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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2257

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2257

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2257**

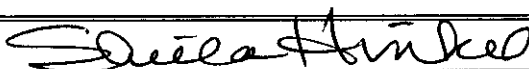
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 22, 2007**

Recorder Job Number: **1564**

Committee Clerk Signature



Minutes:

S Joel Hietkamp, Sponsor of Bill - In support

TESTIMONY # 1 PERFORMANCE AUDIT REPORT FOR WSI

Bi-partisan bill, cause is why WSI should be placed back under the Governor Hoven's control.

It "undoes" what happened in 1997 when we took control away and overrode Governor Schaefer's veto. We need it. We place the person responsible at the ballot box. We need to put someone accountable back in charge. By placing Governor back in charge, we place a person back in charge. Suggested to read "1" on the Procurement System.

Covered pages:

17

21 – internal investment, 20 – retro pay, 23 – lesser penalties, 25- , 26- high rate turnover, 27 – moving buddies, 30 – providing leadership.

Pay went up 26% and employees were fearing retaliation.

32 – bonuses, 33 - , 34 – fear of upper management. Their reaction is: "got it wrong." Take it under advisement and ask committee, "What grade would you give?" These are serious

charges that need to take seriously. Editorials fill papers asking for change. WSI says

"Change is not needed." Then why are claims being denied. This is a product fo both political

parties. None of these issues can be fixed until we make it accountable. The bill puts a name accountable in place, voted in at the ballot box where people have a say.

I get flooded with calls, calls from people who want to come in and testify. I didn't want it to turn into an "example" day. Fund is good, gets people riled up. Doesn't take away the changes we might have made in WSI other than put someone accountable for WSI in charge.

S Andrist: I know there are a number things that you think are wrong with the agency, but you haven't really told us what the bill does. What does it do? Am I right, it does away with the governing board and replaces it with an advisory board.

S Heitkamp: Yes. It's that simple. Undoes what we did in 1997, but gives that advisory board so that the Governor has members of Industry and Labor and other people to listen to.

Senator Nething – State Senator, District 12

S Klein: Committee, as you review those responses in the summary, make sure you follow the entire response, there is more on the back in the back that explains their position.

S Nething: I'm on the bill because I think it's the right thing to do. Retired lawyer and did not practice comp law in my law practice, and did not have any first hand experience from that prospective. [example 14:48m] Nor have I worked from the claimants perspective. Talk to you of legislative experience. Seen changes and how it changed accountability from elected officials to non-elected officials. We need to find a better balance on how the agency is administered. It's time to bring back to office of the governor. Thought we could do it in legislative overview, it wouldn't work; we are not the legislative branch of the government.

The governor is the chief executive. The Highway Dept has special dedicated funds, Job Service has special funds and is run by the direction of the Governor.

WSI is a single office, "Who's going to run it." We need to have a #1 person, Chief Executive to have # 1jurisdiction. We're ready for a change to bring the pendulum back.

S Andrist: I'm ½ persuaded. I want to give the agency a chance to respond. I'm hesitant to remove the governing board.

S Nething: I think the advisory board would be replacement to the governing board.

Representative Bill Amberman, District 26 - In Favor

There comes a time in everyone's life, personal or professional mistake and you could do it over, the 60th legislature has the opportunity to go back and give it back to the Governor.

Edward T Schafer – former Governor - In Favor

TESTIMONY # 3

3 areas: 1. Accountability, 2. Balance, 3. Long term efforts. Covered testimony.

Agency is not accountable. A business unit needs to be accountable. Competition holds you accountable. It is set up as monopoly. WSI not accountable to the people. [29:40m refers to 2nd payment from bottom, page 1, T#3; last paragraph page 2, T#3] Where do they go? OIR office of independent review. When the Governor was accountable he was held accountable by the people. [31:090m 2nd to last paragraph, page 2] Employees in WSI make more money than other agencies. CEO gets 4X increased when was removed from Governor's overlook. In one year it jumped to a 50% increase in pay.

The claims are the same, the business is the same, why do we need more people? I wouldn't be here if there weren't unhappy people. Supreme Court has not heard, they will allow lawsuits. [refers to movie 35:54m] Movie, "A few good men," is about marines who over time became corrupt as a person was held accountable from following orders got discharged. The statement was: "We were supposed to fight for the people who couldn't fight for themselves." Set aside your past votes. Vote to bring accountability back to WSI.

S Potter: Heard that premiums are down, reserves are up, how much are due to reports?

G Schafer: It's running well now, we have good people in charge, agency that's running well, premiums are held in check. There are people who aren't satisfied with the results from their claims at WSI. The agency is running well. If the agency doesn't run well sometimes, where do you go? No way as legislators you can affect that. When the Schafer administration there was a deficit at the agency and over the time, 1994 until 1997 when removed from the Governor's cabinet, the fund moved from approximately 230 million to 270 million increase. That was good on stock market, made good investments.

[Explained holding taxes/increased fees back, so economics can move forward]

S Behm: Why was it removed from the Governor in the first place?

G Schafer: [42:20m told story]

S Klein: The Governor had the idea to create a smooth flowing organization that was being run as a business and insurance company and politics should stay out of it. We wouldn't have a new appointee at the whims of the Governor. We had injured workers then, same bills introduced, we have issues, we have emotionally charged issues. People's lives are affected. We're here to help our constituents.

S Potter: 3 questions 1. Did I heard you imply that even if the legislature would reject for IFT's, you think the board could go ahead and WSI still do it?

G Schafer: I think we've shown it in the past. Yes.

S Potter: In relationship between WSI and higher education. Board of WSI cannot be recalled.

G Schafer: Yes.

S Potter: You're the only governor here right now, but the next governor will he pay attention to this issue?

G Schafer: The ballot box will be the competition.

S Klein: Go back 10 years, didn't we learn or hear more from talk radio, a lot of what we do is based on what we hear today. A lot of what we do is generated by what we hear.

G Schafer: That's why I'm here today. The people will make the decision.

S Andrist: Have you thought about middle ground, the advisory boards are semi-worthless, based on your frame of reference for administration, do you think it's conceivable to make an appointment by the governor and have the governing board that will direct him?

G Schafer: [49:14m] Examples of appointments. Make make responsible to people.

John Smith – had injured wife – “Flying Farmer with Car Jumps” - In Favor

Injured workers have no where to go. This is a democracy and we should have checks and balances. If voters had a say, it would be resolved. I'm doing a jump and all proceeds will go to injured workers of ND. People have no say for the injured worker.

Sebald Vetter – CARE – In Favor

Thank you Governor Schaefer. Done a wonderful job. If you don't do anything, you'll have trouble, we're already there. If you go back through the audit, when a man makes a mistake, he gets a bonus. It's like stealing. Report of injured owrkers. 1009 workers 2466 – 2006 – 6 injuries, 2002 – 7 injuries. 20,000 people claimed as they were injured, that's why the fund is looking now. Don't get to talk at public meetings, it is out of hand. Report on wage increase. 21% - 11% -0 22% In 2006 the wages went up 5%, got 2 increases in one day. He received 7 increases in 1 year. We ask for help and we don't get it.

Rebekka Jokum – College Student - In Favor

TESTIMONY # 4 Went over testimony. Told of her experience with her husband.

Told about the audit report for WSI. [references were 2nd hand information]

S Klein: You quoted news articles, letters to editor, . com, how was your husband treated, was the final solution ok?

C Nelson: Yes, I believe so.

S Klein: So you have no other experience than what you've been reading in the newspaper and hearing?

C Nelson: Some of the instances I don't know the complete details of on my fellow employees and doing research about the results fo the audit and comments that were made.

S Klein: Did you also study the other audit, the Octagon Risk Services audit which dealt with what we're doing with injured workers, the second audit heard that afternoon?

C Nelson: No

S Klein: So you only listened to one audit.

S Heitkamp: Do you know who who asked for and paid for the other audit?

C Nelson: No.

S Heitkamp: Chairman Klein, do you?

S Klein: I believe that's required by US.

S Heitkamp: So WSI required it, or...

S Klein: We as the Legislature have required that Octagon Risk services perform the audit.

S Heitkamp: And it was paid for by WSI?

S Klein: Yes, I believe so.

Christina Nelson - In Favor

TESTIMONY # 5 Went over testimony [1:05:31m]

OPPOSITION

Bob Indvik - WSI Chairman, Board of Directors - In Opposition

TESTIMONY # 6 Went over testimony [1:10:00m]

Covered the power of WSI. We believe we are professional promoters. [1:18:19m shows how they "saved" money, used examples] Asked by Legislature to get review. For intent, see audit 1992. PPI & PPD's Octagon review. Talks about questions on benefits and how the board is structured. People write the policy and board has nothing to do about setting policy – "we administer." Subject: claims, there needs to be credible, competent evidence on the claims. Ex: Firefighter claim – what was the evidence?

Benefits structures [1:20:40m] covered testimony

[1:28:00m] State audit covered and recommendations. Take audits and performance reviews seriously. Have recommendation numbers and our action plan. We will respond to each and every recommendation. Have consultants and advisors, we seek their advice to . provide the best service.

S Heitkamp: You refer to 1992, why not 1997 like Gov. Schafer makes reference to.

B Indvik: We took the worst.

S Heitkamp: 1992 – 1997 a number of those reforms came in. We look at the information as board, you brought in a consultant to tell you what to pay upper level management, board went above and beyond. Why is that?

B Indvik: Let me see that report..

S Heitkamp: I can make that available.

B Indvik: I'm not aware of a report that we went above and beyond.

S Heitkamp: Do you believe salaries are justified going back all the way through what the audit report, taking it serious when you look at the moral of the lower level employees and where they had to have a debate over the 4 & 4 raise in the Attorney General's opinion to get there.

B Indvik: The 4 & 4 raise was above and beyond what we'd already given them as far as performance raises. [91:04m explains]

S Heitkamp: CEO compensation, around \$163,560. You think that it should be that?

B Indvik: I did not compare it to other state employees. It was suggested.

S Heitkamp: Why should one agency get special treatment?

B Indvik: If we are in a position to have someone of that quality, that's what we went looking for.

S Potter: You are head of a state agency. Who are you accountable to? If you see clear criminal activity, would you find out who has been leaking wages at WSI. Isn't that a violation of human rights, has no one been responsible.

B Indvik: Accountable to you, this group, Legislature, people of this state.

S Potter: So as soon as we go home, you're not accountable to anybody?

B Indvik: No, it's never ending.

S Potter: On the face of the audit, I see clear faced criminal activity and there's no denying the fact. The staff sent out investigators to find out who had been leaking information about wages at WSI. The only reason to find out who this is, so that you can violate the human rights, the employment rights of the individual rights when you found that out by incriminating them. No one has been held responsible.

B Indvik: Belief was that a criminal activity took place in the spanning of that information. Was the start of the investigation and went until the investigator said there is no criminal activity, stop the investigation.

S Potter: These are state employees who were sent out to violate the human rights of the individual who did that. So you can do it because you thought it might be another kind of crime?

B Indvik: We were lead to believe that it was a criminal activity.

S Potter: So a fraud investigator can look at any kind of crimes?

B Indvik: No, it had to been an administrative within the SIU discussion if they should proceed or not. There would have had to have been a discussion.

S Heitkamp: Is there ever a time when WSI should be able to use their investigative powers and budget to make copies of an individuals drivers license and go to libraries to check and see if these people have been using their rights in the open records?

B Indvik: Only if you believe a crime has been committed.

S Heitkamp: What crime could they possibly commit by accessing the salaries of the management they are under?

B Indvik: We don't believe that was the criminal part of it. We thought it was spamming.

S Heitkamp: When you say the "spamming," by them taking what is a public document and sending to all of us, if they so choose to, that's spamming. Why is that criminal? It's a public document what these individuals make.

B Indvik: It's not WHAT they sent, it was not illegal, but improper.

S Heitkamp: Why use special investigators to do the work?

B Indvik: It won't happen again.

Dick Johnson – Legislative Committee - ND Motor Carriers Association - In Opposition

TESTIMONY # 7 [1:42:12m] Covers testimony.

S Klein: In your job, job is to be sure the laws are enforced?

D Johnson: Benefit structure is set up by the board. Board sets outcomes and goals and cannot micromanage nor go beyond what current law is.

Bill Shalhoob – ND Chamber of Commerce - In Opposition

TESTIMONY # 8 [1:44:20m] Testimony

We don't have buyer's remorse. Refers to Senator Nething's talk earlier [examples 1:47:00m]

This is insurance and insurance matters. There were things in 1997 that needed to be changed. We have a confident, reliable staff. Asked for a DNP.

CLOSED until PM session.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2257 pm**

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 22, 2007**

Recorder Job Number: **1599**

Committee Clerk Signature

Minutes:

Continuing conversation with Bill Shaloob

S Klein: There were some questions Senator Heitkamp had for Bill [Shaloob].

S Heitkamp: I'll say it as he's walking up. Bill was kind enough to share the process how they come to testify in favor of these or not. You gave us the list for that. I noticed on the list, when it comes to the Workforce Safety and ND Chamber of Commerce

When you break it down, over ½ of those are lobbyists. Is that the norm?

B Shaloob: Lobbyists represent employer groups. If an employer doesn't want to do this, doesn't feel they have the time, they have better things to do, they send their paid representative to represent them. There is a mix.

S Heitkamp: Talked about the process, either for employees or employers.

B Shaloob: We're for the employees. We want them to be taken care of for timely handling. Want inquiries to be taken care of.

S Heitkamp: Been contacted by corporations to help take care of this.

B Shaloob: There are ways to get there.

Russ Hanson – OPPOSITION

Requested to check the roster.

Ron Ness – ND Employment Council – OPPOSITION

All the issues will NOT go away, there are issues that need to be worked on. Suggest reject the bill.

S Heitkamp: You think a bill that places WSI that places back under the Governor's control would go away if passed this legislative session?

R Ness: The issue is of injured workers and premiums and working toward a better process at the bureau.

S Heitkamp: have you read the complete auditors report?

R Ness: Portions, yes. I wonder has it improved or not?

S Heitkamp: You have not read it all?

R Ness: No.

Tom Balzer – NDMCA – OPPOSITION

In the process, the audit is a result and I did read the audit.

S Klein: Did you read the Octagon Risk Services audit also?

T Balzer: I scanned through it.

S Klein: Because generally that talks about how we deliver services to injured workers.

T Balzer: It was a fact-finding, road map for future success for the organization.

Carlee MacLeod – OPPOSITION

TESTIMONY #9 Stands in opposition.

Gordy Smith – Auditors Office – Neutral

No prepared testimony. The message is in the people's testimony. WSI is reviewing the audit.

Only one audit, Octagon performance. The difference is between an audit and evaluation is that the audit has to follow consistent national standards that relate to quality control. The use

expertise in the audit. We asked WSI for input to help management improve. They had no areas to offer. I developed 8 areas. Some are covered by law. Rejected 3 areas: 1. Info tech
2. Human resources 3. Procurement

Pulled them out of the bids that were received, that reduced the bid price by \$75,000 so we were able to save them some money. From our perspective, the audit committee chair made unprofessional, inappropriate comments during the public meeting of the audit committee at the beginning of the audit, the director and the board chair made additional comments that we felt were unproductive and unprofessional. Clearly indicated that the audit was not welcome. S Heitkamp had a question on raises that were given above the consultant recommendations, Page 19 poses examples. [13:46m cited examples relating to pay increases]

WSI was unable to provide support for the amount of those excesses to us, and those raises were provided retroactive. The board chair also testified that splitting the bids, they were able to save \$20,000. This would be news to the audit team because the incident that we site on the report on page 3, they were going to bid out a training session and what they did was take the training session and bid out the speaker, and bid the materials second bid. If you would combine them as you normally would see, it would have come to \$25,000.

We asked them why they would do that, they said, "We're trying to save money."

They couldn't find anybody to try to train people that would give them supplies if they got materials somewhere else.

In statements previously, we're professional skeptical.

[Gave example of the drivers license 15:10m] They said they concurred with 88% of the recommendations we issued on the report, that's "kind of" true, but when you exam the responses in detail, you'll find that 40% of those, they say they didn't do anything wrong.

Low % of change.

S Hacker: Could we get a copy of your testimony?

G Smith: Certainly

S Heitkamp: Do you know if there is a criminal investigation as to whether criminal activity occurred in relation to the driver's license issue?

G Smith: I can tell you that Highway Patrol started out on it and asked for the bureau of criminal investigation from Attorney General's office. Investigation is on going.

S Potter: How long have you been at your work?

G Smith: In July it will be 30 years.

S Potter: Have you ever been called bias?

G Smith: We need to be thorough. There will be giving us convincing evidence, we have to handle tough audits, are goal is to try to help them improve.

S Klein: Do you have 2 audits going on at the same time?

G Smith: No, they work with consultants and coordinators and try to stay out.

Paul Genter – *In Favor*

There are only 4 attorneys that will cover WSI cases.

TESTIMONY # 11 Read testimony

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2257 B**

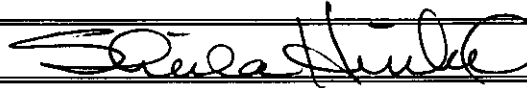
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1745**

Committee Clerk Signature



Minutes:

S Hacker: This is the one that eliminates the board, correct?

S Klein: Correct Simple bill, just puts the governor in charge.

S Hacker: The way I looked at it, seen the pendulum that was over here and accordingly is now over here, I'd like to find a middle without going back the whole way. So, I drafted an amendment to try and find a middle ground, and I think that is an attempt to put accountable individuals to the process. I'll pass those out.

S Klein: If you have an amendment, let's get crackin' here.

What's your amendment do?

S Hacker: The amendment relieves the board and changes the process for how one would GET to the board. Looking at how the board is set up is fundamentally dysfunctional.

You have the board that is putting essentially, putting themselves and their friends to the Governor and he has no option but to select those members in my mind, that was not right when they started it.

What the bill would do is change the mechanism for those individuals that are presented by the board, the groups of 3 that are presented. I made a hybrid commission; it's essentially 2/3 of the Industrial Commission, except for the Gov. as he already has a say on the appointment.

[explains 2:24m] I think it is a middle ground that is workable from all sides. Hopefully put a little, S Heitkamp referred to accountability being the ballot box, well this kind of gets to that point in a fashion.

S Klein: You believe that with the Ag Commissioner and Attorney General's Insurance Commissioner, you've got 3 more at the ballot box.

S Hacker: Yes, absolutely. They would solicit the people to apply for the board that would put those names forward to the Gov.; the Gov. would select one of those 3 and this is only for employer organizations. It does not change how Labor is picked and we switched that law, This would not change that.

S Heitkamp: May I ask S Hacker a Question?

Motion: S Hacker to move the amendment

Second by S Andrist

Discussion

S Heitkamp: So the governor has the final say on the appointment on the members of the board?

S Hacker: He has that today. He has to approve 6 members of the board.

S Heitkamp: He doesn't approve them, he reviews them.

S Klein: We put the group of names forward and he picks from that.

S Potter: That's in a bill we've dealt with, I'm trying to remember the number.

S Hacker: It's current language...[reads from bill 5:07m]

S Heitkamp: My point was, the Governor doesn't pick the 3 candidates, the candidates come to him. So what you're doing is changing it from, the Board bringing them to three other individuals, except in the case of the Employer. In the end, does the Governor have the ability through this amendment to deal with the executive director of WSI?

S Klein: More discussion? This may be a compromise on the selection of the board.

S Wanzek: As I think about it, this amendment could be somewhat palatable, but I won't vote for the bill, I'm not in favor of moving away entirely from the board to under the system we were under 10 years ago. I was here 10 years ago and heard as many complaints back then. As this agency is somewhat different, it's not a general-funded agency, it reminds me of the Wheat Commission. [example 7:00m] As an employer I'm paying premiums and I'm funding an agency that is meant to provide means of employers protecting workers with workers relief when they have an injury that was sustained under their job. I think there is some merit in allowing a board-type structure. I do understand your concern on how you appoint that board and whether that board should be the direct link or not. Making that decision or breaking some kind of middle ground where we allow some elected officials to have some input in it.

S Behm: There was no accountability the way it was. They can do exactly what they want to do. They couldn't be fired, they didn't have to account for anybody. That doesn't seem right.

S Wanzek: They do have to come to this body every 2 years and justify their actions, their budgets, I see that as the accountability. The makeup of the board should be made up of those being a part of the program.

S Heitkamp: The scenario between the Wheat growers and Workers is apples and oranges. If you're a worker in ND, you have no recourse if you're an injured worker unless through WSI, not through courts, not through elected officials, certainly this amendment would make it better than what it is today, I understand that, I still think would like to see it accountable to the Governor who is in charge of WSI. The bill has an advisory board in it. You can't compare it to grain raisers. If you go to WSI and you get told, "NO," like we heard time and time again up at the podium, they have no where else to go. Where the grain growers have a million other

places to go. With the grain growers there isn't this club where they say, "You either go with us, or you got no choice."

S Andrist: I wish there were a perfect system, and I can't figure out how to make it a perfect system, it's true that we did a lot of fixing on the agency under the old system which might make you wonder, "Why did we change it?" in 1997 when things were improving so dramatically. I remind myself under the old system they got into deep, deep trouble back in the '80s so the system didn't work with a straight Governor appointment. Premiums were skyrocketing, same worker complaints. They've been spanked a little bit with the audit and scrutiny, maybe they'll be a little more "hands on."

S Potter: This amendment vexes me. It is an improvement over the current system, but being a "Hog House" amendment, it guts the intention which was to make the executive director directly accountable to the governor. It puts us in a very difficult situation, I still haven't figured out how to vote on it. If this is not the session where we call them to some kind of accountability, what set of circumstances would there be that would lead us to call us to some accountability? All I've heard is negative about the board, the reserves are healthy, but, we see them violating laws, ignoring the audit, I was there the day that Sandy Blunt and chairman Emvik spoke to the audit fiscal review committee and their attitude was not that they're taking this audit should take apart, they were in opposition to it. If we leave this session without addressing those issues, I would not say it's a spanking at all, it's an endorsement of their policies. This is the time we can take charge of the agency. In this session. If we let them go without doing something, I'm afraid it's an endorsement of the last couple years.

S Klein: I would disagree to a point because I sat through those too and they were aggressively somewhat attacked for 3 hours and they had 15 minutes to respond, because we didn't leave them enough time. If all these bills aren't the spanking and holding their feet to the

fire, I certainly believe there are folks going to be back next session. WSI had their audit and in 18 months will have to respond to what they've been asked to respond to and certainly we'll see some changes.

S Behm: There has to be accountability. Everybody has to answer to somebody.

[WSI doctors sample]

S Klein: I feel responsible to the people in my district. They like to express their feelings to me as, if they call the Governor's office they don't know who to talk to. They always know I'm going to respond to them, return their calls. I think as senators, that's some of our responsibility also.

S Heitkamp: Did the proposer of the amendment talk to the Agriculture Commissioner and the Attorney General and the Insurance Commissioner and ask them if they wanted to get into this?

S Hacker: I spoke to 2 out of 3 and they were just fine with it.

S Heitkamp: Can I guess which one you didn't talk to? I would guess that Roger Johnson would not have been with this.

S Hacker: I'm not exactly sure where his office is. I had these drafted yesterday and ran them past the two and said, "If this is something you would be Ok with doing..." They said, "absolutely."

S Heitkamp: What was their response? They said, "Yes?"

S Hacker: They said, "Yes." Would be no problem.

S Klein: Call for DO PASS on the amendments.

Amendment: 70276.0101

VOTE: 4 – 3 Passed

MOTION TO MOVE BILL AS AMMENDED: S Hacker

HAVE DO PASS AS AMMENDED

SECOND by Wanzek

CARRIER Hacker

S Heitkamp: We're trying to put accountability back into WSI and Senator Hacker is not surprising me with these amendments. He had the courtesy of coming up and telling me that he was going to propose the amendments, I told him I was going to oppose the amendments. Basically, what you've done is you've Hog Housed my bill. You've completely changed it to where it's no longer my bill, I understand that. This bill is better than the current system we have now, and so I don't want to avote of "yes" on this bill, because it's all we have changing the structure of that part. It's all we have in front of us. There may be other moves later that go beyond that. But I don't want a yes vote for this bill to be perceived as though it's going to detract me from criticizing the amendments on the floor or the Hog Housing in division on the floor. So the bill goes a ways, just not far enough, but is better than what we have.

S Klein: I appreciate you being up front. I get a sense of where people are at from the get-go and we all know where we have to be.

S Wanzek: Seems like often in government we are faced with a problem, we react, sometimes the pendulum swings too far one way or the other. I respect Senator Heitkamp and that this is his bill and respect that he's going to have every opportunity to address his concerns, my point is, when we try to correct that we don't overreact the other way. I see this as a solution to provide some accountability, going the other way we go from accountability to a political situation again. This agency is deserving of more than just an advisory input from those who pay the premiums and those who receive the benefits. It is trying to move the pendulum back into the center.

S Andrist: I've been on advisory boards and government boards, it's like kissing your sister.

S Heitkamp: I'm still not convinced I'm going to vote on the bill the way it is. I don't think it should come out of this committee. Changing the way it is with the division that it had for what it was going to do in the first place, without sending a message or two it doesn't go far enough. I want be be upfront about it.

S Behm: We need direct accountability.

Discussion?

Roll for a DO PASS on SB 2257 AS AMMENDED

5-2 PASSED

M – Hacker

S – Wanzek

C - Hacker

FISCAL NOTE
Requested by Legislative Council
01/30/2007

Amendment to: SB 2257

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill provides that the Attorney General, Insurance Commissioner, and the Agriculture Commissioner select replacement members for the WSI Board to submit to the Governor for consideration.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2257

BILL DESCRIPTION: Board Member Selection

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 engrossed bill provides that the Attorney General, Insurance Commissioner, and the Agriculture Commissioner select replacement members for the WSI Board to submit to the Governor for consideration.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: January 30, 2007

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/30/2007

FISCAL NOTE
Requested by Legislative Council
01/16/2007

Bill/Resolution No.: SB 2257

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation replaces the existing WSI Board of Directors with an Advisory Board and makes the Executive Director a Governor appointee.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2257

BILL DESCRIPTION: Dissolves WSI's Board of Directors and creates an Advisory Board

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 fiscal impact is anticipated relating to the structural change of replacing WSI's Board of Directors with an advisory Board.

DATE: January 19, 2007

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	222-4943	Date Prepared:	01/19/2007

January 23, 2007

JS
1-24-07
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2257

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to membership of the workforce safety and insurance board; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-03.1. Workforce safety and insurance board of directors - Appointment.

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state which maintain active accounts with the organization, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of less than ten thousand dollars, and at least one employer at large representative. Except for the employer at large representative, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
 - b. Three members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor.
 - c. One member is a member of the North Dakota medical association.
 - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms, ~~except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006.~~ The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. Board members may not serve more than three consecutive terms.
 - a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or medical association representative from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance

commissioner. The ~~board~~ agriculture commissioner, attorney general, and insurance commissioner shall conduct an interview of an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor.

- b. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through ~~its~~ the organization's affiliates embraces a cross-section and a majority of organized labor in this state. The governor shall select the replacement member for a departing nonorganized labor employee representative.
- c. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance commissioner.
- d. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

SECTION 2. APPLICATION. This Act applies to all workforce safety and insurance board appointments for replacements and vacancies that occur after July 31, 2007."

Renumber accordingly

Date: 1-24-07

Roll Call Vote : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2257

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number DO PASS ON AMM

Action Taken _____

Motion Made By Hacker Seconded By Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Arthur Behm		✓
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp		✓
Senator John Andrist	✓		Senator Tracy Potter		✓
Senator Terry Wanzek	✓				

Total Yes 4 No 3

Absent _____

Floor Assignment _____

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

Date: 1-24-07

Roll Call Vote : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2257

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

DO PASS AA

Action Taken

Motion Made By

Wanzek

Seconded By

WANZER

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Arthur Behm		✓
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp		✓
Senator John Andrist	✓		Senator Tracy Potter	✓	
Senator Terry Wanzek	✓				

Total Yes 5 No 2

Absent

Floor Assignment Hacker

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

REPORT OF STANDING COMMITTEE

SB 2257: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2257 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to membership of the workforce safety and insurance board; and to provide for application.

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 - c. One member is a member of the North Dakota medical association.
 - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
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 - a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or

medical association representative from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance commissioner. The ~~board~~ agriculture commissioner, attorney general, and insurance commissioner shall conduct an interview of an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor.

- b. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through ~~its~~ the organization's affiliates embraces a cross-section and a majority of organized labor in this state. The governor shall select the replacement member for a departing nonorganized labor employee representative.
- c. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance commissioner.
- d. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

SECTION 2. APPLICATION. This Act applies to all workforce safety and insurance board appointments for replacements and vacancies that occur after July 31, 2007."

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2257

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2257

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3935

Committee Clerk Signature

Stephanie N. Thomas

Minutes:

Chair Keiser opened the hearing on SB 2257.

Sen. Joel Heitkamp, District 26: See handout A. When the bill originally came to the Senate it was a bill to take WSI, and put it back under the control of the Governor. The vote to take WSI out of the control of the Governor, the vote to override Governor Schafer's veto was wrong. It's my belief it was wrong, and it is my belief that was wrong on a bipartisan approach, democrat and republican alike cast that vote, and it changed policy, changed the way we deal with WSI. That is why I'm passionate about bringing it back under the scope of the Governor's office. I said it would take a bipartisan approach, and I meant that. I called Governor Ed Schafer, he came in gave up his time, and attended the hearing. In the Senate side the bill was hog housed by Sen. Hacker. What he did is he took a 3 member board of elected officials, the Ag Commissioner, the Insurance Commissioner, and the Attorney General, and he placed them in charge of interviewing perspective board members, and then making a recommendation to the Governor. Upon the Governor's appointment, we're right back to where we were. Once that amendment went on the bill, I opposed the bill. If your committee does not restore it to its original version, or does not change it in some way, that will be my testimony in front of you, and I would then just ask you to kill the bill, and let's continue on the

path we're on now. I think it needs to be pointed out that there was a performance audit performed by the ND Auditors Office in WSI, getting away from all of those things that we heard during the interim in relation to workers. If you want to hang out the shingle and say hey come talk to me if you feel you've been wrongly treated by WSI, you will be a busy legislator. If the bill stands the way it does, if they want to inject themselves into WSI, I hope they're ready to be busy. I publicly have stated that if this version goes forward, I'll sure let the Insurance Commissioner, and the Attorney general know that instead of calling me with your case claims, go ahead and we'll let them deal with it. Going back to the performance audit, this looks bigger than what it is. It's not a good report for WSI. If you go through the executive summary, the procurement system, you look at the human resource management system, you look at WSI management, and you look at their board of directors, and you look at that grade in each one of those four areas, it's not good. I hope for the integrity of the legislature, performance audits matter. If we don't trust audits, then let's get rid of the whole system. It also needs to be mentioned that I spoke to the Burleigh County States Attorney last week, and there was a criminal complaint filed with the Burleigh County States Attorney, and there's an investigation into certain matters dealing with WSI that I know that BCI, the Highway Patrol, and the Burleigh County States Attorney have been investigating. He received over 5,000 documents that he had to deal with on WSI. It's my belief that there are many good things going on at WSI. It isn't completely dark, but the point of the matter is this performance audit matters to me, what people say when they call me matters to me, and to me there needs to be a level of accountability. So, I urge you and your committee to take a serious look at putting this bill back to its original form, put it back into Governor Hoeven's office, the accountability of it, allow that accountability to go with an elected official, and to do what Governor Schafer

really pleaded to have happen. Then hopefully a lot of this can end on this. We can evaluate it a couple of years later and see if that pendulum has been brought back to center.

Rep. Thorpe: OIR would still work well under your original bill?

Sen. Heitkamp: It's said that it's a completely separate issue. The Office of Independent Review has been a very good office for WSI, and there's just that question of whether it should be under WSI.

Rep. Kasper: This handout contrasts the old system with WSI compared to the new system under the board. Being that you made comment about the fact that the system isn't working, and things need to change, and so on, I did want you to respond to this chart that shows in my opinion the new system today working substantially better than the old system, based upon actual numbers, as opposed to thoughts in surmising. What would your comment be on how the new system seems to be working with the handout?

See handout B.

Sen. Heitkamp: I see your numbers, and I don't agree with them. The reason I don't agree with them is pretty simple. When I've got calls from individuals who have put a nail through their foot, and they work construction, and they don't want to deal with the hassles of WSI, and they realize what a process it is to go through, and they just go to their doctor, and I firmly believe that Blue Cross Blue Shield, and those of us paying into Blue Cross Blue Shield pay the vast majority of a lot of workplace injuries where the worker pleads not to go, and not to have to deal with WSI. So, you can show me this chart all you want, but I can show you case file upon case file of individuals who got the runaround that you might want to go through and take a look at, and so no, I'm not convinced that WSI is this smooth running, kind, caring organization.

Rep. Kasper: WSI handles about 20,000 claims per year. So, obviously in the occurring basket of 20,000, there may be some that aren't treated the way they'd like to be treated, but that will happen in any situation I think when you have a large number of 20,000. How many calls you've cited called about the person with the nail in the foot? How many calls, or complaints have you received in the last 12 months from people saying they don't like the way the WSI system works?

Sen. Heitkamp: I can't give you the exact account. I can tell you that once you're perceived as somebody who will take those phone calls, you end up getting them from all over the place. What I've started doing is asking them where they live, so they can contact their local legislator, which is quite frankly something I should have done sooner, instead of taking it in, and sometimes advocating to them to talk to attorney friends that I have, who are kind of wore out on it. They believe that the system is so askew that they can't deal with it.

Rep. Kasper: Would you say that you receive an average of 1 per week?

Sen. Heitkamp: Since I've been down here, that would be short, but before I got down here it certainly wasn't one a week. I would receive probably a couple 2 or 3 a month, and then depending upon my day job, and depending upon what the discussion was on my day job, then that day could get real busy by the end of the night.

Rep. Keiser: I do have a problem with the amendment that they put on here. If you read it carefully, all three of those people would be required to interview every applicant, and boy that would be very time consuming. I don't think they have any idea of what's involved in processing these applications.

Bill Shalhoob, ND Chamber of Commerce: Support SB 2257. See written testimony #1.

Sandy Blunt, WSI: Opposed to SB 2257. HB 1460 has now been introduced, and is a more appropriate vehicle.

Rep. Steve Zaiser, District 21: Opposed to SB 2257 as it now stands. I think it is unwieldy, and I think it's worse than the original bill that we now have. It didn't change the structure as I had talked about, it did change the hiring process. I think many of you will agree, it sounds awfully cumbersome, and it is.

David Kemnitz, AFLCIO: Opposed to SB 2257. SB 2257 was supported in its original form.

See handout C. We would like to see this bill in its original form, because we don't believe that WSI as a state agency is governed as a department. It is now governed by a board of directors that is appointed by predominantly business, and not by this legislative body. Unless you intervene somehow in legislation, you cannot remove any of those individuals, or any member of the board. So, what happens if something went wrong in WSI between legislative session, and nothing changed? Unless, you have a special session, there is nothing that I see in law that stops them, not even you. So, what mechanism is in place today that allows the legislative body to intercede if something isn't going in a direction that you feel is the legislative intent, and oversight. I can't find any spot in law that allows you to make changes. We need deeper deliberation, and a broader scope of what is effected here.

See handout D and E.

Rep. Kasper: You talk about the makeup of the board, and how it's appointed. You question that makeup, and what it says to me is that the board itself, from your perspective is not functioning the way you would like it to function, but it is somewhat rubberstamping everything that goes on. On your handout you say that you are the president of the ND AFLCIO. How are you appointed to your job? Do you have a board that you're accountable to that hires you, and appoints you, and can keep you there as long as they desire, or is there one person that appoints you to your job?

David: I'm an elected representative of the labor movement. Our constitution sets it up to go this way. We elected representatives of the local unions from in the state. The convention is the supreme governing body of the ND AFLCIO. The executive council is elected by the body and governs between conventions, and by the constitution the president is elected by that body.

Rep. Kasper: Do you have a board then that gives you direction, or gives the president direction and sets policy, or is that something by your constitution that the president does?

David: The constitution says the president doesn't create policy necessary, but carries out the policy of the convention, so this revolution that I handed out to you is my direction, and they want done. The executive council elected by the convention is the policy making body between conventions, so every policy is laid out by them. So, the entire system is set up by election, representation, and subject to recall and review.

Rep. Kasper: Thank you, it gives me a better understanding of how your system works. The handout that I handed out, look at the financial health where it says net assets. If you look under the old system, it says 1994 there was a \$240 million deficit. This is historic fact, so Governor Shafer makes reference that the deficit changed the surplus, so I'm going to ask WSI to provide the actual deficit, and surplus going back to 1990 so we can see a factual number, as opposed to I think it was this, or I think it was that. You look at today where we have a \$501 million surplus. You can argue as you have that this is because we're not paying enough benefits. I can argue that is a sign of a system that has taken the legislative directives, and turned the system around that was broke into a system that is really working well. To turn over the whole thing and say it's not working, and we have to get rid of the way we select the executive director, when the board and the directors of the legislature have helped turn this around. I don't see where the big problem is, I just don't understand that.

David: Yes, benefits have been increased strategically. Catastrophic benefits went up, for those 15% and below, and a PPI gets nothing, even though they can prove that they have a loss of use in body function as high as 15%. It has been revisited, but never returned. So, claimants have a right to say yes, benefits have increased, to those most in need. For someone who lost a finger is forever looking at that empty spot, and there was nothing paid for that. This legislative body last session adjusted the surplus to the reserve, which created an additional surplus, which helped with this \$100 million dividend return. Reserving is not a science, it's an art form, and so the \$240 million deficit was built from a consummative viewpoint.

Sebald Vetter, CARE: Opposed to SB 2257. We depend on you guys. When it was under the Governor's office I used to go to workman's comp meetings, I brought injured workers over there, and it was a public meeting, now my injured workers have no place to go. We argued yesterday about the Office of Independent Review, but it doesn't help. I'm out here to help people, not discriminate people, but they started it first. Please, do something for the injured worker.

Rep. Ruby: What about the committee you talked about in the interim, was that a good thing for injured workers? Injured workers have places to go; it just doesn't always go to their satisfaction. Why can't the injured workers go through the committee, and through their legislators?

Sebald: Yes, it's good. It's too late for us injured workers, all the injured workers that were there had to go through the procedure. They're exhausted, they're done. It's too late for them, the cases are closed, and they're done.

Rep. Ruby: Some of the changes went back to help those people.

Sebald: I agree on that. Yes, there are changes that come out of the committee. That's why I'm asking for you guys to make changes, but there could be a lot more changes that should be made.

Ed Christenson, CARE: Opposed to SB 2257. You didn't get all this money by raising premiums. Since Mr. Blunt has been here, they have been going by a rate increase. Let's go back to 1993, they paid 100% if the injured worker went to court, the attorney got paid. They used to pay from 0 on the PPI's, now back in 2000 they were going to institute a different rate increase on that PPI's, and decided not to, but they took 6 states, and out of these 6 states they were supposed to be equal to ND's workman's comp. In 2000, you have to have 35% until ND catches up with any of those states. Then you guys ask why we want the system changed. That's why we want the system changed, we want somebody that's going to say hey, don't you think it's time we give just a little bit back.

Rep. Thorpe: On the bills that we heard do you recall HB 1283, which struck the civil claim action subject to judicial review. By striking that we could have brought liberal construction in the process back, is that not one of the better bills that we listened to here?

Ed: It's one of the better ones. They would have to have that little bit of proof more than what we have to have now to overthrow anything.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2257

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4031

Committee Clerk Signature

Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on SB 2257. This is the 3rd bill that deals with the governing of the WSI board.

Rep. Zaiser: I make a motion to approve the amendment 0201.

Rep. Amerman: Second.

See proposed amendment 70276.0201.

Rep. Amerman: I certainly support the amendment.

Rep. Zaiser: I think compare the two approaches, one by an advisory board, or made up of private sector folks, to the way it occurred before. I don't think there's a fair comparison. I think that's the past, and I don't recall the original bill having any discussion of merit.

Essentially, the Governor will be hiring by merit just like the committee, or the chairman of the committee hired the executive director by merit. The big difference is I think there's accountability to elected officials, whereas in the existing situation there isn't that level of accountability, and I do believe there are a number of problems.

Rep. Johnson: If the amendment passes, and the bill passes on the floor, and the other bill that also changes the makeup of the board passed already. If they both pass, what happens?

Rep. Keiser: The last bill passed and signed becomes law.

Rep. Ruby: I'm going to resist this. We've had the discussions about the merits of putting this back into the Governors position. If that's going to be that much work for those three, how much work is it going to be for one Governor? How much of his time, and staff are going to be set up to handle, and take complaints with people who are upset with what's going on with WSI? I didn't think it was the right way to go in the first place, and we're rehashing the same old thing again.

Rep. Thorpe: Have we had any input from the Governor on this particular issue?

Rep. Keiser: No.

Rep. Kasper: I've already found some areas that I think are very poor in the bill through the proposed amendment. On page 2, section 5 it says the director shall appoint the workers compensation department advisory board, impose an equal number of employer representatives, and employee representatives. Further on, the board shall aid the organization in formulating policy, and discussing problems related to the administration, and so on. What that part of the amendment alone does is make the executive director the tsar of the new workers comp department. The executive director appoints the board, and the board gives advice but the executive director is running the show. The board you can just do without, the way this amendment is written. I think the executive director being appointed by the Governor has now gone back into a totally politicized method in the way to operate WSI, which is what we got rid of in the mid 1990's. I think this is a huge step backward, and I would resist the amendment.

Rep. Amerman: When this was under the Governor, was there an advisory board at that time?

Rep. Keiser: I believe there was.

Rep. Zaiser: Relative to the number of staff, the Governor has an array of staff, and he would have a person that would be assigned some individual, and that would be there area, and maybe have other areas in which to accept complaints. Then I would guess the Governor would give that person authority to provide feedback to the director of workers comp, and if he thought the issue was big enough, they'd bring it to the Governor himself. If you have somebody assigned to do that it's not an elected person, and that is one thing, and if you have an elected person responding to an individual complaint, that's another thing. I don't see that as a real legitimate problem. I think it's a philosophical issue, and I want to bring it back, and I am curious to see how the Governor feels about this.

Rep. Ruby: We set the policy, not the executive branch.

Rep. Kasper: On page 2, section 3 it says the Governor shall appoint the executive director of the organization. The director is subject to the supervision, and direction of the Governor, and serves at the pleasure of the Governor. So, if the executive director has a problem at WSI, this is saying no longer talk to your board, go talk to the Governor. The Governor has enough responsibility, and duties around the state of ND, and now you want to interject the Governor in running a huge agency like WSI. It's another area that just flies on the face of common sense.

Rep. Nottestad: In your scenario you set it up that there would be one person in the Governors office that would be responsible. Let's say your assumption is correct. Would that be funded out of general fund, or out of WSI?

Rep. Zaiser: My guess, it would be funded out of the general fund.

Rep. Keiser: When it was under the Governor, there was always a person in the Governors office that had responsibility for WSI, as they do for economic development, and health, or any of them.

Rep. Dietrich: I'm looking at a business aspect of the bill. I have a company that's \$240 million in debt. I change the hierarchy of my company, my management team, and I have a \$501 million surplus. I'm going to fire that team, and go back to what I had before, not a good idea. The record speaks for itself. No doubt that the system we have now works, and we're just tweaking some of the things we need to tweak, and I think it's going to be even better with the bill we already passed. I think we need to resist the amendment, or we need to kill the bill.

Rep. Keiser: If this amendment is defeated, the amendment is dead. If we then take action on the bill, the bill goes forward either as a do pass, or a do not pass. The amendment cannot be divided unless the bill is further amended. The only way the amendment can get on the floor, unless we further amend the bill is unanimous consent of the house to bring an amendment from the committee. That is the ruling of the chair, which can be challenged.

