently support the Board Audit Committee, an internal audit department that reports directly to the committee was created.

The Board has allowed the organization to perform in a business-like fashion and focus on providing quality services to North Dakota's injured workers and employers while at the same time insulating them from political pressures. The Board has the ability to recruit a qualified workers' compensation professional and ensure stability in leadership. Leadership stability gives the organization the ability to strategically plan for the short-term as well as the long-term. The legislature maintains ultimate authority over workers' compensation benefits, the organizational budget, and whether the system is producing the intended results. In short, the Board feels things are running well today and there is no need to alter the present success.

Thank you Mr. Chairman and Members of the Committee for your time. I will be glad to answer any questions.

Workers' Compensation System--Old System vs. New System

	The System of Old	The System Today	
Less Adversarial			
Requests for litigation:	1,400	170	Today's system is much less adversarial than the system of old. Litigation requests have been reduced by over 85%. Today, less than 1% of all claims filed request litigation. Constituent service requests were down by over 50% in 1999 and by over 75% today. Claimant counsel were the winners under the old system. The injured workers and employers are the winners today.
Constituent Service Requests:	336	78	
Claim Acceptance Rate:	93%	93%	
Payments to IW Counsel:	\$1.1 Million	\$224,000	
Less Injuries			
Claims per 100 Covered Workers:	7.47	6.30	Employer implementation of safety programs and utilization of safety grants has resulted in significant declines in claim injury rates.
Wage-Loss Claims per 100 Covered Workers:	1.18	0.81	
Improved Service			
Claims Processed w/ 14 days:	44%	76%	Through Board oversight, operational performance monitoring, and various other accountability mechanisms, benefit delivery and customer service has improved tremendously. Improved service results in less delays, fewer disputes, less costs, and more satisfied customers. Employer and injured worker customer satisfaction surveys are conducted periodically by DH Research, an independent research group out of Fargo. Overall satisfaction ranks high on the 1 to 5 scale.
Medical Bills Processed w/in 30 days:	39%	94%	
Claims Pending over 60 Days:	443	9	
Independently Conducted Injured Worker Customer Satisfaction Surveys (Scale 1 to 5):	Did not exist	4.39	
Independently Conducted Employer Customer Satisfaction Surveys (Scale 1 to 5):	Did not exist	4.21	
Premium Stability			
Rate Changes:	Numerous double digit rate increases up to 60% one year.	Nine reductions and one 6% increase in the last 10 years.	Legislative reforms providing for Board governance and monitoring, Independent Performance Audits, incentives for participation in safety and return to work programs, operational performance monitoring, and a fraud program have resulted in a more cost-effective and efficient operation which ultimately has contributed to a more stable premium environment.
Premiums:	\$133 million	\$96.8 million	
Financially Healthy			
Net Assets:	Nearly \$250 Million Deficit	\$459 Million	Timely and periodic Board review of the fund's investment allocations and strategies has contributed to an improved financial position.
Less Fraud and Abuse			
	Fraud program did not exist. There was no means to detect or deter the fraud and abuse that existed within the system.	Special Investigations Unit established in August, 1994. Has resulted in prosecutions and millions of dollars in cost avoidance to the fund.	
More Accountable			
	The Executive Director was appointed by the Governor. The appointment was typically an individual with no expertise in workers' compensation or the insurance industry which resulted in a long learning curve. Prior to the Board, the organization had 14 directors in 17 years. Changes in Governors led to revolving executive leadership which led to an inefficient and ineffective organization. Executive leadership had the inability to strategically plan because the change in governor resulted in a change of leadership. Recruiting a professional workers' compensation executive was difficult because of the revolving Governor door. Premium levels and claims decisions were based on political influence rather than sound business practices.	A Board of Directors was established in 1997 to provide the vision, oversight, and controls to ensure continual improvement. The Executive Director/CEO reports directly to the Board. Numerous accountability measures came along with this. The Board adopted a Governance model, bylaws, and policy manual. The Governance Manual requires a standing Board Audit Committee. The organization created an internal audit department that reports directly to the Board Audit committee. The Governance manual lays out Board outcomes or expectations for the organization to achieve. Operational performance measures are monitored and reported to the Board quarterly to ensure organizational compliance with Board outcomes. Accompanying the Board legislation was the requirement that the organization undergo biennial independent performance audits to be conducted by workers' compensation industry experts (a recurring mandate that few other state agencies have). Audits are reported to the interim LAFRC committee as well as the House and Senate Industry, Business, and Labor committees.	The Board has allowed the organization to perform in a business-like fashion and focus on providing quality service to injured workers and employers while insulated from political influence. The Board has the ability to recruit a qualified workers' compensation professional and ensure stability in leadership. Leadership stability gives the organization the ability to strategically plan for the short-term as well as the long term. The legislature maintains ultimate authority over workers' compensation benefits, the organizational budget, and whether the system is producing the intended results.



**Testimony of Dave MacIver
President, Greater North Dakota Chamber of Commerce
Presented to the
Senate Industry, Business and Labor Committee
January 25, 2005**

SB 2292

Mr. Chairman and members of the Senate Industry, Business and Labor Committee, my name is Dave MacIver. I am the president of the North Dakota Chamber of Commerce. I am here today representing a coalition which includes area chambers of commerce in North Dakota with over 7,400 member businesses and other associations. We urge you to **oppose** Senate Bill 2292 because we believe the WSI board of directors' organization should be free from politics.

By 1997, it was realized that the Workers Compensation system was broken. Evidence of this included numerous double digit rate increases up to 60% in one year, 1,400 requests for litigation, less than half the claims processed in 15 days, and a nearly \$250 million deficit. Under the old system, the executive director was appointed by the Governor. At times, the appointments were more political than practical, with the individual not having the expertise in workers compensation or the insurance industry.

The legislature sought to resolve these problems by creating a board of directors. The board of directors became responsible for policy making and management decisions, free from political influence. The board is now managed like a business, as it should be, and is totally funded by premiums and not by taxes. And an agency run like a business attracts and retains the best

employees. Personnel and policy decisions are no longer controlled by anticipated political backlash. Professional staff is reassured their jobs do not rest on political change. This enables the organization to keep the most competent people and run more efficiently.

Today's system bears the fruit of this change:

- Litigation requests reduced by over 85%
- Constituent service requests down by over 75%
- Significant declines in claim injury rates
- Less delays, few disputes, less costs and more satisfied customers
- More cost-effective and efficient operation which ultimately has contributed to a more stable premium environment.
- Qualified workers compensation professionals to ensure stability in leadership

In conclusion, the new organization of the WSI board of directors has allowed the organization to perform in a business-like fashion and focus on providing quality service to injured workers and employers while insulated from political influence. Let's not go back.

Thank you, Chairman Mutch and members of the Senate Industry Business and Labor Committee, for this opportunity to discuss the business community's position on SB 2292. We urge a **DO NOT PASS** for SB 2292. Thank you and I would be happy to answer any questions at this time.

The following chambers are members of a coalition that support our policy statements:

Beulah
Bismarck-Mandan
Bottineau
Cando
Crosby
Devils Lake
Dickinson
Fargo
Grand Forks
Greater North Dakota Chamber of Commerce
Hettinger
Jamestown
Langdon
Minot
Wahpeton
Watford City
West Fargo
Williston

Total Businesses Represented= 7429