Rep. Zaiser: I was under the understanding that there could be a minority report on any bill brought to the floor.

Rep. Keiser: I spoke to the speaker, and that is exactly the protocol, and that's the ruling of the speaker, as well as my ruling. You can't have a minority report, if you have put an amendment on it, you can further amend, and if that further amendment is not adopted, then you can define it as a minority report, but a single amendment will be acted on, or not taken out of committee unless there's another amendment, and that's the ruling of the speaker.

Rep. Zaiser: I have the understanding that just like in appropriations, this amendment could be brought to the floor.

Rep. Keiser: As you might recall, there was a majority report, which was the majority amendment to the bill, and then there was a minority report which was the minority amendment for the bill. There was one amendment, but then it got divided.

Page 5

House Industry, Business and Labor Committee

Bill/Resolution No. SB 2257

Hearing Date: February 27, 2007

Roll call vote was taken for the adoption of amendment 0201, motion fails, 5 Yeas, 9

Nays, 0 Absent

Rep. Ruby: I move a do not pass.

Rep. Dietrich: Second.

Roll call vote was taken. 13 Yeas, 1 Nay, 0 Absent, Carrier: Rep. Vigesaa

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2257

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: 02-28-2007

Recorder Job Number: 4064

Committee Clerk Signature

Bisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on SB 2257.

Rep. Keiser: This is SB 2257. That's the Joel Heitkamp bill that would reconfigure the board. It was hog housed in the Senate and turned back into the regular current management system where oversight is done by the board, except that they put in the condition that the Ag Commissioner, Insurance Commissioner, and the Attorney General will be making the nomination to the Governor for selecting board members. We had a lengthy discussion on that bill and we passed the bill out thirteen to one. Rep. Zaiser was the only opposing person. When we passed that out, we had a lot of discussion in committee and Rep. Zaiser said that we wanted a minority report, it's been a big issue. Rep. Zaiser as we said, came to me before our committee work and told me about that so I went to the Speaker of the House and asked how it works. We don't have many divided reports coming out of this committee, but the Speaker said if there is an amendment then it has to be divided, well there was an amendment offered but the amendment was defeated by the committee. Then we took a vote on the bill and the bill is out of the committee at this moment. The vote descended out with a DO NOT PASS because that is what the bill sponsor requested again it was thirteen to one. I made a statement to the committee that I would rule that this amendment could not be divided and that

influenced the vote for many people on this committee. There is no question in my mind because the motion to divide the amendment, well, we didn't have an amendment to divide. But we still had a bill and there can be a minority report on the bill. That is the one thing I learned. Even though we send the bill out with a DO NOT PASS or a DO PASS, it doesn't matter you can have a minority report on a bill. You can have a minority report on the amendment and you can have a minority report on the bill. I think I misled members of the committee by my statement. If a request is made to divide the amendment I would reject it because we didn't have an amendment but we did have a bill, so I hope I am being clear on this. It is legal to have a minority report on the bill; however, before we can have a minority report on the bill there has to be three members in the House or Senate committee that signed the minority report, whether it is on the amendment or the bill. Those three must vote in opposition. They must support the minority position. Rep. Zaiser, the amendment was voted on and it was supported by people but the amendment was defeated, so the amendment is done. But the bill is there. The bill is before us and there can be a minority report not on the amendment but on the bill. Now we need three people to vote NO on the bill and I think we would have had three people vote NO on the bill if they knew they could take to the floor a minority report on the bill.

Rep. Vigesaa: The motion was DO NOT PASS; there would have been three that would have voted YES.

Rep. Keiser: You have to have voted in the majority to reconsider.

Rep. Boe: The minority report would be the amendment though?

Rep. Keiser: It will be the amendment. It will be whatever the three minorities or more want.

Rep. Boe: Wouldn't the fact that we supported the amendment; I thought the idea was to have the three was so that obviously you have to have a motion and second and third guy to go with you on the vote?

Rep. Keiser: No, well yes, but that is if the members adopt it. We are not adopting it. If there is an amendment adopted then there is a substitute amendment that becomes the minority report. What our understanding is, we already had so many people vote for the amendment and it's more than six, but the bill that is out of committee with a DO NOT PASS, and there is only one person opposing, so the committee, the bill has to be voted to be reconsidered. That takes a majority of the committee, not the majority present.

Rep. Zaiser: I agree with what you are saying. How we got here, I thought a bill could be split and that is why I asked for a minority report. Amendment vs. a bill and I guess looking at the rules, it is primarily been done in appropriations with an amendments vs. amendment that is why I think Speaker thought it was that way and that is where Legislative Counsel said any bill could be split and that was my thinking when I asked for it. But what I would like to do now is I am going to withdraw my efforts to go through with this minority report now. It is cumbersome and it has actually been a learning experience for a number of people and I thank you for the Chairman's indulgence and honesty the fact that he thought it was one way and it was another and his willingness to come back and explain it. I think I am going let this rest in terms of peace for all. It is important that we all do know now that a bill can be split it doesn't have to take two amendments. That was my point is that a bill could be there could be a minority report in a majority report on a bill.

Rep. Keiser: Unfortunately there are fourteen members of the committee so any member of this committee reported in the majority can move to reconsider. If they do and it is seconded then we will take a vote on it. Then if the bill does get back before us and it has to come back

before us before we can then have three people vote in the minority that then we could have a minority report on the bill. That is where we are at.

Rep. Zaiser : I would make a recommendation to my caucus I think is the one that supported the amendment to let this lie like a sleeping dog, but they can do whatever they wish.

Rep. Keiser: I think it is very educational and since we have a little time, let's finish the discussion. If you had known that in committee, I think we would have had three votes that would have gotten a minority report on the bill and then it would have been like all minority reports, it could go on the floor and the minority would report with the address first and if it is defeated then the majority report which is a DO NOT PASS would take precedence and it would move to the fourteenth order and be voted on. There is one other thing. Although there were what I consider to be very important changes with Rep. Zaiser added to the bill, the general bill that Sen. Heitkamp turned in, in its original form was a bill that has already been acted on by the House. That then leads to a frustration on the floor of the House that quickly leads to an eighth order and eighth order is non-debatable and is calling for a vote and the majority rules. When you do bring a bill back to the floor that has already been voted on you should be prepared for a very quick eighth order and not a lengthy debate because you have already had the debate.

The discussion ended and no further action was taken on the bill and the committee's action was NOT reconsidered.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2257

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to creation of an advisory board for the workers' compensation department; to amend and reenact subsection 1 of section 21-10-01, subsections 7, 13, and 22 of section 65-01-02, sections 65-02-01, 65-02-01.1, 65-02-30, and 65-04-19.3, subdivision b of subsection 3 of section 65-05-29, and section 65-05.1-08 of the North Dakota Century Code, relating to reference to the workforce safety and insurance board of directors and changing the name of workforce safety and insurance to the workers' compensation department; and to repeal sections 65-02-03.1, 65-02-03.2, and 65-02-03.3 of the North Dakota Century Code, relating to the workforce safety and insurance board of directors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 21-10-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the executive director of workforce safety and insurance the workers' compensation department, the insurance commissioner, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The executive director of workforce safety and insurance the workers' compensation department may appoint a designee, ~~subject to approval by the workforce safety and insurance board of directors,~~ to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the executive director of workforce safety and insurance the workers' compensation department or the executive director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. AMENDMENT. Subsections 7, 13, and 22 of section 65-01-02 of the North Dakota Century Code are amended and reenacted as follows:

7. "Board" means the workforce safety and insurance workers' compensation department advisory board of directors.
13. "Director" means the executive director of the organization.
22. "Organization" means workforce safety and insurance, or the workers' compensation department; the director; or any department head, assistant, or employee of workforce safety and insurance the workers'

compensation department designated by the director, to act within the course and scope of that person's individual's employment in administering the policies, powers, and duties of this title.

SECTION 3. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01. ~~Workforce safety and insurance~~ Workers' compensation department - ~~Director~~ Executive director - Division directors. The organization must be maintained for the administration of this title. The ~~board~~ governor shall appoint the executive director of the organization. The director is subject to the supervision and direction of the ~~board~~ governor and serves at the pleasure of the ~~board~~ governor. The appointment must be on a nonpartisan, merit basis, in accordance with chapter 54-42. The governor shall set the compensation and prescribe the duties of the director. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 4. AMENDMENT. Section 65-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01.1. ~~Workforce safety and insurance~~ Workers' compensation department. The legislative council may delete, where appropriate, "~~workers compensation bureau~~", "~~North Dakota workers compensation bureau~~", "workforce safety and insurance", "workforce safety and insurance board", "workforce safety and insurance fund", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "~~workforce safety and insurance~~" "workers' compensation department", "workers' compensation department advisory board", "workers' compensation fund", or "workers' compensation" as appropriate. Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that ~~workforce safety and insurance~~ the workers' compensation department be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by ~~the workers compensation bureau~~ workforce safety and insurance. The legislative council may replace "bureau", where appropriate, wherever the term appears in the North Dakota Century Code or in the supplements of the North Dakota Century Code, with the term "organization". These changes are to be made when any volume or supplement is being reprinted.

SECTION 5. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation department advisory board - Composition - Compensation - Duties. The director shall appoint a workers' compensation department advisory board composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of the representative's vocation, employment, or affiliations, and members representing the general public as the director may designate. The board shall aid the organization in formulating policies, discussing problems related to the administration of the organization, and in assuring impartiality and freedom from political influence in the solution of these problems. The members of the board may be reimbursed for expenses in the amounts provided by law for state officials but must serve without further compensation except as may be authorized and fixed by the organization by rule. The organization shall provide staff services to the board. The board shall assist the organization in formulating policies and discussing problems related to the administration of the organization, including adoption of rules, establishment of fees, determination of employer premium rates, maintenance of the solvency of the workers' compensation fund, and provision of rehabilitation services. The board may make recommendations and proposals for consideration by the director.

SECTION 6. AMENDMENT. Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select a firm with extensive expertise in ~~workforce safety and insurance~~ workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that biennium. This may not be construed to require the firm to be a certified public accounting firm. As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate departments of the organization to determine whether the organization is providing quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section ~~65-02-03.3 and within the board's bylaws 5 of this Act.~~ The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, ~~the chairman of the board,~~ and a representative of the firm shall present the evaluation report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation. The director shall provide a copy of the performance evaluation report to the state auditor. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section. Money in the ~~workforce safety and insurance~~ workers' compensation fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

SECTION 7. AMENDMENT. Section 65-04-19.3 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. ~~Upon approval of its board of directors, the~~ The organization may create and implement actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section are not subject to title 28-32 and may include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

SECTION 8. AMENDMENT. Subdivision b of subsection 3 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

- b. An adjudication by the organization or by order of ~~the board or~~ any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

SECTION 9. AMENDMENT. Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-08. ~~Workforce safety and insurance~~ Workers' compensation educational revolving loan fund - Continuing appropriation.

1. The organization may establish a revolving loan fund to provide a low-interest loan to an individual who has suffered a compensable injury. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years at an interest rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the ~~board's~~ director's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's ~~workforce safety and insurance~~ workers' compensation fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The ~~board~~ director, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the ~~workforce safety and insurance~~ workers' compensation fund.

SECTION 10. REPEAL. Sections 65-02-03.1, 65-02-03.2, and 65-02-03.3 of the North Dakota Century Code are repealed."

Renumber accordingly

Date: 2-27-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2257

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt proposed Amendment 70276.0201

Motion Made By Rep Zaiser Seconded By Rep Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser	X	
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigasaa		X			

Total Yes 5 No 9

Absent 0

Floor Assignment Rep. Vigasaa

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

Date: 2-27-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2257

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT Pass

Motion Made By Rep Ruby Seconded By Rep Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	X
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 1

Absent 0

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2257, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2257 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2257

TESTIMONY OF SENATOR JOEL HEITKAMP

SB 2257

January 22, 2007

Mr. Chairman and Fellow Committee Members:

I stand before you today in support of SB 2257. As you can see, this bill has bipartisan support and comes to you with one particular cause -- that is to put accountability back into state government when it comes to WSI. This bill quite simply puts this back to where they were in 1997 with the Governor in control of WSI.

We need that fellow Senators, we need that in so many ways. As all of us know, in our democracy there is nothing more accountable than the ballot box. By placing the Governor back in control of WSI, we place a person accountable at the ballot box in charge.

Why do we need to do this, you might ask? Here is a copy of the performance audit on WSI conducted by State Auditor Robert Peterson. This audit is quite lengthy, Mr. Chairman, so I can only hope that you will hold the action of this committee until everyone has had a chance to review this document. I want to focus on a number of issues in the audit, but the best way to start is with the executive summary.

I would only ask this committee, if you were a school teacher, what grade would you give WSI after an audit such as this. There are many individuals, some who have used performance audits in the past to target members of the executive branch, that have chosen to ignore this audit, Mr. Chairman. It is my opinion that the people of North Dakota have not. Editorials from individuals all over the state and from editorial boards have filled the papers with the need for this change.

You are going to hear today, I would suspect from WSI, that they are taking this audit serious and implementing change when it comes to the finding. I would only ask you to research their initial reaction to the audit and the response they gave in the papers across the state. You are also going to hear that the need for change is not here. In fact, the fund is doing so well that this is a good indicator of how well they are running things. Never mind that the stock market is at an all-time high and that is the reason for a large part of the fund's success. Never mind that it is not hard to increase the fund when you consistently make it harder to make a claim.

No, Mr. Chairman, the need is here and the time is right. This took Democrats and Republicans alike to create this monster and it will take Democrats and Republicans alike to fix this problem. Let's put accountability back into WSI and place this agency back under the control of the Governor where it belongs.

2257
#2

CHAPTER 558**HOUSE BILL NO. 1440**

(Representatives Skarphol, Boucher, Dalrymple)
(Senators Grindberg, Lips, Robinson)

WORKERS COMPENSATION BOARD OF DIRECTORS**VETO**

March 27, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1440

Dear Speaker Timm:

I am returning unsigned and hereby veto House Bill 1440, creating a workers compensation board of directors to manage the workers compensation bureau and oversee the administration of North Dakota's workers compensation program.

Over the past four years, the director and staff of the North Dakota Workers Compensation Bureau, members of the Legislative Assembly, our state's employers and employees, and my staff, all working together, have made great strides in developing and implementing sound policy reforms that have significantly improved the services our workers compensation bureau provides. These reforms have led to better benefits for our workers, lower premiums for our employers, and a dramatic reduction in the bureau's unfunded liability. Last year the voters of North Dakota overwhelmingly ratified our efforts.

House Bill 1440 is aimed at preserving these remarkable results. And while I share the Legislative Assembly's concern for ensuring continued progress at the workers compensation bureau, I believe House Bill 1440 is the wrong vehicle for accomplishing that goal. I, therefore, respectfully veto this bill and ask members of the assembly to carefully consider my reasons for doing so.

First, I believe HB 1440 reduces accountability, an essential element in the operation of any government agency. By removing ultimate authority for management of the workers compensation bureau from the governor and placing it with an unelected board of directors similar to the Board of Higher Education, this legislation seriously weakens the focus of responsibility our workers and our employers demand.

This diffusion of accountability among members of a ten-person board of directors in large measure eliminates our existing "court of last resort" for employers and injured workers who, rightly or wrongly, believe themselves aggrieved by bureau procedures. My office currently manages 30 or more calls per month from individuals seeking the assistance they believe the governor can provide. To whom will these people turn for help in the future?

2257
#3

In addition, HB 1440 erodes traditional legislative and executive oversight of the bureau's budget. Section 5 of the bill permits the bureau, with the board's acquiescence, to transfer moneys between line items within the bureau's budget. The budget itself is developed without coordination with the governor's overall budget. This lack of coordination concerning salary levels, benefit packages, and technology programs can contribute to serious budgetary pressures being placed, not only on the premium payors who ultimately fund the bureau's budget, but also on other agencies who must compete with the workers compensation bureau for employees. All these pressures can lead to the prospect of increased taxes.

Be assured that I am as concerned as any of you that the progress we have made in our workers compensation program never be compromised. But, with the appropriate protections afforded by the independent audit created in Senate Bill 2074 already in place, I am unwilling, and I believe the people of North Dakota are unwilling, to sacrifice the accountability required of every government agency and its administration.

I, therefore, respectfully veto House Bill 1440.

Sincerely,

Edward T. Schafer
Governor

NOTE: The Governor's veto of House Bill No. 1440 was not sustained. For the full text of House Bill No. 1440 as approved, see chapter 528.

~~Mr. Peterson~~ Chairman + members of the committee
my name is Rebecca Jachim, I am from Wishek but
I am also a college student here in Bismarck I am in charge
of ~~the~~ senate bill 2257

Introduction

last year Husband was injured at work, employer helped file claim

Luckily A. All chiropractic appointments were paid for
B. Husband completely recovered

II.

A. Many people in ND who have had to submit claims to WSI

have found it 1. sobering and frustrating battle to obtain benefits

III. Rasper Schneider, Attorney from Fargo, Letter to Editor Bismarck Tribune on December 6th Says

that A. His firm has represented hundreds of hard working men and women, through no fault of their own, have had the unfortunate experience of being injured on the job

He goes on to say B. WSI is supposed to be a two-way street, but many of the injured workers he represents have been unfairly denied compensation

Thesis Statement

I. I believe it is time to return Workforce Safety and Insurance to the oversight of the Governor's Office.

Body

~~to the~~ Stated in Bismarck Tribune's Nov. 30th edition In 1997 the legislature voted to take workers comp from control of the governor's office and make it an independent department under the direction of an 11 member board

I believe this A. Experiment that backfired

II. Completed Oct. of this year, Robert R. Peterson, State Auditor submitted a Performance Audit Report on WSI

WSI was A. Found not having an adequate procurement system for benefits

and management was circumventing

2257
#4

B. Management circumventing few controls that had been established

They C. Found fault in WSI practices in hiring employees, evaluating employees, and took inappropriate actions with their employees

Actions 1. Such as reported by the Grand Forks Herald, as overlooking state contracting and procurement rules, hiring unqualified employees, ^{and even} put fraud investigators on the trail of an employee who was ^{thought to be} circulating information about large agency pay raises

~~Management and Board of directors was not~~
~~and took appropriate leadership and~~
accountability to its employees

III.

~~I~~ A. Employees at WSI are so fearful of retaliation from management that they called the state auditors at home-sometimes crying- to comment about the agency"

~~Every worker deserves a safe work environment and every employer deserves to have healthy workers safely on the job"~~

B. ~~WSI does not practice what they preach~~

The C. Environment in their own agency "unsafe" ^{can be said to be}

With 193 of 223 employees responding to the survey

A. Over 1/2 feared being disciplined or fired for speaking out according to KXMB News on Nov.

29

Pause B. WSI has become runaway train fueled by lack of ethics and accountability

Now VI. I do have to admit that as an agency, WSI is returning a substantial profit ...

A. At the expense of the people they are supposed to be serving

WSI

- B. Has been accused of trying to save money by unfairly denying claims
- C. Money, KXnet.com, that is included in \$18,000 of questionable spending

1. Questionable spending identified by Grand Forks Herald being used for gift certificates and cards for restaurants, shopping malls, movie theaters, meals and trips for some state legislators, costume rentals and flowers and balloons

Thw is 2. \$18,000 dollars that could have gone to injured workers, reduced premiums to employers, or to Audit's recommendation of WSI employee pay raises

An 3. Employer who commented at KXnet.com ^{had} had to pay premium increases of 100% even though he has never had an employee file a claim

~~Legislature has failed to keep WSI accountable for its practices~~

- A. Time someone does
- B. I believe moving the agency to the Governor's office is not a silver bullet
- C. Will provide a means for checks and balances in this agency

VIII. I believe during this legislative session is when something needs to be done

A. ~~It's a major concern of employers in the state, and injured workers, and the staff that working at Workforce Safety. We've got these entities calling, saying something needs to be done"~~

IX. Representative Frank Wald, chairman of the Legislature's Audit and Fiscal Review Committee

A. Skeptical of the result of the audit

B. Mountain out of a molehill

1. "I think the audit was fair. I believe this needs to go back under the control of the Governor's office. Then there is some accountability for the agency *And I agree with him*"

Summary of Mainheads

I. Because of the rights of injured workers and employers, the questionable practices in the agency and questionable spending there is a strong call for change

I. ~~CONFIDENTIAL~~

a. I feel this is a bipartisan issue I feel strongly about

b. Take my word for it, for me who has voted strictly republican in every election I have been able to vote in, for me to agree with a democrat it really takes and issue I feel strongly about

II. Whether you email your representative, senators, or the governor, please tell them to address the issue of Workforce Safety and Insurance this legislative session.

~~Take my word for it, I have an important~~
~~thought~~ ~~in my mind~~ I feel very strongly
that there is a need for change. Please vote
for change.

Thank you

Mr. Chairman Klein and Committee, my name is Christina Nelson from Bismarck. I am representing, my husband (an injured worker). I'm in favor of bill 2257.

My husband was injured on January 18th 2006. Since his injury date we have gone through three claim adjusters and still have not received any answers.

We feel that the pay that he is receiving is not where it should be; we asked how they calculated his pay, because we know that they never took his bonuses into consideration. We asked WSI to help us understand how they calculated his pay.

After he received the ok to go to work for a few hours a day, WSI said that his pay would not be affected, that he will receive his normal pay minus what he made. After he started work, we got his Temporary Total Disbursement check and it was approximately \$450 short of what it should be. WSI stated he had to wait until he is done working, in order for him to get the money that is owed to him. WSI never stated how long it will take for him to get reimbursed.

In December, 2006, my husbands WSI doctor recommended him to start a work conditioning program. We still haven't heard whether it is approved or not.

Now we are dealing with the Vocational Rehabilitation part. WSI chose to send him to school for an Associate Degree in Business. Speaking with the doctor, he said that my husband would have better success at Power Process, then going to school for Business, due to his restrictions. At first he was denied Power Process schooling. After my husband appealed the letter to go to school for a Business degree, he was accepted for Power Process schooling, under one condition. That condition is to sign a stipulation stating that if he doesn't find a job in the state of ND, that WSI will not be held accountable for it. The stipulation is incorrect. Stipulation states doctor did not approve of Power Process, however, in the doctors transcripts he did approve. Also stipulation states; Power Plant, not Process Plant; which are two different courses. WSI informed us that the part where the doctor disagrees with Power Process isn't important, due to this is

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not what WSI is looking for; they are looking at the job market. I did take this stipulation to my lawyers' office and they said that this is incorrect and they will be in contact with them to get this matter resolved. It has been over two weeks and WSI will not return the lawyers phone calls to get this matter taken care of. There are two other injured workers that are going to school for Process Plant. One has not received a stipulation that he should have received three weeks ago; the other injured worker stipulation is incorrect like my husbands.

WSI was supposed to put down a \$100 for tuition. They would not pay for it. My husbands Claim Adjusters Supervisor stated "That my husband got paid today and that there isn't any reason why I can't go down and pay for his tuition, turn in my receipt and that she will try to have a check to me by the weekend". We are on a fixed income. Food, clothing, heating and personal hygiene comes before anything else.

My questions are; why doesn't WSI treat everyone equally? Why isn't WSI employees all on the same page? Why can WSI say one thing and then do the opposite? Is WSI qualified to tell an injured worker what to go to school for? How many WSI adjustors do we have to go through? Why doesn't WSI return a phone call or a letter? Why do we always have to check on the status of a WSI claim?

An injured worker or family should not be put through turmoil. How does WSI expect a person to heal physically and mentally with all stress and anxiety that has been placed on an injured worker and family?

We need somebody that is reliable, loyal and trustworthy to get the process done in a timely and fashionable order. This is why the Governor should take back Workforce Safety Insurance to make sure that this is done and that everyone is treated equally.

Thank you to Chairman Klein, and Committee, for giving me this chance to speak on behalf of this bill.

65-02-03.3. Board - Powers and duties. The board may authorize the organization to transfer moneys between line items within the organization's budget. The board shall:

1. Appoint a director on a nonpartisan, merit basis.
2. Set the compensation of the director.
3. Ensure a proper response to any audit recommendations.
4. Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.
5. Prepare, with the assistance of the organization, an organization budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The organization shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.
6. Assist the organization in formulating policies and discussing problems related to the administration of the organization, while ensuring impartiality and freedom from political influence.
7. Incorporate principles of continuous improvement goal setting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.
8. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.

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

The System of Old

The System Today

Improved Service and Less Adversarial

Claims Processed w/ 14 days:	44% (1995)	63%	Through Board oversight, operational performance monitoring, and various other accountability mechanisms, benefit delivery and customer service has improved. 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% (1997)	96%	
Independently Conducted Injured Worker Customer Satisfaction Surveys (Scale 1 to 5):	4.09 (1998)	4.38	
Independently Conducted Employer Customer Satisfaction Surveys (Scale 1 to 5):	Did not exist	4.21	
Medical Provider Satisfaction Survey:	Did not exist	3.83	
Requests for litigation:	1400 (1994)	209	Today's system is much less adversarial than the system of old. Litigation requests have been reduced by over 85%. Today, only 1% of all claims filed request litigation. Constituent service requests are down by over 73% today.
Constituent Service Requests:	336 (1997)	91	
Paid Medical, ALAE, and Wage-Loss Benefits:	\$66.4 Million (1997)	\$82.7 Million	
Payments to IW Counsel:	\$1.1 Million (1997)	\$158,000	

Less Injuries

Claims per 100 Covered Workers:	7.28 (1997)	6.78	Employer participation in safety programs has resulted in declines in claim injury rates.
Wage-Loss Claims per 100 Covered Workers:	1.06 (1997)	0.73	

Premium Stability

Rate Changes:	Numerous double digit rate increases up to 60% one year.	Eight consecutive reductions and three small inflationary increases in the last 11 years.	Legislative reforms providing for Board governance and monitoring, Independent Performance Audits/Evaluations, 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.
Statewide Earned Premiums (before dividend credits):	\$133 million (1996)	\$121.6 million	

Financially Healthy

Net Assets:	\$240 Million Deficit (1994)	\$501 Million Surplus	Timely and periodic Board review of the fund's investment allocations and strategies has contributed to an improved financial position. Due to positive investment results, 40% premium dividend credits have been issued the past two years.
Declared Dividends:	\$0	Approximately \$100 million the past two years.	

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.	Return on Investment for 2006 was \$4.03 saved for every dollar spent.
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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. 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 no 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.
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Workforce Safety & Insurance 2005-06 Quick Facts

	1999	2000	2001	2002	2003	2004	2005	2006
Employer accounts	22,108	22,659	20,142	20,006	19,781	19,672	19,586	19,756
Unearned premiums (\$millions)	\$112.4	\$112.1	\$99.0	\$93.1	\$89.6	\$96.8	\$108.4	\$121.6
Fund surplus, with 5% discount on liabilities (\$millions)	\$206.3	\$332.9	\$332.6	\$341.1	\$337.4	\$403.7	\$469.2	\$501.3
Restricted surplus, based on 2005 legislation (\$millions)	\$206.3	\$217.2	\$224.4	\$218.3	\$252.0	\$263.7	\$272.2	\$274.7
Declared Premium Dividends (\$millions)	\$0.0	\$0.0	\$12.0	\$12.0	\$0.0	\$0.0	\$46.0	\$54.0
Investments (\$millions)	\$776	\$900	\$925	\$907	\$980	\$1,078	\$1,169	\$1,201
Investment returns	7.4%	12.2%	1.4%	-1.7%	9.0%	9.6%	7.3%	3.5%
Covered workforce	292,868	296,663	299,714	301,913	301,777	304,287	311,200	318,240
Medical-only claims filed	17,194	17,399	17,727	17,396	16,311	16,722	17,424	19,268
Wage-loss claims filed	2,840	2,646	2,593	2,554	2,442	2,462	2,463	2,320
Total claims filed	20,034	20,045	20,320	19,950	18,753	19,184	19,887	21,588
Total claims filed per 100 Covered Workers	6.84	6.76	6.78	6.61	6.21	6.30	6.39	6.78
Wage-loss claims filed per 100 Covered Workers	0.97	0.89	0.87	0.85	0.81	0.81	0.79	0.73
General Administrative and ULAE Expenses (\$millions)	\$11.8	\$11.5	\$13.0	\$13.9	\$17.1	\$15.4	\$16.7	\$17.4
General Administrative Expense and ULAE Ratio	10.5%	10.3%	13.1%	14.9%	19.1%	15.9%	15.4%	14.3%
Indemnity benefits paid (\$millions)	\$31.6	\$32.2	\$34.1	\$33.6	\$34.8	\$35.6	\$36.9	\$37.0
Medical benefits paid (\$millions)	\$27.8	\$32.7	\$36.5	\$37.9	\$40.3	\$45.7	\$47.8	\$42.4
Allocated Loss Adjustment Expense (ALAE) paid (\$millions)	\$8.2	\$6.5	\$5.9	\$3.9	\$4.2	\$4.3	\$3.8	\$3.3
Total paid benefits (\$millions)	\$67.6	\$71.4	\$76.5	\$75.4	\$79.3	\$85.6	\$88.5	\$82.7
Maximum weekly wage-loss benefit	\$417	\$480	\$497	\$516	\$537	\$555	\$577	\$624
Minimum weekly wage-loss benefit	\$251	\$262	\$271	\$282	\$293	\$303	\$315	\$341
Claims accepted/denied within 14 days	na	67%	72%	74%	74%	75%	72%	63%
Claims Reported within 14 days	na	na	na	na	68%	72%	75%	83%
Callers' average time on hold (seconds)	17	22	26	20	20	22	29	27
Litigation requests	325	226	183	209	201	170	224	209
Injured Worker Independent Customer Satisfaction Survey (1 to 5 scale)	4.09	4.29	4.18	4.34	4.37	4.38	4.35	4.38
Employer Independent Customer Satisfaction Survey (1 to 5 scale)	na	na	na	4.14	4.17	4.21	4.20	4.21
SI employee turnover rate	9%	15%	10%	10%	5%	7%	8%	12%

Workers Compensation: A look at the past decade
Reform Efforts have produced results

The economic well being of North Dakota is dependent upon a favorable business climate as well as the health and safety of its workforce. Through the workers compensation reform efforts of the past decade, the oversight by the Workforce Safety & Insurance (WSI) Board of Directors, and the efforts of the business community, a much improved and stable workers compensation system exists today.

The policy and operational reforms and incremental improvements have resulted in the following:

- 1) Increased Accountability;
- 2) Improved Service and Overall Benefit Delivery;
- 3) A More Equitable Benefit Structure;
- 4) Premium Stability; and
- 5) A Strong Overall Financial Position.

The combined efforts of the business community, past and current lawmakers, past and current Board members, past and current WSI staff, and the various stakeholder groups have all contributed to a more stable workers compensation environment. The details of some of these positive results have been outlined below.

Increased Accountability

- Prior to the reforms, 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 made up of various stakeholders 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. The Governance manual outlines 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 reviews to be conducted by workers' compensation industry experts (a recurring mandate that no other state agencies have) to ensure the ongoing accountability of the workers compensation system. Performance Reviews 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.

Improved Service and Overall Benefit Delivery

- Through Board oversight, operational performance monitoring, and various other accountability mechanisms, benefit delivery and customer service has improved. Improved service results in fewer 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 (consistently between a 4 and 5 for both the injured worker and employer surveys).
- Claims processing timeframes have improved resulting in fewer delays and ultimately less disputes.
- Today's system is much less adversarial than the system of old. Litigation requests have been reduced by over 85%, from 1,400 in 1994 to just over 200 today. Today, approximately 1% of all claims filed request litigation.
- Total constituent service requests, which are constituent inquiries from various public officials, were 336 in 1997 compared to 91 today, a reduction of 73%.

- Safety incentive programs have resulted in reductions in wage-loss claim injury rates, the most severe claims. Wage-loss claims filed per 100 covered workers have declined by 32%, from 1.06 in 1997 to 0.72 today.

A More Equitable Benefit Structure

The policy reforms have provided for a benefit structure with less ambiguities and a focus on increased benefits for the severely injured. The goal of a workers compensation system is to maintain an equitable and adequate benefit structure, not overly excessive in that the incentive to return-to-work is diminished, and adequate enough to ensure the truly injured are adequately compensated.

The following benefit enhancement provisions were passed during the 1997, 1999, 2001, 2003, and 2005 legislative sessions.

- Increased weekly death benefits for surviving spouses from a fixed \$210 per week to up to 110% of statewide average weekly wage (SAWW) (or currently \$624 per week).
- Increased lifetime cap on death benefits by more than 25%, from \$197,000 to \$250,000.
- Increased the lump sum death award for death claims where no surviving spouse or dependents exist from \$2,000 to \$12,500 (or 5% of the lifetime cap on death benefits for claims with surviving dependents).
- Introduced a post-retirement additional benefit for injured workers whose disability benefit ends at time of retirement.
- Increased additional benefit payments by applying the calculation to the compensation rate before any social security offset
- Increased the maximum disability benefit from 100% of SAWW to 110% of SAWW. As a percent of the state's average wages, it's one of the highest maximum benefit rates in the country.
- Shortened the waiting period that the long-term disabled must wait to become eligible for cost of living adjustments from 10 years to 7 years.
- Passed legislation allowing up to a \$50,000 home remodeling and vehicle adaptation allowance for each catastrophically injured worker.
- Increased permanent partial impairment awards for the severely impaired.
- Created the Guardian Scholarship program to help pay for the education of a spouse and/or dependent of a worker who dies on the job.
- Increased the maximum amount of scholarships from \$3,000 to \$4,000 per year for up to 5 years for spouses and dependent children of a worker who died as a result of a compensable work-related injury.
- Established the amount of scholarships issued in exceptional circumstances at \$10,000 per year for up to 5 years.
- Increased the maximum amount of scholarships that can be awarded annually from \$150,000 to \$300,000.
- Established a \$15 million educational revolving loan fund that is accessible to eligible injured workers.
- Created options for an injured worker to choose to pursue a retraining program or opt for up to five years of partial disability benefits.
- Provided discretion for WSI to allow an injured worker to pursue retraining in cases where an employee's first appropriate option was not retraining.
- Established additional safety incentives to ensure the health and safety of North Dakota's workforce.
- Established ongoing appropriation authority to fund safety education, grant, and incentive programs.

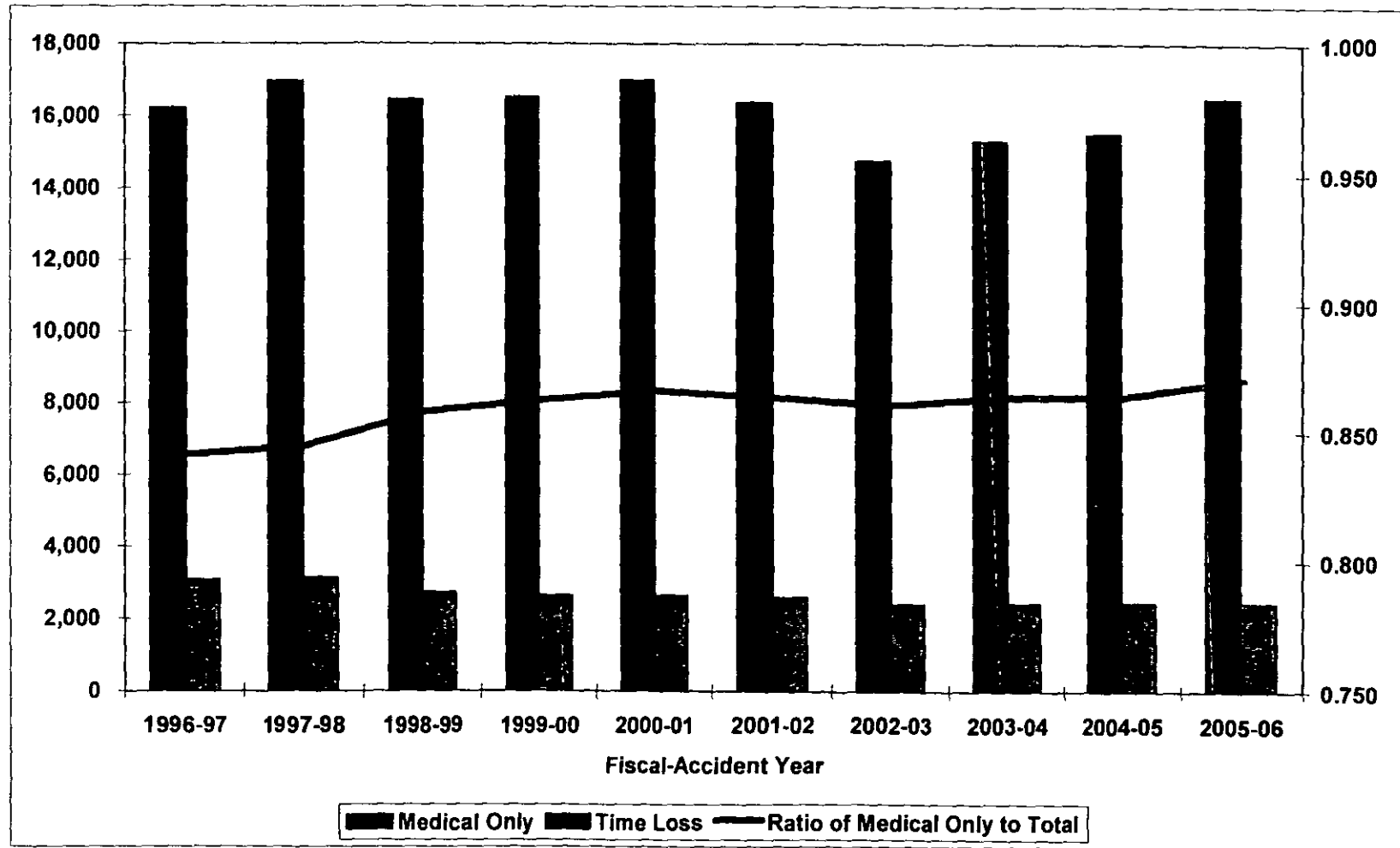
Premium Stability

- Prior to the policy and operational reforms, and in part due to the political influence within the rate-setting process, the rating structure was inadequate to cover anticipated losses and resulted in significant successive double digit premium rate increases.
- Statewide premiums peaked in 1996 at \$133 Million. Statewide premiums still remain below that level today. If adjusted for inflation, the gap widens further.
- The operational and policy reforms led to eight consecutive premium rate reductions. Small inflationary increases have occurred the three most recent years.
- A national study conducted annually has cited North Dakota as the lowest workers compensation premium state for the past few years.
- Premium rates today are set actuarially, free from political influence, to cover anticipated losses and expenses incurred for the given policy year.
- Policy and operational reforms providing for Board governance and monitoring, 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 collectively has contributed to a more stable premium environment.
- Contributing to the stable premium environment is the relatively low provision for administrative costs contained within the premium rate structure. WSI's administrative expense ratio is approximately 15%, compared to industry averages of 25% to 35%.

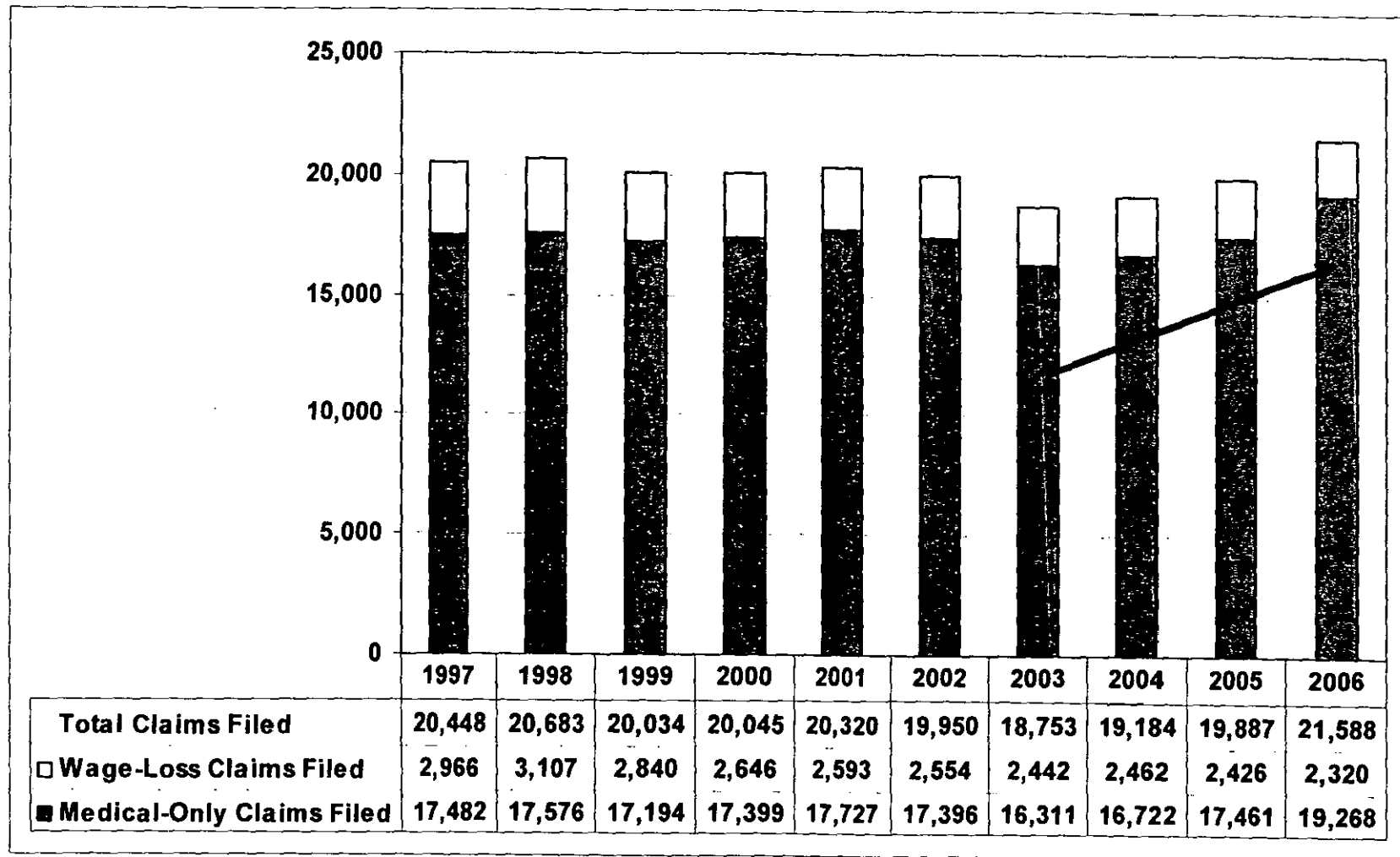
Strong Financial Position

- Prior to the policy and operational reforms, the workers compensation fund was in nearly a quarter billion dollar deficit position in 1994.
- Timely and periodic Board review of the fund's investment allocations and strategies has contributed to an improved financial position. Prudent investment management by the Retirement and Investment Office staff as well as the State Investment Board has provided for better than expected investment performance, a significant factor in the positive growth of the fund.
- Today the fund is solvent with an adequate surplus. Given the fact that WSI was now in a fund surplus position, a position the organization was historically unaccustomed to, the 2005 Legislature enacted legislation requiring WSI to maintain an adequate level of reserves plus surplus in the range of 120% to 140% of the actuarially established discounted reserve. The intent was to ensure overall long-term program stability and avoid the deficit positions of the past.
- To the extent the reserves plus surplus exceed statutory requirements (140%), the excess can be returned to policyholders in the form of premium dividend credits.
- Premium dividend credits are determined annually by WSI's Board of Directors (separate from premium rate level adjustments) based on overall fund financial position.
- WSI's Board of Directors has declared 40% premium dividend credits in each of the last 2 years. It is estimated that over the two year time period this will equate to an estimated **\$100 million** plus in aggregate credits to WSI policyholders.

Workforce Safety and Insurance Claim Counts Data at June 2006

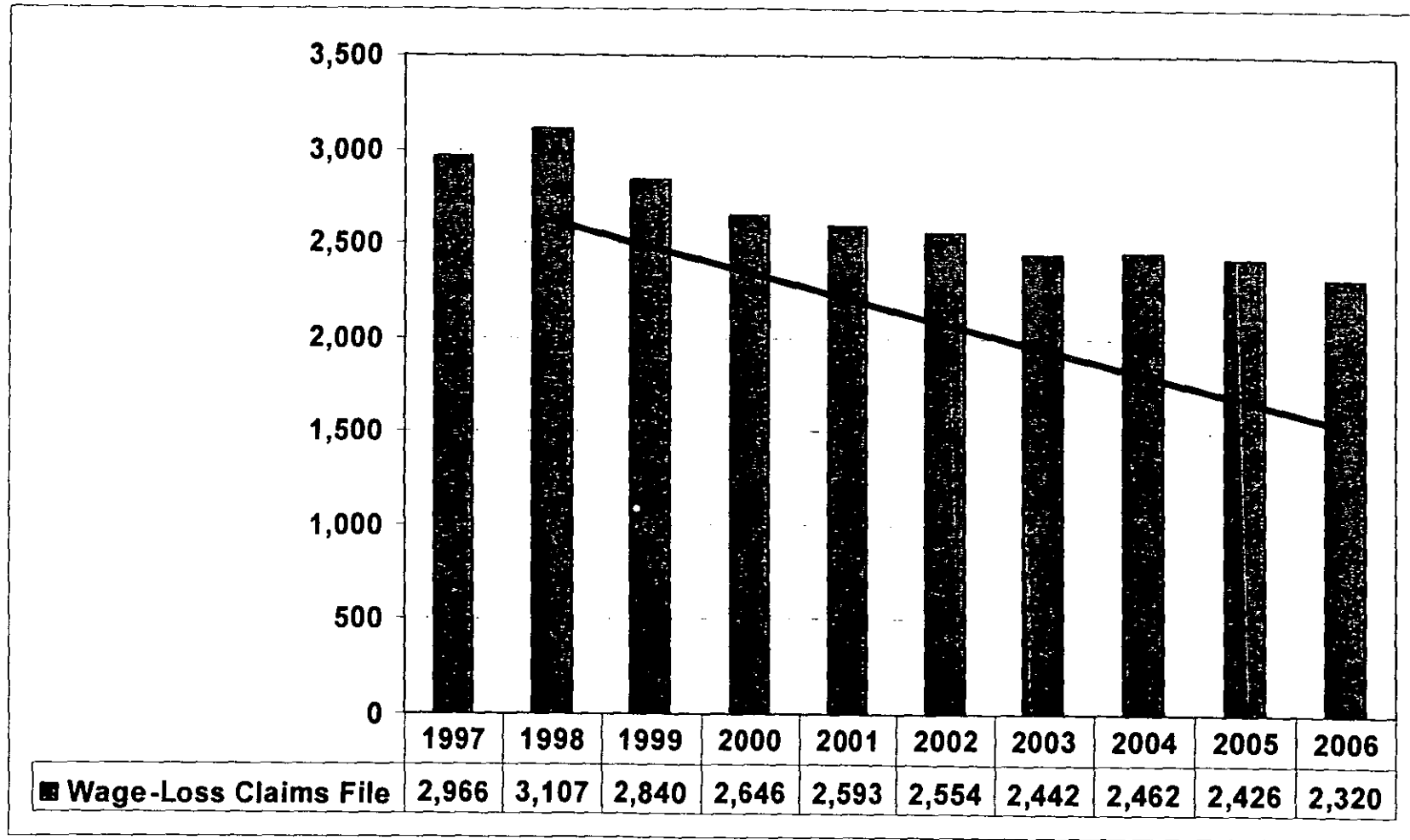


Workforce Safety & Insurance 1997-2006 Claims Reported



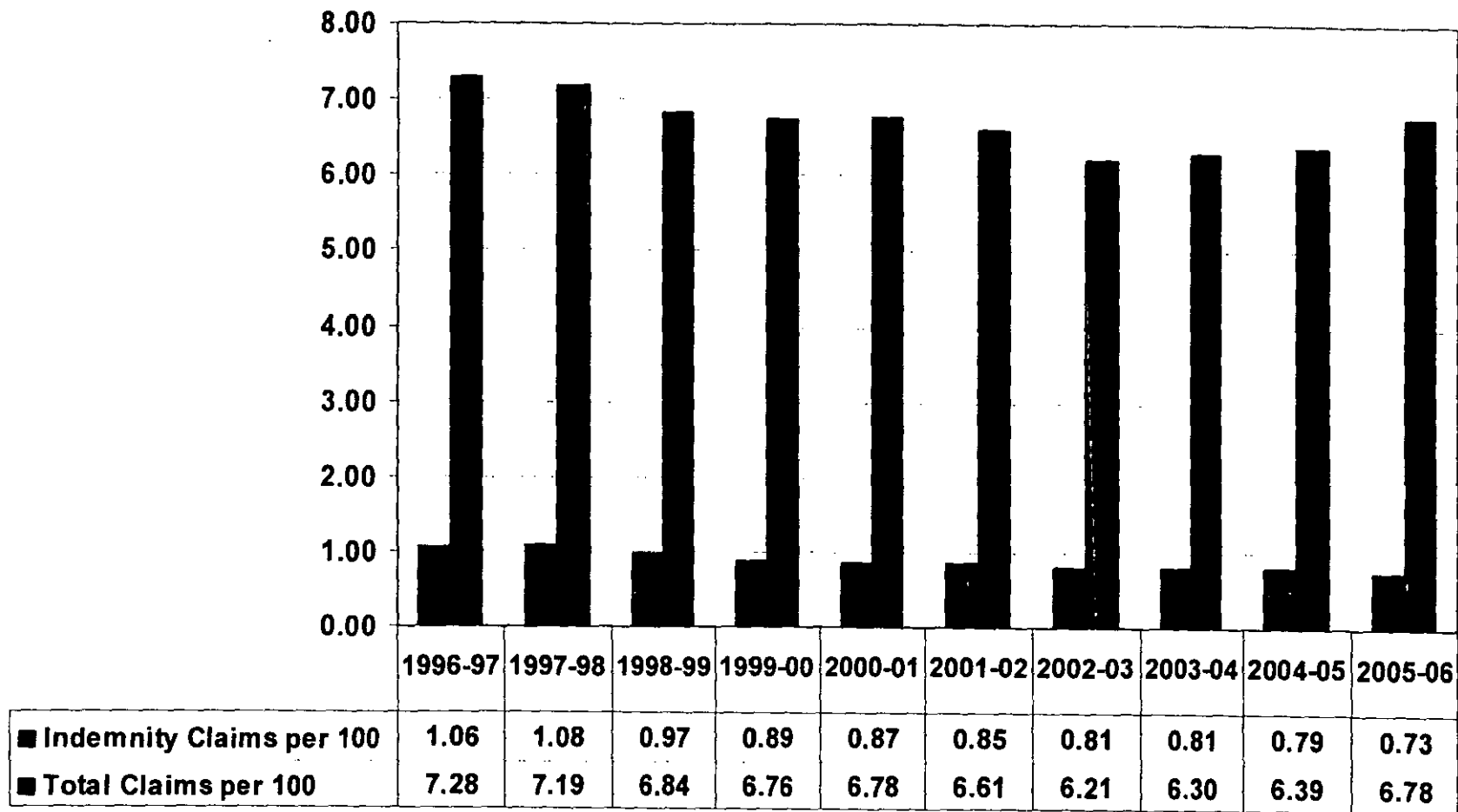
Data taken at September 15 each year

Workforce Safety & Insurance 1997-2006 Wage-Loss Claims Reported



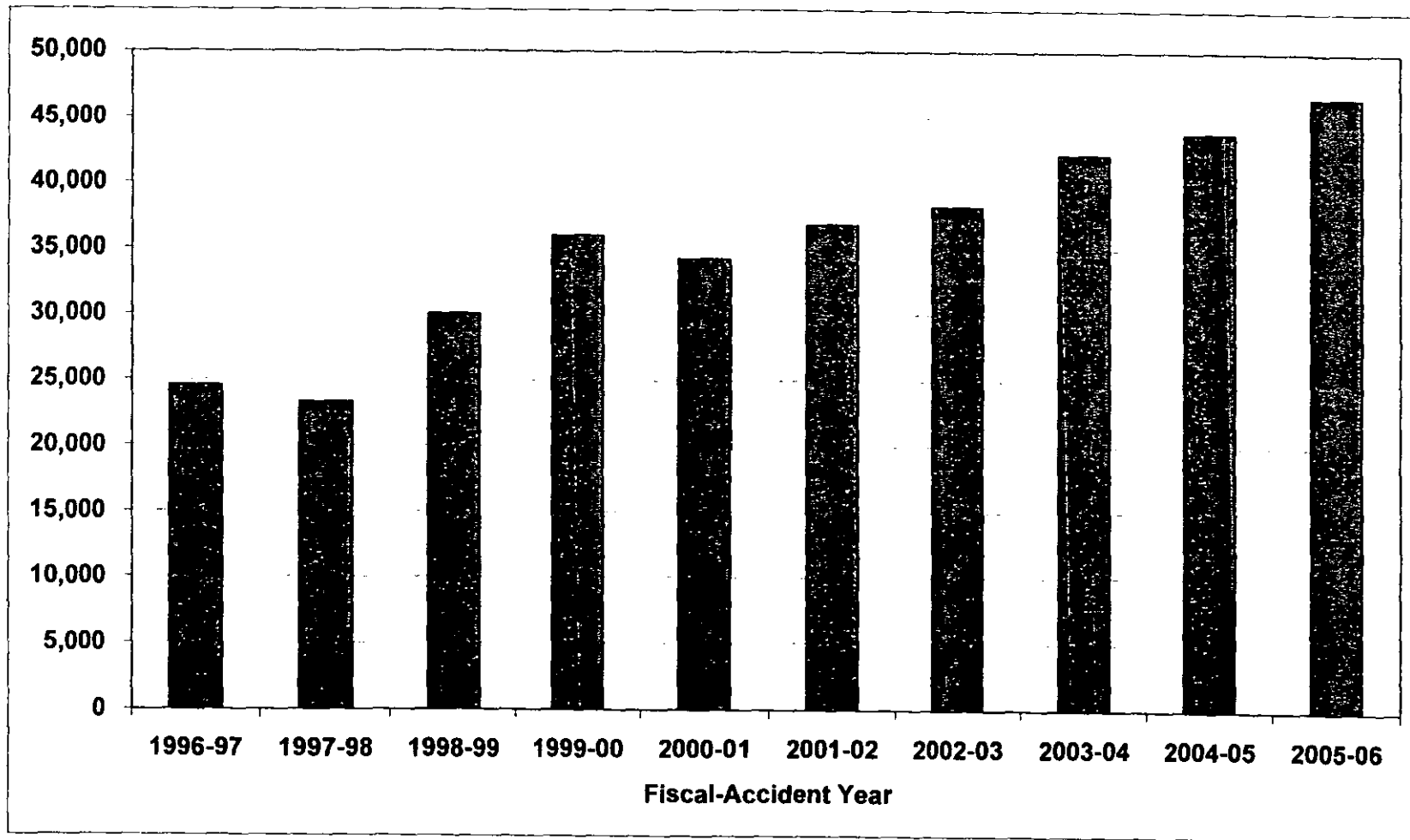
Data taken at September 15 each year

Workforce Safety & Insurance Claims Reported per 100 Covered Workers

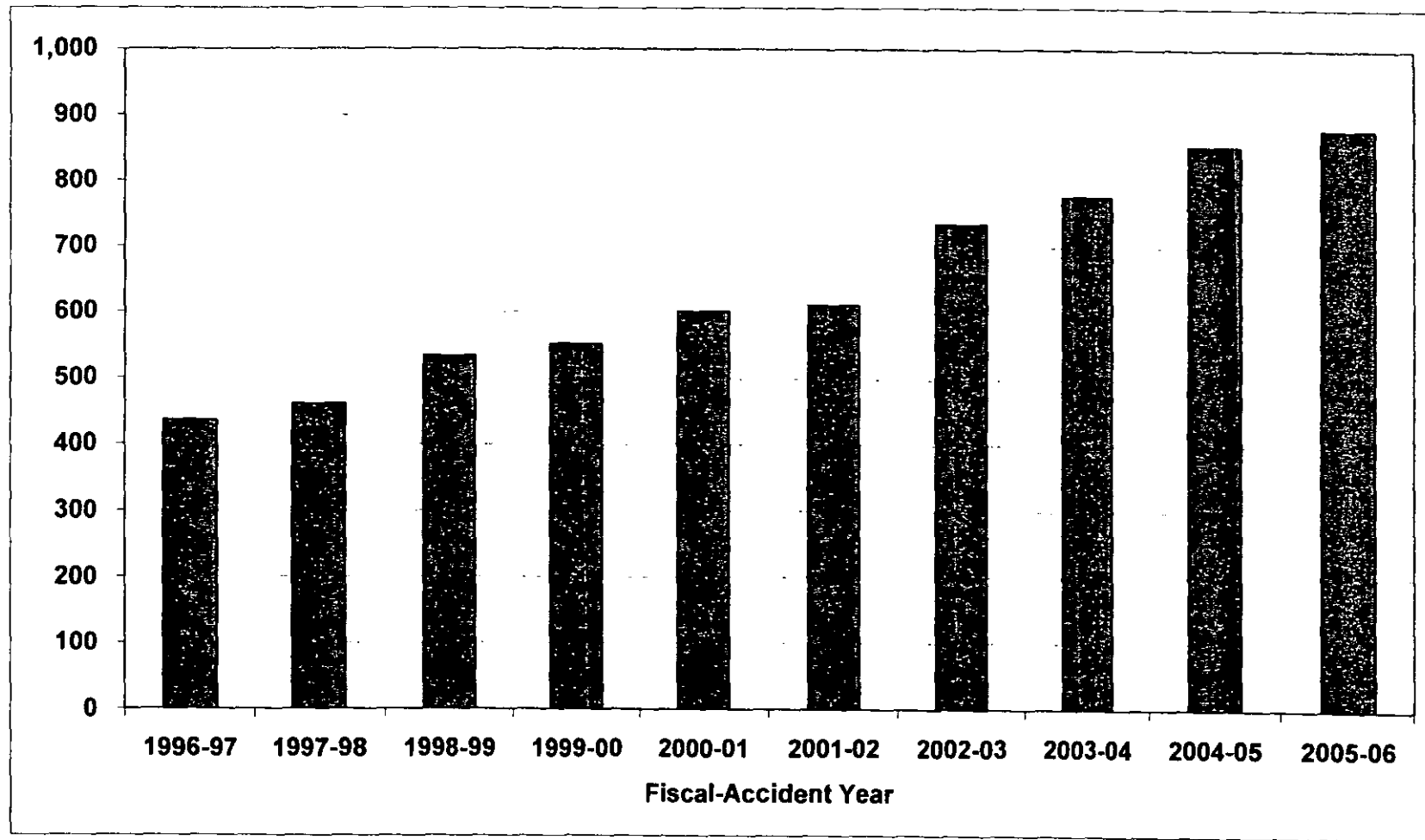


Data taken at September 15 each year

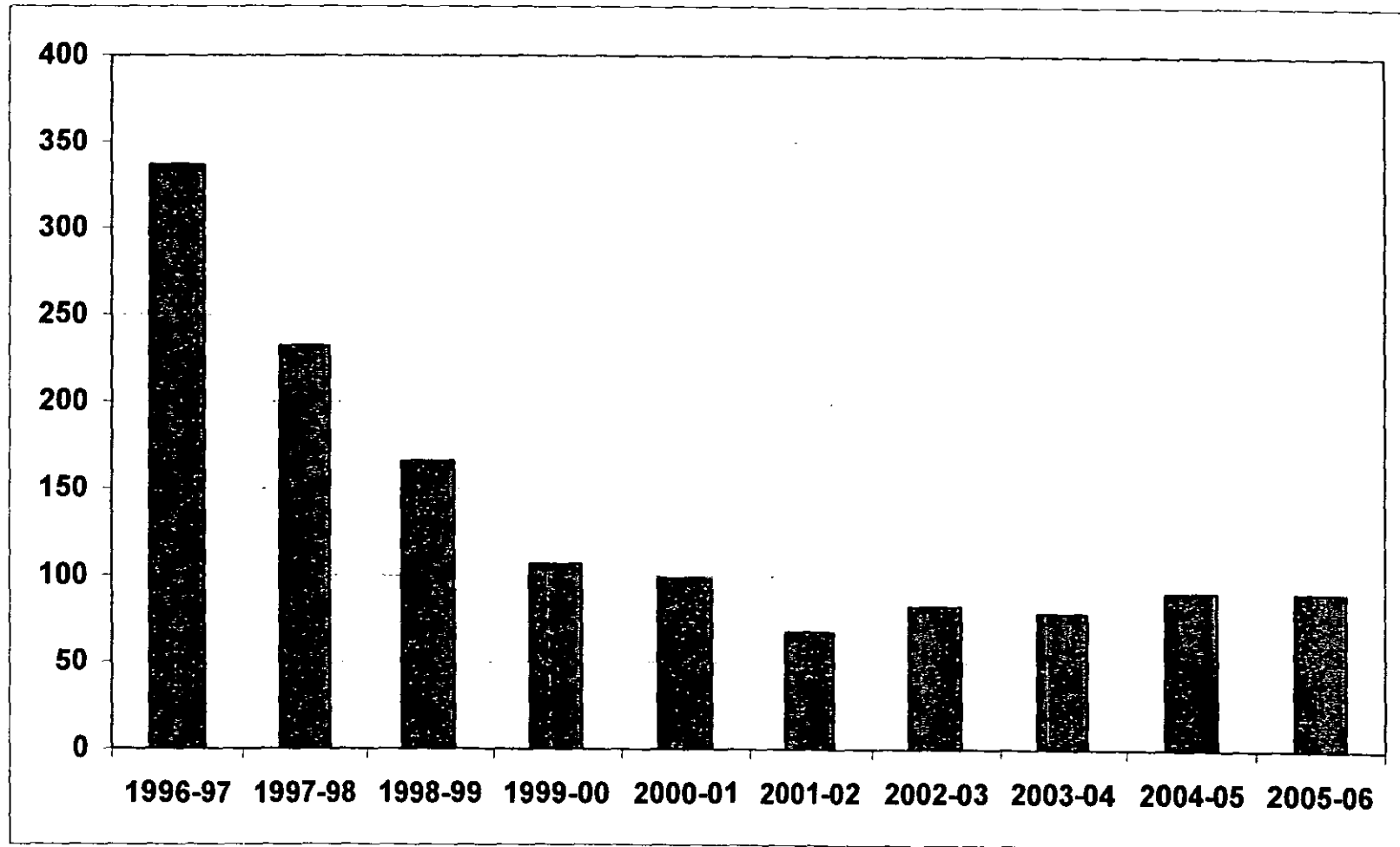
**Workforce Safety and Insurance
Average Cost per Time Loss Claim
Data at June 2006**



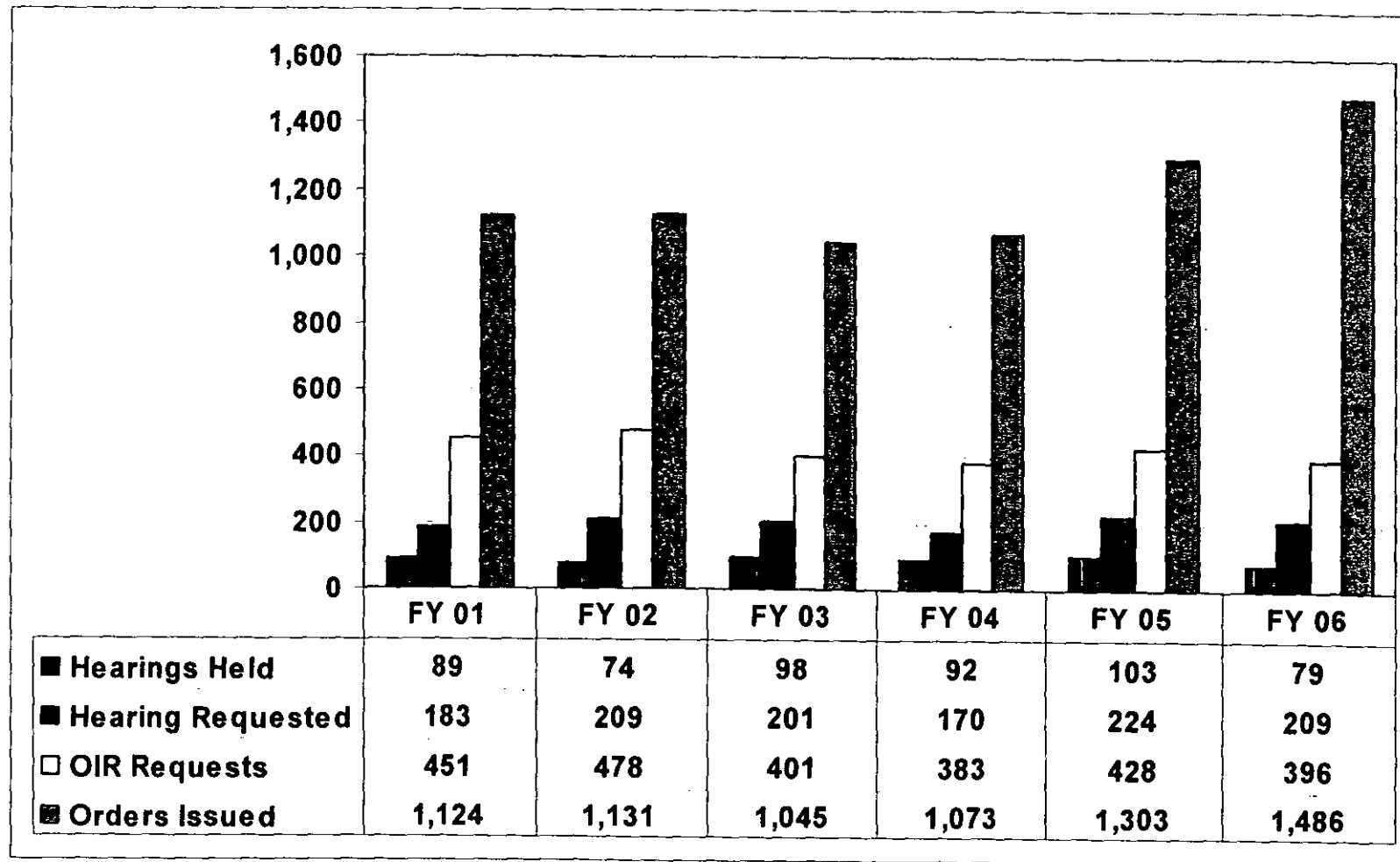
**Workforce Safety and Insurance
Average Cost per Medical Only Claim
Data at June 2006**



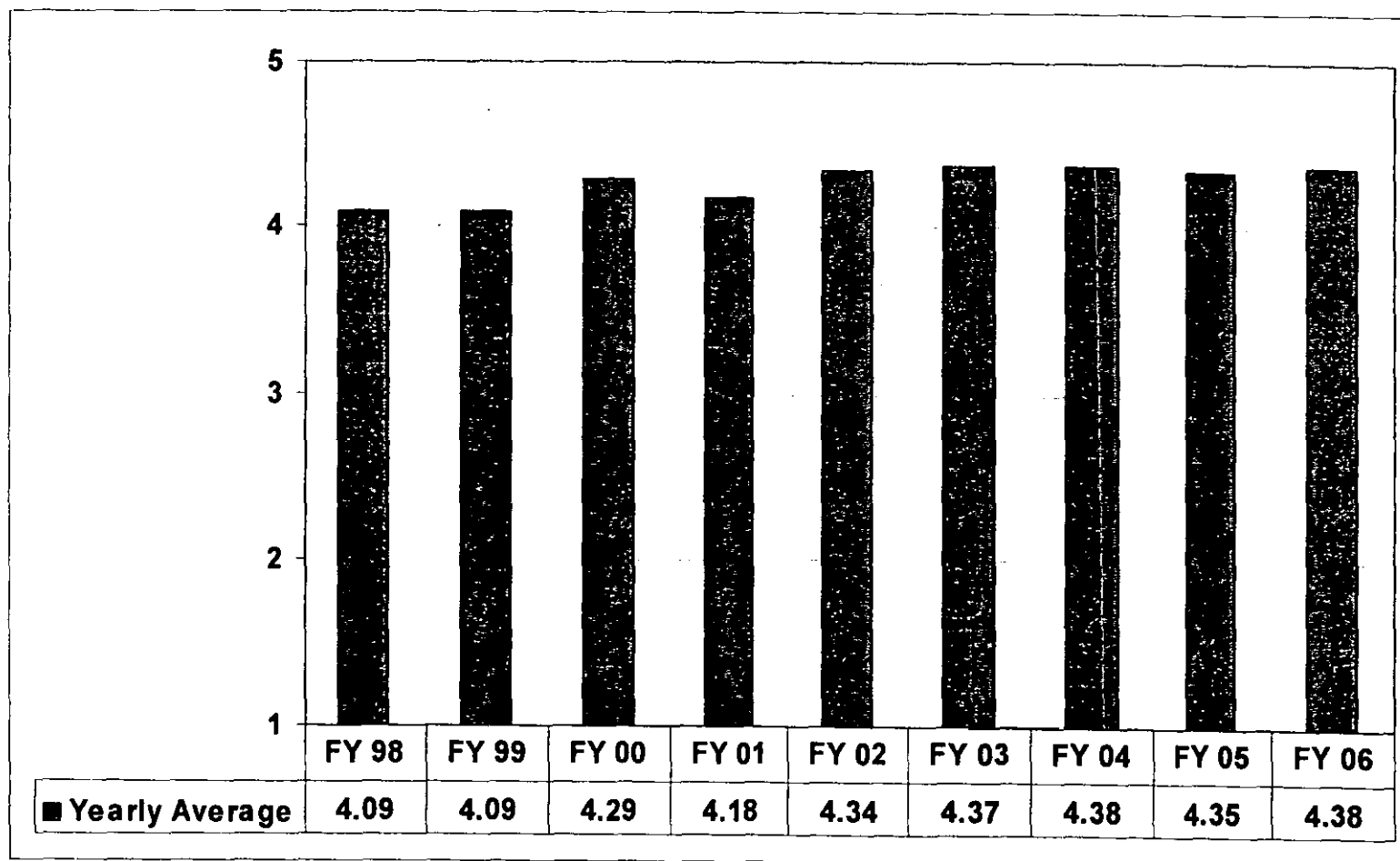
**Workforce Safety & Insurance
Constituency Requests
At June 30 each year**



Workforce Safety & Insurance Litigation Requests Data at June 30 each year



Workforce Safety and Insurance Injured Worker Satisfaction Survey Results

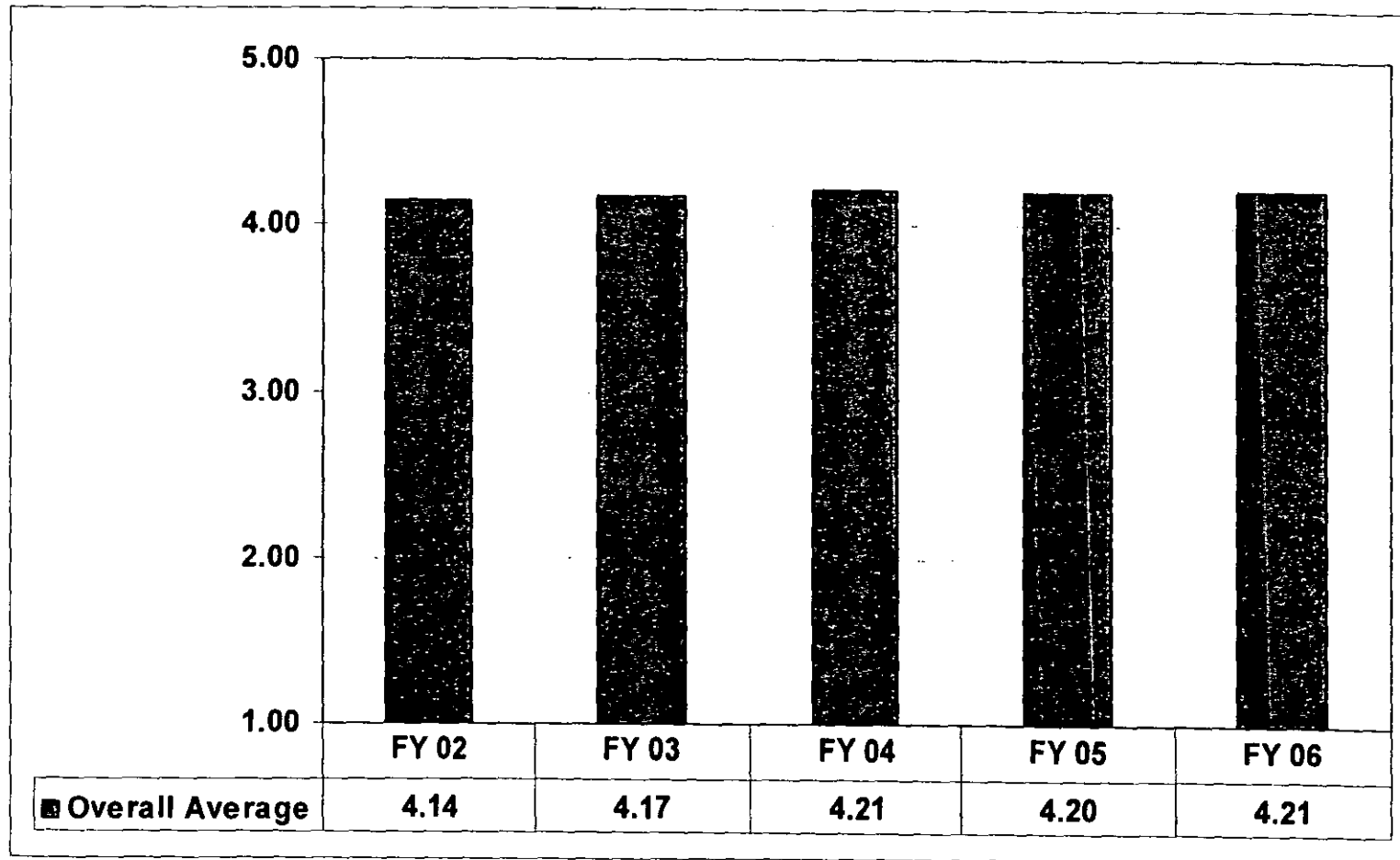


1 indicates least satisfied and 5 is most satisfied.

~Claims 60-90 days post initial acceptance

~Employer surveys are conducted by an independent research group (DH Research)

Workforce Safety and Insurance Employer Satisfaction Survey Results



1 indicates least satisfied and 5 is most satisfied.

~Employer survey was revamped beginning with June 2001

~Employer surveys are conducted by an independent research group (DH Research)

ID	WBS	Task Name	Duration	Start	Finish	% Complete	Qtr 4, 2006 Oct
1	1	PA2006-Performance Audit	180 days	Mon 11/27/06	Fri 8/3/07	31%	
2	1.0	Procurement Systems-Element 1	90 days	Mon 11/27/06	Fri 3/30/07	51%	
3	1.1	Procurement system	90 days	Mon 11/27/06	Fri 3/30/07	58%	
4	1.1.1	Review OMB and WSI procurement policies	90 days	Mon 11/27/06	Fri 3/30/07	80%	
5	1.1.2	Determine similarities and differences of policies	90 days	Mon 11/27/06	Fri 3/30/07	80%	
6	1.1.3	Determine which policies should remain	90 days	Mon 11/27/06	Fri 3/30/07	80%	
7	1.1.4	Determine which policies involve the greatest risk	90 days	Mon 11/27/06	Fri 3/30/07	50%	
8	1.1.5	Ascertain education and expertise of procurement office	90 days	Mon 11/27/06	Fri 3/30/07	75%	
9	1.1.6	Communicate with department managers	90 days	Mon 11/27/06	Fri 3/30/07	75%	
10	1.1.7	Monitor payment vouchers for contracts or purchases without valid author	90 days	Mon 11/27/06	Fri 3/30/07	50%	
11	1.1.8	Assess current recordkeeping practices	90 days	Mon 11/27/06	Fri 3/30/07	75%	
12	1.1.9	Determine most effective method of recordkeeping	90 days	Mon 11/27/06	Fri 3/30/07	90%	
13	1.1.10	Change policy so recordkeeping flows through procurement	90 days	Mon 11/27/06	Fri 3/30/07	90%	
14	1.1.11	Requests for services are reviewed and authorized by procurement	90 days	Mon 11/27/06	Fri 3/30/07	50%	
15	1.1.12	Procurement officer involved in discussions involving procurement needs	90 days	Mon 11/27/06	Fri 3/30/07	30%	
16	1.1.13	Periodic QA audit on contract files	90 days	Mon 11/27/06	Fri 3/30/07	10%	
17	1.1.14	Educate managers in correct procurement procedures	90 days	Mon 11/27/06	Fri 3/30/07	10%	
18	1.1.15	Monitor payment vouchers for proper support documentation	90 days	Mon 11/27/06	Fri 3/30/07	20%	
19	1.2	Procurement office involvement	90 days	Mon 11/27/06	Fri 3/30/07	71%	
20	1.2.1	Determine if more than one employee can act as Procurement Officer	90 days	Mon 11/27/06	Fri 3/30/07	100%	
21	1.2.2	Inform managers of decision on procurement	90 days	Mon 11/27/06	Fri 3/30/07	75%	
22	1.2.3	Educate managers and employees on role of Procurement Officer	90 days	Mon 11/27/06	Fri 3/30/07	10%	
23	1.2.4	Modify Service & Supply request form	90 days	Mon 11/27/06	Fri 3/30/07	100%	
24	1.3	Public funds	90 days	Mon 11/27/06	Fri 3/30/07	32%	
25	1.3.1	Opinion regarding allowable expenditures of public funds	90 days	Mon 11/27/06	Fri 3/30/07	10%	
26	1.3.2	Review NDCC & OMB policies to determine guidelines for WSI	90 days	Mon 11/27/06	Fri 3/30/07	8%	
27	1.3.3	Research AG opinions resulting after the 1993 opinion	90 days	Mon 11/27/06	Fri 3/30/07	0%	
28	1.3.4	Review correspondence between OMB & WSI regarding spending author	90 days	Mon 11/27/06	Fri 3/30/07	75%	
29	1.3.5	Inform managers and employees of guidelines and limitations	90 days	Mon 11/27/06	Fri 3/30/07	50%	
30	1.3.6	Inform managers of past expenditures and future changes	90 days	Mon 11/27/06	Fri 3/30/07	50%	
31	1.4	Contract award	90 days	Mon 11/27/06	Fri 3/30/07	5%	
32	1.4.1	Review evaluation methodology	90 days	Mon 11/27/06	Fri 3/30/07	25%	

Project: Project1
Date: Thu 1/18/07

Task

Milestone

External Tasks

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Summary

External Milestone

Progress

Project Summary

Deadline

ID	WBS	Task Name	Duration	Start	Finish	% Complete	Qty 4, 2006
							Oct
33	1.4.2	Educate evaluation teams on evaluation methodology	90 days	Mon 11/27/06	Fri 3/30/07	0%	
34	1.4.3	Monitor evaluation methodology	90 days	Mon 11/27/06	Fri 3/30/07	0%	
35	1.4.4	Utilize evaluation methodology in accordance with state Procurement Offi	90 days	Mon 11/27/06	Fri 3/30/07	0%	
36	1.4.5	Request ND Procurement Office to develop written policy for guidance on	90 days	Mon 11/27/06	Fri 3/30/07	0%	
37	1.5	Contract Initiation	90 days	Mon 11/27/06	Fri 3/30/07	60%	
38	1.5.1	Review necessity of contract completion & signing before payments	90 days	Mon 11/27/06	Fri 3/30/07	30%	
39	1.5.2	Train AP employees to examine contract payment requests	90 days	Mon 11/27/06	Fri 3/30/07	50%	
40	1.5.3	Require Director of Finance to audit contract payment requests	90 days	Mon 11/27/06	Fri 3/30/07	100%	
41	1.6	Contract payments	90 days	Mon 11/27/06	Fri 3/30/07	60%	
42	1.6.1	Review necessity of contract completion & signing before payment	90 days	Mon 11/27/06	Fri 3/30/07	30%	
43	1.6.2	Train AP employees to examine contract payment requests	90 days	Mon 11/27/06	Fri 3/30/07	50%	
44	1.6.3	Require Director of Finance to audit contract payment requests	90 days	Mon 11/27/06	Fri 3/30/07	100%	
45	1.7	Temporary employee status	90 days	Mon 11/27/06	Fri 3/30/07	0%	
46	1.8	Executive Director reimbursements	90 days	Mon 11/27/06	Fri 3/30/07	0%	
47	1.9	Tax reimbursements	90 days	Mon 11/27/06	Fri 3/30/07	83%	
48	1.9.1	Employee reimbursements are within policy	90 days	Mon 11/27/06	Fri 3/30/07	80%	
49	1.9.2	Request written support documentation for reimbursements	90 days	Mon 11/27/06	Fri 3/30/07	100%	
50	1.9.3	Train AP employees to examine reimbursement requests	90 days	Mon 11/27/06	Fri 3/30/07	50%	
51	1.9.4	Require Director of Finance to audit reimbursement requests	90 days	Mon 11/27/06	Fri 3/30/07	100%	
52	1.10	Expenditures applied to appropriate biennium	90 days	Mon 11/27/06	Fri 3/30/07	85%	
53	1.10.1	Train AP employees to examine timeliness of payment requests	90 days	Mon 11/27/06	Fri 3/30/07	75%	
54	1.10.2	Review OMB policy regarding bid splitting and coding of expenditures to or	90 days	Mon 11/27/06	Fri 3/30/07	80%	
55	1.10.3	Require Director of Finance to review all expenditures	90 days	Mon 11/27/06	Fri 3/30/07	100%	
56	2.0	Human Resource Management System-Element 2	180 days	Mon 11/27/06	Fri 8/3/07	17%	
57	2.1	Employee performance appraisal process	90 days	Mon 11/27/06	Fri 3/30/07	0%	
58	2.2	Signed performance appraisals	90 days	Mon 11/27/06	Fri 3/30/07	100%	
59	2.3	Consistent and uniform hiring process	90 days	Mon 11/27/06	Fri 3/30/07	0%	
60	2.4	Formal policies and procedures	90 days	Mon 11/27/06	Fri 3/30/07	0%	
61	2.5	Veterans preference	90 days	Mon 11/27/06	Fri 3/30/07	0%	
62	2.6	Competitive hiring process	90 days	Mon 11/27/06	Fri 3/30/07	0%	
63	2.7	Compensation adjustments	90 days	Mon 11/27/06	Fri 3/30/07	0%	
64	2.8	Bonus program requirements	90 days	Mon 11/27/06	Fri 3/30/07	100%	

Project: Project1
Date: Thu 1/18/07

Task

Milestone

External Tasks

Split



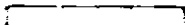






Summary

External Milestone

Progress

Project Summary

Deadline

ID	WBS	Task Name	Duration	Start	Finish	% Complete	Oct 4, 2006
65	2.9	Employee incident investigation	180 days	Mon 11/27/06	Fri 8/3/07	0%	Oct
66	2.10	Actions taken related to employee investigations	90 days	Mon 11/27/06	Fri 3/30/07	0%	
67	2.11	Risk management notification	90 days	Mon 11/27/06	Fri 3/30/07	0%	
68	2.12	Classification and pay-for-performance monitoring	90 days	Mon 11/27/06	Fri 3/30/07	0%	
69	2.13	Pay range changes based on formal evaluation process	90 days	Mon 11/27/06	Fri 3/30/07	0%	
70	2.14	Turn-over-rate calculation	90 days	Mon 11/27/06	Fri 3/30/07	0%	
71	2.15	Formal procedure for review of policy handbook	90 days	Mon 11/27/06	Fri 3/30/07	0%	
72	2.16	Incentive pay	90 days	Mon 11/27/06	Fri 3/30/07	100%	
73	2.17	Absenteeism	90 days	Mon 11/27/06	Fri 3/30/07	0%	
74	3.0	WSI Management-Element 3	180 days	Mon 11/27/06	Fri 8/3/07	15%	
75	3.1	Increase morale	180 days	Mon 11/27/06	Fri 8/3/07	0%	
76	3.2	Open door policy	90 days	Mon 11/27/06	Fri 3/30/07	0%	
77	3.3	Communication	90 days	Mon 11/27/06	Fri 3/30/07	0%	
78	3.4	SIU resources	90 days	Mon 11/27/06	Fri 3/30/07	0%	
79	3.5	Contractual provisions	90 days	Mon 11/27/06	Fri 3/30/07	0%	
80	3.6	Appropriate use of resources	90 days	Mon 11/27/06	Fri 3/30/07	0%	
81	3.7	Establish and implement strategic plan	180 days	Mon 11/27/06	Fri 8/3/07	0%	
82	3.8	Strategic plan on website	90 days	Mon 11/27/06	Fri 3/30/07	100%	
83	3.9	Accurate information	90 days	Mon 11/27/06	Fri 3/30/07	0%	
84	3.10	Succession planning	180 days	Mon 11/27/06	Fri 8/3/07	0%	
85	3.11	Resource planning for philosophy changes	180 days	Mon 11/27/06	Fri 8/3/07	0%	
86	3.12	Quality Assurance functions	90 days	Mon 11/27/06	Fri 3/30/07	100%	
87	3.13	Internal Audit staffing level	180 days	Mon 11/27/06	Fri 8/3/07	0%	
88	3.14	Blanket bond coverage	90 days	Mon 11/27/06	Fri 3/30/07	100%	
89	3.15	Premium dividend credits	90 days	Mon 11/27/06	Fri 3/30/07	0%	
90	4.0	Board of Directors-Element 4	180 days	Mon 11/27/06	Fri 8/3/07	19%	
91	4.1	Board of Directors compliance with legislative intent	180 days	Mon 11/27/06	Fri 8/3/07	0%	
92	4.2	Formally establish role for required approval	180 days	Mon 11/27/06	Fri 8/3/07	0%	
93	4.3	Carver Policy Governance Model	180 days	Mon 11/27/06	Fri 8/3/07	0%	
94	4.4	Carver Policy Governance Model education	90 days	Mon 11/27/06	Fri 3/30/07	76%	
95	4.4.1	Identify sources of education and training	90 days	Mon 11/27/06	Fri 3/30/07	80%	
96	4.4.2	Establish cost estimate	90 days	Mon 11/27/06	Fri 3/30/07	100%	
Project: Project1		Task		Milestone		External Tasks	
Date: Thu 1/18/07		Spft		Summary		External Milestone	
		Progress		Project Summary		Deadline	

ID	WBS	Task Name	Duration	Start	Finish	% Complete	Qty 4, 2006 Oct
97	4.4.3	Clarify time frame when BOD is available	90 days	Mon 11/27/06	Fri 3/30/07	100%	
98	4.4.4	Issue RFP	90 days	Mon 11/27/06	Fri 3/30/07	100%	
99	4.4.5	Coordinate training with BOD and vendor	90 days	Mon 11/27/06	Fri 3/30/07	0%	
100	4.5	Revised outcomes	90 days	Mon 11/27/06	Fri 3/30/07	0%	
101	4.6	Measurable performance criteria	90 days	Mon 11/27/06	Fri 3/30/07	0%	
102	4.7	Separate monitoring report	180 days	Mon 11/27/06	Fri 8/3/07	0%	
103	4.8	Board performance evaluation	180 days	Mon 11/27/06	Fri 8/3/07	0%	
104	4.9	Governance process	180 days	Mon 11/27/06	Fri 8/3/07	0%	
105	4.10	Executive Directors performance	180 days	Mon 11/27/06	Fri 8/3/07	0%	
106	4.11	Salary recommendation for Executive Director	90 days	Mon 11/27/06	Fri 3/30/07	0%	
107	4.12	Board compensation	90 days	Mon 11/27/06	Fri 3/30/07	0%	
108	4.13	Pertinent information prior to Board voting	90 days	Mon 11/27/06	Fri 3/30/07	0%	
109	4.14	Formal plan for Executive Director vacancy	180 days	Mon 11/27/06	Fri 8/3/07	0%	
110	4.15	Executive Directors expenses	90 days	Mon 11/27/06	Fri 3/30/07	0%	
111	4.16	Audit Committee charter	180 days	Mon 11/27/06	Fri 8/3/07	0%	
112	4.17	Fraud hotline	90 days	Mon 11/27/06	Fri 3/30/07	100%	
113	4.18	Performance related contracts	90 days	Mon 11/27/06	Fri 3/30/07	100%	

Project: Project1
Date: Thu 1/18/07

Task

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Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

Workforce Safety & Insurance Claims Filed and Acceptance Rates

Claims Filed

- **FY2006** – total claims filed = 21,588 (2,320 wage-loss & 19,268 med-only)
- **FY2005** – total claims filed = 19,887 (2,426 wage-loss & 17,461 med-only)
 - 8.6% increase in total claims filed from FY2005 to FY2006
 - 4.4% decrease in the number of wage-loss claims filed from FY2005 to FY2006
 - During FY2006 the number of claims filed each quarter showed a decrease from the previous quarter
 - The first quarter FY2007 shows a 3.6% decrease when compared to the first quarter of FY2006.

New Programs in late FY2005 and FY2006

- **April 2005** we started accepting the first report of injury form (FROI) from medical providers
- **August 2005** we implemented an early reporting incentive for employers. This incentive allows for the waiver of the \$250 assessment if we receive notification of the claim or incident by midnight of the business day following the date of the injury or incident.

Ultimate Acceptance Rates

- FY2006 – 86.7%
- FY2005 – 91.0%
- FY2004 – 92.9%
- The most significant change is the increase in the number of claims denied for no medical treatment and no signed injured worker report (C1). These are both a result of the new programs we implemented in April and August 2005.
- If you remove all claims denied for no medical treatment and no signed injured worker report (C1) from all three years the acceptance rates are as follows, which are more consistent:
 - FY2006 – 91.3%
 - FY2005 – 93.5%
 - FY2004 – 93.0%

Senate Bill 2257

Chairman Klein and Committee Members

For the record my name is Dick Johnsen, I chair the legislative committee of the North Dakota Motor Carriers Association. I served 5 years on the Board of WSI.

I appear today in opposition to SB 2257 on behalf of the members of NDMCA.

The Motor Carrier Industry is a large premium payer, over 10% of premiums collected by WSI come from the various segments of our industry and because of that we have always had a keen interest in the operations of WSI.

In the late 80's and early 90's premium rates were out of control, injured workers were not being provided the services they needed in a timely manner, claims analyst were buried in work overload handling 2-3 time the industry standard, medical providers were not getting paid for the services they performed, employer and employee access to claim information was difficult at best, litigation was rampant and the system had an unfunded liability of 1/4 billion dollars.

The states business leaders, legislators and other stakeholders with a vested interest brought about the legislation passed in the mid to late 90's to address the situation. The Board was established, a governance model chosen, committees established, goals or outcomes established and the process began to govern the workers compensation system. Measurements were put in place to monitor almost anything measurable however the base line started with the Board since there were no previous monitoring systems in place. Further legislation was passed during ensuing sessions to tweak the systems operation and benefits. The unfunded liability is gone, accomplished by increased accountability, improved service and benefit delivery, a more equitable benefit structure, a sound stable premium structure, safety programs, sound investment strategies, and a trained, professional, dedicated workforce.

Each successive legislative session the Board and staff have brought forward legislation to improve the system and provide a more equitable benefit structure. Premiums are among the lowest in the nation with benefits rated in the middle. Around 20 benefit changes have been enacted and a list of those can be provided to the committee if you so desire.

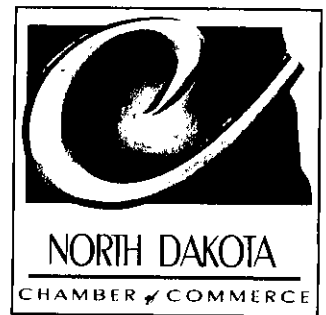
WSI is now in a sound financial position, governance is in place to keep it that way.

The changes proposed in SB 2257 are not the solution to the perceived problem.

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An advisory board consisting of appointments by a political appointment that is most likely not an expert in the field of workers compensation is not workable. An advisory board does not set policy or direct staff, it can only advise and 6 & 6 doesn't work.

**Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2257
January 22, 2007**



Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. A list of the specific members was attached top my testimony on SB 2294. As a group we stand in opposition to SB 2257 and urge a do not pass vote from the committee on this bill.

This bill changes the structure of WSI to what existed before 1997 and as a business community we are unconditionally opposed to this change. Let's not forget where we were and where we are. In 1995 we had skyrocketing premiums and an unfunded liability of \$250 million dollars. Today are premiums are competitive with employers in other states and are benefits rank 26th among all states. For once we are leaders on both ends of state rankings, those for injured workers and employers, and as the employers we do not see any reason to undergo a major change like SB 2257 would force upon us.

Thank you for the opportunity to appear before you today in opposition to SB 2257.
I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

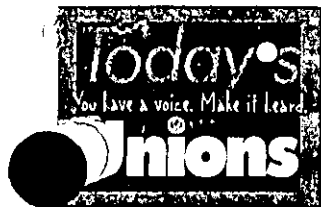
Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members



NORTH DAKOTA AFL-CIO

1323 E. Front Ave., Suite 1 • Bismarck, ND 58504-6097
(701) 223-0784 • FAX (701) 223-9387

David L. Kemnitz
President

Arnold H. Zins
First Vice President



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Terry N. Curl
Mark Hager

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CWA

Loren E. Moe
IBEW

Wesley Lynnes
FIRE FIGHTERS

Ed Grossbauer
AFGE

Debra A. Cederholm
GCIU

Ken Jangula

IRON WORKERS

Lawrence D. Morris

LABORERS

Tim Forrest

LETTER CARRIERS

Tele. Rm.

MACHINISTS
Barb May
RWIWE

MINE WORKERS

Tom M. McLaughlin

OPEIU

Heather Cowdrey-Murch

IUOE

Virgil D. Horst

PAINTERS

MK3

POLICE ASSOCIATION

ROAD SPRINKLER FITTERS

Timothy J. Buchholz

UA

Logan Dockett

APWU

Sue Carnahan

SMWIA

Dan Calkins

USW

Randall J. Edison

AFSCME

Carol Gierszewski

AFT

Colette Bruggman

UTU

John Risch

SOUTHERN SLOPE CLC

Training

SOUTHERN PLAINS UNITED LC

St. Michel

NORTHERN VALLEY LC

Mark Froemke

GREATER NORTHWEST LC

Mark Hager

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

WHEREAS: The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly

WHEREAS: The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and

WHEREAS: The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it

RESOLVED: That the following ' be provided to the 2007 legislative session.

1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.

2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.

3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.

4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.

5) Office of Independent Review. Place the control of the OIR with the Governor.

6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.

7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.

8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.

9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

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10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

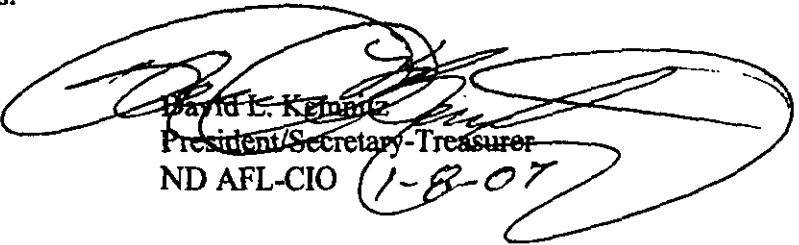
11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.


David L. Kellogg
President/Secretary-Treasurer
ND AFL-CIO 1-8-07

Why are fair, unbiased reports so important?

Labor and Industries, employers, the labor community and the legislature all want IME examiners to make a special effort to provide fair, unbiased reports.

This is partly because biased reports may create significant problems for all parties involved. For example, biased reports may lead to litigation, which can result in costly delays and high legal expenses, not to mention the effect on the health of the worker and the operation of the employer's business. Protests create administrative problems for claim managers, so adjudicators prefer reports that neither overstate nor understate the worker's impairment.

Senate Bill 2257
January 22, 2007
Industry, Business and Labor Committee

Chairman Klein, members of the committee, for the record I am Carlee McLeod, with the Bismarck Mandan Chamber of Commerce. On behalf of our 1,100 business in the Bismarck Mandan community, I come before you today to oppose the changes to the WSI governance structure proposed in Senate Bill 2257.

It is our belief that the suggested changes in this bill will endanger the positive progress made by the organization in the past 10 years and instead place it into the political arena. Free from political influence, WSI has made tremendous strides. While anecdotal evidence from aggrieved injured workers and other interested parties may suggest otherwise, the numbers are clear.

Notable Improvements:

- Claims processed within 14 days have increased by just under 20%;
- Both employee and employer satisfaction is high;
- Requests for litigation have dropped from 1400 in 1994 to 209 in 2006;
- Rate changes have stabilized;
- WSI is financially healthy, with a current \$501 million surplus after a \$240 deficit in 1994.

These improvements would not have been possible without an industry knowledgeable board and an executive director who does not shift with the political calendar. The changes to the governance structure proposed in SB 2257 jeopardize that stability. For those reasons, we oppose SB 2257.



STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

**TESTIMONY BEFORE SENATE INDUSTRY,
BUSINESS AND LABOR COMMITTEE
1/22/2007**

Senate Bill 2257

Testimony: Presented by
Gordy L. Smith, Audit Manager

Chairman Klein and members of the committee, I'm here to testify in the neutral position on SB2257. The purpose of my testimony is to clarify and correct comments made regarding the performance audit done at WSI. I was not planning on testifying so I apologize that my testimony was originally given off of notes I had taken while listening to testimony. A committee member asked that I supply my testimony in writing. I felt compelled to ensure that the committee has accurate information regarding the performance audit.

First of all, there was only one audit done at WSI, it was the performance audit that the State Auditor's Office conducted. The report issued by Octagon was the result of a performance evaluation. The difference between an audit and an evaluation is that the audit must follow standards established nationally when conducting the audit. The evaluation on the other hand, does not necessarily have to follow any standards. Instead, the firm uses its expertise and experience to make conclusions on the areas reviewed.

There has been a statement that WSI "welcomes" audits. I would hardly call WSI's reaction to the performance audit and the audit team as "welcoming us". Initially there was only going to be a performance evaluation done as required in state law. I have written the previous four requests for proposals (rfp's) for the performance evaluations of WSI. When I started this process I asked WSI if there were any suggestions they had of areas that the consultant could cover. The WSI contact person eventually (after 6 weeks) indicated that the executive director had decided not to offer any suggestions. After I developed the rfp, we sent it to WSI to get their input. They were obviously upset with 3 of the elements (areas to cover). These were the information technology, the procurement and the human resource elements.

The State Auditor and I attended a meeting with the executive director and the chair of WSI's audit committee. They provided us with a few reasons as to why they objected to those elements. In addition, they also informed us that they now had two additional

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areas they wanted the consultant to review. Neither the State Auditor nor I were persuaded by their arguments to drop any of the elements, however we did decide to include the two additional areas that WSI suggested.

One of WSI's concerns involved the total cost of having the consultant look at these areas. We decided to conduct a performance audit covering three areas. As a result, the price of the Octagon evaluation was reduced by \$75,000.

The WSI audit committee chair made comments which we felt were unprofessional and inappropriate during a public meeting of the Audit Committee at the beginning of the audit. In addition, the executive director and the Board chair also made comments which we felt were unprofessional and unproductive at an all employees meeting during the early stages of the audit. The comments referred to in this paragraph along with others made during the audit clearly indicated the performance audit was not welcome.

Next, in response to a question the board chair indicated he was not aware of any report which indicated employees were paid above the consultants recommended salary level. Page 19 of the performance audit clearly provides 3 examples where the executive director provided 3 members of the executive team with salary increases which exceeded the amount designated for performance increases as well as the amount to bring the individuals to the minimum of the new salary range provided by the consultant. WSI was not able to provide us with how this additional salary increase was calculated.

The board chairman also testified that by splitting a bid, WSI was able to save \$20,000. This is news to the Auditor's Office and no evidence of this was provided to us during the audit. Page 3 of the performance audit report cites the splitting of the bid and the fact that WSI could not find a separate vendor to supply the materials than the vendor who was going to supply the training. WSI ended up with the same vendor supplying both the training and materials.

The board chairman further testified that they take the audit seriously and will work on implementing the recommendations. It has appeared in the media that WSI claims it concurred with 88% of the recommendations in the performance audit. This is "kind of" true. In approximately 40% of their responses they indicate they concur with the recommendation but then go on to indicate they did nothing wrong. For example, there are recommendations (pages 35-37) regarding downloading photos off of the drivers license system and using the Special Investigations Unit resources to try to track down the individual who sent the public information to legislators, state officials and WSI employees. The report indicates we feel WSI violated their contract with the Department of Transportation, that it was inappropriate and that it constituted "abuse" as defined in the auditing standards. WSI concurs with the recommendation but then goes on to say they believe the use of those resources was appropriate and that it was not abuse. This perspective does not inspire a lot of confidence that WSI will indeed make improvements and that similar circumstances in the future won't end up with the same results. If one subtracts the approximate 40% of these "concurrences" from the

original 88%, it means that WSI concurred with and recognized improvements are needed in 48% of the recommendations which is an extremely low rate.

Finally the performance audit contains instances where the State Auditor's Office contacted other entities to gain additional information prior to preparing our findings. These would include the Attorney General's Office, OMB's Risk Management Division, and the Department of Transportation. In all cases these, entities agreed with our conclusions in the relevant areas. During the audit and in some cases in their responses to the audit report, WSI would have us believe that all of these entities are wrong, and that they are right. This perspective is unreasonable.

Good Morning

My name is Paul Genter. My work experience is as follows.

Chief of Police in Medina ND – 1 year

Deputy Sheriff in Mclean County – 3 years

Deputy Sheriff in Burleigh County - 23 years

I am in support of SB 2257 and believe the Governor should have the power to choose the executive director of WSI. This should be on a non-partisan basis.

The Office of Independent Review should be under the direction of the Governor.

WSI should have hearing officers and their findings should be final.

If there are any discrepancies as to an injured worker injuries or abilities, a medical assessment must be given to evaluate the injury or ability.

Claims should be adjudicated as rapidly as possible. To have a reduced or discontinued benefit over a long period of time is unfair to the injured worker and there family.

2257
#11

Medical, vocational assessment and age should all be considered when job placement is contemplated.

Jobs should be in the area that the injured worker resides. To expect an injured worker to relocate to another part of the state, sell their home, take children out of school and have a wife quit her job, is totally unreasonable.

The constant harassment from WSI with their skill enhancement programs towards an injured worker that has already been deemed incapable of performing a given task needs to be stopped.

Pre 1995 WSI laws should be reenacted because at present the State of ND has only 4 attorneys that regularly work WSI cases. The laws that are in place now make it next to impossible to receive compensation from WSI. This is unfair to the injured worker and their attorneys. The attorneys are inundated with work load and can't give each case as much time as they need, this is unfair to the injured worker because they can't receive fair and rapid representation in the settlement of a claim.

WSI's pre-conceived notion that all injured workers are parasites to the system needs to stop. The premium was paid by the employer in the event that a worker gets injured. The monies received belong to the injured worker not the Executive Director and the Board.

The only way to fairness is to level the playing field and this needs to begin here with the ND Legislators.

At some point the Bureau must recognize it is dealing with real people not merely statistics and notions in a file.



**Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2257
February 27, 2007**

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. A list of the specific members is attached to my testimony. As a group we stand in support of SB 2257 and urge a do pass vote from the committee on this bill.

This committee had the opportunity to consider WSI governance before crossover and passed HB 1460 as a means of addressing this issue. After hearing much of the same debate the Senate passed this bill. We believe either bill will provide a proper and incremental way to address the concerns with the board of directors and look forward to participating in the discussions in each chamber.

Thank you for the opportunity to appear before you today in support of SB 2257.
I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association

Executive Summary

Results and Findings

Recommendations addressed in this report are listed in Appendix A. Discussions relating to individual recommendations are included in Chapters 1 through 4.

Procurement System

We determined Workforce Safety & Insurance (WSI) does not have an adequate procurement system. WSI has not established sufficient controls necessary to have an adequate procurement system. One area of concern relates to executive management apparently circumventing controls which had been established. We also noted a significant lack of adequate policies, and implementation of those policies which have been established.

Human Resource Management System

We determined WSI has not established an adequate human resource management system. We noted a number of areas of concern related to aspects of human resources including hiring of employees, evaluating employees, conducting investigations involving employees, using a pay for performance system, making payments to employees, and establishing adequate policies. Due to the lack of an adequate system, we noted inconsistencies, inappropriate actions being taken, and apparent preferential treatment taking place.

WSI Management

We determined WSI management has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas of concern related to the organization's personnel system, the organization's procurement system, strategic planning, and actions, or lack of actions, taken by the Executive Director.

Board of Directors

We determined the WSI Board of Directors has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas where improvement could be made relating to the Board's governance of the organization as well as compliance with its adopted governance model.

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

B

The System of Old

The System Today

Improved Service and Less Adversarial

Claims Processed w/ 14 days:	44% (1995)	63%	Through Board oversight, operational performance monitoring, and various other accountability mechanisms, benefit delivery and customer service has improved. 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% (1997)	96%	
Independently Conducted Injured Worker Customer Satisfaction Surveys (Scale 1 to 5):	4.09 (1998)	4.38	
Independently Conducted Employer Customer Satisfaction Surveys (Scale 1 to 5):	Did not exist	4.21	
Medical Provider Satisfaction Survey:	Did not exist	3.83	Today's system is much less adversarial than the system of old. Litigation requests have been reduced by over 85%. Today, only 1% of all claims filed request litigation. Constituent service requests are down by over 73% today.
Requests for litigation:	1400 (1994)	209	
Constituent Service Requests:	336 (1997)	91	
Paid Medical, ALAE, and Wage-Loss Benefits:	\$66.4 Million (1997)	\$82.7 Million	
Payments to IW Counsel:	\$1.1 Million (1997)	\$158,000	

Less Injuries

Claims per 100 Covered Workers:	7.28 (1997)	6.78	Employer participation in safety programs has resulted in declines in claim injury rates.
Wage-Loss Claims per 100 Covered Workers:	1.06 (1997)	0.73	

Premium Stability

Rate Changes:	Numerous double digit rate increases up to 60% one year.	Eight consecutive reductions and three small inflationary increases in the last 11 years.	Legislative reforms providing for Board governance and monitoring, Independent Performance Audits/Evaluations, 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.
Yearwide Earned Premiums (before dividend credits):	\$133 million (1996)	\$121.6 million	

Financially Healthy

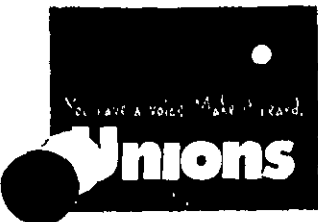
Net Assets:	\$240 Million Deficit (1994)	\$501 Million Surplus	Timely and periodic Board review of the fund's investment allocations and strategies has contributed to an improved financial position. Due to positive investment results, 40% premium dividend credits have been issued the past two years.
Declared Dividends:	\$0	Approximately \$100 million the past two years.	

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.	Return on Investment for 2006 was \$4.03 saved for every dollar spent.
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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. 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 no 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.
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NORTH DAKOTA AFL-CIO

1323 E. Front Ave., Suite 1 • Bismarck, ND 58504-6097
(701) 223-0784 • FAX (701) 223-9387

David L. Kernoltz
President

Arnold H. Zins
First Vice President



TRUSTEES

Terry N. Curl

Mark Hager

Gerry Nies

VICE PRESIDENTS

AWIU

Bruce Bergson

BCTGM

Scott Ripplinger

BOILERMAKERS

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BRICKLAYERS

Randy Carlson

OP & CMIA

James A. Murray

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Loren E. Moe

IBEW

Wesley Lynnes

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AFGE

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if

MACHINISTS

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BMWE

MINE WORKERS

Tom M. McLaughlin

OPBU

Heather Cowdrey-Murch

IUOE

Virgil D. Horst

PAINTERS

MKG

POLICE ASSOCIATION

ROAD SPRINKLER FITTERS

Timothy J. Buchholz

UA

Logan Dockter

APWU

Sue Camahan

SMWIA

Dan Calkins

LSW

Randall J. Edison

AFSCME

Carol Gierszewski

AFT

Colette Bruggman

UTU

John Risch

MISSOURI SLOPE CLC

uning

SOUTHERN PLAINS UNITED LC

Michel

SOUTHERN VALLEY LC

Mark Froemke

GREATER NORTHWEST LC

Mark Hager

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

- WHEREAS:** The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly
- WHEREAS:** The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and
- WHEREAS:** The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it
- RESOLVED:** That the following be provided to the 2007 legislative session.

- 1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.
- 2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.
- 3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.
- 4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.
- 5) Office of Independent Review. Place the control of the OIR with the Governor.
- 6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.
- 7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.
- 8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.
- 9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

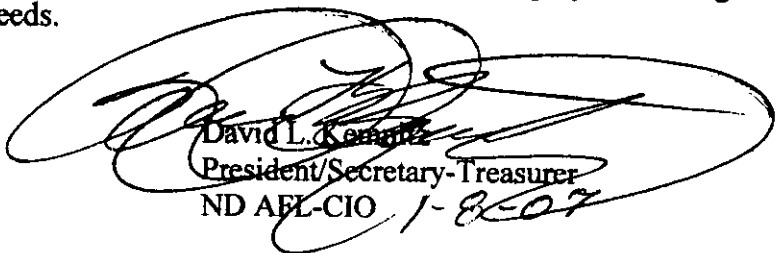
11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.


David L. Kemnitz
President/Secretary-Treasurer
ND AFL-CIO 1-8-07

<http://www.in-forum.com/Opinion/articles/157478>

Ed Schafer (governor 1992-2000), Fargo letter: The goal for WSI: more accountability
The Forum - 02/23/2007

I appreciated reading Sen. Nick Hacker's, R-Grand Forks, N.D., recent letter to the editor regarding his amendments to Sens. Nething and Joel Heitkamp's, D-Hankinson, N.D., proposed legislation involving Workforce Safety and Insurance.

I agree that there is no apparent appetite for senators to vote to bring some accountability for this agency back to the people through an elected representative. Sen. Hacker worked to bring some compromise to the proposed legislation and helped move the legislation in a better direction than the current structure. (I'm not sure, however, what the agriculture commissioner has to do with WSI.)

But I do believe that Sen. Hacker and others should present the proper facts to the debate. He justifies the current governance structure by pointing to performance measures of the agency. He states in his writing that in 1995, the agency was moved out of the Governor's Cabinet (it was in 1997), and at the time there was a \$250 million deficit (the largest was \$236 million), benefits were being cut and rates increased.

In reality, he is using the statistics that were inherited at the beginning of my first term as governor and giving a false impression of the performance of the agency as a standalone entity. The Comprehensive Annual Financial Report available at the Office of Management and Budget or Legislative Council shows when the agency was actually removed from the Governor's Cabinet, that deficit had been moved to a \$38 million surplus – a \$272 million turnaround. WSI records also show that benefits had been restored and rates had gone down for the first time in over a decade.

Clearly, if performance had been the issue, WSI should have stayed under the control of the governor.

2/26/2007

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WSI bill rejected

By DALE WETZEL

Associated Press Writer



Rep. George Keiser, R-Bismarck, asks House members to reject a revamping of the state's workers compensation agency, during floor debate, at the Capitol in Bismarck, N.D., on Monday, Feb. 12, 2007. Keiser, the chairman of the committee that heard the bill, told House members they need not grant the governor the authority to appoint the agency's director. The House agreed with Keiser and defeated the bill. (AP Photo/Will Kincaid)

North Dakota's workers compensation agency has promised to address the management shortcomings highlighted in a recent state audit by next month, its legislative defenders say.

The North Dakota House on Monday staved off a second attempt to restore the governor's authority to appoint the state's workers compensation director. Representatives voted 60-33 to reject a proposal to allow the governor, rather than an appointed board, to hire the top administrator for the Workforce Safety and Insurance agency.

"Obviously there are always things that need to be improved in any organization, but I think we have made some real good improvements," said Rep. Wes Belter, R-Leonard. "I do not think that this bill would change things for the good."

The North Dakota Senate rebuffed a similar bill last month. Instead, senators favored legislation to allow North Dakota's attorney general, agriculture commissioner and insurance commissioner to review candidates for WSI's board rather than leaving the board itself with control over new appointments.

Two separate audits of the agency last year detailed significant management and employee morale difficulties at WSI, which administers insurance and rehabilitation programs for workers who are injured on the job.

"The best way to fix workers' comp is to fix it at its core, and its core is the organization," said Rep. Steve Zaiser, D-Fargo. "I think it's deeply flawed, because there is no real accountability."

Rep. Merle Boucher, D-Rolette, the House minority leader, said there was "a tremendous amount of chaos" at the agency.

"There's turnover in the staff. There's dissatisfaction out amongst the general public, with the working people that it's supposed to represent," Boucher said.

Republicans opposed the overhaul, saying that under the agency's present structure, it is in better financial condition and does a better job of processing claims.

Rep. George Keiser, R-Bismarck, said state workers compensation administrators were in the process of implementing recommendations made by the state performance audit, which was published late last year.

"This is no time to impact the workers of North Dakota, the injured workers, in a negative way," Keiser said.

PERFORMANCE AUDIT REPORT

Workforce Safety & Insurance

October 26, 2006

Report No. 3024

2257
#1

October 26, 2006

Honorable John Hoeven, Governor

Members of the North Dakota Legislative Assembly

Transmitted herewith is the performance audit report on aspects of Workforce Safety & Insurance. This report contains the results of our review of the adequacy of the organization's procurement system, the organization's human resource management system, and policies and procedures related to leadership and accountability.

The audit was conducted pursuant to and under the authority of North Dakota Century Code Chapter 54-10. Included in the report are the goals and scope, findings and recommendations, conclusions, and management responses.

Sincerely,

Robert R. Peterson
State Auditor

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Executive Summary

Results and Findings

Recommendations addressed in this report are listed in Appendix A. Discussions relating to individual recommendations are included in Chapters 1 through 4.

Procurement System

We determined Workforce Safety & Insurance (WSI) does not have an adequate procurement system. WSI has not established sufficient controls necessary to have an adequate procurement system. One area of concern relates to executive management apparently circumventing controls which had been established. We also noted a significant lack of adequate policies, and implementation of those policies which have been established.

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We determined WSI has not established an adequate human resource management system. We noted a number of areas of concern related to aspects of human resources including hiring of employees, evaluating employees, conducting investigations involving employees, using a pay for performance system, making payments to employees, and establishing adequate policies. Due to the lack of an adequate system, we noted inconsistencies, inappropriate actions being taken, and apparent preferential treatment taking place.

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We determined WSI management has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas of concern related to the organization's personnel system, the organization's procurement system, strategic planning, and actions, or lack of actions, taken by the Executive Director.

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We determined the WSI Board of Directors has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas where improvement could be made relating to the Board's governance of the organization as well as compliance with its adopted governance model.

Procurement System

Introduction

A goal of this performance audit was to answer the following question:
"Has Workforce Safety & Insurance established an adequate procurement system?"

We determined Workforce Safety & Insurance (WSI) does not have an adequate procurement system. WSI has not established sufficient controls necessary to have an adequate procurement system. One area of concern relates to executive management apparently circumventing controls which had been established. We also noted a significant lack of adequate policies, and implementation of those policies which have been established. Significant improvements needed with WSI's procurement system are included in this chapter. Improvements of less significance were communicated to WSI management in a separate letter.

To determine whether WSI had established an adequate procurement system, we:

- Reviewed WSI's procurement policies and procedures;
- Reviewed selected contracts and related procurement documentation;
- Reviewed support for selected expenditures; and
- Interviewed selected staff.

Improving Procurement Policies and Procedures

We reviewed 53 contracts to determine if WSI complied with State procurement laws, administrative rules, Office of Management and Budget (OMB) policies, and WSI policies and procedures. We identified noncompliance issues in a number of procurement areas. We identified WSI did not consistently adhere to procurement requirements, criteria, or guidelines in:

WSI was in noncompliance with procurement requirements.

- Using selection criteria for awarding contracts;
- Following printing requirements;
- Obtaining legal department approval of contracts;
- Using the Attorney General's contract guidance;
- Following "Guidelines to Managing Contractual Risk;"
- Including insurance requirements in solicitations;
- Obtaining appropriate insurance documentation;
- Using vendors who are registered with the Secretary of State;
- Using informal bids versus informal proposals;
- Using Service Requisitions; and
- Using Service Evaluations.

Three contracts were awarded using inappropriate selection criteria. North Dakota Administrative Code Section 4-12-11-01 requires contracts to be awarded to the responsible vendor with the lowest responsive bid. WSI was not aware of this NDAC requirement regarding two of these contracts. For the third contract, WSI was unable to explain why the contract was not awarded to the lowest bid.

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State procurement requirements for printing were not followed for two printing jobs. The first involved the printing of an instruction sheet for the "First Report of Injury" form and the "First Report of Injury" form itself. The vendor considered this one "job" of 100,000 copies (same print stock, font color, and electronic media source). WSI considered this to be two "jobs" of 50,000 copies each. This project was just over \$2,500, the level at which state law requires the printing to be done by OMB or contracted by OMB. The second print "job" was approximately \$7,000. In review of information, we noted the entire project appeared to be poorly planned as the printing was rushed and WSI concluded there was not enough time to comply with state law relating to printing.

WSI policy states certain contracts are required to be approved by their legal department. Of the 53 contracts reviewed, 6 contracts (11%) were not approved as required by WSI policy.

North Dakota Century Code requires agencies to follow OMB purchasing guidelines. These guidelines require the use of the Attorney General's Office's sample contract contained in the "Contract and Review Manual." Of the 53 contracts reviewed, 26 did not follow the Attorney General's sample contract.

State agencies are required to follow OMB's "Guidelines to Managing Contractual Risk." These guidelines require a risk analysis for all contracts and appropriate insurance provisions be included in state contracts. WSI personnel were not familiar with these guidelines and 34 of the contracts reviewed did not appear to have adequate risk analysis. These same guidelines require agencies to obtain certain insurance certificates or endorsements as applicable. Of the 53 contracts reviewed, 30 contracts did not contain, or contained inadequate, insurance documentation.

OMB guidelines require most vendors be registered with the Secretary of State. WSI contracted with six vendors that should have been registered with the Secretary of State but were not.

OMB guidelines provide guidance regarding when to use informal bids versus informal proposals, including oral versus written solicitations. WSI used informal bids for six contracts when informal proposals would have been preferable. Informal proposals would allow WSI to consider additional qualitative factors when evaluating proposals.

WSI's policies require the use of Service Requisitions and Service Evaluations. Due to poor communication of policies and lack of implementation of these policies, 35 of 53 contracts reviewed did not have service requisitions and 21 did not have service evaluations.

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Recommendation 1-1

We recommend Workforce Safety & Insurance take appropriate action to formally establish an adequate procurement system. The organization should, at a minimum:

- a) Ensure purchasing policies are thoroughly documented, communicated to appropriate employees, and implemented;
- b) Centralize recordkeeping of procurement information; and
- c) Establish an adequate monitoring process to monitor compliance with laws, Office of Management and Budget guidelines, and the organization's policies.

In establishing a formal procurement system, the organization should ensure changes are made to address all areas identified in the report as requiring improvement, including compliance issues.

Management's Response

CONCUR: WSI has been and continues to be committed to ensuring that it has an adequate procurement system. See Appendix B for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix B for the State Auditor's concluding remarks.

Using WSI Procurement Office

In review of contracts awarded by WSI, certain contracts did not properly involve WSI's Procurement Office from the beginning of the process. Instead, executive management started procurement processes which, in effect, circumvented established controls. Two contractors, involving multiple procurement transactions, were identified and information related to each is below.

When the Procurement Office was not properly involved, problems with the processes used were noted.

1. Contractor was paid \$47,500 during our audit period and was used for three WSI procurements. Two of the procurements related to the same purpose – to provide a training seminar for WSI. Information related to the two purposes for selecting this contractor follows:
 - WSI bid out the books needed for a training seminar separately from the actual training. The training books cost \$10,500 while the training was purchased for \$16,000. When these two are properly combined, the \$26,500 procurement would have required WSI to use a formal request for proposal. North Dakota Administrative Code (NDAC) Section 4-12-04-08 prohibits the splitting of bids. WSI was unable to identify another vendor who would sell the books without the training course being included.
 - WSI selected the contractor to facilitate a planning meeting (\$21,000). The contractor appears to be selected prior to phone bids being solicited from other vendors. There is communication with this vendor, via email, indicating the vendor had early notice and participated in extensive discussions with WSI prior to other vendors being notified. This results in noncompliance with NDAC Section 4-12-04-03 which prohibits furnishing information to a prospective bidder that

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might give the prospective bidder an unfair advantage. After the discussions are held with this contractor, WSI then obtains phone bids from other vendors. None of the vendors contacted are registered with the State's Procurement Office, one is out-of-state (New York) and one is out of country (Ontario). One of the bids obtained is for \$84,000 – four times the winning bid.

2. Contractor was paid approximately \$19,000 during our audit period and was used for three procurements which are identified below.
 - The vendor appears to have been selected before competitive bids were requested. We reviewed documentation indicating a contract was negotiated with the vendor prior to competitive bids being requested. Once bids were requested, WSI did not select the lowest bid received and instead awarded the contract to the vendor it had previously negotiated with. NDAC Section 4-12-11-01 requires contracts to be awarded to the lowest responsible bidder which does not appear to have happened.
 - The vendor appears to have been selected before competitive bids were obtained. We reviewed documentation indicating this vendor had early notice and participated in extensive discussions with WSI prior to other vendors being notified. This results in noncompliance with NDAC Section 4-12-04-03 which prohibits furnishing information to a prospective bidder that might give the prospective bidder an unfair advantage. The bid from the selected vendor appeared incomplete and not comparable to the other bids received. The selected vendor's bid excluded four of the eight specifications asked for in the request for a bid. The other two bidders submitted a bid for all eight specifications. Rather than disqualifying the vendor for being unresponsive, WSI awards the contract to this vendor. The vendor selected had a phone quote of \$14,400 while the other two bids obtained were \$60,000 and \$204,000. The contract awarded to the vendor was suspended for violating WSI's harassment policy (conclusion of WSI's own investigation) so the full amount has yet to be paid.
 - The vendor also received payments of approximately \$6,800 for services which were not included as part of a contract. These services should have been awarded following a competitive process in accordance with state procurement requirements. The majority of the payments (approximately \$5,600) are for the vendor to facilitate a retreat in Medora.

WSI's Procurement Office was not properly involved in the above procurements involving the two contractors. We also noted other instances in which WSI's Procurement Office was not properly included in the procurement process. For example, we noted noncompliance issues regarding printing projects which did not involve WSI's Procurement Office (discussed in the section entitled "Improving Procurement Policies and Procedures").

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The apparent override of procurement processes and procedures raises concerns related to executive management. Such behavior sets a negative tone at the top regarding compliance with laws and established policies and procedures. Not only does such behavior set a negative tone at the top, but such instances also require the information to be used in assessing the potential for fraud. As indicated by *Government Auditing Standards* and other professional guidance (such as SAS No. 99), when management is willing to override internal controls, the risk of fraud is higher.

Recommendation 1-2

We recommend the Workforce Safety & Insurance Procurement Office be involved at the beginning of all competitive, limited competitive, noncompetitive, and negotiated purchases.

Management's Response

CONCUR: Management is aware that this recommendation does not include noncompetitive purchases under \$2,500 with a purchasing card. The Procurement Officer is a critically important element of WSI's organizational structure. WSI has continually expected that the Procurement Officer be involved from the start of each applicable purchase. In support of this expectation, after a concern was raised by the Procurement Officer that they were not being involved in contracts until the end, a managers meeting was held in June of 2005 to present a procurement overview and outline the need to involve the Procurement Officer as soon as possible in the procurement process. See Appendix B for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI states it has continually expected the Procurement Officer to be involved from the start of applicable purchases and held a meeting in June 2005 to present information. This meeting was either missed by certain managers, information was misunderstood by managers, or managers chose to ignore information as WSI continued to fail to properly include the Procurement Officer as soon as possible in the procurement process. See Appendix B for the remainder of the State Auditor's concluding remarks.

Improving the Use of Public Funds

We identified expenditures appearing to result in noncompliance with constitutional provisions, state law, and OMB policy. While individually not for significant amounts, we did identify expenditures totaling approximately \$18,300. Examples of expenditures include:

- Gift certificates/cards purchased from various restaurants, a gas station, shopping mall, and movie theaters (we did identify \$3,500 of certificates/cards were purchased in the last 2 ½ months of the biennium and were distributed/used in the next biennium);
- Beverages and lunches;
- Carnations and balloons;
- Paying for legislators to attend insurance conventions;
- WSI inviting a legislative committee to lunch to present its 2005 legislative bills and paying for the meal;

Public funds appear to have been used for purposes which do not relate directly to the agency's statutory responsibilities.

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- Decorations and costume rental; and
- Ornaments/trinkets.

Public funds should be spent efficiently and only expended to pay for expenditures that are directly related to the purpose of the agency and within the agency's statutory responsibilities. As required by the Constitution of North Dakota and in accordance with a 1993 Attorney General's Opinion, an agency may expend public funds only for public purposes.

Recommendation 1-3

We recommend Workforce Safety & Insurance make improvements with how public funds are used. The organization should, at a minimum:

- a) Ensure expenditures comply with constitutional provisions, North Dakota Century Code requirements, and OMB Policies; and
- b) Ensure expenditures are for necessary and reasonable purposes.

Management's Response

CONCUR: However, WSI does not concur that it has been noncompliant. WSI is focused on assuring the agency follows the law and conducts itself appropriately and believes it has predominantly obeyed all applicable laws and OMB guidance under NDCC 65-02-01.2 and OMB Policy 207. See Appendix B for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI states it does not concur it has been noncompliant. Based on management's response to this recommendation and the previous two recommendations, we are concerned with management's unwillingness to take responsibility for actions it has taken. For example, in their response to the first recommendation, WSI makes references to and attempts to place blame on the Procurement Officer for the findings. However, it was WSI management who failed to properly include the Procurement Officer in the problem areas we noted. In regards to this recommendation, this is the second review which concludes WSI has not appropriately expended public funds. A private CPA firm selected by the Risk Management Division of OMB to review procurement areas also concluded WSI was not spending moneys as it should. See Appendix B for the remainder of the State Auditor's concluding remarks.

Using Established Evaluation Methodology

In review of WSI's process for awarding a contract in excess of \$500,000, we identified WSI inappropriately changed the evaluation methodology after proposals were received. There were two evaluations used in the procurement process – one to evaluate the proposal and one to evaluate a demonstration by the vendors. While the proposal evaluation was scored consistently with other WSI evaluations we reviewed, the demonstration evaluation was not. WSI removed the high and low scores of the employees' evaluations and then averaged evaluation scores. If the high and low scores were not excluded, it appears a different vendor would have been selected.

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Methodology for evaluating vendor demonstrations was changed after the demonstrations.

Both NDAC and OMB policies require evaluation methodologies to be established and consistently followed. When such changes do occur, there are concerns regarding bid manipulation and related liability issues. WSI management believed members of the evaluation team may not have been acting in good faith and thus, required the change to occur. Rather than making such a change, WSI should have considered dismissing members of the evaluation team and replacing them with members management believed would have looked out for the interests of the organization as a whole.

Recommendation 1-4

We recommend Workforce Safety & Insurance use the established evaluation and selection methodology to ensure fairness in awarding contracts.

Management's Response

CONCUR: WSI has, and will continue to, utilize the evaluation and selection methodology in accordance with the guidelines established by the State of North Dakota Procurement Office. See Appendix B for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix B for the State Auditor's concluding remarks.

Ensuring Contracts are Established

In review of contracts and payments made for services, we identified WSI had paid for services prior to contracts being finalized. WSI allowed one of its largest vendors (paid over \$3 million during the audit period) to conduct work and be paid for services for one month without a contract being established. This appears to have occurred when WSI did not enter into a six month contract extension in a timely manner. We also identified a vendor was allowed to incur expenses of \$16,000 before the contract was signed. WSI noted this was an oversight as the contract was provided to the vendor five months before but was not returned. Allowing work to be performed not pursuant to written agreements increases risk in a number of areas including unexpected liabilities, actual payments to be made, what services are to be provided, etc.

Recommendation 1-5

We recommend Workforce Safety & Insurance ensure contracts are in place before work commences or continues on an expired contract.

Management's Response

CONCUR: The two instances noted are rare and in the future WSI will ensure contracts are signed before vendors are authorized to begin working. WSI acknowledges the second instance was an oversight and took the necessary corrective action once the error was identified.

Improving Payments for Contracted Services

In review of contract payments, we identified WSI making four payments to contractors which appear to be pre-payments. One pre-payment (\$35,000) was for a 12 month contract. Another payment identified in the amount of \$12,500 allowed WSI to use a prior biennium's appropriation. While the other two pre-payments are for minimal

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amounts (\$1,200 and \$750), WSI did have to suspend one contract which resulted in additional resource being used to recover the amount.

When advance payments are made, there is a risk that the goods or services will not be received or required specifications will not be met. Withholding payment until satisfactory performance has been accomplished is one way to ensure the state receives goods or services in compliance with contract terms.

Recommendation 1-6

We recommend Workforce Safety & Insurance ensure contracts are not paid until the services have been performed to the organization's satisfaction.

Management's Response

CONCUR: Advance or pre-payments are extremely rare and WSI acknowledges that they should be provided in only extremely limited circumstances. In reference to the four instances in the narrative. The first was a May of 2003 contract for services required by law in Minnesota in order to continue to establish its subsidiary insurance company in the state. The second item was a follow-up review to a recommendation within the 2004 Performance Evaluation in which WSI agreed to pay one-half (\$12,500) up front to cover expenses (travel, lodging, etc...) and work started in June of 2005. On-site work for this review commenced on June 28, 2005. Given the circumstances of the two instances outlined above, WSI exercised its discretion and determined the payments in these two instances were appropriate. As for the remaining two items (\$1,200 and \$750), WSI acknowledges that they were inadvertent and should not have occurred.

Analyzing Contractor versus Temporary Employee Relationships

In review of information, employees identified as temporary employees by WSI appear to be independent contractors. From July 1, 2003 to March 31, 2006, one of these contractors was paid \$72,000 while the other was paid approximately \$68,000. Hiring contractors as temporary employees allows a state entity to select who they want without having to follow the necessary laws and policies related to procurement of services.

Recommendation 1-7

We recommend Workforce Safety & Insurance formally analyze potential temporary employee relationships to ensure contractors are not hired as temporary employees.

Management's Response

CONCUR: Whether to structure a business relationship as an independent contractor or an employee is not always a "black and white" determination. At the time of hire, those who reviewed the circumstances considered both individuals to be appropriate temporary employees and that a temporary employee relationship was in the best interest of the State. WSI does concur that in future determinations documentation of such an analysis should be placed in the employee's record.

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Improving Reimbursements to Executive Director

When the Board of Directors approved the hiring of the current Executive Director, the minutes identify an amount of a base salary "with a housing/business expense allowance of \$18,000." In review of expenditure information, we noted the Executive Director being reimbursed for items which a typical business expense allowance would appear to cover. We noted the Executive Director being reimbursed approximately \$660 for various items, \$7,600 for travel related areas, and WSI also pays \$12,000 in membership dues of a CEO membership organization. This could result in WSI effectively paying twice for expenses (expense allowance paid and again when vouchers are submitted). A recommendation in Chapter 4 is made to the Board of Directors to clarify how the expense allowance is to be used (section entitled "Clarifying the Executive Director's Expense Allowance").

The Executive Secretary prepares and approves most of the Executive Director's vouchers for reimbursement. WSI noted the former Finance Director would approve the coding of expenditures which apparently was including a review of the support for reimbursements as well. This appears to have been an informal process as no documentation exists regarding the Finance Director's review or approval of support.

Recommendation 1-8

We recommend Workforce Safety & Insurance make improvements related to reimbursements to the Executive Director. The organization should, at a minimum:

- a) Require the Executive Director to use his business expense allowance;
- b) Ensure the person preparing the Executive Director's voucher is not the person approving the voucher and is not a person reporting directly to the Executive Director; and
- c) Ensure the person approving the reimbursements has sufficient knowledge of the Board of Directors' intent relating to the Executive Director's business expense allowance.

Management's Response

- a) DO NOT CONCUR: As part of the Executive Director's most recent annual performance, this issue was addressed. The Executive Performance Committee recommended to the Board of Directors that the expense account provision be eliminated and that the \$18,000 be considered as salary. The Board accepted and voted in support of the Executive Performance Committee's recommendation(s) at its November 9, 2006 meeting.
- b) CONCUR: WSI will require the Director of Finance to sign off on Executive Director vouchers.
- c) DO NOT CONCUR: See management's response to Recommendation 1-8 (a).

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State Auditor's Concluding Remarks

WSI states it does not concur the Executive Director should use his business expense allowance as intended. This statement concerns us considering the Board of Directors had specifically provided such an allowance to the Executive Director with little or no guidance. The fact the Board decided to eliminate this account and include the amount as salary is irrelevant as this occurred after the concerns regarding the expense allowance were brought to management's and the Board's attention. We did not state such an allowance should not have been provided but noted clarification was needed.

Improving the Reimbursement of Taxes

When the Executive Director and the Chief of Employer Services were hired, each received a letter from WSI identifying relevant employment information including extending relocation concessions (reimbursements for moving expenses incurred). The letter states portions of the reimbursement may be taxable and reported on a federal W2 tax form. A year after the Executive Director was reimbursed for moving expenses, the Chair of the Board of Directors, at the request of the Executive Director, notified the Finance Director to reimburse the Executive Director and the Chief of Employer Services for their income tax liability related to the taxable portion of the moving expense reimbursement. WSI reimbursed both individuals for their tax liability (total approximately \$1,350). We identified no information provided to the employees which indicated WSI would pay for the tax due on the taxable portion of the reimbursement.

Recommendation 1-9

We recommend Workforce Safety & Insurance make improvements with reimbursing employees for taxes already paid by employees. The organization should, at a minimum:

- a) Ensure tax reimbursement payments are reasonable and done in accordance with established agreements;
- b) Attempt to recover the amounts improperly paid to employees; and
- c) Ensure requests made to the Chair of the Board of Directors are reasonable.

Management's Response

- a) CONCUR: This authorization was given based on a verbal commitment made by the Chair during the hiring negotiations with the Executive Director. Both parties understood there would be no cost to the Executive Director for moving expenses. This same representation was made by the Executive Director to the Chief of Employer Services during employment negotiations and was based on the Executive Director's understanding that taxes would be reimbursed as part of the compensation package.
- b) DO NOT CONCUR
- c) CONCUR: The Board Chair considered this request to be reasonable.

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Applying Expenditures to the Appropriate Biennium

In review of expenditure information, we identified approximately \$24,600 being applied to the incorrect biennium. This results in noncompliance with legislative intent related to appropriation laws as well as OMB policy. In review of information, we were concerned with the fact that WSI appears to have applied purchases to a biennium inappropriately because funding was available. For example, WSI admitted they arranged for an expenditure of \$10,500 to be applied to the 2003-2005 appropriation because the funding was available. Also, we noted a payment of \$12,500 to a vendor in a biennium which allowed WSI to use a prior biennium's appropriation.

Recommendation 1-10

We recommend Workforce Safety & Insurance comply with legislative intent and apply expenditures to the appropriate biennium.

Management's Response

CONCUR: However, WSI does not concur with the description in the narrative "that WSI apparently applied purchases to a biennium inappropriately because funding was available." WSI followed the Office of Management and Budget's Expenditure and Revenue Policy 200 (Financial Statement — Fiscal Year Cutoff). See Appendix B for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix B for the State Auditor's concluding remarks.

Human Resource Management System

Introduction

A goal of this performance audit was to answer the following question:
"Has Workforce Safety & Insurance established an adequate human resource management system?"

We determined Workforce Safety & Insurance (WSI) has not established an adequate human resource management system. We noted a number of areas of concern related to various aspects of human resources including hiring of employees, evaluating employees, conducting investigations involving employees, using a pay for performance system, making payments to employees, and establishing adequate policies. Due to the lack of an adequate system, we noted inconsistencies, inappropriate actions being taken, and apparent preferential treatment taking place. Significant improvements needed within WSI's human resource management system are included in this chapter. Improvements of less significance were communicated to management in a separate letter.

To determine whether WSI had established an adequate human resource management system, we:

- Reviewed WSI's personnel and classification system;
- Reviewed applicable laws, policies, and procedures;
- Reviewed applicable management controls; and
- Interviewed selected staff.

WSI Personnel System and Salary Information

WSI's classification system is, for the most part, the same classification system used for other state agencies.

The 1995 Legislature removed WSI from the state's classified system and allowed the organization to establish its own personnel system. Prior to January 1, 2006, WSI used a pure market classification system in which salary ranges for positions were determined by using one national and two local positions for comparison purposes. Beginning January 1, 2006, WSI implemented a new classification system based on the results of a review conducted by an outside consultant (Hay Group).

WSI's current classification system is, for the most part, the same classification system administered by Human Resource Management Services. Under both systems, positions are evaluated based on the same eight factors, points are assigned to these factors, and the total points relate to a pay grade. Each pay grade is assigned a salary range. The significant difference noted in the two systems is the salary ranges of WSI are significantly higher than HRMS. For example, WSI has two pay grades with a higher minimum amount than all pay grade minimums used by HRMS. In comparison of similar job titles from one system to the other, WSI's pay grades assigned are significantly higher.

When WSI implemented the new system, increases were given to ensure employee salaries were brought up to the new minimum level of the assigned pay grade or to provide an increase based on the number of years the employee was in their position (termed "XYZ" increase, maximum of 3.5%). WSI's calculation for implementing the new ranges

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identified salary increases ranging from 0% to 27%. WSI estimated the new system would result in an additional \$600,000 being expended in the 2005-2007 biennium and would require an additional \$800,000 for the next biennium. As identified later in this chapter, with additional raises provided to employees, the 2007-2009 biennium will require over \$2 million more for salaries compared to the current biennium amount.

Making Improvements with the Performance Appraisal Process

Improving Appraisals and Pay for Performance

WSI's pay for performance system has not operated effectively due to problems with the performance appraisal process.

Based on a review of information regarding performance appraisals of WSI employees, we noted significant improvements are needed. As the organization's pay for performance system relies on the performance appraisal process, we also determined the pay for performance system has not operated effectively. In addition, we identified noncompliance with a state law requirement to obtain an employee's signature on documentation within employee personnel files.

WSI policy requires a performance appraisal of employees to be completed annually. Our review noted the following:

- All employees were not receiving performance appraisals annually as required by policy.
- One raise, apparently based on a performance appraisal, was given prior to the performance appraisal being completed.
- A new performance management plan was implemented in November 2005. Based on a review of information and limited discussions with supervisors, there was confusion as to what forms are required to be completed, which are optional, and what forms are to be provided to the Human Resources Department.
- Documentation related to employees' goals and objectives for the evaluation period does not appear to be completed prior to the beginning of the period under review. Evaluation criteria should be developed and communicated to employees at the beginning of the appraisal period.
- The performance appraisal process involved only supervisors conducting appraisals of those they supervise. No evaluations were being conducted of the supervisors by those they supervised.

WSI uses a pay for performance system. Thus, the performance appraisals not only help identify employee performance and determine an employee's potential for advancement, but also provide the information necessary for making salary adjustments. We question the effectiveness of the pay for performance system due to the problems we identified with the performance appraisal process.

We noted the vast majority of employees had received raises and we question whether there was an actual pay for performance system in place. We noted approximately 94% of all employees working throughout the 2004 calendar year received a raise and approximately 94% received a raise in calendar year 2005. The majority of employees received 3% raises in each of the two years. The scale for raises ranges

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from 0% to 5% and is based on the score of the performance appraisal. When discussing implementing the new classification system to the Board of Directors in August 2005, the Executive Director stated the Board had asked that the pay for performance system be looked at as it never really developed to what they hoped it would be. The effectiveness of the pay for performance system will continue to be questioned unless significant changes are made.

Recommendation 2-1

We recommend Workforce Safety & Insurance improve the employee performance appraisal process and ensure the pay for performance system operates in an effective manner. The organization should, at a minimum:

- a) Ensure the performance appraisal process is adequately monitored for compliance with policies including appraisals being completed annually;
- b) Establish the criteria to be used for measuring performance at the beginning of an appraisal period;
- c) Update performance appraisal policies in a timely manner;
- d) Have supervisors evaluated by those they supervise; and
- e) Provide training to employees related to properly completing performance appraisals.

Management's Response

CONCUR (a, b, c, e) and DO NOT CONCUR (d). See Appendix C for the remainder of WSI's response.

Obtaining Employee Signatures on Appraisals

North Dakota Century Code Section 54-06-21 states documents addressing an employee's performance may not be placed in their personnel file unless the employee has had the opportunity to read the material. The employee must acknowledge they have read the material by signing the copy to be filed or an attachment to the copy to be filed. In our review of 29 employees receiving annual performance appraisals, we noted 2 employees had unsigned performance appraisals in their personnel file.

Recommendation 2-2

We recommend Workforce Safety & Insurance comply with North Dakota Century Code Section 54-06-21 and ensure performance appraisal forms are signed by employees before placing them in personnel files.

Management's Response

CONCUR: Regarding the two employees noted with unsigned performance appraisals: the first was an employee in WSI's Fargo office and their review was conducted over the phone and the reviewer forgot to gather the signature; the second employee had signed the appraisal form but the supervisor accidentally kept the signed copy and turned in an unsigned copy. Both issues were immediately rectified and procedures have been put in place to avoid this issue in the future. As noted in management's response to Recommendation 2-1, WSI implemented a new Employee Performance Management system which requires an electronic signature in order for the evaluation to be formally filed.

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Making Improvements with Hiring Employees

In a review of information regarding how employees of WSI are hired, we noted significant improvements are needed. WSI did not have a uniform, consistent hiring process and had not established adequate policies and procedures. We noted noncompliance issues with veterans' preference requirements and identified employees being hired without a competitive hiring process.

Establishing a Uniform Hiring Process and Formal Policies

During a review of information related to the hiring of employees, we noted a number of concerns related to the hiring process. Examples include:

WSI did not have a consistent, uniform process for hiring employees.

- WSI selected individuals for employment who did not meet the minimum qualifications of the position.
- The involvement of the Human Resource Department with the hiring process was not consistent.
- WSI did not use a formal screening process for determining which applicants would be interviewed. As a result, we were unable to determine reasons why qualified candidates were not interviewed but candidates not meeting qualifications were interviewed.
- We noted a question was asked during the interview of two applicants which was technically specific and we could not determine the relevancy of the question as it related to the position. We did note one of the two applicants did have a technical background and knowledge in this area and this applicant was also an acquaintance of the supervisor of the position who was involved in the interview process.
- WSI has not been verifying the education of applicants selected and we noted instances in which work experience was also not verified.

WSI has not established adequate formal policies related to the hiring process. For example, WSI does not have formal policies related to veterans' preference, job interview expenses, and moving expenses for newly hired employees.

Recommendation 2-3

We recommend Workforce Safety & Insurance establish a consistent and uniform process for hiring employees. The organization should, at a minimum:

- a) Ensure selected applicants meet minimum qualifications of the position;
- b) Centralize the hiring process within the Human Resource Department;
- c) Establish a formal screening process and standardized scoring system which is consistently applied to all applicants;
- d) Ensure questions asked of applicants are relevant and pertain to the position's primary duties; and
- e) Verify work experience and education for all individuals hired.

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Management's Response	CONCUR: In August of 2006, WSI implemented a revised hiring process. The modified hiring process includes the use of a register of applicants, uniform scoring sheets, and a certificate of eligible for vacant positions. This new process ensures that: applicants meet minimum requirements; the hiring process is centralized within HR; there is a formal screening and scoring process; questions asked of candidates are relevant; and work experience and education is verified. See Appendix C for the remainder of WSI's response.
State Auditor's Concluding Remarks	See Appendix C for the State Auditor's concluding remarks.
Recommendation 2-4	We recommend Workforce Safety & Insurance establish formal policies and procedures for the hiring process to provide clear guidance and enhance consistency in the process.
Management's Response	CONCUR: WSI created and implemented a formal Hiring Process procedure manual in August 2006 which provides clear guidance and enhances consistency in the hiring process. This procedure manual is housed in the HR Department.
<i>Complying with Veterans' Preference</i>	North Dakota Century Code Chapter 37-19.1 establishes a preference in public employment for veterans. Based on the hiring process used by WSI, we noted points for veterans were being inappropriately awarded during the interview phase instead of during the initial screening phase. We also noted confusion regarding the application of veterans' preference.
Recommendation 2-5	We recommend Workforce Safety & Insurance comply with veterans' preference requirements in North Dakota Century Code Chapter 37-19.1. The organization should, at a minimum: <ul style="list-style-type: none">a) Review veterans' preference requirements with the Office of the Attorney General and modify hiring procedures accordingly; andb) Use certified mail to notify veterans of their nonselection.
Management's Response	CONCUR: As noted in management's response to Recommendation 2-3, WSI has revised the hiring process to include utilizing a register of applicants, uniform scoring sheets, and a certificate of eligible to ensure compliance with NDCC requirements related to veterans' preference. The modified process was outlined in a discussion with a representative of the Attorney General's Office. Based on this discussion, WSI is under the belief that it is now in compliance with the veterans' preference law.
<i>Using Competitive Hiring Process</i>	North Dakota Century Code Section 65-02-01 states the Executive Director may appoint the director of any division and this appointment must be on a nonpartisan, merit basis. When the Chief of Injury Services and the Leadership and Organization Excellence Executive were hired, a competitive process was not followed. The Executive Director noted he hired both individuals on his own based on his

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knowledge of the individuals and due to the fact that he trusted both. The Executive Director noted both individuals were considered to be his friends prior to their hiring. There was no documentation indicating how the hiring of these two individuals was done on a nonpartisan, merit basis.

Recommendation 2-6

We recommend Workforce Safety & Insurance use a competitive hiring process for all positions but document information as to how an appointment is being done on a nonpartisan, merit basis if the Executive Director makes an appointment without a competitive process.

Management's Response

CONCUR: While the necessary documentation was not placed in each individual's personnel file, they were legally appointed on a nonpartisan, merit basis. While he did have a past professional relationship with both individuals, these relationships provided the Executive Director with invaluable first-hand knowledge of their professional qualifications and knowledge, skills, and abilities. It was this knowledge that allowed the Executive Director to make their selections based on their individual "merit." Both individuals have a significant number of years of experience in the field of workers' compensation. Supporting documentation will be placed in each individual's file and in the files of any future appointments under 65-02-01.

Making Improvements with Payments to Employees

In review of salary information and payments to employees of WSI, we noted employees had not received the general increases provided by the Legislature for the 2005-2007 biennium. A formal Attorney General's Opinion was requested and the opinion noted WSI had to comply with the legislative intent to provide the across-the-board increases. We also noted payments provided to certain employees as bonuses did not comply with requirements in state law.

Complying with Legislative Intent on General Increases

Chapter 25 of the 2005 Session Laws identifies legislative intent regarding state employee compensation adjustments. The Chapter requires compensation adjustments of 4% for permanent state employees beginning July 1, 2005 and 4% beginning on July 1, 2006. We noted WSI did not provide the 4% general increases to employees. WSI was specifically listed within the Session Law as receiving an amount (\$213,435) to provide the general increases to its employees. In prior bienniums when the Legislature provided general increases, WSI was specifically identified as being exempt from providing general increases. This did not occur with the 2005 Session Law. WSI believed it was still exempt from providing the general increases so we requested a formal Attorney General's Opinion. In the Attorney General's Opinion, dated June 16, 2006, the following was stated:

- The opinion of the Attorney General is that "all permanent, non-probationary employees at WSI who otherwise do not have documented levels of performance indicating they are not meeting standards must be provided the 4% across-the-board increase in

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The Attorney General concluded WSI was required to provide the 4% across-the-board increases.

salary in each year of the biennium to the extent funds are available."

- The Attorney General states "it is my understanding that WSI has operated under the assumption that it was not subject to the provisions governing permanent state employee compensation adjustments. As a result, considerable monies have already been allocated and spent for employee raises, often above and beyond the 4% provided as across-the-board increases. This has apparently affected the ability of WSI to provide additional 4% compensation adjustments beginning in July 2006."
- The Attorney General states "An agency further must affirmatively take steps to comply with the Legislature's statement of intent on state employee compensation adjustments for the second year of the biennium, including considering rescinding or reducing past increases above the across-the-board adjustment."
- The Attorney General states "it is my opinion that appropriate modifications or off-sets to the actual raises provided may be made to comply with legislative intent."

WSI's first attempt at implementing the Attorney General's Opinion was inconsistent with the Intent of Session Law.

WSI provided us with information on August 9 which identified the actions it had taken to implement the Attorney General's Opinion. In review of this information, we noted WSI had used employees' average fiscal year 2005 salary as a starting point in applying the 4% which is inconsistent with the intent of Session Law. Using the average salary instead of an employee's actual June 30, 2005 salary resulted in employees being paid less than what was required. WSI's explanation for using the average fiscal year 2005 salary was that they were trying to convert employee salaries to match the state's system where pay raises are effective on July 1 of each year. We are unaware of any such state system as explained by WSI and, therefore, WSI's explanation is unreasonable.

In the process leading up to providing employees the general increases, WSI discussed certain issues with representatives of the Attorney General's Office which appear to relate to performance of a limited number of employees. However, WSI did not discuss their significant interpretation of using the average salary with the Attorney General's Office. We question why this significant issue was not brought to the attention of the Attorney General's Office prior to implementation. We did note WSI's original calculations for implementing the 4% increases had appropriately used employee's actual June 30, 2005 salaries. However, the average salaries were added into the calculations on July 19, one week prior to the Executive Director notifying employees of the increases. Not only was WSI's use of the average salary not within the intent of the Session Law, but WSI had to expend additional resources to again implement the 4% increases.

Following a meeting with representatives of the Attorney General's Office, WSI, and our office, WSI again attempted to implement the 4% general increases. In a limited review of this information, it does appear

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to provide the majority of employees with the increases as required by Chapter of 2005 Session Laws. However, we did identify four employees who did not appropriately receive the increase due to calculation errors. When we informed WSI of the errors, WSI noted subsequent appropriate adjustments were made.

WSI withheld increases from former and current employees citing early retirement agreements and performance related issues. In certain instances (10 total), we questioned the sufficiency of documentation regarding performance levels and the impact Chapter 25 of the 2005 Session Laws has on the early retirement agreements. WSI met with representatives of the Attorney General's Office and a representative of our office. The representatives of the Attorney General's Office agreed with WSI there were legitimate issues as to whether these employees were entitled to the 4% increase. After discussing the legal and factual issues, WSI decided to give the 4% increase to all but one employee based on that employee's documented performance.

Recommendation 2-7

We recommend Workforce Safety & Insurance ensure it complies with legislative intent related to employee compensation adjustments.

Management's Response

CONCUR: WSI has administered the four percent general increases in accordance with the Attorney General's formal opinion.

Complying with Bonus Requirements

In review of payments to employees, we noted certain employees received increases which were retroactively applied (made effective to an earlier date which resulted in a lump sum payment being made). Examples include:

- An employee received a \$1,334 monthly increase (21%) in November 2005. The increase was applied back four months to July 2005. Based on information from WSI, the monthly increase consists of a performance evaluation adjustment of \$188, an increase of \$533 to have the employee's salary be at the minimum of a new pay range, and \$613 established by the Executive Director. We were unable to verify how the \$613 was determined.
- An employee received a \$745 monthly increase (11%) in November 2005. The increase was applied back four months to July 2005. Based on information from WSI, the monthly increase consists of a performance evaluation adjustment of \$265, an increase of \$133 to have the employee's salary be at the minimum of a new pay range, and \$347 established by the Executive Director. We were unable to verify how the \$347 was determined.
- An employee received a \$728 monthly increase (14%) in July 2005. The increase was applied back seven months to December 2004. Based on information from WSI, the monthly increase consists of a performance evaluation adjustment of \$161, an increase of \$87 related to a new compensation plan being implemented, and \$480 established by the Executive Director. We were unable to verify how the \$480 was determined.

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Retroactively applying increases for keeping staff and paying closer to market resulted in bonus payments being provided.

When asked for reasons regarding the additional increases (those above performance evaluation adjustments and related to the new compensation plan), the Executive Director noted the employees were respected, their work was respected, the employees would be worked pretty hard, the organization believed and trusted them, and there needed to be increases for keeping staff and paying them closer to market. While it is reasonable for increases to be given to retain staff and pay closer to market, these increases should not be retroactively applied. The retroactive payments made for the increases established by the Executive Director are considered bonuses (does not include increases for performance evaluation or related to the new compensation plan). Requirements related to bonuses are within North Dakota Century Code Chapter 54-06. To provide bonuses, the chapter requires state agencies have a written policy in place and establishes a maximum bonus payment amount allowed. The bonus payments identified at WSI result in noncompliance with requirements in statute.

Recommendation 2-8

We recommend Workforce Safety & Insurance ensure payments made to employees comply with the bonus program requirements within North Dakota Century Code Chapter 54-06.

Management's Response

CONCUR: However, WSI disagrees with the conclusion that the retroactive pay increases are bonuses. Each identified employee in this category was either denied their right to an annual salary review or promoted to a new position with additional responsibilities but not immediately financially adjusted to reflect such responsibilities. As a result, two of the identified employees went two-and-a-half to three years without a compensation adjustment and the third went for over six months with additional duties for which they were not appropriately compensated. After the full analysis by the Hay Group was complete, the Organization was in a position to conduct the appropriate appraisals and compensation adjustments. These salary adjustments were then made retroactive to the appropriate date or to the extent possible. Consequently, these payments were for base compensation and not bonus pay. See Appendix C for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI identifies employees were denied their right to an annual salary review. These employees report to the Executive Director who went from May 2004 until the fall of 2005 without conducting appraisals of such employees. In our review of employee appraisals, we did identify recently hired employees conducting evaluations of employees. For example, we noted an employee who had been at WSI for less than a month completed a performance appraisal on two employees. We are also aware of other employees within WSI who were not provided salary increases for an extended period of time but no retroactive increases were provided to them.

WSI states after the analysis of the Hay Group was complete, the organization was in a position to conduct appropriate appraisals and compensation adjustments. We are unsure how this analysis allowed

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WSI to conduct appropriate appraisals as appraisals were being conducted on the majority of other employees within WSI prior to the analysis being complete. See Appendix C for the remainder of the State Auditor's concluding remarks.

Making Improvements with Investigations

Based on a review of information regarding investigations of incidents involving WSI employees, we noted significant improvements were needed. We identified concerns with how WSI conducts such investigations as well as concerns with the actions taken by the organization upon completion of investigations. In addition, we noted WSI has not properly notified the state's Risk Management Division of certain investigations.

Improving How Investigations are Conducted

WSI has their own employees conduct investigations related to incidents involving harassment and noncompliance with the organization's policies. We noted concerns with who conducted the investigations and how certain investigations were conducted. Examples include:

- The Executive Director was identified as influencing who was to conduct an investigation which involved the Executive Director. The Executive Director insisted one of his department chiefs conduct the investigation. When the Internal Audit Manager noted Internal Audit should conduct the analysis, the Executive Director stated "it is HR's responsibility to conduct all such investigations. If anyone feels that my integrity is such that I will intentionally attempt to influence the outcome to my or anyone else's advantage, then I should be asked to tender my resignation immediately because I can not be trusted. If asked such I will do so today." The Executive Director forwards this information onto his three department chiefs noting he has "thrown down the gauntlet and could be called on it today. If called on it, I will without question resign." One of the Executive Director's department chiefs conducted the investigation.
- In certain investigations, the employee conducting the investigation was not free of conflicts of interests or was not independent. For example, we noted an investigator's direct supervisor was one of the individuals being investigated.
- When employees were interviewed in one-on-one settings, we noted the interview summary typed by the interviewer was not always reviewed or signed off by the interviewee. Uncertainty exists in regards to whether the interview summary is an accurate reflection of the information obtained.
- We noted investigation reports were not always signed and dated. It is unclear when a report is finalized, and if changes occur to a report, it is unclear when they occurred.

Individuals conducting investigations were not free of conflicts of interests or were not independent.

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Recommendation 2-9

We recommend Workforce Safety & Insurance make improvements with how investigations of incidents involving employees are conducted. The organization should, at a minimum:

- a) Ensure investigations are conducted by an independent source who is free of conflicts of interests;
- b) Ensure individuals conducting investigations receive proper training;
- c) Have interview sheets signed by the interviewee, specifically when interviews are conducted in a one-on-one setting; and
- d) Ensure final investigation reports are signed and dated.

Management's Response

CONCUR: When issues arise that necessitate the initiation of an investigation, WSI concurs that it is paramount to ensure that this process is performed in a manner that uncovers all relevant facts in an unbiased manner. While WSI concurs with the recommendation, there are statements within the preceding narrative --that if/when taken out of context-- imply a situation in which the Executive Director may have intentionally directed the investigatory responsibilities to his direct report in order to prevent all applicable findings from being documented. See Appendix C for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI's statement related to an implication that such action was taken in order to prevent all applicable findings from being documented is misleading. We do not conclude on the reason why the Executive Director required his direct report to conduct this investigation. We conclude such a practice does not allow for the investigator to be free of conflicts of interest and places the investigator in an uncomfortable position. See Appendix C for the remainder of the State Auditor's concluding remarks.

Improving How Investigation Results are Implemented

In review of investigation reports and actions taken related to recommendations included in these reports, we noted concerns with a lack of action taken and results and recommendations of investigations being changed. Examples include:

- As a result of inappropriately using WSI resources, a recommendation was made in April 2005 to have an employee forfeit eight hours of annual leave and require the employee to pay a monthly cell phone bill. This did not occur. This employee reports directly to the Executive Director. WSI noted the employee did surrender the annual leave and made a payment, but this was done only after the issues were brought to their attention during the audit (June 2006).
- An investigation report included a recommendation for the results to be communicated to the employee who had requested a review be performed. This was not done. The report also recommended an employee attend a counseling session, submit a letter of apology to another employee, and be encouraged to attend an alternative dispute resolution session. This did not occur. The offending employee is directly supervised by the Executive Director. After the

Recommended actions
from investigations
were not always
followed.

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investigation was conducted, it was the Executive Director's opinion there existed conflicting information. We are unsure as to what conflicting information is being referenced as the conclusions of the report are supported by relevant evidence.

- An investigation was conducted when an outside contractor apparently made inappropriate, harassing comments to a WSI employee. This contractor is a human resource professional who was to provide consulting and executive mentoring services. The investigation report concludes the contractor violated WSI's harassment policy and recommends the contract be terminated with an option of review in six months. The Executive Director recommended a lesser penalty (a three month suspension). This was the second time we noted the contractor had made inappropriate comments. In each case, the Executive Director was aware of these comments. There was no documentation related to what was actually communicated to the contractor. While the contractor was to be under suspension and was not to be paid in November 2005, we did note such a payment was made.

Recommendation 2-10

We recommend Workforce Safety & Insurance make improvements with actions taken related to results and recommendations of investigations involving employees. The organization should, at a minimum:

- a) Document actions taken or the justification for no actions taken in relation to recommendations from investigations;
- b) Improve the monitoring of actions to be taken;
- c) Document the reasons for changing conclusions or recommendations of investigations; and
- d) Have results of investigations provided to the Board of Directors Audit Committee when the investigation involves the Executive Director.

Management's Response

CONCUR: WSI is committed to an effective investigation process and it should be noted that the detailed facts of each investigation exist because once management was notified of the issue, a full investigation was immediately initiated and documented. In the future, management will further document actions taken along with additional rationale for any divergence from the investigator's original recommendations and HR will be responsible for assuring all final recommendations are fulfilled and documented. See Appendix C for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI states facts of each investigation exist because once management was notified of the issue, a full investigation was immediately initiated and documented. Management having an investigation conducted is the minimal course of action required to be taken. Management's actions taken at the conclusion of investigations requires improvement. See Appendix C for the remainder of the State Auditor's concluding remarks.

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Notifying Appropriate Entities In review of information regarding investigations, we noted WSI had notified the state's Risk Management Division of certain incidents but not all incidents. For example, WSI did not provide proper notification of incidents involving harassment of employees. WSI believed whether or not Risk Management was to be notified was within their discretion. WSI has no such discretion if there is a potential claim against the state. Once it is determined there is a potential claim against the state, WSI is required to notify Risk Management of such incidents.

Recommendation 2-11 We recommend Workforce Safety & Insurance promptly notify the state's Risk Management Division of issues where there is a potential for a claim to be filed against the state including all issues related to harassment.

Management's Response CONCUR: While most any act could potentially lead to a claim, WSI has to properly act as a gatekeeper in determining the credibility of the claim in each instance. Throughout this process, there was one instance identified in which the Organization agrees that a report should have been generated and was not. The Organization does concur that in the future an appropriate reporting vigilance must be kept in relation to this recommendation.

State Auditor's Concluding Remarks WSI states it agrees there was one instance identified when a report should have been generated and was not. We identified three such instances. WSI concurs with one. For another instance, WSI did notify Risk Management but this occurred six months after the investigation and after we had identified to WSI they had not provided notification to Risk Management. In discussing this issue with a representative of Risk Management, they noted Risk Management should have been notified at the beginning of the process prior to an investigation being conducted. For the third incident, WSI did conduct an investigation which was not identified to Risk Management. In discussing this issue with a representative of Risk Management, they noted Risk Management should have been notified. The representative noted no investigation should occur until Risk Management is notified. Risk Management's statutory authority allows for Risk Management to close records of an ongoing investigation for a period of time which would be beneficial to the investigation as well as assist in avoiding potential claims against the state.

Making Improvements with Classification System In a review of information regarding the classification system and the pay for performance system used by WSI, we noted both were not adequately monitored. We also noted an improper change with a salary range was allowed to occur within the classification system.

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Monitoring Systems

We noted WSI did not adequately monitor either the classification system or the pay for performance system. Inequities and ineffective processes were allowed to continue without appropriate action taken to make changes. For example, we noted the pay for performance system used by WSI resulted in nearly every employee receiving a raise in calendar year 2004 and 2005. Also, the majority of employees received 3% raises in these two years. When a majority of employees are receiving salary adjustments every year and the majority receive the same salary adjustment, we question whether an actual pay for performance system is being used.

Recommendation 2-12

We recommend Workforce Safety & Insurance periodically monitor and evaluate the classification and pay for performance systems to ensure they are operating effectively and are accomplishing what WSI intends.

Management's Response

CONCUR: The most recent evaluation of WSI's compensation system was professionally conducted in the spring of 2005 by the Hay Group. WSI intends to follow the Hay Group's suggestion that WSI complete a subsequent assessment approximately every three years. Regarding the narrative statements, please see management's response to recommendation 2-1.

Making Changes to Pay Ranges

When an applicant for a job opening was selected, the former Chief of Employer Services wanted a salary to be offered which exceeded the maximum for the pay range assigned to the position. This applicant was an acquaintance of the former department chief. The Executive Director moved the position to a higher pay grade which resulted in a higher pay range for the position. This change occurred with no formal evaluation of the position. The effectiveness and integrity of the classification system are questionable when changes are made without a formal evaluation.

Recommendation 2-13

We recommend Workforce Safety & Insurance ensure changes made to pay ranges within the classification system are based on a formal evaluation process.

Management's Response

CONCUR: WSI takes the issue of its compensation structure as well as its professional duties very seriously. See Appendix C for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix C for the State Auditor's concluding remarks.

Additional Issues

During the work performed, we noted a number of areas where improvements are needed. We noted concerns regarding the accuracy of and increase in turnover rates computed by WSI. WSI has not adequately reviewed their policy handbook and has not established policies in a number of areas. WSI should end incentive programs and needs to review the absenteeism rate it has established for certain employees.

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Improving how Turnover is Calculated

WSI had not established a standard calculation for determining a turnover rate.

In our review of information related to turnover, we noted WSI had used different methods of calculating their turnover rate. WSI noted "past turnover calculation formulas varied depending upon for whom and for what reason the calculation was prepared." It became apparent WSI had not developed a standard calculation as late as March 2006. When requested by our office to provide the most recent turnover information, the Executive Director noted to employees in email "It is important to get our forever and standard calculation set ASAP so we can establish a consistent industry calculation."

We did identify other concerns regarding turnover information. For example, WSI presented turnover rate information to a newspaper in February 2006 which excluded certain former employees from the calculation provided. This calculation used by WSI was not consistent with how the industry averages provided to the newspaper were computed. Another concern noted was both the Human Resources section and the Strategic Operations section were computing turnover information. Besides concerns related to efficient use of resources, we noted differences in the turnover information calculated by the two divisions.

WSI has seen an increase in turnover. Turnover information provided by WSI identifies the following turnover rates:

- FY 03: 5.4%
- FY 04: 6.6%
- FY 05: 8.2%
- FY 06: 12.2%

After the first three months of fiscal year 2007, the annualized turnover rate identified by WSI is approximately 15%. WSI noted to us the turnover rate was within an acceptable range and identifies it is under the industry average. WSI identified an industry average of 12.7%. We attempted to identify the reasonableness of using this industry average for comparison purposes but were unable to do so. The organization identifying the industry average collected data on annualized 2004 information by surveying businesses. The organization identified there were 41 businesses included in the insurance category but stated the data was confidential, they do not know the actual businesses who responded to the survey, and do not know exactly what type of insurance they were in.

While WSI does not identify turnover information by department, we did conduct a limited review of turnover by department. We noted significant turnover of employees in certain areas of the organization which may be indicative of problems which should be addressed.

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Recommendation 2-14

We recommend Workforce Safety & Insurance make improvements with how turnover rates are calculated, presented, and reviewed. The organization should, at a minimum:

- a) Ensure a standard, consistent turnover rate is used;
- b) Have only one department responsible for calculating and tracking turnover;
- c) Properly identify turnover rate information if differences in calculations exist; and
- d) Identify turnover rate information by department and review areas where significant increases are occurring.

Management's Response

CONCUR: As a result of the turnover request from a newspaper and discussions with the Board Audit Committee regarding the turnover calculation, the importance of having a standard calculation was clearly indicated. It had been the practice of WSI to use the year-to-date (YTD) rate until 2006 when WSI also started to track an annualized turnover rate. The HR department is now the only unit responsible for calculating and tracking turnover. WSI concurs that expanding the turnover information down to the department level may provide additional benefit. HR will work to develop this additional turnover data. Finally, management would like to note that while the turnover rate information presented to the newspaper did exclude certain employees from the calculation, the exclusion of "Early Retirement, Released for Cause, and Temporary Employee" was clearly noted both verbally and in writing when the information was submitted.

Establishing a Periodic Review

In a review of WSI's Policy Handbook, we noted a number of areas where formal policies were lacking and inconsistencies existed. For example, WSI had not established a policy related to paying moving expenses of newly hired employees. We noted WSI had paid moving expenses of five employees (one of which exceeded \$15,000). WSI did not have a policy in place to protect the state's investment for these expenditures (such as reimbursing the expenditures if employees left employment within a certain period of time). While WSI included a provision in the employment letters requiring reimbursing the expenditures if the employees voluntarily left, WSI legal counsel did not believe this was sufficient as it was not included in policy.

For policies established by WSI, we noted certain policies require modification or improvement. For example, the reduction in force policy established by WSI lacks significant criteria. Inadequate policies lead to inconsistencies and potential inequitable treatment of employees. We also noted WSI would change policies and back date the policy to make it appear effective sooner than it actually was. This creates confusion.

Recommendation 2-15

We recommend Workforce Safety & Insurance establish a formal procedure to periodically review the Policy Handbook, make the necessary changes, and date changes accordingly.

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Management's Response

CONCUR: WSI has established a formal procedure to periodically review the Policy Handbook and make the necessary changes. Additionally, management would like to note that the only policy it is aware of being backdated was the bereavement policy. Feedback was communicated to the Executive Director questioning an exclusion from the policy. Based on this information, the Executive Director requested that the Human Resources Department review industry best practices. Based on this research, the bereavement policy was updated. WSI noted that the updated policy would have supported the employee who originally communicated the concern. Consequently, WSI backdated the policy based on the reasoning that had it been congruent with industry best practices at the time of the question, the employee would have been covered.

State Auditor's Concluding Remarks

WSI confirmed it backdated the policy. We question when it is ever appropriate to use a date other than the date when an event occurs. Using WSI's reasoning, we are concerned whether WSI would consider rectifying noncompliance issues with policy by simply backdating changes to policies.

Ending Incentive Programs

WSI identified nine employees were eligible for incentive (bonus) programs. In March 2006, an ergonomic consultant hired by WSI recommended the programs be discontinued due to the risk of repetitive motion injuries and increased mental stress. When conducting ergonomic training for state agencies, a WSI representative noted state agencies should not have such incentive programs.

Recommendation 2-16

We recommend Workforce Safety & Insurance end all incentive pay programs for their employees and ensure appropriate payment adjustments are made.

Management's Response

CONCUR: Due to an increasing frequency of repetitive stress injuries (RSIs), WSI consulted with a physical therapist to conduct a Job Safety Analysis. Based on the analysis, WSI agreed to eliminate all production-based incentive programs. WSI will ensure that appropriate compensation payments are made.

Reviewing Absenteeism Standard

We noted the Chief of Support Services had established a benchmark of 7.5% absenteeism for certain employees. When asked how this benchmark was established, the Chief of Support Services identified information which noted a 5% absenteeism rate was too high. However, we noted this information was irrelevant. The information provided related to how the 5% rate was calculated was significantly different than how WSI calculated the 7.5% rate. The 5% rate calculation did not include vacations and approved leave of absences. WSI is including these amounts in their calculation.

We noted employees who have been employed by the state for an extended period of time may not be able to stay within the 7.5% rate established by the Chief of Support Services. This is due to the amount

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of annual leave employees can accumulate during the year. A representative of the Office of the Attorney General noted annual leave is a benefit of employment with the state and employees must be given the opportunity to use their annual leave. Since the 7.5% rate is used as criteria within performance appraisals, certain employees may need to make a decision of not taking time entitled to them or risk having their appraisal rating adversely affected if they do take time entitled to them. This is not appropriate.

Recommendation 2-17

We recommend Workforce Safety & Insurance review and re-evaluate the reasonableness of a 7.5% standard for absenteeism. The organization should, at a minimum:

- a) Ensure the absenteeism standard is not lower than the amount of annual leave employees are entitled to use in a year;
- b) Ensure the absenteeism standard includes consideration for a reasonable amount of sick leave; and
- c) Ensure leave taken under the Family Medical Leave Act or compensation earned under the Fair Labor Standards Act is not included in the calculation of the absenteeism rate.

Management's Response

CONCUR: The seven-and-a-half percent absenteeism rate was used when reviewing the Dependability section of the employee's performance evaluation. WSI will assure that any absenteeism standard set will not fall below the annual leave accrual rate of an employee including a consideration for a reasonable amount of sick leave with an exclusion for FMLA and FSLA leave.

WSI Management

Introduction

A goal of this performance audit was to answer the following question:

"Are adequate policies and procedures established to provide appropriate leadership and accountability for Workforce Safety & Insurance?"

As the goal relates to Workforce Safety & Insurance (WSI) management, we determined management has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas of concern related to the organization's procurement system (Chapter 1 of this report), organization's personnel system (Chapter 2 of this report), strategic planning, and actions, or lack of actions, taken by the Executive Director. Significant improvements needed to be made by management are included in this chapter. Improvements of less significance were communicated to management in a separate letter. Chapter 4 addresses the answer to the above goal as it relates to the Board of Directors of WSI.

To determine whether WSI management had established adequate policies and procedures to provide leadership and accountability, we:

- Reviewed strategic planning information;
- Reviewed applicable management controls; and
- Interviewed selected staff.

WSI Organizational Structure

An Executive Director of WSI is appointed by an 11 member Board of Directors. The organization is comprised of three main departments with the department chiefs reporting directly to the Executive Director. In addition to the department chiefs, there are four other employees who comprise the executive team and report directly to the Executive Director.

In comparison of WSI's organizational structure from previous years to the current structure, we did note there was one less person included in the executive team. Prior to the current Executive Director starting at WSI, April 2004, there were eight vice presidents. While one less person is on the executive team, we noted the salary for the team of seven is higher than when it was a team of eight. The average executive team member salary as of March 2006 is 26% higher than the average salary of the prior executive team in March 2004. This equates to over \$135,000 more a year being paid in salaries (using the difference of the average executive team member salary).

Improving Organization Culture and Morale

Throughout this audit, indications of low employee morale, problems with communication, and employees fearing retaliation were noted. While the performance audit did not specifically include a cultural assessment or morale evaluation, evidence indicated problems existed in these areas. WSI provided information to our office on September 22, 2006 which

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included results of an organizational culture survey conducted by an outside contractor. The results of the cultural survey confirmed information we had identified and conclusions we had made – there are significant areas of concern within WSI which need addressing. The cultural survey indicated significantly low ratings in a number of areas. The lowest scores were related to the following questions:

- There is a clear agreement about the right way and the wrong way to do things.
- The leaders and managers "practice what they preach."
- We respond well to changes in the business environment.
- Our approach to doing business is very consistent and predictable.

Our review identified the Executive Director should take appropriate actions to improve morale. Also, WSI should establish an effective open door policy and make significant improvements with communication between executive management and staff.

Taking Actions to Increase Morale

Our review during this audit identified information in which the Executive Director has taken action which results in apparent preferential treatment or favoritism being provided. Examples include:

- When WSI implemented a new compensation plan based on a review performed by the Hay Group, WSI calculated raise amounts for all employees. Employees could receive a raise allowing them to reach the minimum of the new pay grade assigned their position, or could get an increase termed an "XYZ" increase (based on the amount of time employee had in the position, a factor was applied to the salary for an increase with a maximum of 3.5%). The Executive Director provided increases to seven of his eight direct reports which were in excess of what WSI had computed. For example, while WSI's computed XYZ increase for the Chief of Injury Services identified a yearly increase of \$416, the Executive Director increased this salary \$8,992 a year. Also, the Chief of Employer Services was to receive an XYZ increase of \$205 a year but the Executive Director increased this salary \$5,996 a year. While there were other employees who received increases above what WSI had calculated, these differences related to a specific classification (all Claims Supervisors received additional adjustments for compression issues) or were due to reasonable adjustments made to the calculation.
- When WSI implemented a new compensation plan based on a review performed by the Hay Group, we noted the Executive Director had certain employees' increases retroactively applied (the increase was made effective to an earlier date). Four of the eight direct reports had their compensation increases retroactively applied. Two of these employees had not received salary increases for over two years. We did identify one other employee receiving a retroactive payment for the new system. No other employees were

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noted as being allowed similar retroactive payments for the increases related to the new system.

- In review of investigation reports, we noted concerns with a lack of action taken and results/recommendations of investigations being changed. All instances we noted involved direct reports of the Executive Director or a contractor who was providing executive mentoring services. (These instances are further addressed in Chapter 2, "Improving How Investigation Results are Implemented" section.)
- In review of payments to employees, we noted certain employees received increases which were retroactively applied (made effective to an earlier date which resulted in a lump sum payment being made). We noted for three employees who report directly to the Executive Director, portions of the retroactive payments are bonuses which were in noncompliance with requirements in state law. (This is further addressed in Chapter 2, "Complying with Bonus Requirements" section.)

A significant number of employees identified favoritism as an issue within the organization and our review identified apparent preferential treatment and/or favoritism.

Employees within WSI also identify favoritism as an issue within WSI. Our office conducted an employee survey in February 2006 as part of the performance audit. Of the 192 employees responding to the statement "Favoritism is not an issue in raises or promotions," 50% selected "Strongly Disagree" or "Disagree." This is a significantly high negative response. Preferential treatment and/or favoritism have a negative impact on employee morale which, in turn, adversely impacts the organization.

In review of information related to actions taken by the Executive Director, we questioned whether the Executive Director had followed through with commitments or promises. This has a direct impact on morale of an agency when employees raise questions regarding whether or not the leader of the organization can be trusted. Examples noted include:

- In February 2006, WSI employees were emailed information regarding the salaries of all employees within the organization. After this event, the Executive Director emailed all employees stating "We are investigating the spamming and mailing with every resource we have. If we find any more details I promise you we will update you ASAP." Two days later the Executive Director forwards his Executive Team an email he wrote to the individual who allegedly emailed the salary information. In the email to the Executive Team, the Executive Director states "FYI – DO NOT FORWARD PRINT, COPY, OR SEND ON IN ANY MANNER. For FYI only." The Executive Director did not follow through on his promise to update employees if more details were identified but rather, chose to inform the Executive Team only. In discussing this situation with the Executive Director, we were provided two different reasons for not informing employees. The Executive Director first noted to us he did not send information to all employees as his

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- decision was not to climb into the gutter with the individual sending the email and saw no need to notify employees. Three days later, the Executive Director stated he did inform the agency to the point he could noting it would have been unethical and possibly liable to widely and publicly announce a name to the whole agency that he could not prove.
- The Executive Director emailed all employees in June 2005 referencing his commitment to personally visit everyone who worked at WSI. The email notes the Executive Director had not spent an equal amount of time with each person as first intended, he needed to make time available to those who had not received a promised initial visit, and requested employees to schedule a time with his Executive Secretary. In discussing this with the Executive Director, he noted when he started at WSI, his 90-day plan said he would meet with all employees. The Executive Director noted he did not meet with everyone in the first 90 days as expressed but he did eventually meet with everyone (some in teams to accommodate his schedule or the employees' schedule).

In review of the information above, we did note the Executive Director may have promised or committed himself to actions which were not reasonable. For example, promising employees information which later is determined to be possibly unethical or could create a liability if it were provided is apparently creating an unreasonable expectation. Also, meeting personally with over 200 employees within 90 days would appear unrealistic given the number of employees, relatively short period of time, and needing to fulfill other responsibilities.

Recommendation 3-1

We recommend the Workforce Safety & Insurance Executive Director make improvements with actions taken in order to increase morale of the organization. While this will encompass a number of areas, the Executive Director should, at a minimum:

- a) Ensure actions taken are not resulting in preferential treatment and/or favoritism; and
- b) Follow through with commitments or promises, ensure unreasonable commitments are not made, and notify all applicable parties if promises or commitments are unable to be adhered to.

Management's Response

CONCUR: WSI concurs that continued actions should be taken to focus on morale; however, WSI does not concur that any favoritism or consistent pattern of not following through on commitments exists. See Appendix D for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI states it does not concur any favoritism exists. This statement concerns us given the information identified and the large number of employees citing favoritism as an issue within the organization. See Appendix D for the State Auditor's concluding remarks.

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Having an Effective Open Door Policy

While WSI identified it has an open door policy, we noted information which identifies the open door policy is ineffective.

WSI identifies it has an open door policy in which employees can bring issues to management. Based on a review of survey comments, discussions with employees, and WSI information, WSI does not have an effective open door policy. Employees identified a fear of identifying information to management and a fear of possible retaliation. Results from two different surveys verify the lack of an effective open door policy within WSI.

- Our office conducted an employee survey in February 2006 as part of the performance audit. Of the 192 employees responding to the statement "I am able to take issues to or can disagree with senior management without fear of consequences," 44% selected "Strongly Disagree" or "Disagree." In review of written comments submitted by employees, 42 employees were identified as making comments related to fear of retaliation, afraid to speak out, and WSI not having an actual open door policy.
- A brief survey of employees conducted by the Executive Director in April 2006 asked employees "Are you afraid you will lose your job if you honestly speak out?" Of the employees responding, 46% selected "YES."

An effective open door policy should allow all employees to discuss information with management, which in turn would allow management to be aware of and potentially deal with issues in a timely and effective manner. For an open door policy to be effective there must be no retaliation or fear of retaliation from management if an employee brings a legitimate issue to its attention. We noted certain actions taken by WSI may have added to employees' fears regarding retaliation. For example, when an employee brought an issue to human resources within WSI, the Executive Director wanted the subsequent investigation to include who made the request to review documentation. The person who brought the issue forward is irrelevant and further adds to employees' fears. An ineffective open door policy can negatively impact morale of an organization and thus, impact employee productivity.

Recommendation 3-2

We recommend Workforce Safety & Insurance take appropriate action to have an effective open door policy under which employees can bring issues to management without actual retaliation or fear of retaliation.

Management's Response

CONCUR: WSI's current Executive Director has had an open door practice since arriving in 2004 and there have been zero cases of retaliation. As with all Open Door Policies/Practices, there is a level of trust that must be present for it to be effective. WSI management continues to work to establish the trust. It is important to note that for an Open Door Policy/Practice to be effective, any manager (including the Executive Director) must walk freely and talk with employees in their comfort zone. Additionally, any and all forms of retaliation are not tolerated and will not be condoned. See Appendix D for the remainder of WSI's response.

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State Auditor's Concluding Remarks

WSI states there have been zero cases of retaliation. This is a very bold statement and contradicts a number of employee comments identified in the employee survey we conducted as well as information we obtained during interviews. When WSI's own survey identifies 46% of respondents believe they will lose their job if they honestly speak out, there is an indication retaliation, perceived or actual, has occurred or exists. See Appendix D for the remainder of the State Auditor's concluding remarks.

Improving Communication

As part of the performance audit, an employee survey was sent in February 2006. Of the 193 employees responding to the statement "Management communicates well with employees," 47% selected "Strongly Disagree" or "Disagree" (management was defined as upper/senior management of WSI). This identifies a significant problem associated with the communication between executive management and other employees of the organization. Communication problems have a negative impact on employee morale and, thus, the productivity of employees. Open, honest, and adequate communication between executive management and employees should exist to foster positive employee attitudes.

Recommendation 3-3

We recommend Workforce Safety & Insurance make significant, timely improvements related to communication between executive management and other employees of the organization.

Management's Response

CONCUR: WSI has revamped how Executive Management communicates with the organization. A regular weekly column in "The Chronicle" from the Executive Director outlines his calendar and some personal thoughts. The Assistant Communications Team (ACT), with representatives from each department, has been established to provide routine feedback from all departments. Regular meetings with Executive Team members are conducted to facilitate open discussion. Collection boxes have been placed where anonymous questions or suggestions can be placed. The Executive Director also periodically attends weekly staff meetings.

Improving the Use of Resources

In February 2006, WSI employees were emailed information regarding the salaries of all employees within the organization. The Executive Director emailed all employees stating "We are investigating the spamming and mailing with every resource we have. If we find any more details I promise you we will update you ASAP." When asked what resources were used, the Executive Director identified the Special Investigations Unit (SIU), IS (information systems) unit, General Counsel, and himself. The Executive Director specifically requested SIU to conduct an investigation in order to find out who sent the information, what could they find on this person, and whether or not a law was broken.

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After all employees received an email containing salary information, WSI inappropriately used certain resources to investigate who had sent the email.

North Dakota Century Code Section 65-02-23 states WSI is to establish a fraud unit. The section states the fraud unit is to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services. The use of SIU to attempt to track down an individual who emailed public information to WSI results in noncompliance with legislative intent as this unit was not established for this purpose. The costs associated with SIU's involvement in the investigation are unknown.

When the Executive Director made the request to SIU to conduct the investigation, he provided two names of former employees to include as suspects. SIU was informed by WSI's information systems unit the email had originated at a public library. SIU accessed the Department of Transportation's (DOT's) driver's license image program. SIU printed at least one of the suspect's picture from the driver's license image program. SIU showed pictures of the two suspects to employees at the public library where the email had originated. SIU also accessed the driver's license image program for two other individuals – one a current employee of WSI and one a former employee of WSI (the pictures of these two individuals were not apparently shown to employees at the public library). North Dakota Century Code Chapter 39-33 identifies driver's license images, as well as social security numbers and medical information, as "highly restricted personal information."

The use of the driver's license system to access photos was inappropriate and violated the contract WSI has with DOT as well as state law requirements. The contract requires WSI to use the driver's license image program for official use only. A representative of DOT confirmed WSI's purpose for accessing the program was not an official use. DOT is waiting for the completion of the performance audit to take appropriate action.

When the Executive Director used additional resources beyond SIU to investigate who had sent the emails to WSI, the use of these resources constitutes abuse as defined by Government Auditing Standards. The costs associated with the use of the IS unit and General Counsel are unknown. As defined by Government Auditing Standards:

"Abuse is distinct from fraud, illegal acts, or violations of provisions of contracts or grant agreement. When abuse occurs, no law, regulation, or provision of a contract or grant agreement is violated. Rather, abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances."

Recommendation 3-4

We recommend Workforce Safety & Insurance comply with legislative intent and ensure the Special Investigations Unit's resources are used appropriately.

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Management's Response	CONCUR: The Unit is not exclusively the "fraud unit" referred to in 65-02-23. In other words, the fraud unit is not the same entity as SIU. Rather, the fraud unit is encompassed by, and is one component of SIU. The Unit's functions also include assistance with claim compensability, subrogation, judgment collection, and any violations of Title 65 (for example, unlawful retaliation under section 65-05-37).
State Auditor's Concluding Remarks	WSI identifies additional responsibilities of SIU beyond being the fraud unit. These responsibilities also do not identify where the use of SIU to investigate who had sent the email would be appropriate.
Recommendation 3-5	We recommend Workforce Safety & Insurance comply with contractual provisions and ensure the Department of Transportation's driver's license image program is accessed for official use only.
Management's Response	Concur: While management concurs that WSI should ensure access to information is for official use only, WSI does not concur that the use of the photos was inappropriate in this circumstance. As provided in the responses to Recommendations 3-4 and 3-6, the e-mail giving rise to SIU's involvement was potentially a legal and/or human resource issue. Because SIU's function is not limited to only investigating fraud, the use of the two photos was reasonably required to carry out SIU's function in the preliminary investigation. WSI did not breach its contract with DOT, nor was state law violated. WSI has, and will continue to take its responsibilities regarding DOT-accessed information seriously.
State Auditor's Concluding Remarks	While WSI does not concur the use of the photos was inappropriate, we concluded and DOT agreed with our conclusion that accessing the driver's license image program was not appropriate.
Recommendation 3-6	We recommend Workforce Safety & Insurance use resources in an efficient and proper manner to ensure the use of resources does not result in abuse.
Management's Response	CONCUR: While management concurs with the recommendation, it does not concur that any abuse was conducted. As stated in the narrative, Government Auditing Standards (in part) note: "...abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances." (Emphasis Added) Initially, the manner in which the e-mail in question was sent was thought to possibly involve legal and/or internal resource abuse issues --depending upon whether or not any current WSI employees could have possibly been involved in the e-mail's distribution. Due to the potential legal issues, the SIU was directed by the Executive Director to conduct a preliminary investigation of the issue. Because SIU is not limited in function to just investigating fraud, management disagrees that the Executive Director's use of the unit was abuse. Instead, it is management's belief that a prudent person would have acted in a similar

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manner when given the same set of legal and ethical facts and circumstances.

State Auditor's Concluding Remarks

WSI states initially there were possible legal and/or internal resource abuse issues. We are unable to determine why WSI needed photos of individuals to make a determination of whether such issues existed. SIU had information made available to it by WSI's information systems unit as to where the email originated. The only purpose of using photos was to have them viewed by employees of the public library to determine whether such individuals were at the library. This has nothing to do with determining whether laws are broken and only relates to attempting to identify the person sending the emails.

Improving Areas Related to Strategic Planning

In a review of information regarding planning for the organization, we noted WSI has lacked a strategic plan for a number of years. WSI had not developed a strategic plan in a timely manner after the Board of Directors established its direction. We noted concerns with information within WSI's strategic plan. Information related to strategic planning is not included on WSI's web site.

Establishing and Implementing a Plan

In November 2004, the Board of Directors established its Outcomes. It was approximately a year later that WSI formulated strategies and identified a strategic plan for implementing the Board's Outcomes. We noted WSI was attempting to coordinate a strategic planning session with the Board as far back as January 2002. Yet, it was over three and a half years later that the organization establishes a strategic plan. A lack of a strategic plan makes it difficult to measure an organization's success and WSI went an extended period of time with no plan to assist in focusing the organization's resources and efforts.

When WSI had a strategic visioning and planning session, only the Executive Team was included in this process with minimal, if any, other WSI staff involved. The CEO membership organization WSI pays \$12,000 a year to be a member of, identifies that prior to undertaking a strategy planning process, management must understand unless it is committed to involving the entire employee staff, the plan won't work.

Improvements with the strategic plan are needed.

WSI's mission is "Our mission is our passion. Our Passion is North Dakota's workforce. To us, it's personal." In October 2005, WSI employees provided input regarding the mission and employees noted they did not understand and did not like the terms "passion" and "personal." Having a mission statement the employees do not understand is an indication of a very poor mission. In addition, the facilitator of the review of the strategic plan also noted concerns with the mission noting the mission should, at a minimum, identify "the who" and "the what." In our review of the mission, we noted concerns with the phrase "To us, it's personal." WSI should be a professional, objective organization and when things are taken personally, there is an inherent risk the professionalism and objectivity of the organization is impacted.

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We noted other concerns regarding the information within WSI's strategic plan.

In a limited review of information pertaining to WSI's plan, we noted information related to implementation was not accurate. For example, the strategy "Provide on-site consultative services for Preferred Markets" was identified by WSI as being completed on December 1, 2005. No such on-site visits had been provided by December 1, 2005.

Recommendation 3-7

We recommend Workforce Safety & Insurance establish and implement its strategic plan in a timely manner, once the Board of Directors establishes revised outcomes. The organization should, at a minimum:

- a) Review and modify its mission;
- b) Reevaluate the purpose and other structural elements of the strategic plan;
- c) Ensure employee involvement is obtained when developing the plan; and
- d) Ensure information related to completion of strategies is accurate.

Management's Response

CONCUR: (a) and (b) WSI concurs with these recommendations to the extent that the Board of Directors makes such modifications at its retreat in the first quarter of 2007 where—in part—the Board will review the mission, vision, values, and outcomes.

(c) WSI concurs with the recommendation that employee involvement is critical and that is why WSI extensively involved employee participation in the creation of the current strategic plan. See Appendix D for the remainder of WSI's response.

(d) WSI concurs it should ensure information related to completion of strategies is accurate. The example outlined in the narrative "Provide on-site consultative services for Preferred Markets" was identified as complete on December 1, 2005, because it had been deployed for implementation. The Safety Outreach Program had been researched, defined, and developed and the "preferred markets" had been identified which included employers within high risk industries as well as other high risk employers. The act of deploying the plan began in January of 2006 and will continue on an ongoing basis. WSI's core team has established a process to monitor strategy completion and will continue to periodically monitor to ensure the most complete and accurate information is available.

Including Information on WSI Web Site

While WSI has included core values, vision, and mission on their web site, other strategic planning information and the Board of Directors' Outcomes are not on the web site. WSI should ensure relevant and pertinent information is easily accessible to employers who are paying premiums, injured workers receiving benefits, and other interested parties.

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Recommendation 3-8

We recommend Workforce Safety & Insurance include relevant strategic planning information and the Board of Directors' Outcomes on their web site.

Management's Response

CONCUR: WSI concurs it should include relevant strategic planning information and the Board of Directors' Outcomes on its website. As of November 2006, WSI posted the Board of Director's outcomes as well as relevant strategic planning information on WSI's website.

Ensuring Accurate Information is Provided

During our review of information, we identified a number of areas in which information provided by WSI appears to be misleading, inaccurate, or does not properly include all relevant information. This related not only to information provided to us during the audit, but included information WSI provided to legislative committees, other state entities, and other parties. Examples noted include:

- On February 22, 2006, WSI submitted written testimony to the legislative Employee Benefits Programs Committee regarding WSI's pay for performance system. WSI noted "In June 2005, the Hay Group evaluated WSI's pay for performance process and validated it as being operated in an appropriate manner." We determined work was not performed by the Hay Group regarding validating the pay for performance as being operated in an appropriate manner. When we contacted a representative of the Hay Group, they noted validating the process was not part of the scope of work performed.
- We noted WSI's proposed budget to the 2005 Legislature included \$1 million for safety partnership grants. WSI received continuing appropriation authority for safety programs during the Legislative Session. However, the \$1 million for safety grants was not removed from the budget request. Based on discussions with WSI, the \$1 million appears to have been used to pay for raises and information technology projects.
- On August 29, 2006, WSI submitted a written response to us related to a question on increases provided to employees when the new compensation plan was implemented. WSI stated the Executive Director informed the Board of Directors that some WSI employees would receive performance increases greater than what was initially recommended by the Hay Group analysis. No such statement was made to the Board and WSI later stated the phrase "the performance increases greater than what was initially recommended by the Hay Group analysis" was not made.
- On September 12, 2006, WSI provided information to the Attorney General's Office related to reasons for withholding 4% general increases from certain employees. In review of the information provided and comparing it with other information WSI had, there was information not provided to the Attorney General's Office which was necessary to make an accurate and informed decision.
- On October 4, 2006, WSI provided information to the Budget Section related to a request for an additional \$250,000 spending

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authority. In response to a question, WSI stated just the Executive Director and new employees in an orientation period did not get the 4% general increase. We noted WSI had also withheld the increase for employees with performance related issues (nine) and withheld payments to four other employees due to an apparent error.

- In the work conducted as part of the biennial performance evaluation, we noted the hired consultant had identified a few errors with information in some of the quarterly operating reports and had encouraged WSI staff responsible for each segment of the operating report to carefully validate contents before the report is published.

There were a number of other areas identified throughout the audit. While WSI has noted such information was not provided to be misleading and they did not intentionally make errors, we noted a trend with information provided which appeared to make information incomplete or inaccurate.

Recommendation 3-9

We recommend Workforce Safety & Insurance take appropriate steps to ensure information it provides is accurate.

Management's Response

CONCUR: Whereas WSI agrees that all disseminated information should be as accurate as reasonably possible it disagrees that the examples cited in the narrative prove that a trend exists in which inaccurate information is routinely disseminated. See Appendix D for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix D for the State Auditor's concluding remarks.

Improving Planning Processes

In a review of information, we identified WSI requires improvement with planning for vacancies and making changes to management philosophies. WSI does not have a formal process for succession planning. We noted management philosophy was changed and training provided was occurring too quickly.

Implementing Succession Planning

Turnover within WSI increased during fiscal year 2006. In fiscal year 2007, turnover continues to increase and we noted WSI lost two employees in high level positions – the Finance Director and the Chief of Employer Services. We noted when the Finance Director left, WSI did not have an employee within the department who had the knowledge and/or training to fill in this position on a part time basis. The vacancy of the Finance Director position also appears to be part of the reason a significant raise was provided to the Human Resource Manager who had been with WSI for a year. In August 2006, this manager received over an 18% raise as WSI apparently could not afford to lose another high level position within the Support Services department.

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Recommendation 3-10

We recommend Workforce Safety & Insurance implement succession planning as an ongoing process to identify, assess, and develop talent to ensure leadership and management continuity throughout the organization.

Management's Response

CONCUR: Prior to this audit WSI had identified the need for succession planning and a skill-based career path for its employees. The current HR Manager was hired in August 2005 with the expectation that they would be responsible for building a succession planning process for the organization. Since this time, strategies have been established to enhance the effectiveness of individual staff members including providing opportunities for professional improvement/growth and to create a skills-based career path to provide employees with the opportunity to advance their skills and grow within their position as they develop necessary skills.

Making Changes with Management Philosophy

Starting in late April 2005, WSI had "Good to Great" training. This was followed by a Hedgehog Council kickoff three weeks later and training on Total Quality Management (TQM) occurred the next months. Following the training on TQM (outside vendor paid over \$18,000), WSI put TQM training and implementation on hold as there was too much information being provided and too much was going on within the organization. The Executive Director also noted a lack of funding to continue training. Training appears to have been put on hold in the fall of 2005 which is relatively early in the biennium.

Recommendation 3-11

We recommend Workforce Safety & Insurance ensure adequate planning, including consideration for impact on staff time and other resources, is conducted prior to changes and training on management philosophy is implemented.

Management's Response

CONCUR: Management admits that the planning of the change did not develop as effectively as it had planned; however, each of the steps was designed to build one on top of the other to arrive at the final strategic plan ("Good to Great" training, hedgehog council, and Total Quality Management (TQM) training, etc...). The steps were planned and were conducted in such a way as to involve organizational staff in the planning and implementation. See Appendix D for the remainder of WSI's response.

Making Changes with the Internal Audit Department

An Internal Audit Department exists within WSI and the Internal Audit Manager reports to the Board of Directors Audit Committee. In our review of information, we noted Internal Audit should have a function added to its responsibilities. We also identified a staffing reduction occurred with Internal Audit which has impacted its ability to fulfill its mission.

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Increasing the Responsibility of Internal Audit

A function of WSI's Quality Assurance Director is to facilitate the implementation of recommendations from performance reviews, financial audits, internal audits, and other applicable reviews. Guidance provided by The Institute of Internal Auditors states a function for Internal Audit to consider is to administer/maintain "the comprehensive follow-up database for recommendations and action plans resulting from internal audit engagements and the work of external auditors and other internal evaluation and investigation functions." The Quality Assurance Director reports directly to the Strategic Executive which could create conflict of interest and independence problems when there are recommendations addressing areas related to the Strategic Executive.

Recommendation 3-12

We recommend Workforce Safety & Insurance move the Quality Assurance Director's function of facilitating implementation of recommendations to Internal Audit.

Management's Response

DO NOT CONCUR: WSI does not concur with the recommendation to move the Quality Assurance (QA) Director's function of facilitating the implementation of recommendations to the Internal Auditor Department. The QA function was established to assist management in coordinating and monitoring the implementation of recommendations from the various internal and external audits/reviews. Currently, Quality Assurance produces status reports and reports them to the Board Audit Committee.

Practice Advisories 2500-1 and 2500.A1-1, interpretations of Standard 2500 from the International Standards for the Professional Practice of Internal Auditing, provide additional guidance relating to the role of internal audit in monitoring progress and the follow-up process.

Consistent with the guidance found within these advisories, QA will modify the existing process and provide periodic updates including the management status reports to internal audit for evaluation and validation. Internal audit will then report the results of their follow-up work to the Board Audit Committee.

State Auditor's Concluding Remarks

WSI states it will have the Quality Assurance Director provide periodic reports to Internal Audit for evaluation and validation. This provides more support for the recommendation to have this function within Internal Audit. Another benefit for Internal Audit is the knowledge and education it will gain as part of this process which should assist in identifying additional areas to review where improvements can be made.

Reviewing Staffing Levels

In August 2005, the Executive Director requested a position be moved from Internal Audit and provided to him to use as deemed appropriate. The Board of Directors Audit Committee allowed this one-third reduction in staffing of Internal Audit without apparently formally approving the change (no motion approved) and did so less than a year after having a prior Internal Audit Manager specifically inform them that three positions were needed. The Internal Audit position was allowed to go to the Executive Director without the Audit Committee even knowing how the

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position was to be used by the Executive Director. The Executive Director used this position to create a new position within WSI (Leadership & Organization Excellence Executive). The difference in the ending salary of the Internal Audit position and the starting salary of the new position amounted to over \$46,500 a year.

A position was removed from Internal Audit with no analysis of the impact on Internal Audit's mission.

The Audit Committee allowed Internal Audit staffing to be reduced by one-third. This occurred with no analysis of the benefit of what the position would be used for or an analysis of what the impact was of the reduction on Internal Audit's mission. The move of the position has significantly impacted the operations of Internal Audit which has been further adversely affected by the fact there has been no Internal Audit Manager since December 2005. If Internal Audit is to fulfill its mission of providing timely, value-added audit services to all management levels and the Board, it must be adequately staffed. If the function of facilitating recommendations is moved to Internal Audit as discussed in the previous section, a review of staffing levels should include the impact of this move.

Recommendation 3-13

We recommend Workforce Safety & Insurance conduct an in-depth review of the staffing level of Internal Audit and determine an adequate staffing level for Internal Audit to effectively fulfill its mission.

Management's Response

CONCUR: In response to the narrative preceding the recommendation, there have been past discussions relating to staffing of the Internal Audit Department. In summary, at the August of 2005 Board Audit meeting, the committee members discussed that: the Internal Audit Manager requested to fill a vacancy and maintain department at 3 FTE; Internal audit historically did not do much follow-up and there was now a Quality Assurance position to review and monitor recommendation implementation; with the QA position was there still a need for a third full-time person, there was no historical data to help justify staffing levels; that Internal Audit would start tracking time spent on audits so historical data would exist for any future reviews; and, there was a high turnover within the Internal Audit department. Following the discussion, the Executive Director suggested keeping Internal Audit at two plus Quality Assurance until there was enough data to support the request. He further noted that between the internal and external audits there existed a significant auditing presence. The Executive Director did request to use the vacant position until such time as the data could determine an appropriate staffing level.

State Auditor's Concluding Remarks

WSI states there had been past discussions relating to staffing of Internal Audit. However, there was no documented analysis of an adequate staffing level of the department. Rather than complete such an analysis prior to making changes, WSI made changes (removed a position) until there was enough data to support the prior staffing level. This appears the reverse of a normal course of action taken as usually an analysis is conducted to support a change; not make a change and then do an analysis to support the change.

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Increasing Blanket Bond Coverage Amount

A blanket bond is a bond that collectively covers all public employees and public officials of an entity without the necessity of identifying names or positions as a part of the bond. WSI has a blanket bond with coverage up to \$250,000. This is an inadequate amount of coverage given the size of WSI's investments (over \$1.1 billion), revenue (over \$100 million in premiums billed to employers prior to dividends), and expenditures (over \$100 million in operating expenses). WSI is at an increased risk of financial loss due to management not adequately protecting the organization's resources.

Recommendation 3-14

We recommend Workforce Safety & Insurance significantly increase their blanket bond coverage amount.

Management's Response

CONCUR: WSI will increase its blanket bond coverage from the current amount of \$250,000 to the maximum offered by the State Bonding Fund of the North Dakota Insurance Department --\$2,000,000. Additionally, management will review increasing the blanket coverage to a higher level if applicable.

Improving the Calculation of Premium Dividend Credits

The Board of Directors passed a resolution in June 2005 providing for a 40% premium dividend credit for employers with active policies and in good-standing. The credit was not to be applied to minimum premium accounts (\$125), accounts in a delinquent/unsatisfactory/or not good standing status, and optional all-states premium. The dividend was to be applied to the estimated premium and it could not result in a premium due of less than \$125. Based on a limited review of information, we noted certain employers received a dividend credit in excess of 40% and certain employers had a premium due that was less than \$125 after the dividend credit was applied.

The errors in calculation appear to have occurred when the initial billed premium amount had an adjustment made to it. After an adjustment was made to the premium amount, WSI did not make a corresponding adjustment to the dividend credit. As long as an employer account is still active for the next premium billing cycle, WSI should be able to make appropriate adjustments to correct the errors. However, when employer accounts have been closed, WSI will need to make other attempts to recoup the money owed (WSI estimated the errors on closed accounts is over \$17,000).

Recommendation 3-15

We recommend Workforce Safety & Insurance correctly calculate premium dividend credits and take appropriate action to recover lost premium amounts.

Management's Response

CONCUR: WSI concurs it should correctly calculate premium dividend credits and take appropriate action to recover lost premium amounts. See Appendix D for the remainder of WSI's response.

Board of Directors

Introduction

A goal of this performance audit was to answer the following question:

"Are adequate policies and procedures established to provide appropriate leadership and accountability for Workforce Safety & Insurance?"

As the goal relates to the Board of Directors, we determined the Board has not established adequate policies and procedures to provide appropriate leadership and accountability for the organization. We noted a number of areas where improvement could be made relating to the Board's governance of the organization as well as compliance with its adopted governance model. Significant improvements needed to be made by the Board are included in this chapter. Improvements of less significance were communicated to Board management in a separate letter. Chapter 3 addresses the answer to the above goal as it relates to management of Workforce Safety & Insurance (WSI).

To determine whether the Board had established adequate policies and procedures to provide leadership and accountability, we:

- Reviewed the Board's bylaws, governance policies, and meeting minutes;
- Reviewed information related to the Carver Policy Governance Model; and
- Interviewed Board members.

Performance Audit and Performance Evaluation

North Dakota Century Code Section 65-02-30 requires a performance evaluation be conducted of WSI every biennium. The firm is selected by the Office of the State Auditor to complete the performance evaluation. The Request for Proposal (RFP) sent out by our office for the performance evaluation contained 11 elements. After receiving proposals and evaluating information, a decision was made to remove three elements from the performance evaluation and include those elements as areas to consider as part of a performance audit. These three areas included human resource management, consulting contracts, and Internal Audit and the Board of Directors Audit Committee.

As with every performance audit, during the first phase of the audit information is collected regarding an organization, department, or function. This is used to establish the scope of the performance audit. During the first phase of this audit, we did identify concerns related to various areas of WSI including:

- Human resource management: due to concerns noted in this area, an applicable goal and related objectives were developed. Results of this goal are identified in Chapter 2 of this report.
- Procurement: due to concerns noted in this area, a goal and related objectives were developed. This did include reviewing consulting contracts which was an element from the RFP for the performance evaluation. Results of the goal are identified in Chapter 1.

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- Management and leadership: we identified concerns regarding the Audit Committee and Internal Audit as well as concerns related to communication, leadership, and accountability. Due to this, a goal and applicable objectives were developed which encompassed these areas. The results of the goal are identified in this chapter and Chapter 3. The conclusion on this goal also relied on information obtained during the review of human resources and procurement.

The performance evaluation conducted on WSI included elements to evaluate performance measurements and review the Board of Directors to determine whether the Board complied with a section of law and the Board's bylaws. The work performed by the outside consultant was taken into consideration during the work we performed regarding the Board. Our scope was significantly different than the scope of work required to be performed by the consultant. When it became apparent work needed to be included on the Board regarding issues such as accountability, leadership, and compliance with the Board's adopted governance model and policies, we included this within the scope of our work. These areas were not included in the scope of the performance evaluation. Thus, the issues identified in this chapter relate to Board improvements which were not required to be included as part of the performance evaluation.

Complying with Legislative Intent

In 1997, the 55th Legislative Assembly established the Board Directors of WSI. Prior to this, the Governor was responsible for the organization. According to WSI's web site, the role of the Board is to ensure continuity of leadership at WSI and to ensure WSI operates efficiently and effectively. Based on our review, we noted the Board needs to change how it operates and functions. The Board does not ensure WSI operates efficiently and effectively as the Outcomes established by the Board require improvement, performance criteria needs to be established, and the Board needs to establish an adequate monitoring report. The Board has not complied with the principles of the adopted Carver Policy Governance Model and Board members require additional education on this model of governance. The individual who designed the Carver Policy Governance Model noted a partial implementation of the Carver Model can be worse than not using it at all. The Board has only partially implemented the model. Additional information on these areas as well as other areas which require improvement is addressed within this chapter.

The Board meets quarterly and on an as needed basis. In a review of the Board's minutes, we noted the Board is meeting for a minimal amount of time and it is questionable whether a Board can effectively govern an entity like WSI in such a minimal amount of time. Beginning with the November 2003 quarterly meeting and going forward, we identified the 11 quarterly board meetings lasted, on average, 3 hours. Thus, the Board spends approximately 12 hours a year meeting as a full

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The Board of Directors was established as a governing board and our review of information identifies the Board does not comply with this legislative intent.

Board. This does not include the strategic planning seminar held in November 2004 which lasted less than 8 hours. The Board has followed a quarterly board meeting schedule for an extended period of time.

The Board is comprised of 11 members – 6 representing employers, 3 representing employees, 1 representing medical providers, and 1 appointed at large. While state law requires one employee member to have received workforce safety and insurance benefits and another separate employee member to represent organized labor, the Board has allowed one member to serve both of these requirements. We requested an Attorney General's Opinion to clarify member representation and the formal opinion states one person may not serve as the employee representative who has received WSI benefits and as the employee representative for organized labor. According to the Attorney General, the Board is in noncompliance with legislative intent.

The noncompliance with legislative intent has allowed two of the three Board members representing employees to be appointed based on no criteria. We question whether the employee representation on the Board has been sufficient considering the noncompliance issue and the fact the majority of motions are passed unanimously. Also, one appointed member, for which there is no criteria, is a Risk Manager of one of the largest electric generation and transmission cooperatives in the nation. The other appointed employee representative, for which there is no criteria, is a Controller. It is unclear how these members represent employees.

Our interview of Board members and review of emails raised concerns regarding the time commitment and effort of members. Two members were identified as discussing the fact they had other jobs. One of these members commented during an Audit Committee meeting they find it very difficult to make decisions on things when they are not there day to day, and to manage what someone's doing within an office that they basically spend zero time with other than at meetings, makes it uncomfortable. We noted another member of the Board had emailed the Executive Director stating "We may have dialogue and exchange our views, but I have absolute confidence we will never have different positions."

Based on our review, it appears the Board is not fulfilling its responsibility. The Board was established to be a governing board of WSI and we conclude the Board has not complied with legislative intent.

Recommendation 4-1

We recommend the Workforce Safety & Insurance Board of Directors comply with legislative intent and effectively govern the organization.

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Management's Response

CONCUR: Although the Board agrees that it should comply with legislative intent and effectively govern the organization, the Board does not concur that it has not done so. The narrative prefacing this recommendation provides incomplete information and isolated incidents in an attempt to support a broad, sweeping conclusion. Although highly critical, there is not a meaningful remedy suggested in the recommendation as to how the organization is not being effectively governed by the Board or how it could be better governed. See Appendix E for the remainder of the Board's response.

State Auditor's Concluding Remarks

The Board states the narrative prefacing the recommendation provides incomplete information and isolated incidents in an attempt to support a broad, sweeping conclusion. All conclusions are based on sufficient audit evidence. Based on the information leading up to Chapter 4 and the corresponding recommendations made to the Board in Chapter 4, it is evident the Board has not complied with legislative intent and is not effectively governing the organization.

The Board states there is not a meaningful remedy suggested in the recommendation as to how the organization is not being effectively governed or how it could be better governed. The remainder of Chapter 4 identifies a number of recommendations related to how the Board could improve and effectively govern the organization. It is concerning that the Board is not aware the intent of the remaining recommendations in the chapter address areas where the Board can better govern.

Establishing the Board's Role

In review of Board minutes, we noted when the Board is passing motions which appear to establish a policy or requirement, there is no additional documentation of the requirement placed into Board policy. Also, there is no formal documentation identifying all of the Board's statutory responsibilities and institutional memory must be relied upon for ensuring compliance.

While the Board is authorized to transfer moneys between line items of the budget, this no longer occurs as no line items exist.

North Dakota Century Code (NDCC) Section 65-02-03.3 states the Board may authorize WSI to transfer moneys between line items within WSI's budget. In discussing this with a representative of the Office of Management Budget, this was the apparent reason WSI was allowed to have a one line item budget. We noted the Board no longer authorizes transfers between line items as the line items no longer exist. Also, we noted the Board's monitoring of the budget appears to be minimal. NDCC Section 65-02-03.3 requires the Board to prepare, with assistance of WSI, the budget for the organization. We noted the budget is prepared by WSI staff with limited parameters or guidelines established by the Board and there are limited policies established related to the Board's role in the budget.

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Recommendation 4-2

We recommend the Workforce Safety & Insurance Board of Directors formally establish its role regarding when Board involvement and/or approval is required.

Management's Response

CONCUR: The Board's statutory responsibilities will be placed within its existing planning calendar to ensure continued consistency and compliance. Additionally, as noted in the narrative, NCDD 65-02-03.3 (Board - Powers and duties) does state: "The board may authorize the organization to transfer moneys between line items within the organization's budget." (Emphasis Added) The Board was originally given the authority to transfer between line items. Since the Board already had the authority to move between line items, the organization was given a single-line appropriation. The Board feels it is appropriately advised of any significant budgetary changes and is fulfilling its legislative and governance obligations.

Improving Board Governance

The Board of Directors of WSI has adopted the Carver Policy Governance Model. This is a model of governance designed to empower boards of directors to fulfill their obligation of accountability for the organization they govern. The model is to enable a board to focus on the larger areas, to delegate with clarity, to control management's job without meddling, and to rigorously evaluate the accomplishment of the organization. Our review of the Carver Model and the Board of Directors actions identified noncompliance issues. Board members do not appear to be properly educated on the model and should receive additional training. The Outcomes established by the Board require improvement and the Board should establish measurable performance criteria. The Board is lacking an adequate monitoring report which relates to its established Outcomes and other established criteria.

Complying with the Carver Model

Our review identified a number of areas in which the Board is in apparent noncompliance with principles of the Carver Policy Governance Model. For example, under the Carver Model, a board speaks on behalf of the organization's owners and is to be committed to representing the interests of the owners so it will not allow itself to make decisions based on the best interests of those who are not the owners. The model also notes boards must learn to distinguish between owners and customers, for the interests of each are different. In discussions with all Board members, there was no consensus from the members as to who the owners and customers were. We also noted noncompliance issues regarding the Carver Model related to the Outcomes established by the Board and performance expectations were not being clearly defined and monitored. The individual who designed the Carver Policy Governance Model noted a partial implementation of the Carver Model can be worse than not using it at all and the Board has only partially implemented the model.

Based on our discussions with Board members, it was apparent members did not have adequate knowledge regarding the Carver Model.

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The Board is in apparent noncompliance with the principles of its adopted governance model and Board members require additional education and training on the model.

Three members were unable to explain the model or how it was used by the Board. In addition, in February 2006 when the Executive Director asked the Audit Committee to consider the structure of the Internal Audit Department, the Executive Director noted the current reporting relationship went against the Carver Model. The reporting relationship does not go against the Carver Model. Rather than the Audit Committee correctly identifying this does not go against the Carver Model, the Audit Committee approved a change. This was then approved by the full Board the following day. Since this required a modification of policy, the change did not become effective immediately. At the next quarterly meeting, the Board was informed of the inappropriateness of the change of the reporting relationship by their outside financial auditors and the Board determined not to proceed.

Recommendation 4-3

We recommend the Workforce Safety & Insurance Board of Directors comply with the Carver Policy Governance Model.

Management's Response

CONCUR: The Board has established its structure in accordance with John Carver's, PhD Principles of Governance. Whereas the Board concurs that it is important to comply with this style of governance, it does not concur with the auditor's interpretation of this model. The statement that the Board of Directors is in noncompliance with the Carver Model implies the existence of a single model which serves as a standard structure for all boards. While Dr. Carver does establish certain principles, practices, and protocols which characterize, or possibly hallmark, the boards that are successful in order to compare and contrast to those that are unsuccessful, he also acknowledges in his own writings that a myriad of forms and sub-forms of boards exist. Within Dr. Carver's book, Boards That Make a Difference, it is clearly acknowledged that there are different types of boards with different styles. How a board operates is dependent upon many factors, which include but are not limited to organizational structure, member composition, and entity stakeholders. Consequently, the Board does not concur with the statement it has only partially implemented the Carver Model. Again, this model is not a one-size fits-all, cookie cutter template. Dr. Carver says as much in the following quotation referring to boards. "Values and perspectives that govern an organization can be divided into four categories, whether or not the board recognizes or uses them." This text indicates very clearly that Dr. Carver acknowledges the differences in boards.

State Auditor's Concluding Remarks

The Board states it does not concur with the auditor's interpretation of the Carver Model. We used information directly from the developer of the governance model and compared WSI information to the information specifically identified in Carver materials.

The Board includes our statement that the Board is in noncompliance with the Carver Model implies the existence of single model. This is a misleading statement. We do not imply one single model exists. However, we do note the principles of the model are the same,

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regardless of the type of board, and it is the principles identified in the model with which the Board does not comply.

Recommendation 4-4

We recommend the Workforce Safety & Insurance Board of Directors obtain additional education and training on the Carver Policy Governance Model.

Management's Response

CONCUR: The Board concurs that additional training would be beneficial and appropriate. With the addition of new Board members in 2007, it will be an opportune time to augment the organization's knowledge-base with enhanced and qualified Carver education and training. In addition to orientation of new Board members, WSI will request that Mr. Carver and/or a representative of his designation travel to North Dakota to provide a Board education segment at a future meeting.

Establishing Proper Outcomes

In addressing one of the Carver Model principles, the Board's Governance Policy states "the board is to determine what good the organization is to accomplish, for whom, and at what cost or relative worth. The Board focuses on the Outcomes, not the means that the CEO uses to achieve them." The Carver Model identifies the "ends" are always about the changes to be made for persons outside the organization, the "ends" should not describe the organization itself or its activities, and the "ends" policies should not be about the staff.

The Outcomes
established by the
Board need revision.

The Board established six Outcomes (or "ends") in November 2004. In our review of the Outcomes, we identified concerns with all six Outcomes complying with the "ends" criteria established under the Carver Model. For example, the Outcome "Enhance WSI Staff Development" clearly does not comply as the "ends" should not be about the staff. Due to this, the Board is not able to effectively govern under the Carver Policy Governance Model.

Recommendation 4-5

We recommend the Workforce Safety & Insurance Board of Directors establish Outcomes that determine what good the organization is to accomplish, for whom, and at what cost or relative worth.

Management's Response

CONCUR: The WSI Board of Directors will ensure that all Outcomes are developed in accordance with the criteria established within the Carver Model of Board Governance.

Establishing Measurable Performance Criteria

Under the Carver Model, being accountable in leadership of the organization requires the board to be definite about its performance expectations and to assign these expectations clearly. While the Board has established Outcomes and Executive Limitations, the Board has not established definite performance expectations. As a result, the Board has no measurable performance targets in which the Board can compare actual performance to expected performance for all the Outcomes.

Executive Limitations are the constraints on the Executive Director's authority which establish boundaries of prudence and ethics within which

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all executive activity and decisions must take place. The Executive Limitations established by the Board are very broad.

Recommendation 4-6

We recommend the Workforce Safety & Insurance Board of Directors establish detailed, measurable performance criteria within the Outcomes and Executive Limitations policies.

Management's Response

DO NOT CONCUR: The establishment of the type of measurable performance criteria alluded to within the preceding narrative would constitute a situation in which WSI's Board of Directors would be acting in a way inconsistent with Dr. Carver's most basic direction related to effective methodological governance protocol. See Appendix E for the remainder of the Board's response.

State Auditor's Concluding Remarks

Based on our review of information related to the Carver Model, this recommendation is not inconsistent with effective methodological governance protocol. If the Board does not establish measurable criteria, we are unsure how the Board can measure or determine whether established expectations are met.

Establishing an Adequate Monitoring Report for Board Expectations

The Board receives a quarterly operating report generated by staff of WSI. The report is compiled by relying on key data elements captured in the department measures. The report does not identify performance data directly related to expectations set by the Board in its Outcomes and Executive Limitations policies. In addition, this report does not appear to address the Board's Outcomes. As a result, the Board does not have a mechanism in place to effectively govern and hold the Executive Director accountable related to the Board's established expectations. The Board should establish a separate monitoring report for the purpose of determining whether board expectations are being fulfilled. This would not take the place of the quarterly operating report which should still be generated.

Recommendation 4-7

We recommend the Workforce Safety & Insurance Board of Directors establish a separate monitoring report for the purpose of determining whether board expectations, set in its Outcomes and Executive Limitations policies, are being fulfilled.

Management's Response

CONCUR: The Board will review and expand, if necessary, monitoring information for the purpose of determining whether board expectations are being fulfilled.

Evaluating Board Performance

The Board's Governance Policy states in order to aid WSI and to achieve the Board's mission, the Board will monitor and regularly discuss the Board's process and performance. The Board did not have a formal plan established to regularly discuss its process and performance. A number of areas addressed in this report related to the Board may have been identified if an adequate monitoring process had been followed.

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Recommendation 4-8

We recommend the Workforce Safety & Insurance Board of Directors periodically conduct an evaluation on the Board's and individual members' performance including each committee's and individual committee members' performance.

Management's Response

CONCUR: The Board will consider this recommendation as part of their scheduled January 2007 Board retreat.

Improving Processes Once Outcomes are Established

After the Board of Directors established six new Outcomes in November 2004, the Board did not make changes to policies in a timely manner. The changes were not approved until June 2006. We noted the policies still reference an outdated mission statement of the organization.

While the Board established the Outcomes in November 2004, it was not until October 2005 that WSI formulated strategies and identified a strategic plan. As of July 2006, WSI's plans used to achieve the Board Outcomes indicated they are partially implemented with only one of the six Outcomes' plans being greater than 50% complete.

Recommendation 4-9

We recommend the Workforce Safety & Insurance Board of Directors improve the governance process used once Outcomes are established or modified. The Board should, at a minimum:

- a) Timely incorporate changes into policy; and
- b) Adequately monitor the organization's progress in developing a plan to accomplish the Outcomes.

Management's Response

CONCUR: In regard to part (a) of the recommendation, with few exceptions, Board policy changes have been incorporated timely. The reason for the delay with the Outcomes policies and strategic plan formulation has been outlined in management's response to Recommendation 3-7. In regard to part (b) of the recommendation, the Board education topic at the August of 2006 Board meeting was staff presentations on strategy implementation and a progress update on overall strategy implementation. It is the Board's intent to continue to receive periodic updates from staff relative to overall strategic plan implementation at subsequent Board meetings.

Evaluating the Executive Director

In review of the Board of Directors process for evaluating the Executive Director, we noted improvements were necessary to ensure established expectations are being met and to hold the Executive Director accountable. The committee evaluating the performance of the Executive Director should be providing a salary recommendation to the Board upon completion of the evaluation.

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Making Changes to the Executive Director's Evaluation

The Board needs to improve its evaluation process of the Executive Director.

Under the Carver Policy Governance Model, being accountable for leadership of the organization requires a board to determine if the established expectations are being met. Monitoring or evaluative information is to speak directly to whether board expectations are being fulfilled. Consequently, monitoring should be related to expectations set by the board in its "ends" and Executive Limitations policies. We noted the Board's 2004 and 2005 evaluation of the Executive Director included criteria developed from the essential functions as identified in the job description rather than relying on the Outcomes and Executive Limitations.

The Board's Governance Policies identify the evaluation of the Executive Director is to be determined from Executive Director reports, internal audit reports, and external reports. When conducting the evaluation, the Board used more than the reports established within the policy. For example, the Board used surveys of selected WSI employees. Not only did questions asked in surveys not relate to Board expectations, but we question whether a sufficient number of employees are surveyed. In 2005, the Executive Director's direct reports are surveyed as well as 25 WSI staff, but only 10 of the 25 staff responded.

The Board has not conducted a proper evaluation of the Executive Director and is in noncompliance with the evaluation process under both the Carver Model and the Board's Governance Policies. As a result, the Board did not have an adequate means to determine whether performance was acceptable or not.

Recommendation 4-10

We recommend the Workforce Safety & Insurance Board of Directors evaluate the Executive Director's performance solely on established criteria in Outcomes and Executive Limitations policies which measure the degree of organizational success.

Management's Response

CONCUR: The WSI Board of Directors will review this recommendation with a Carver Governance consultant to ensure the formulation of a methodology that ensures the Executive Director's performance is based on the Outcomes.

Providing a Salary Recommendation

The Board of Directors' Bylaws state the Executive Performance Committee is responsible for providing a salary recommendation for the Executive Director. After completing the Executive Director's evaluation in 2004 and 2005, the committee did not provide a salary recommendation to the full Board. When the Board approved a salary increase for the Executive Director in 2004, the Board identified an incorrect base salary amount. This created confusion as to what the raise was to be and this may have been avoided if the Executive Performance Committee had made a recommendation as required by policy.

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Recommendation 4-11

We recommend the Workforce Safety & Insurance Board of Directors Executive Performance Committee provide a salary recommendation for the Executive Director after evaluating the Executive Director's performance.

Management's Response

CONCUR: The Executive Performance Committee for Workforce Safety & Insurance's Board of Directors will provide salary recommendations for the Executive Director after evaluation.

Increasing Board Member Compensation

Board members receive a daily compensation rate of \$100 for each meeting attended or for other board related duties. They are reimbursed for mileage and expenses at the same rate as provided state officers. In review of other boards, we noted this amount is low. For example, two large insurance companies in the state had board of directors receiving compensation ranging from \$17,000 to \$28,750 with the president of one board receiving \$39,450. In comparison to another state which has a monopolistic workers' compensation system, we noted oversight commission members receive \$2,000 for each meeting attended, not to exceed \$18,000 in a year.

In comparison to other boards, WSI's Board of Directors' compensation is low.

According to WSI, there has been an increase in the number of applications received when there are Board vacancies. To ensure interest continues for Board vacancies, adequate compensation for work performed should be provided. A higher level of expectation is being established for Board members within this report. This higher level of expectation should result in additional compensation.

Recommendation 4-12

We recommend the Workforce Safety & Insurance Board of Directors increase the amount of compensation Board members receive.

Management's Response

NOT ABLE TO RESPOND: It would be inappropriate for the Board to take any position in relation to this recommendation without public discussion.

State Auditor's Concluding Remarks

We do not understand the Board's response to this recommendation. According to NDCC Section 65-02-03.2, the Board is responsible for determining the compensation Board members are entitled to receive for days spent in attendance at Board meetings or other business as approved by the Board. Thus, the Board is statutorily required to set its compensation.

Ensuring Information is Provided to All Members

On October 17, 2003, a Board of Directors meeting began with a motion to sever the employment relationship with the Executive Director. The minutes of the meeting reflect certain members were confused and apparently did not have information other members had. One member believed there had been a number of communications that had gone on that the entire Board had not been privy to. When the vote was taken to sever the employment relationship, 8 members voted yes, 2 voted no,

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and 1 attempted to abstain from voting. A representative of the Attorney General's Office informed the member a conflict of interest was needed to abstain. The member identified they did not have enough information and the Attorney General's Office representative informed them this did not constitute a conflict of interest. The member then voted no.

For the Board to make an informed decision, information available to certain Board members should be made available to all Board members prior to votes being taken on motions. When a motion is made at the beginning of a meeting for the Board to take such an action as it did, questions arise regarding whether discussions among Board members occurred prior to the meeting.

Recommendation 4-13

We recommend the Workforce Safety & Insurance Board of Directors ensure necessary and pertinent information is provided to all Board members before voting on motions.

Management's Response

CONCUR: The Board concurs that it should ensure necessary and pertinent information is provided to all Board members before voting on motions. Board leadership asserts that it works diligently to timely disseminate pertinent information to all Board members. Although there may be occasions where Board members may not have the exact same level of information, Board members assert they are able to make informed decisions.

Establishing a Plan for Vacancies of the Executive Director Position

The Board has no formal plan for actions it is to take when there is a vacancy in the Executive Director position.

When the former Executive Director was removed on October 17, 2003, the Board of Directors did not promptly select all members of a Search Committee. At the November 4 meeting, discussions were held regarding collection of information and the Chair of the Board was requested to appoint committee members by November 20. The Search Committee was still not identified and the Board was still updating the Executive Director job description at the meeting on November 20.

During the absence of the Executive Director, a Transition Team comprised of WSI Vice Presidents was established. The Board originally established a team of four excluding representation from one department the Board identified as important. A month after establishing the team, the Board voted to add another Vice President. The minutes of meetings reflect the Board did not define the expectations of the Transition Team. We noted the Vice Presidents of the organization did not have performance appraisals conducted in a timely fashion which would negatively impact the employees as salary increases are dependent upon a performance appraisal being conducted.

The Search Committee was responsible for reviewing applications for the open Executive Director position. Phone interviews were conducted with applicants, and four applicants were brought to the city for additional interviews. We noted WSI paid the expenditures of the spouse of at least one of the applicants. No formal guidance or policies were

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established by the Board regarding acceptable expenses for the second interview of candidates.

Recommendation 4-14

We recommend the Workforce Safety & Insurance Board of Directors establish a formal plan for actions it will take when the Executive Director position is vacant. The formal plan should, at a minimum:

- a) Identify the Board's role and functions during the transition;
- b) Establish appropriate Board committees in a timely manner;
- c) Identify the payment of applicant interview expenses including expenses for second interviews; and
- d) Identify how performance appraisals of employees reporting directly to the Executive Director position will be conducted.

Management's Response

CONCUR: The Board concurs that succession planning in this area is worthwhile. The Board will consider the provisions of this recommendation in its analysis to provide for the most appropriate succession and transition plan.

Clarifying the Executive Director's Expense Allowance

During the interviewing and selection process for the Executive Director position, the position's salary range and the fact the position does not include any bonuses or perks was clearly communicated to applicants. When the Board of Directors offers the open position to its first choice, the applicant requested a higher salary and the Board withdrew the offer. When discussing a salary offer for the second choice, the Board went into executive session. When the Board approved the hiring of the current Executive Director, the minutes identify an amount of a base salary "with a housing/business expense allowance of \$18,000." Since the Board had gone into executive session to discuss the salary, no information available to the public was identified as to the reason for providing such an allowance (even though all applicants were specifically informed no such allowance would be offered) and what the allowance is to be used for. Neither the Chair of the Board nor the Executive Director indicated further guidance being provided on the allowance. We did note expenditures were incurred by the Executive Director which were reimbursed by WSI and appeared to relate to expenses which a typical business expense allowance would cover (this is further addressed in Chapter 1).

Recommendation 4-15

We recommend the Workforce Safety & Insurance Board of Directors formally document the types of expenses intended to be included in the Executive Director's expense allowance and clearly communicate this information to the Executive Director and the individual responsible for approving all Workforce Safety & Insurance expenditures.

Management's Response

DO NOT CONCUR: See Management's Response to Recommendation 1-8.

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State Auditor's Concluding Remarks

The Board does not concur that clarification for an expense allowance is required. This statement concerns us considering the Board had specifically provided such an allowance to the Executive Director. The fact the Board decided to eliminate this account and include the amount as salary is irrelevant as this occurred after the concerns regarding the expense allowance were brought to management's and the Board's attention. We did not state such an allowance should not have been provided but noted clarification was needed.

Making Improvements with the Audit Committee

Two standing committees are established within the Board of Directors Bylaws. One is an Audit Committee which has a number of responsibilities. These include reviewing audit recommendations, monitoring the Executive Director's response to audit recommendations, and evaluating the performance of and providing a salary recommendation for the Directors of the Internal Audit Department and the Office of Independent Review. We noted the Audit Committee has not clearly established its processes, procedures, and responsibilities. In review of actions taken by the Audit Committee, we noted the committee was not following a Board motion related to performance related contracts.

Establishing a Charter

In a review of information regarding the Audit Committee, we noted the committee does not have an established charter. As a result, the Audit Committee is determining what responsibilities it has and the processes it will follow rather than appropriately having the Board establish such information. Guidance regarding charters is available from a number of sources and the Board should review such guidance prior to a charter being established.

Recommendation 4-16

We recommend the Workforce Safety & Insurance Board of Directors review guidance on audit committees and audit committee charters provided by the American Institute of Certified Public Accountants and The Institute of Internal Auditors and establish a charter for the Board Audit Committee.

Management's Response

CONCUR: The Board concurs it should review guidance on audit committees and audit committee charters. The Board Audit Committee will review information to determine if a charter would be beneficial above and beyond the guidelines established within the existing Board bylaws and governance policies.

Making Changes with the Employee Fraud Hotline

WSI has established an employee fraud hotline which provides a phone number WSI employees can call to report potential fraudulent activity (WSI also has a fraud hotline for reporting injured worker, employer, and provider fraud). While the call for the employee fraud hotline goes to an outside CPA firm, the issues are then reported to the Chief of Support Services and the Director of Human Resources. This information should be sent to an independent party, such as Internal Audit. The Board Audit

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Committee is responsible for compliance with laws, regulations, and ethics. The Audit Committee should provide oversight of a fraud hotline.

Recommendation 4-17

We recommend the Workforce Safety & Insurance Board of Directors Audit Committee ensure all information obtained from the organization's internal employee Fraud Hotline is sent directly to Internal Audit.

Management's Response

CONCUR: The internal employee fraud hotline reports will be routed to the Internal Audit Manager who will then follow the directives under the "Responsibility" section of the Internal Audit Charter.

Complying with Board Motions

A motion was approved at the November 20, 2003 Board meeting requiring the Audit Committee be informed of performance related contracts that have an estimated cost of \$100,000 for the biennium. While the motion specifically states the Audit Committee is only to be informed of performance related contracts, we noted the Audit Committee passed motions to approve a contract, to approve the awarding of a contract extension, to approve a WSI staff recommendation to renew a contract, and to approve WSI to move forward with a request for proposal. In February 2005, there was confusion regarding Board policy for requiring request for proposals for services exceeding \$100,000.

Recommendation 4-18

We recommend the Workforce Safety & Insurance Board of Directors Audit Committee comply with the Board's motion regarding performance related contracts or take appropriate action to have the Board pass a motion which clarifies the Audit Committee's role with performance related contracts.

Management's Response

CONCUR: At its October 12, 2006, Board meeting, the Board voted to forgo the mandated board oversight of contracts in excess of \$100,000.

Audit and WSI Background Information

Purpose and Authority of the Audit

The performance audit of aspects of Workforce Safety & Insurance (WSI) was conducted by the Office of the State Auditor pursuant to authority within North Dakota Century Code Chapter 54-10. WSI is required by state law to have a biennial performance evaluation conducted. Certain elements within the Request for Proposal, issued by the Office of the State Auditor, for a consultant to conduct the performance evaluation were not awarded. Instead, these elements were considered as part of this performance audit.

A performance audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of WSI.

Background Information

WSI is the sole provider of workers' compensation insurance in the state. This requires employers to purchase workers' compensation from the state fund.

In 1997, the Legislature passed legislation to create a Board of Directors to govern WSI, removing such authority from the Governor. The Board is comprised of 11 members representing employers (6), employees (3), and medical providers (1) with one member appointed at large (1). The Board is to ensure continuity of leadership at WSI and to ensure WSI operates efficiently and effectively.

WSI is organized into three major departments – Employer Services, Injury Services, and Support Services. Other major functions include General Counsel, Special Investigations Unit, Communications, Strategic, and two departments which report to the Board Audit Committee – Internal Audit and Office of Independent Review.

Prior to employer dividend credits, employer premiums exceed \$100 million a year. WSI has over \$1 billion in investments. The organization is a specially funded state agency with a one line item appropriation. WSI's budget for the 2005-2007 biennium was approximately \$33.3 million (\$1.1 million more than the previous biennium) and WSI was authorized 223.24 full-time equivalents (FTE).

Goals of the Audit

North Dakota Century Code Section 54-10-01 requires our office to conduct performance audits in accordance with generally accepted government auditing standards. The goals of our audit, listed below, include the necessary elements of a performance audit conducted in accordance with generally accepted government auditing standards.

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Audit and WSI Background Information

<i>Goal One</i>	Has Workforce Safety & Insurance established an adequate procurement system?
<i>Goal Two</i>	Has Workforce Safety & Insurance established an adequate human resource management system?
<i>Goal Three</i>	Are adequate policies and procedures established to provide appropriate leadership and accountability for Workforce Safety & Insurance?

Scope and Methodology

This audit was conducted in accordance with generally accepted government auditing standards and includes appropriate performance auditing and evaluation methods. Audit field work was conducted from the end of March 2006 to the end of October 2006. The audit period for which information was collected and reviewed was July 1, 2003 through March 31, 2006. In certain instances, additional information was reviewed. This was due, in part, to obtain and review recent information related to the organization and actions taken by WSI related to salary increases required by law. Specific methodologies are identified in the respective chapters of this report.

Board and WSI Comments Regarding the Audit

From the very start of this performance audit, it was evident to our office the Board and executive management of WSI were against a performance audit being conducted. There were comments made by both the Board and WSI management which appeared unprofessional and inappropriate and led to a negative tone being set at the beginning of the audit. Examples used to make this conclusion include:

- At the February 8, 2006 Board Audit Committee meeting, representatives of the Office of the State Auditor provided information to the Audit Committee regarding the performance audit. It became clear the Audit Committee was against the performance audit. The Chair of the Audit Committee attempted to interpret Government Auditing Standards and it became obvious, he did not correctly understand the standards. The Chair of the Audit Committee also sent emails to the Executive Director and individuals of a newspaper stating he did not support the performance audit and the audit was not welcome. It is concerning to the Office of the State Auditor that a chair of an Audit Committee would act in such a manner. Based on the information contained in this audit report, it is obvious to the Office of the State Auditor such a performance audit was needed in the areas reviewed.
- A representative of the Office of the State Auditor provided information to WSI employees at an all employee meeting on February 9, 2006. After this presentation concluded, the Executive Director's opening comments to employees were he encouraged everyone to fill out the employee survey as it was a great opportunity to get information from an independent source. The Executive Director then stated they did not agree with the

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performance audit. The Executive Director stated he disagreed with the performance audit piece on how management was running the organization and human resources as he considers that to be management. The Executive Director stated if the State Auditor's Office wanted to do all that, than his personal opinion was that the State Auditor's Office should apply for his job and get the Board to dump him.

- At the same employee meeting as noted in the previous bullet, the Chair of the Board of Directors addressed the employees. The first comment the Chair had was the meeting was a boring session as far as he was concerned. It should be noted the Chair was not invited to this meeting so it was unclear to us why the Chair attended. The State Auditor's Office had attempted to meet with employees of WSI without executive management present. This request was made to allow employees an opportunity to feel more comfortable and to ask questions which may not have been asked if executive management was present. The Executive Director denied our request for this and insisted he and executive management attend the meeting.

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List of Recommendations

Recommendation 1-1

We recommend Workforce Safety & Insurance take appropriate action to formally establish an adequate procurement system. The organization should, at a minimum:

- a) Ensure purchasing policies are thoroughly documented, communicated to appropriate employees, and implemented;
- b) Centralize recordkeeping of procurement information; and
- c) Establish an adequate monitoring process to monitor compliance with laws, Office of Management and Budget guidelines, and the organization's policies.

In establishing a formal procurement system, the organization should ensure changes are made to address all areas identified in the report as requiring improvement, including compliance issues.

Recommendation 1-2

We recommend the Workforce Safety & Insurance Procurement Office be involved at the beginning of all competitive, limited competitive, noncompetitive, and negotiated purchases.

Recommendation 1-3

We recommend Workforce Safety & Insurance make improvements with how public funds are used. The organization should, at a minimum:

- a) Ensure expenditures comply with constitutional provisions, North Dakota Century Code requirements, and OMB Policies; and
- b) Ensure expenditures are for necessary and reasonable purposes.

Recommendation 1-4

We recommend Workforce Safety & Insurance use the established evaluation and selection methodology to ensure fairness in awarding contracts.

Recommendation 1-5

We recommend Workforce Safety & Insurance ensure contracts are in place before work commences or continues on an expired contract.

Recommendation 1-6

We recommend Workforce Safety & Insurance ensure contracts are not paid until the services have been performed to the organization's satisfaction.

Recommendation 1-7

We recommend Workforce Safety & Insurance formally analyze potential temporary employee relationships to ensure contractors are not hired as temporary employees.

Recommendation 1-8

We recommend Workforce Safety & Insurance make improvements related to reimbursements to the Executive Director. The organization should, at a minimum:

- a) Require the Executive Director to use his business expense allowance;
- b) Ensure the person preparing the Executive Director's voucher is not the person approving the voucher and is not a person reporting directly to the Executive Director; and

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List of Recommendations

- c) Ensure the person approving the reimbursements has sufficient knowledge of the Board of Directors' intent relating to the Executive Director's business expense allowance.

Recommendation 1-9

We recommend Workforce Safety & Insurance make improvements with reimbursing employees for taxes already paid by employees. The organization should, at a minimum:

- a) Ensure tax reimbursement payments are reasonable and done in accordance with established agreements;
- b) Attempt to recover the amounts improperly paid to employees; and
- c) Ensure requests made to the Chair of the Board of Directors are reasonable.

Recommendation 1-10

We recommend Workforce Safety & Insurance comply with legislative intent and apply expenditures to the appropriate biennium.

Recommendation 2-1

We recommend Workforce Safety & Insurance improve the employee performance appraisal process and ensure the pay for performance system operates in an effective manner. The organization should, at a minimum:

- a) Ensure the performance appraisal process is adequately monitored for compliance with policies including appraisals being completed annually;
- b) Establish the criteria to be used for measuring performance at the beginning of an appraisal period;
- c) Update performance appraisal policies in a timely manner;
- d) Have supervisors evaluated by those they supervise; and
- e) Provide training to employees related to properly completing performance appraisals.

Recommendation 2-2

We recommend Workforce Safety & Insurance comply with North Dakota Century Code Section 54-06-21 and ensure performance appraisal forms are signed by employees before placing them in personnel files.

Recommendation 2-3

We recommend Workforce Safety & Insurance establish a consistent and uniform process for hiring employees. The organization should, at a minimum:

- a) Ensure selected applicants meet minimum qualifications of the position;
- b) Centralize the hiring process within the Human Resource Department;
- c) Establish a formal screening process and standardized scoring system which is consistently applied to all applicants;
- d) Ensure questions asked of applicants are relevant and pertain to the position's primary duties; and
- e) Verify work experience and education for all individuals hired.

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List of Recommendations

- Recommendation 2-4** We recommend Workforce Safety & Insurance establish formal policies and procedures for the hiring process to provide clear guidance and enhance consistency in the process.
- Recommendation 2-5** We recommend Workforce Safety & Insurance comply with veterans' preference requirements in North Dakota Century Code Chapter 37-19.1. The organization should, at a minimum:
- a) Review veterans' preference requirements with the Office of the Attorney General and modify hiring procedures accordingly; and
 - b) Use certified mail to notify veterans of their nonselection.
- Recommendation 2-6** We recommend Workforce Safety & Insurance use a competitive hiring process for all positions but document information as to how an appointment is being done on a nonpartisan, merit basis if the Executive Director makes an appointment without a competitive process.
- Recommendation 2-7** We recommend Workforce Safety & Insurance ensure it complies with legislative intent related to employee compensation adjustments.
- Recommendation 2-8** We recommend Workforce Safety & Insurance ensure payments made to employees comply with the bonus program requirements within North Dakota Century Code Chapter 54-06.
- Recommendation 2-9** We recommend Workforce Safety & Insurance make improvements with how investigations of incidents involving employees are conducted. The organization should, at a minimum:
- a) Ensure investigations are conducted by an independent source who is free of conflicts of interests;
 - b) Ensure individuals conducting investigations receive proper training;
 - c) Have interview sheets signed by the interviewee, specifically when interviews are conducted in a one-on-one setting; and
 - d) Ensure final investigation reports are signed and dated.
- Recommendation 2-10** We recommend Workforce Safety & Insurance make improvements with actions taken related to results and recommendations of investigations involving employees. The organization should, at a minimum:
- a) Document actions taken or the justification for no actions taken in relation to recommendations from investigations;
 - b) Improve the monitoring of actions to be taken;
 - c) Document the reasons for changing conclusions or recommendations of investigations; and
 - d) Have results of investigations provided to the Board of Directors Audit Committee when the investigation involves the Executive Director.

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- Recommendation 2-11** We recommend Workforce Safety & Insurance promptly notify the state's Risk Management Division of issues where there is a potential for a claim to be filed against the state including all issues related to harassment.
- Recommendation 2-12** We recommend Workforce Safety & Insurance periodically monitor and evaluate the classification and pay for performance systems to ensure they are operating effectively and are accomplishing what WSI intends.
- Recommendation 2-13** We recommend Workforce Safety & Insurance ensure changes made to pay ranges within the classification system are based on a formal evaluation process.
- Recommendation 2-14** We recommend Workforce Safety & Insurance make improvements with how turnover rates are calculated, presented, and reviewed. The organization should, at a minimum:
- a) Ensure a standard, consistent turnover rate is used;
 - b) Have only one department responsible for calculating and tracking turnover;
 - c) Properly identify turnover rate information if differences in calculations exist; and
 - d) Identify turnover rate information by department and review areas where significant increases are occurring.
- Recommendation 2-15** We recommend Workforce Safety & Insurance establish a formal procedure to periodically review the Policy Handbook, make the necessary changes, and date changes accordingly.
- Recommendation 2-16** We recommend Workforce Safety & Insurance end all incentive pay programs for their employees and ensure appropriate payment adjustments are made.
- Recommendation 2-17** We recommend Workforce Safety & Insurance review and re-evaluate the reasonableness of a 7.5% standard for absenteeism. The organization should, at a minimum:
- a) Ensure the absenteeism standard is not lower than the amount of annual leave employees are entitled to use in a year;
 - b) Ensure the absenteeism standard includes consideration for a reasonable amount of sick leave; and
 - c) Ensure leave taken under the Family Medical Leave Act or compensation earned under the Fair Labor Standards Act is not included in the calculation of the absenteeism rate.
- Recommendation 3-1** We recommend the Workforce Safety & Insurance Executive Director make improvements with actions taken in order to increase morale of the organization. While this will encompass a number of areas, the Executive Director should, at a minimum:
- a) Ensure actions taken are not resulting in preferential treatment and/or favoritism; and

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List of Recommendations

- b) Follow through with commitments or promises, ensure unreasonable commitments are not made, and notify all applicable parties if promises or commitments are unable to be adhered to.

- Recommendation 3-2** We recommend Workforce Safety & Insurance take appropriate action to have an effective open door policy under which employees can bring issues to management without actual retaliation or fear of retaliation.
- Recommendation 3-3** We recommend Workforce Safety & Insurance make significant, timely improvements related to communication between executive management and other employees of the organization.
- Recommendation 3-4** We recommend Workforce Safety & Insurance comply with legislative intent and ensure the Special Investigations Unit's resources are used appropriately.
- Recommendation 3-5** We recommend Workforce Safety & Insurance comply with contractual provisions and ensure the Department of Transportation's driver's license image program is accessed for official use only.
- Recommendation 3-6** We recommend Workforce Safety & Insurance use resources in an efficient and proper manner to ensure the use of resources does not result in abuse.
- Recommendation 3-7** We recommend Workforce Safety & Insurance establish and implement its strategic plan in a timely manner, once the Board of Directors establishes revised outcomes. The organization should, at a minimum:
- a) Review and modify its mission;
 - b) Reevaluate the purpose and other structural elements of the strategic plan;
 - c) Ensure employee involvement is obtained when developing the plan; and
 - d) Ensure information related to completion of strategies is accurate.
- Recommendation 3-8** We recommend Workforce Safety & Insurance include relevant strategic planning information and the Board of Directors' Outcomes on their web site.
- Recommendation 3-9** We recommend Workforce Safety & Insurance take appropriate steps to ensure information it provides is accurate.
- Recommendation 3-10** We recommend Workforce Safety & Insurance implement succession planning as an ongoing process to identify, assess, and develop talent to ensure leadership and management continuity throughout the organization.

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List of Recommendations

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| Recommendation 3-11 | We recommend Workforce Safety & Insurance ensure adequate planning, including consideration for impact on staff time and other resources, is conducted prior to changes and training on management philosophy is implemented. |
| Recommendation 3-12 | We recommend Workforce Safety & Insurance move the Quality Assurance Director's function of facilitating implementation of recommendations to Internal Audit. |
| Recommendation 3-13 | We recommend Workforce Safety & Insurance conduct an in-depth review of the staffing level of Internal Audit and determine an adequate staffing level for Internal Audit to effectively fulfill its mission. |
| Recommendation 3-14 | We recommend Workforce Safety & Insurance significantly increase their blanket bond coverage amount. |
| Recommendation 3-15 | We recommend Workforce Safety & Insurance correctly calculate premium dividend credits and take appropriate action to recover lost premium amounts. |
| Recommendation 4-1 | We recommend the Workforce Safety & Insurance Board of Directors comply with legislative intent and effectively govern the organization. |
| Recommendation 4-2 | We recommend the Workforce Safety & Insurance Board of Directors formally establish its role regarding when Board involvement and/or approval is required. |
| Recommendation 4-3 | We recommend the Workforce Safety & Insurance Board of Directors comply with the Carver Policy Governance Model. |
| Recommendation 4-4 | We recommend the Workforce Safety & Insurance Board of Directors obtain additional education and training on the Carver Policy Governance Model. |
| Recommendation 4-5 | We recommend the Workforce Safety & Insurance Board of Directors establish Outcomes that determine what good the organization is to accomplish, for whom, and at what cost or relative worth. |
| Recommendation 4-6 | We recommend the Workforce Safety & Insurance Board of Directors establish detailed, measurable performance criteria within the Outcomes and Executive Limitations policies. |
| Recommendation 4-7 | We recommend the Workforce Safety & Insurance Board of Directors establish a separate monitoring report for the purpose of determining whether board expectations, set in its Outcomes and Executive Limitations policies, are being fulfilled. |

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- Recommendation 4-8** We recommend the Workforce Safety & Insurance Board of Directors periodically conduct an evaluation on the Board's and individual members' performance including each committee's and individual committee members' performance.
- Recommendation 4-9** We recommend the Workforce Safety & Insurance Board of Directors improve the governance process used once Outcomes are established or modified. The Board should, at a minimum:
- a) Timely incorporate changes into policy; and
 - b) Adequately monitor the organization's progress in developing a plan to accomplish the Outcomes.
- Recommendation 4-10** We recommend the Workforce Safety & Insurance Board of Directors evaluate the Executive Director's performance solely on established criteria in Outcomes and Executive Limitations policies which measure the degree of organizational success.
- Recommendation 4-11** We recommend the Workforce Safety & Insurance Board of Directors Executive Performance Committee provide a salary recommendation for the Executive Director after evaluating the Executive Director's performance.
- Recommendation 4-12** We recommend the Workforce Safety & Insurance Board of Directors significantly increase the amount of compensation Board members receive.
- Recommendation 4-13** We recommend the Workforce Safety & Insurance Board of Directors ensure necessary and pertinent information is provided to all Board members before voting on motions.
- Recommendation 4-14** We recommend the Workforce Safety & Insurance Board of Directors establish a formal plan for actions it will take when the Executive Director position is vacant. The formal plan should, at a minimum:
- a) Identify the Board's role and functions during the transition;
 - b) Establish appropriate Board committees in a timely manner;
 - c) Identify the payment of applicant interview expenses including expenses for second interviews; and
 - d) Identify how performance appraisals of employees reporting directly to the Executive Director position will be conducted.
- Recommendation 4-15** We recommend the Workforce Safety & Insurance Board of Directors formally document the types of expenses intended to be included in the Executive Director's expense allowance and clearly communicate this information to the Executive Director and the individual responsible for approving all Workforce Safety & Insurance expenditures.

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- Recommendation 4-16** We recommend the Workforce Safety & Insurance Board of Directors review guidance on audit committees and audit committee charters provided by the American Institute of Certified Public Accountants and The Institute of Internal Auditors and establish a charter for the Board Audit Committee.
- Recommendation 4-17** We recommend the Workforce Safety & Insurance Board of Directors Audit Committee ensure all information obtained from the organization's internal employee Fraud Hotline is sent directly to Internal Audit.
- Recommendation 4-18** We recommend the Workforce Safety & Insurance Board of Directors Audit Committee comply with the Board's motion regarding performance related contracts or take appropriate action to have the Board pass a motion which clarifies the Audit Committee's role with performance related contracts.

Chapter 1 Supplemental Responses & Concluding Remarks

Management's Response to Recommendation 1-1

This is why in March of 2005 WSI management created the role of a dedicated Procurement Officer. The individual selected for the position had all of their duties unrelated to procurement reassigned and was given a salary increase commensurate with the new role. Additionally, all agency contracts were centralized under their oversight. Their primary role was to assure the agency followed all applicable procurement guidelines. This unit is now under the administration of a new Procurement Officer and every effort necessary continues to be utilized to assure WSI is in compliance with all applicable purchasing policies.

While, WSI concurs with the recommendation, there are several statements made within the narrative which management would like to clarify. Management readily admits there were errors within its procurement documentation; however, these errors were unintentional. Additionally, many of the identified issues relate to WSI not fully following its internally-adopted and more-stringent guidelines. It should also be noted, that many of the items referenced in the audit had been accepted purchasing practices at WSI for many years prior to the current leadership team being instituted. Numerous documents show the Procurement Officer not only supported but approved identical items. Documents from managers who held authority over the procurement process at that time demonstrate that at no time were they put on notice of any of these issues. Since many of the cited actions were practiced for years by the Organization and/or existed in WSI's Employee Policy Handbook, the current leadership was under the advisement that the practices were proper.

Finally, relating to one of the printing instances, below are quotes from a follow-up e-mail sent by the Executive Director to the project coordinator. These statements demonstrate a continued commitment to following all applicable rules/laws/policies: *"the procurement law being law and critical to obey;" ... "was it not someone's obligation to assist the agency in sailing through the waters legally to fulfill its needs;" ... and, "I do not see a willful attempt by anyone to break any laws here; however, what I see is poor planning and budgeting that caused individuals to react instead of act."*

State Auditor's Concluding Remarks

While WSI states the role of the Procurement Officer was created to ensure it had an adequate procurement system, this role could only be fulfilled if the Procurement Officer was properly included in all processes. A number of the problems noted with procurement relate to executive management circumventing controls and not properly including the Procurement Officer in the process. Procurement processes reviewed involving the Procurement Officer were, for the most part, handled in an appropriate manner.

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Chapter 1 Supplemental Responses & Concluding Remarks

**Management's Response
to Recommendation 1-2**

Within the narrative of this recommendation, implications are made that a bid may have been artificially fragmented. The allegation assumes that the \$10,500 spent on books and \$16,000 spent on training should have actually been one bid. If these two expenditures were combined, then WSI should have used a formal, sealed-bid procurement process; however, the purchases were two legitimately separate purchases. WSI required both the *Counselor Salesperson* Wilson Learning training material as well as a certified Wilson Learning trainer that would customize the training for WSI's safety professionals; however, they did not necessarily have to be provided from a single vendor. Additionally, due to the fact that WSI wanted to be assured that the training material was received before the July 13, 2005, training date, as well as assure the appropriate time and steps to properly bid for the trainer were followed, the purchases were legitimately made as two separate acquisitions.

Another item discussed within the narrative referenced a vendor that was selected for an annual retainer associated with managerial consulting services. This narrative stated that the vendor should have been eliminated because of an exclusion of four specifications. The specifications section of the Request for Telephone Quote on file states that WSI bidding for: "4 days per month – total of 48/year with the following *potential* services rendered under the monthly contract. (Emphasis Added) The specifications then lists eight "potential" areas of services that each vendor then considered, weighted, and bid upon. Based on the bids provided, WSI chose the lowest vendor who was \$45,600 lower than one bidder and \$189,600 less than another bidder. In their bid, the selected vendor did list a cost for the other potential areas that even if added into the bid would still have been a lower bid than the other two.

As a final note, management is highly concerned about the following comments found in the preceding narrative:

"The apparent override of procurement processes and procedures raises concerns related to executive management. Such behavior sets a negative tone at the top regarding compliance with laws and established policies and procedures. Not only does such behavior set a negative tone at the top, but such instances also require the information to be used in assessing the potential for fraud. As indicated by professional guidance, when management is willing to override internal controls, the level of fraud risk is higher."

WSI management takes its legal, ethical, and public trust responsibilities seriously and agrees that if such activity were occurring at WSI it would set a negative tone; however, no such activity has ever been condoned or intentionally practiced under the current management. While management readily admits that some procurement mistakes were made, they were not made willfully or intentionally. Consequently, management feels it is potentially injurious to the agency's reputation

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Chapter 1 Supplemental Responses & Concluding Remarks

**State Auditor's Concluding
Remarks**

that there were apparent overrides of the procurement process. It should be noted that the entire crux of the statement rests on the word "apparent." The American Heritage Dictionary defines apparent as "Appearing as such but not necessarily so" and the Merriam-Webster Dictionary defines it as "manifest to the senses or mind as real or true on the basis of evidence that may or may not be factually valid."

WSI states the Wilson Learning training material as well as a certified Wilson Learning trainer did not necessarily have to be provided from a single vendor. In most seminars or when training is provided, the presenter is responsible for providing materials. WSI did end up using the same vendor for both purchases which further supports our conclusion. One purpose for making the purchases separately was to avoid formal bidding requirements (when the two are properly combined, the threshold requiring formal bids is met). Another purpose for making the purchase separately was to allow WSI to receive the books in one biennium even though they were not intended to be used until the following biennium. We question whether legislative intent related to the appropriation process is complied with when an agency receives goods in one biennium which it fully anticipates not using until the following biennium.

WSI states it selected the lowest vendor for managerial consulting services. When the awarded bid is less than \$15,000 and other bids are over 4 times and 13 times more, it is evident comparative bids were not obtained. WSI states eight potential areas of services were considered, weighted, and bid upon by the vendors. It is unclear how WSI came to this conclusion based on the information we reviewed in the phone quote documentation. We question whether the other two vendors were even made aware the bids could be made on certain services or that they could pick and choose what to bid upon.

WSI states it takes its legal, ethical, and public trust responsibilities seriously and agrees if such activity ("apparent override of procurement processes and procedures") were occurring it would set a negative tone. Our audit and this report identifies management did not follow established policies and procedures and this sets a poor example for the rest of the organization.

WSI provides information related to the use of the term "apparent." We attempted to explain the reason for using such terminology in our performance audit reports but management either ignored this information or did not understand our explanation. Such language has been used by our office in performance audits dating back to the early 1990's.

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Chapter 1 Supplemental Responses & Concluding Remarks

**Management's Response
to Recommendation 1-3**

In January of 2005, WSI worked with the legislature to establish specific appropriation authority to assure WSI was making prudent and discretionary payments for the promotion/support of the agency. Just prior to the additional appropriation authority being amended into WSI's budget bill, OMB noted that WSI was already a "promotional agency" and thus already had this authority. As a result, the amendment for additional appropriation authority was withdrawn. In February of 2005, in order to ensure WSI strictly followed the promotional agency rules, the Executive Director wrote OMB to ask for compliance guidance:

"I was seeking some guidance from you on the actual guidelines and allowances of the program (meals, alcohol, travel, etc.). We want to assure that we are meeting and exceeding every guideline established for the program."

OMB responded:

"You are referring to OMB fiscal policy 207 related to promotional expenses when you say WSI already has the ability to purchase meals, etc. with detailed receipts and justification . . . The policy does not state what is allowed and what is not allowed. The only guideline given is that "agencies are expected to use restraint and common sense in authorizing these types of expenses."

WSI welcomes the opportunity to have legislative committees as well as other public officials on-site to educate and inform legislators on the agency's legislative policy proposals and other issues relevant to the organization. The meals were provided in accordance with applicable policy guidelines. Additionally, WSI believes it is the state's best interest to provide legislators with opportunities to learn about national legislative initiatives and industry best practices and advancements affecting workers' compensation.

Under the provisions of 65-02-01.2 carnations are given to employees in appreciation for their years-of-service at WSI. This has historically been part of Human Resource's (HR) rewards and recognition program. The process of recognizing and rewarding employees with a flower on their anniversary date of employment has been in place for 2-3 years and the process of recognizing and rewarding employees with gift certificates has been in place for over 6 years.

**State Auditor's Concluding
Remarks**

WSI references OMB Policy 207 which identifies a list of state agencies authorized to incur promotional expenses. This policy states agencies are expected to use restraint and common sense in authorizing these types of expenses. In review of expenditures incurred by WSI, we conclude WSI did not exercise prudent restraint in the use of public funds.

WSI states the purchase of carnations for employees is done so under the provisions of NDCC Section 65-02-01.2 which authorizes WSI to

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Chapter 1 Supplemental Responses & Concluding Remarks

establish its own personnel system. While WSI is allowed to establish its own personnel system, this provision would not allow the organization to be in noncompliance with constitutional provisions that public funds be used for public purposes.

**Management's Response
to Recommendation 1-4**

Within the narrative, though, the auditor notes a situation where they "identified WSI inappropriately changed the evaluation methodology after proposals were received" because "WSI management believed members of the evaluation team may not have been acting in good faith and thus, required the change to occur." The statement points to a situation in which WSI had concerns relating to discrepant scoring by a member of the review team. WSI could have removed the member and replaced them with a new member; however, due to the complexity of the issue and the inability to replicate the vendor presentations, this was not an available option. WSI had to take some form of action though, and chose to drop the high and low scores of the evaluation committee. The decision to drop these scores was made by the Project Sponsor in consultation with WSI's Procurement Officer who advised the Project Sponsor that they had discussed the issue with an OMB representative. As a result of this narrative, WSI again contacted a representative from OMB to verify its actions were appropriate. When the situation was explained, the representative stated the committee had a responsibility to do something. The representative stated that the procurement guidelines are devoid of guidance in a situation similar to the one referred to; however, some form of corrective action was necessary.

**State Auditor's Concluding
Remarks**

WSI states it had concerns relating to discrepant scoring by a member of the review team and chose to drop the high and low scores of the evaluation committee. We do not conclude as to whether there was discrepant scoring or not. We are not aware of information or a review being conducted to determine whether this alleged member had actually inappropriately scored information. In addition, if one member was alleged to have discrepant scoring, we question how WSI determined the discrepant scoring involved only one member of the review team as no documentation was identified of an investigation or review being performed. While we do not imply other members of the review team could have been involved, there appears to be no determination made if other members' scoring should have been questioned.

WSI states a representative from OMB was again contacted to verify its actions were appropriate. WSI notes the representative stated the committee had a responsibility to do something. However, WSI does not state whether the OMB representative verified its actions were appropriate or not. While we agree something had to be done, we question the dropping of the high and low scores of the evaluation committee as the most appropriate action to take.

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**Management's Response
to Recommendation 1-10**

Policy 200 outlines the appropriate procedure for the receipt and payment of both of these goods or services. In part, Policy 200 specifically states:

The general rule is that expenditures are to be charged to the fiscal year in which the goods or services were received. Guidance can be found in the Office of Management and Budget's (OMB) Fiscal and Administrative Policy 201. According to that policy, "... all goods and services ordered and received prior to June 30 must be charged to the biennial appropriation for the period ending June 30. Goods and services received after June 30 are obligations of the biennial appropriation beginning July 1." It further states "This policy prohibits receiving goods and services in July and charging the cost to the previous biennium, as well as improperly charging a new biennium for past biennial costs."

In certain cases, expenditures are allowed to be paid prior to the goods or services being received. One instance is when prepayment is a requirement of the contract, such as in the case of certain rental payments or insurance payments. Another instance is when a discount is offered for early payment, such as when purchasing airline tickets. However, there are very few exceptions to the general rule.

Based upon the narrative, there were predominantly two items in question which accounted for \$23,000 of the \$24,600. The first item (\$10,500) related to the purchase of training materials for a workshop that was to be held July 13-16, 2005. In order to assure WSI receive the necessary and required training materials in advance of the scheduled workshop, the materials were ordered and received before June 30, 2005. Per OMB Policies 200 and 201, these items were properly expensed to the correct biennium as "all goods and services ordered and received prior to June 30 must be charged to the biennial appropriation for the period ending June 30."

The second item (\$12,500) was a follow-up review relating to recommendations within the 2004 Performance Evaluation. By contract, WSI agreed to pay the vendor one-half up front to cover expenses (travel, lodging, etc...) as well as some of the audit work which was to occur before June 30 of the biennium. On-site work for this review commenced on June 28, 2005. Per OMB Policy 200, the payments were appropriately applied to the correct biennium.

Appendix B
Chapter 1 Supplemental Responses & Concluding Remarks

**State Auditor's Concluding
Remarks**

WSI states the training materials were ordered and received before June 30, 2005. WSI had inappropriately split the purchase of the training materials and selection of the presenter into two purchases. While WSI did receive the materials before June 30, the materials were purchased for an event which was to occur in the following biennium. WSI had more than sufficient funds available in the 2003-2005 biennium. We question whether legislative intent related to the appropriation process is complied with when an agency receives goods in one biennium which it fully anticipates not using until the following biennium.

WSI states it agreed to pay a vendor one-half up front to cover expenses and believes the payments were appropriately applied to the correct biennium. The pre-payment does not comply with OMB policy. The policy identifies there are very few exceptions to the general rule and the pre-payment made by WSI would not be an acceptable exception to the policy. One reason such a pre-payment is made for this contract would be to attempt to use moneys from the 2003-2005 biennium. WSI had more than sufficient funds available at the end of this biennium.

Chapter 2 Supplemental Responses & Concluding Remarks

Management's Response to Recommendation 2-1

CONCUR (a, b, c, e): As noted in the narrative, the Board had asked the Executive Director to review the pay-for-performance system because they had some concerns that it may not be functioning as well as they had originally expected. In order to enhance the effectiveness of the pay-for-performance process, WSI began an informal bid process in January of 2006 to acquire a new performance management system. In August of 2006, WSI began the implementation of a new electronic Employee Performance Management (EPM) system. The new appraisal process includes the transition from reviewing employees on anniversary date to a single, focal-review period. This new appraisal process will also help ensure that each employee receives a timely review with an electronic signature. Additionally, it provides tools to allow employees to be more actively involved as-well-as informed about their performance. The criteria for the performance evaluations were identified in conjunction with input from WSI employees and their supervisors. Training for all employees as well as supervisors on how to effectively navigate and utilize the EPM system was conducted in August 2006.

Concerning the statement in the narrative that "Documentation related to employees' goals and objectives for the evaluation period do not appear to be completed prior to the beginning of the period under review. Evaluation criteria must be developed and communicated to employees at the beginning of the appraisal period;" it is WSI's current practice to communicate evaluation criteria with employees at the beginning of the appraisal process. The performance planning goal sheets are submitted at the time of review for filing purposes. The form would not be located in the personnel file until after the review was complete.

DO NOT CONCUR (d): While WSI agrees enhancements to the pay-for-performance appraisal process were necessary; WSI does not concur that supervisors should be evaluated by those they supervise. Peer-reviewed literature notes that 360° feedback should not be used for direct evaluation of any employee. There are a number of ways an individual may react to a 360° appraisal process. Many researchers have addressed this issue from an emotional perspective; specifically negative employee reactions which can lead to interpersonal problems. Although the use of such performance appraisal systems is on the rise (DeNisi & Kiuger, 2000), scholars have noted a number of problems with 360° performance systems and documented negative perceptions and impacts of such use.

Appendix C
Chapter 2 Supplemental Responses & Concluding Remarks

**Management's Response
to Recommendation 2-3**

The preceding narrative states: "We noted a question was asked during the interview of two applicants which was technically specific and we could not determine the relevancy of the question as it related to the position. We did note one of the two applicants did have a technical background and knowledge in this area and this applicant was also an acquaintance of the supervisor of the position who was involved in the interview process." Its purpose was to identify the experience and actual knowledge, skills, and abilities of the two safety professionals who were interviewed. Management felt and still feels that the question referenced was relevant to the technical safety position being filled and had nothing to do with any acquaintances of the supervisor.

**State Auditor's Concluding
Remarks**

Regarding WSI's response, the hiring process was for the Director of Loss Prevention. A question asked during the interview was "A radio isotope has a ½ life of 1 year. How many years will it take to reduce the initial activity to less than 10%?" This question was worth 10 points on a 100 point scale and we were unable to determine the relevancy of such a specific question based on the position's job description.

**Management's Response
to Recommendation 2-8**

The Organization (WSI) is unable to identify anything which prohibits this practice. The documented intention was properly noted as a salary adjustment in each case and all financial documentation is consistent with this practice. Black's Law Dictionary, 7th ed. West Group 1999, defines Bonus as:

A premium paid in addition to what is due or expected...In the employment context, worker's bonuses are not a gift or gratuity; they are paid for services or on consideration in addition to or in excess of the compensation that would ordinarily be given.

In no respect can it be alleged the identified employees were paid "in addition" to what was "due or expected." In fact, they received less than what was due, expected or ordinarily given. Consequently, based on the way these salary adjustments were accounted for and documented, WSI is without basis for any characterization of the payments other than salary increases based upon WSI's pay-for-performance system. Any form of payment, whether salary or otherwise, are "payments made for retaining employees or to reward performance."

**State Auditor's Concluding
Remarks**

WSI states any form of payment would be for "payments made for retaining employees or to reward performance." While we do not disagree with this statement, when such payments are retroactively applied, we categorize such payments as bonuses.

**Management's Response
to Recommendation 2-9**

When the following e-mail chain is reviewed, it outlines the reasoning and the justification for this directive:

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Chapter 2 Supplemental Responses & Concluding Remarks

From: (Executive Director)
Sent: Thursday, May 26, 2005 10:45 AM
To: (Chief of Support Services)
Cc: (HR Employee)
Subject: FW: XXXXXXXX Funeral

As you know, an anonymous allegation of time falsification was raised against (Employee), (Employee), (Employee), (Employee), (Employee), and (Executive Director). I am now of the understanding that the initial allegation was filed with WSI's Human Resources department and then routed to Internal Audit. I am writing to request a copy of the final investigation report. If one does not exist, then I am asking that a full and formal investigation be opened into the issue and that it be appropriately documented and filed. The policies and the integrity of the organization as well as the integrity of those accused requires that this be done. If appropriate action is to be taken then it should be enacted and documented. A full investigation should included how and why the concerns came about as well as who made the public request to review the documentation that led to the investigation. Simply because I am involved should not stop us from following every formal policy and procedure. Thank you for your assistance in this investigation.

From: (Executive Director)
Sent: Thursday, May 26, 2005 11:51 AM
To: (Board Member); (Board Member); (Board Member)
Cc: (Internal Audit Manager)
Subject: FW: XXXXXXXX Funeral

FYI - I am not asking to be treated any differently (positively or negatively) than anyone else. As per our operating procedures, a full and final investigation with findings should be conducted and filed with the organization.

From: (Internal Audit Manager)
Sent: Thursday, May 26, 2005 12:03 PM
To: (Executive Director); (Board Member); (Board Member); (Board Member)
Subject: RE: XXXXXXXX Funeral

Because of the staff involved and their reporting relationships, I think the proper procedure will be for the Internal Audit Department to do a follow-up with all the individuals involved in this matter. In order for WSI staff to feel safe that they can report, it is imperative that the anonymity of the person reporting the concern remain confidential with myself and the HR department. Unless I hear differently the investigation will start immediately. Please let me know your thoughts.

(Internal Audit Manager)

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From: (Executive Director)
Sent: Thursday, May 26, 2005 12:10 PM
To: (Internal Audit Manager); (Board Member); (Board Member); (Board Member)
Subject: RE: XXXXXXXX Funeral

I disagree, that is not the protocol & procedure of the agency. It is HR's responsibility to conduct all such investigations. If anyone feels that my integrity is such that I will intentionally attempt to influence the outcome to my or anyone else's advantage, then I should be asked to tender my resignation immediately because I can not be trusted. If asked such I will do so today.

I have grave concerns (not for me by the integrity of the organization) about who was looking at records prior to the allegation. All records are public, but do require a public request to review. I do not want other employee's records privately poured over and then anonymously thrown out. Unless otherwise directed by the Board, it is (Chief of Support)'s and (HR Employee)'s responsibility to independently conduct this investigation and report on it. I am concerned about the bleeding over of functions.

When this issue is taken fully within the context of the request, it is apparent that the Executive Director was asking for a timely, documented, unbiased investigation be conducted because of concerns that the original reviewing party may have failed to do so. Had it not been for the Executive Director's directive, such a detailed record of investigation would never have existed for review.

State Auditor's Concluding Remarks

WSI states when the issue is taken fully within context, it is apparent the Executive Director was asking for a timely, documented, unbiased investigation. We disagree with such a conclusion. If an actual unbiased investigation was to be conducted, the Executive Director should not have specifically identified what the investigation was to entail. Also, the Executive Director should have ensured the investigator was independent and free of conflicts of interest, either apparent or actual. The Executive Director did not take such action and instead demanded his direct report conduct the investigation. We do not state or want to imply the direct report conducted a lesser investigation or modified their process in conducting the investigation. This employee was put into an uncomfortable position and should not have been the individual conducting the investigation due to the reporting relationship with the Executive Director.

WSI states had it not been for the Executive Director's directive, a detailed record would never have existed. When this issue was first addressed, Internal Audit contacted the Chair of the Audit Committee of the Board of Directors and was instructed to discuss the situation with the Executive Director. The next day and prior to any chance for Internal

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Audit to conduct an adequate review, the Executive Director emails the employees involved in the incident addressing the issue. Six days later the Executive Director makes the request for a formal investigation. In review of this timeline, it does not appear sufficient time was allowed for Internal Audit to conduct such a review. The investigation performed was requested on May 26 and the final report is completed June 10.

Management's Response to Recommendation 2-10

Management would like to clarify the facts relating to each of the investigations noted in the narrative:

- In the case of the inappropriate use of WSI resources, the investigation was completed and the appropriate discipline was issued. The allusion to the fact that "this employee reports directly to the Executive Director" was somehow the reason for the non-collection is incorrect. In early April of 2005, the individual in question had brought in their checkbook to make the payment, however, no one was sure how to process the check and they wanted to see if the time could be donated to a party in need instead of just forfeited. Unfortunately, the appropriate follow up was not conducted to assure both recommendations were fulfilled. Upon being notified of the oversight in June of 2006, the Executive Director asked to see the proof of payment and surrendered time. No proof could be presented, so he directed that the issue be immediately addressed and documented.
- The second investigation noted was an incident that happened on and off of WSI property. The Executive Director felt there existed recorded statements that mitigated the issue to some degree. As with all investigations, the recommendations presented are the investigator's opinion of what should be done; however, it still remains management's right and responsibility to determine whether or not to follow such recommendations or be accountable for an alternative action. The recommendations in this case were for the Executive Director to conduct a counseling session, require a written apology, and encourage the individual to volunteer to attend an Alternative Dispute Resolution session. *The only recommendation not followed was the issuance of a written apology.* He had recommended a verbal apology instead because he felt it carried a higher level of meaning. The Executive Director did counsel the direct report about the incident and about his expectations of their continued professional decorum. The Executive Director also recommended that they consider voluntarily attending an ADR session with the requestor. With the recommendation of a verbal apology, one could interpret that the Executive Director took a higher level of action than recommended.
- The final case noted an outside contractor that had allegedly made an inappropriate comment where the final action was a lesser penalty than the one recommended. This was the one and only comment which required an investigation. Upon being made aware of the contractor's alleged comments, the Executive Director

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immediately directed that an investigation be initiated. As noted in the case above, recommendations presented are the investigator's opinion of what should be done. The continued innuendo that the Executive Director appeared to be attempting to influence the outcome of an investigation is incorrect. If the Executive Director had wanted to influence the outcome of the investigation as alleged, he could have simply pressured the investigator to present his recommendation as the final action rather than allowing the investigator to make their own independent recommendation. Instead, he wanted it clearly noted on the record that he had no intention of ever asking the investigator to alter their recommendation(s). The following chain of e-mails regarding the issue demonstrates such:

From: (Executive Director)
Sent: Wednesday, November 30, 2005 9:18 AM
To: (HR Manager.); (Chief of Support Services)
Subject: FW: XXXXX investigation
Importance: High
Sensitivity: Confidential

Thank you for your quick review and thorough reporting of this issue. I have read the documents and have noted a couple questions in the document summary. I also would not agree with the depiction that I said (as is noted in (Employee's) statement) (Employee) conducts this type of behavior all the time. Instead, I would say the way it is noted in my statement is how I have consistently expressed the topic.

Based on the two coin having two sides and seeing that they both felt uncomfortable, an outright termination of XXXXX's contract is too aggressive in my opinion. I am in no way asking that your recommendation be altered to adjust my feelings --I simply wanted to note on the record that I am looking for a middle ground. As XXXXX did immediately note his statements to (Employee) and me, there appears to be no attempt to hide nor an appearance that the comments were malicious or intentional sexual harassment. Nevertheless, his comments to (Employee), while not sexual harassment, were inappropriate. As an HR professional and a consultant hired by this organization, XXXXX is held to a higher bar of accountability. Consequently, I will recommend a 3 month suspension (Nov., Dec., and Jan.) of his contract and associated fees and then review his contract in February of 2006 for the resumption of executive coaching and consulting services.

From: (HR Manager)
Sent: Tuesday, November 15, 2005 5:09 PM
To: (Executive Director)
Cc: (Chief of Support Services)
Subject: XXXXX investigation

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Importance: High
Sensitivity: Confidential

(Executive Director),

I have attached the investigation summary with my recommendations regarding the incident with XXXXX. I also included all of the supporting statements so that you can review the information. Please let me know if you would like me to clarify any of these items.

Thank you,
(HR Manager)

In this case, with all the facts, the Executive Director made the final determination as recorded.

State Auditor's Concluding Remarks

Regarding the inappropriate use of resources, WSI states the allusion to the fact an employee reports directly to the Executive Director was somehow the reason for the non-collection is incorrect. There is no allusion to facts. The facts are this employee does directly report to the Executive Director and recommended action to be taken did not take place.

In relation to the second investigation, WSI states the only recommendation not followed was the issuance of a written apology. This is an inaccurate statement. Within the recommendation section of the investigation report, there is a statement that the letter is to be delivered to the employee who had requested a review be performed. This was not done. The investigation report had recommended an employee receive a counseling session emphasizing the disparity between WSI's Core Values and the documented alleged misrepresentation. It is unclear whether this did take place. WSI's response states the Executive Director did counsel the direct report about the incident and about his expectation of their continued professional decorum. While WSI states the Executive Director recommended a verbal apology instead of written apology, WSI does not address whether such an apology occurred.

For the final case noted, WSI states there was one comment which required an investigation. This audit report notes this was the second time we had noted the contractor had made inappropriate comments. The first instance relates to the contractor emailing the Executive Director making inappropriate references to certain employees. When asked about this comment, the Executive Director stated he had called the contractor and informed the contractor these comments were not acceptable. We note this first instance to identify this contractor had already been contacted by the Executive Director regarding inappropriate comments prior to the comments being made which resulted in an investigation.

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WSI's final statement is the Executive Director made the final determination as recorded. There is no documentation as to what WSI communicated to the contractor so we are unsure as to what final determination was recorded and provided to the contractor.

**Management's Response
to Recommendation 2-13**

While WSI did conduct a formal evaluation of the position, it did not formally document the evaluation conducted. WSI personnel met and discussed the issue in detail in order to assure that the addition of the new range fit within WSI's compensation philosophy. While the previous Loss Prevention Director had worked in the safety and workers' compensation field, he was neither degreed nor certified as a safety professional. For these reasons, the initial Loss Prevention Director's compensation range was established for a non-degreed, non-certified Director. The referenced Loss Prevention Director candidate was both degreed and certified as a workplace safety professional. The candidate also held (holds) the Board of Certified Safety Professionals Certified Safety Professional (CSP) designation. As a result of the review and eventual hiring of the candidate, WSI now has two pay ranges for the Loss Prevention Director; one for a safety degreed and certified Director, and one for a non-degreed and non-certified Director. Additionally, this distinction was expanded to more than just the Director's position. An adjustment was also made to the Safety Consultant (SC) position to delineate between a SC1 (non-degreed and/or non-certified) and a SC2 (degreed and/or certified). In order to assure that WSI acted in accordance with the philosophy and training provided by the Hay Group, WSI contacted the Hay Group. All of the theories, actions, and justifications for the range adjustment were presented during the conversation. The Hay Group concurred with WSI's actions and agreed they were completely within the agency's compensation philosophy and market application. The Hay Group further noted that when you hire/recruit you have to routinely consider if the new candidate "will do the job differently and bring different skills that bring a higher value to the job."

**State Auditor's Concluding
Remarks**

WSI states it did conduct a formal evaluation of the position. While WSI appears to have discussed information regarding the position, there was no evidence WSI had evaluated the eight factors used to determine a proper classification of a position (points are to be assigned to factors and the total points correspond to a relevant pay grade). Without a position going through such a documented process, we question whether WSI did conduct a formal evaluation.

WSI states it contacted the Hay Group and provided information. This is irrelevant as the contact occurred with the Hay Group during this audit after we brought this issue to management's attention and was not done at the time the change was made.

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Management's Response to Recommendation 3-1

The following are examples that substantiate management's assertion that these issues did not occur in a manner described in the narrative.

Concerning the Executive Director providing increases to seven of his eight direct reports in excess of what WSI had computed:

- In order to fully understand why the increases were provided, one must first understand the purpose of the increases. At the August 11, 2005, Board Meeting, the Hay Group representative explained the findings of its study. One of the findings was that there was an internal equity gap in what was expected of management as compared to what was being compensated.

"Why would I want to take on more responsibility if I am going to make the same amount of money? No one is going to do that." ... "It is a concern because if you look at it (Internal Equity) a lot of Executives and Managers make what senior staff members make so they are saying, 'Why would I take on the additional responsibility for the same pay?'" ... "We have some significant concerns at your Internal Equity basis but that is not surprising because your previous pay plan effectively did not address internal equity issues at all." ... "The current practice at WSI relative to like positions in the Executive market means, quite frankly, you are at risk of losing your senior positions if they are marketable because of what they could earn in this market today."

In order to slowly bring the agency in line with what the market will pay for similar skill sets, the increased expectations, and increased leadership expectations, the increases above the minimum level of the range were provided to the senior leaders (NOTE: the highest increase did not rise higher than the midpoint of the range and the others were in the first 25% of their ranges or lower). Additionally, to have seen such an action would not have been a surprise because the Executive Director stated at the August 11, 2005, Board Meeting, "Some people are not simply minimum performers, they are above minimum performers and we have to address that in this as well." Consequently, WSI has provided almost 15 employees (seven of which were direct reports) increases above the amounts originally arrived at based on the projected computation. Additionally, the Board supported the insertion of \$600,000 into WSI's 2007/09 proposed biennial budget to continue to make above minimum market adjustments for WSI staff. When viewed in context of the total changes and purpose, there is no pattern of preferential treatment or favoritism being exhibited.

Concerning certain employees receiving their increase early and retroactively:

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- The first employee had not received an increase since December of 2002. Their next increase was postponed until the Hay compensation range data was available. The back pay of their adjustment was made to the start of the fiscal year in order to provide a minimal level of equity for not receiving an increase for almost three years. Management considers making up for not receiving an increase for almost three years equitable not preferential treatment or favoritism. The only link to the Hay Group study in this case was that management was waiting to see the new compensation range data in order to assure any adjustment was appropriate under the new system.
- The second employee had not received an increase since March of 2003. Their next increase was postponed until the Hay Compensation study data was available. The back pay of their adjustment was made to the start of the fiscal year in order to provide a minimal level of equity for not receiving an increase for almost two-and-a-half years. Management considers making up for not receiving an increase for almost two-and-a-half years equitable not preferential treatment or favoritism. As above, the only link to the Hay Group study in this case was that management was waiting to see the new compensation range data in order to assure any adjustment was appropriate under the new system.
- The third member was given a promotion in the last quarter of calendar year 2004 and was informed that their salary range would be based on the final Hay Compensation study data once it was available. The final data was not available until the summer of 2005. The salary increase as well as the back pay were tied to the 2004 promotional commitment. Management considers honoring a commitment equitable and not preferential treatment or favoritism. As above, the only link to the Hay Group study in this case was that management was waiting to see the new compensation range data in order to assure any adjustment was appropriate under the new system.
- The fourth member was given additional duties and changed their FLSA classification from non-exempt to exempt. At the time of their next performance evaluation, they were advised that their final salary would be based on the results of the compensation study that was to be conducted. The rate and back pay were tied to a promotional commitment. Management considers honoring a commitment equitable not preferential treatment or favoritism. As above, the only link to the Hay Group study in this case was that management was waiting to see the new compensation range data in order to assure any adjustment was appropriate under the new system.

Concerning the noted lack of action taken and results/recommendations of investigations being changed involving direct reports of the Executive Director or a contractor who was providing executive mentoring services:

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- See management's response to recommendation 2-10. It should again be noted that the detailed facts of each investigation exist because once management was notified of the issue; WSI immediately initiated and conducted a thorough investigation in each case.

Concerning the survey results that, of the 192 employees responding to the statement "Favoritism is not an issue in raises or promotions," 50% selected "Strongly Disagree" or "Disagree:"

- It should be noted that this was a perceptual-based survey question that categorized all managers as a group. No facts of founded, routine favoritism are presented and favoritism is not practiced within WSI. While the agency appears to be split 50/50 on this perception, it is still a troubling number. WSI management agrees that it is important to work to alleviate this perception.

Concerning the issue of the promised updates:

- The Executive Director had drafted an e-mail to send as a final update on the matter of the spammer (see below), but it was never sent due to a desire to take the higher road and because of counsel from WSI employees. At no time was it simply a case of where he "saw no need to notify employees." This information was not presented because the Executive Director does not keep his commitments; it was not presented because the agency wanted to move on. The senior team was advised of the limited information so they could dispel growing rumors to the extent possible when asked about the issue. WSI disagrees that this is a significant example of a failure to keep commitments and instead is an example of discretionary leadership. (NOTE: Any innuendo that the reasoning changed from one day to another is an incorrect allegation. Additional context and clarifying questions were asked in the follow up interview that lead to additional information being discussed.)

Good afternoon. As promised, I am writing to keep you up to date on any relevant information related to the anonymous "j runnings" release of WSI's salary history. I am providing this information because it relates to the top questions I have been asked over the last week ("Who would do such a thing to us?" and "If you get a name you will share it with everyone, yes?").

The Forum has confirmed that (the reporter) did in fact release his electronic version of the document to a source:

"As for (the reporter) forwarding an e-mail to a source . . . He said he did so to give the source updated and otherwise public information, of which the source already had an earlier version to aid in receiving an educated response."

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Chapter 3 Supplemental Responses & Concluding Remarks

The next question one would ask is "what is the name of the source that already had an earlier version." You may recall in a earlier e-mail to Forum officials we noted the following facts:

"In the investigation of this story, (the reporter) was advised by one of his sources to request a specific salary file from the Office of Management and Budget (OMB). OMB recorded two public requests for the same document—one in paper and one electronically."

We know by the public information requests noted above the exact and only name that possessed the earlier "paper" version of the same information. It is only to this person that (the reporter) could have released it if the statement by the Forum officials is factual (and we believe that it is). It is with great disappointment that I give you the name of the person at the heart of this personal attack —(X X). While we can not confirm that is was in fact (X) who "sent" the anonymous e-mail and mailings, it is clear (he/she) was at the heart of the release. Because if (he/she) did not personally send it, then (he/she) had to provide it to someone who did and that means (he/she) was at least involved in its orchestration.

I promised I would share what I knew and that is why I write today —to fulfill a promise. I take no joy in telling you this information; in fact, it greatly saddens me to see how little a former co-worker thinks of us. Maybe now knowing will help us move on.

Thank you again for all you do every day in spite of the very few who wish to stop us.

Concerning the Executive Director not meeting with everyone in the first 90 days:

- *When originally proposed it did not appear to be an unattainable goal to meet with every employee in the first 90 days, as the visits were originally intended to be 5-10 minutes per employee. However, over time these meetings slowly grew to be up to 45-60 minutes per visit. These meetings were extremely valuable and informative, but ended up throwing the 90 day schedule off balance. The meetings continued past the 90 days and some continued as small teams in one hour meetings. It was the Executive Director's belief that he had eventually met with every employee (while not in the first 90 days). Some period of time later the issue that he missed some employees surfaced and he sent out the referenced e-mail stating that if he missed someone, please set up a meeting and he would take the time necessary. There was no intent to not fulfill the commitment —and it eventually was fulfilled, but not as*

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effectively and orderly as originally planned. As recommended, future commitments will be better weighed for appropriateness.

Finally, concerning the indications of low employee morale, problems with communication, and employees fearing retaliation:

- Issues with morale plague many organizations around the world. It is WSI's goal to provide an environment in which employees are proud of what they do and have a high degree of pride when doing it. As noted, there are areas in which improvement can be made. WSI management heard morale was an issue, but could not get a clear, concrete answer on exactly what the issue was; this is why the cited Denison study was to be conducted in February of 2006. However, with the audit survey being a priority, the Denison study was placed on hold. In September of 2006, WSI conducted the Denison study in order to get concrete examples of exactly which areas to improve first, and why. As noted, the top areas were the following. There is a clear agreement about the right way and the wrong way to do things; The leaders and managers "practice what they preach;" We respond well to changes in the business environment; Our approach to doing business is very consistent and predictable. Under heavy times of change and uncertainty, these would appear to be very natural concerns. Culture change is a part of any organization's continued growth. One of the primary components of this change is morale. This small word challenges companies to find innovative and creative ways to raise its level. There is no one approach to this topic that has proven to be successful across the board. What leaders are tasked to do is identify, confront, and deal with the issues affecting morale. History or baggage carried over from one leader to another can cause a perpetual cycle of up and downs. The only true remedy for dealing with this subject is to work toward open, honest communication across all lines in an organization –something which WSI is now actively addressing. WSI is at that point in time when the old, lingering issues must be faced so the organization can move to its new future. Culture change in any business can easily take from four to six years to accomplish. WSI is at a breakthrough stage and (as noted in the audit) it is critical that the organization continue to keep its focus on what we do by serving our customers and continuing to develop the culture of WSI into a strong sense of enthusiasm and dedication to a commonly shared goal that unifies the team.

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State Auditor's Concluding Remarks

When WSI was provided a copy of the draft audit report for their review, they were requested to provide management responses to each recommendation and we stated these responses should be concise. When we met with WSI representatives to discuss their draft responses, we noted their response to this recommendation was very lengthy and was not concise. As can be seen by the length of the response, WSI's final response is not concise and is even longer than their drafted response.

WSI stated it provided approximately 15 employees (seven of which were direct reports) increases above the amounts originally arrived at based on the projected computation (for the Hay Group analysis). This is a further indication of preferential treatment. Of the 8 direct reports of the Executive Director, 7 received larger increases than computed. Approximately 8 of the remaining 200 other employees received larger increases than computed.

WSI states the employee survey conducted by us categorized all managers as a group. This is an inaccurate statement. The survey specifically identified the question regarding favoritism in a section related to "upper/senior management of WSI." Another section of the survey asked questions related to employees' immediate supervisors.

WSI provides information related to an email drafted by the Executive Director to send to all employees regarding the matter of the spammer. We do not understand the relevancy of including this draft email since it was a draft and was never provided to employees. WSI states that any innuendo the reasoning changed from one day to another is an incorrect allegation. We do not make such an allegation and make no such innuendo. The report notes a timeline of events only.

Management's Response to Recommendation 3-2

In the case where the Executive Director requested that the investigation include the party who made the initial allegation, this was not done to heighten the fear of retaliation. In fact, the following is the actual language of the request and the reasoning:

"A full investigation should include how and why the concerns came about as well as who made the public request to review the documentation that led to the investigation." ... "I have grave concerns (not for me by the integrity of the organization) about who was looking at records prior to the allegation. All records are public, but do require a public request to review. I do not want other employee's records privately poured over and then anonymously thrown out."

WSI understands the perception of the request and will work to reduce as much concern during future investigations to the extent that it does not jeopardize the integrity of the investigation. However, simply having

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an open door policy does not mean employees will come to your door or immediately feel free from retaliation.

Additionally, prior to the existing leadership, WSI as an organization had years of distrust passed from one leader to another. As reported recently in the November 3, 2006 edition of the Fargo Forum, "...in October 2003, documents that news reporters and others obtained through open records requests described (Executive Director's) management style as mercurial and hostile ... Staff evaluations and letters, both signed and unsigned, used terms including 'outbursts of anger,' 'impulsive,' 'irrational,' 'fear,' 'low morale,' 'temper,' 'intimidation,' 'hostile behavior,' 'retaliation,' 'rage,' 'vindictive,' 'hostile work environment,' 'harassment' and 'retribution.'"

These statements can not be overlooked when considering the cited survey results. The organizational trust level will take years to earn back. Consequently, absent comparative data, management is unable to conclude whether the survey results are more or less favorable than they would have been in prior periods.

To transform an organization's culture is a long-term commitment. In a peer-reviewed article entitled *Transforming Local Government: Practical Experience Building a Program-Based Organization* by William S. Chiat, Chiat notes that it can take four to six years to change an organization's culture. This article also alluded to the importance of investing time in this process of cultural change. "Don't become discouraged when anticipated change does not occur as quickly as expected."

Considering that WSI has had four different Executive Directors in the last seven years and that it takes four to six years of steady leadership to change an organization's culture (the current leadership team had only been together about one year at the time of the SAO survey), one can understand the reduced level of trust and uncertainty pointed out in the survey results. Consequently, under these circumstances, to have more than 50% of the organization responding neutral or better to the noted questions is a good start but certainly not a great result. WSI and/or its Board are committed to continuing to provide an environment of stable leadership and open doors.

**State Auditor's Concluding
Remarks**

WSI states it will work to reduce concerns during future investigations to the extent it does not jeopardize the integrity of the investigation. We are confused by WSI's statement. While their response notes a concern regarding jeopardizing the integrity of the investigation, they appeared to have no problem with a direct report of the Executive Director conducting an investigation involving the Executive Director. Also, the fact the Executive Director is specifically identifying what an investigation is to include raises questions as to whether the investigator is free of conflicts.

WSI states to have more than 50% of the organization responding neutral or better to the noted question is a good start but certainly not a

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great result. The question identified was to have employees respond to the statement "I am able to take issue to or can disagree with senior management without fear of consequences." Only 28% of respondents selected "Agree" or "Strongly Agree."

**Management's Response
to Recommendation 3-7**

Following the November 2004 Board retreat WSI undertook a number of necessary preliminary steps to properly lay the foundation for the successful implementation of a strategic plan. Beginning in January 2005, a team was formed to put the outcomes into action. The team was tasked with developing strategies that would help fulfill the mission and outcomes established by the Board. This process continued through May 2005 which resulted in the outline for the foundation of the plan. In August 2005, functional units began drafting business plans. A strategic visioning and planning session for executive management was conducted in September 2005 wherein the elements of the draft structural framework were created. In October 2005, the second employee summit was held for WSI staff to validate the various elements of the structural framework document including the re-formulation of the previously identified strategies. In November 2005, a strategic core team was ultimately developed to facilitate strategy implementation and monitor progress of the strategic plan. The narrative preceding the recommendation notes that the CEO membership organization WSI pays \$12,000 a year to be a member of, identifies that prior to undertaking a strategy planning process, ownership must understand unless it is committed to involving the entire employee staff, the plan won't work. As can be seen in the comments above, WSI extensively involved employees in the process in order to assure it was developed and validated by those who did the job and would be responsible for its implementation. After gathering staff input and direction for an extended period of time, management was tasked with creating a draft structural framework document at an offsite retreat which was again subsequently validated by staff at the second employee summit.

**Management's Response
to Recommendation 3-9**

Within the narrative are examples in which management would like to provide its perspective in order to provide a more accurate perspective relative to the frequency and severity of these issues.

- Point one ... Although WSI cannot confirm or deny what any employee of the Hay Group might have said about the scope of what was performed within the analysis, WSI refutes the allegation that a validation of the system was not performed. Within the actual proposal provided by the Hay Group it was stated that, "Hay will combine its expertise in compensation and performance management with the skills, expertise and inputs from WSI to ensure that outcomes of the project are based on legal compliance with all appropriate laws and regulations." WSI stands by this statement as accurate since the Hay Group was partnered with to ensure a valid and reliable pay-for-performance system.

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- Point two ...The narrative notes that WSI received continuing appropriation authority for safety programs and did not remove the \$1 million grant request from its biennial budget request. The funding then appeared to be used for pay increases and information technology needs. These are correct statements and management is not sure how they demonstrate a pattern of inaccurate information. WSI placed the \$1 million request in the budget submitted to OMB by July of 2004. The continuing appropriation request was submitted in a separate bill. When WSI submitted its budget to OMB, it was unaware of the possible continuing appropriation bill. WSI also had no assurances that the continuing appropriation request would be approved. Consequently, the provisions of both bills were kept. WSI never hid these facts and even openly noted during the session that both provisions existed. Once both bills passed, the authority and accounting for the safety grants switched to the continuing appropriation. WSI then discussed with its Board the possibility of using its single line appropriation authority to support WSI employees with compensation increases and some unexpected computer system issues. The utilization of these funds was done legally and within WSI's authority. WSI management had been very open and public about these actions; thus, they are unsure of how this supports the assumption of inaccurate statements.
- Point three ... The narrative notes that WSI stated the Executive Director informed the Board of Directors that some WSI employees would receive performance increases greater than what was initially recommended by the Hay Group analysis. This is an accurate statement. In fact, as noted in management's response to Recommendation 3-1, the Executive Director stated at the August 11, 2005, Board Meeting, "Some people are not simply minimum performers, they are above minimum performers and we have to address that in this as well." Management is unaware of where the statement "actually did not occur" was derived unless it was a clarification of the "exact" words used rather than a summary of the statement.
- Point four ...The narrative notes "there was information not provided to the Attorney General's Office which was necessary to make an accurate and informed decision." Of the thousands of sheets of requested information over ten months, one single document was unintentionally missed. Once the issue was brought to management's attention before the meeting, the document was immediately provided to the Attorney General's office for their review. In the end, the proper determination still was made.
- Point five ...The Executive Director responding to a question about how many employees did not receive an increase. His response was "...somewhere in the neighborhood of -I would say-6-10 people." Phrases such as "in the neighborhood of" and "I would say" are not substantive examples of inaccurate information. Instead, they are generalized statements to notify the members that

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they are a best estimate without the exact facts being readily available.

- Point six ... The narrative notes "the hired consultant had identified a few errors with information in some of the quarterly operating reports." Whereas, WSI does agree that there were a few errors in some of the operating reports, management feels that the frequency of these errors do not rise to the level of a pattern of inaccurate statements. The consultant referenced, seems to agree with management's perspective on this issue when they stated. "We noticed a few errors in some of the operating reports. For instance, some of the legal projections in the December 2005 operating report had not been updated when compared to the September 2005 report. We don't believe a recommendation is necessary for this finding, but would encourage WSI staff responsible for each segment of the operating report to validate carefully its contents before the report is published." (emphasis added)
- The last narrative note states: "While WSI has noted such information was not provided to be misleading and they did not intentionally make errors, we noted a trend with information provided which appeared to be incomplete or was inaccurate." Without hyperbole, over nearly the last 10 months of this Performance Audit WSI has: provided thousands of WSI staff hours to support it; pulled and compiled thousands of documents; directed to turn over more than 37,000 e-mails from 13 specified people; and provided hundreds of staff hours of electronically recorded interviewing time. Management feels that WSI is not dissimilar than other agency if scrutinized to this degree. With enough time and resources, unintended inconsistencies can be found. Management believes that a limited number of isolated inconsistencies can not be labeled as a trend of inaccuracies.

State Auditor's Concluding Remarks

In point one, WSI states it cannot confirm or deny what any employee of the Hay Group may have said. The representative of the Hay Group contacted was the individual WSI specifically identified for us to contact. In discussing WSI's written comment regarding validation of the pay for performance system operating in appropriate manner, WSI changed its information about what the intent was of this written statement at least twice.

In relation to point two, WSI had provided information that their appropriation request included \$1 million for safety partnership grants. The \$1 million was not spent in accordance with what WSI had identified in written documents. We conclude it is misleading to inform the Legislature about how funds are intended to be used for a certain purpose but then are not used for such a purpose.

Within point three, WSI states it is unaware of where the statement "actually did not occur" was derived. The phrase "did not occur" comes directly from a response WSI provided to us when WSI appears to admit previous information provided was not accurate.

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In point four, WSI states of the thousands of sheets of requested information, one single document was unintentionally missed. Nobody requested WSI provide information to the Attorney General's Office.

In point five, WSI states it provided generalized statements in relation to a question about how many employees did not receive an increase. The Executive Director's actual response to the question begins with him identifying himself and only those new employees who were at WSI less than 6 months that were in an orientation period. This is not a generalized statement. There were other categories of employees who did not receive increases and were not identified by the Executive Director.

Regarding WSI's last bullet, in the last 15 years of conducting performance audits, our office has not encountered the degree of inaccuracy we noted in this audit and information being changed by WSI. As a result, a substantial additional amount of time and work was invested to verify the accuracy of information provided. This also resulted in our office recording meetings with WSI representatives which is not routinely done in performance audits conducted by our office. However, the amount of recorded time did not equate to "hundreds of staff hours of electronically recorded interviewing time" as WSI states.

WSI states it was directed to turn over more than 37,000 e-mails from 13 specified people. This is a misleading statement. WSI was directed to provide emails of 13 employees involving correspondence to other WSI employees, WSI Board of Directors, employers, injured workers, contractors/vendors, and other government officials and entities. WSI decided, as a means to save time, to provide all emails of the 13 employees. This was more than what our office had requested.

**Management's Response
to Recommendation 3-11**

Management does agree that the pace of change did begin to grow too fast and felt unwieldy and was consequently slowed down. Additionally, WSI created a new training division and hired a training and development professional to assist in better planning and execution. WSI also formed a Core Strategic Team whose role was to facilitate strategy implementation and monitor progress of the strategic plan. The critical success factor is to involve those who do the job in the planning and implementation of the change and TQM is a powerful tool to assist with this task. The TQM program entitled Strategically Taking Action Relying on Teams (START) was started with a pilot team of WSI staff. The START program had a fully developed plan and implementation schedule, yet the pace of change grew too fast.

As noted, at the request of the staff, the TQM implementation was temporarily suspended. With the decision to incorporate the compensation plan recommendation from the Hay Group, all discretionary and training spending was reduced in order to fund the salary increases. This was a decision that was supported by the agency

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**Management's Response
to Recommendation 3-15**

members at an All Employee Meeting. This is why the "training appears to have been put on hold in the fall of 2005 which is relatively early in the biennium."

Premiums are billed at the beginning of the policy year using estimated payroll information from the prior year. At the conclusion of the policy year, premiums are then reconciled using actual payroll information. The billing system is programmed to automatically reconcile the information and process the adjustments accordingly. When premium dividend credits are declared, the same concept holds true. Dividend credits are applied to the estimated premium at the beginning of the policy year and reconciled at the end of the policy year. Consequently, estimated payroll may be higher than actual causing an over credit for the dividend. As with premium, this is adjusted for active employers at the time of their annual policy renewal.

After preparing the 2005-06 dividend file at the request of SAO, Employer Services conducted an analysis of the dividend credits that were issued for the 2005-06 year. As a result of this review, three primary issues were identified relating to the issuance of dividends including:

- 1) the issuance of dividends to a limited number of minimum premium accounts;
- 2) premium adjustments with no corresponding adjustment to dividend credits; and
- 3) the overstatement of dividends to a limited number of accounts that cancelled coverage during the course of the year.

For groups (1) and (2) outlined above, the current billing system was already programmed to automatically reconcile the dividend calculation at the time of policy renewal. In regard to cancelled accounts, group (3) above, 41 accounts with overstated dividends were identified. These 41 accounts totaled \$17,772 of the estimated \$52 million of premium dividend credits that were issued for the 2005-06 policy year. WSI is in the process of calculating the correct dividend credits for these cancelled accounts. Once calculated, WSI will issue the appropriate premium adjustments and follow normal collection protocols to recoup these amounts.

Chapter 4 Supplemental Responses

Management's Response to Recommendation 4-1

Additionally, to infer that the Board is not fulfilling its governance role unless it is meeting as a whole is misleading and inaccurate. *"Beginning with the November 2003 quarterly meeting and going forward, we identified the 11 quarterly board meetings lasted, on average, 3 hours. Thus, the Board spends approximately 12 hours a year meeting as a full Board."*

If the information presented in the narrative was all that one had on the level of the involvement of the Board in the fulfillment of its duties, one would truly believe that the Board was not involved. However, the information presented is incomplete. For example, from February 8, 2006, until November 17, 2006, the Board and its committees held 22 publicly noticed meetings --of which only three appear to be attended in full or in part by representatives from the State Auditor's Office. For had the reviewers been in attendance at the meetings, they would have heard significant discussion, debate, and seen detailed preparation material presented over numerous meetings. Additionally, the information as presented does not address the Audit, Executive Performance, Legislative, and Nominating Committee meetings as well as any Special Board meetings. The information as presented also did not consider the significant amount of preparation and community representation time that each Board member must conduct as well. Nor does it consider that during a legislative year, the full Board may meet weekly, if not more, to monitor and timely address ongoing legislative issues.

Yes, each Board member has a full-time job in addition to their role as a board member; however, as alluded, this does not mean that they do not take their duties seriously. It should also be noted that the role as a Board is to govern and not attempt to manage the day-to-day activities of the organization. Thus, the fact that they do have other jobs is not inconsistent with this charge.

By law, the two employee representatives of the Board are appointed by the Governor alone. While the Board may support the reappointment of an existing member, the Board does not provide a list of candidates to the Governor for either of these positions as it does with the other members. Nevertheless, while the appointment authority is solely the Governor's, the Board does differ with the Attorney General's opinion and feels that each Governor has appropriately followed the law as written and has voted to seek a legislative clarification to this opinion from the 60th Legislative Assembly.

Lastly, while the audit references the Board was formed in 1997, it neither references the state of the organization at that time nor why the Board had to be formed. Additionally, the audit does not consider the significant performance achievements that have occurred under the Board's leadership. Absent more sufficient support for this recommendation, the Board maintains it has, and continues, to govern effectively.

Appendix E

Chapter 4 Supplemental Responses

Management's Response to Recommendation 4-6

Within the direction of the Carver Model, it is stated that the organization's senior executive performance should be evaluated based on the organization's achievements. An often referred to milestone that can be used as a benchmark when ascertaining this executive's level of performance is the strategic plan. WSI staff has made a concerted effort to engage an effective strategic plan that will serve as a method to achieve the board's outcomes. In addition, staff has ensured that the board is informed of progress in relation to this strategic plan. Further, the Executive Performance Committee of WSI's Board regularly measures the organization's Executive Director regarding the ability to achieve the strategic plan. One criterion that the Executive Director is measured on annually is the following. "Provides a high level of oversight in accomplishing the six expected outcomes of the plan. Presents clear and meaningful performance indicators in which to continually monitor and measure its success." Based on this performance criterion, it is evident that WSI's Board is measuring the Executive Director congruent to the organization's strategic plan.