

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1408

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1408

**House Industry, Business and Labor Committee**

Check here for Conference Committee

**Hearing Date:** January 28, 2009

**Recorder Job Number:** 8079

Committee Clerk Signature

*Allen LeTang*

**Chairman Keiser:** Opened the hearing on HB 1408 relating to allowing employers to self-insure for worker's compensation coverage.

Dan Ruby: Representative from District 38. See testimony attachments 1 & 2.

Chairman Keiser: Assuming that the amendments on the bill, then it create three approaches to having Worker's Compensation. You can self insure, private market or purchase from a state fund.

Representative Ruby: I would admit that most industries would not be able to self insure.

Chairman Keiser: I'm assuming that you didn't change any of the self insuring portions of the bill other than add the two other tiers?

Representative Ruby: That's correct.

Chairman Keiser: One of the concerns that I have, conceptually, you have to be a large company to self insure, so the law of large numbers would basically work. You have to use sound actuarial in determining the rate for self insuring so that it's adequate. The question that arose to me is that when you default or get into trouble, what does happen? Would they become members of the guarantee fund when they are self insuring. Where does the liability go? The state doesn't want it.

Representative Ruby: There would be bonding required.

Chairman Keiser: I get funding for the first five years, but then I get into trouble, who will bond me then?

Representative Ruby: It would be under the Insurance Commissioner authority, monitoring would have to be in place.

Chairman Keiser: Coming back to the state is not acceptable. This is SUTA dumping potentially in Worker's Compensation.

Representative Ruby: There is a reinsurance option as well.

Chairman Keiser: That's the reserve?

Vice Chairman Kasper: I'm not familiar with self funded Worker's Compensation Insurance, but would be stop loss insurance, so an employer is self insured, they would pick up the first \$100,000 of any claim of an injury. Then you buy reinsurance has the obligation to pay that forever.

Robert Hale~Self. See testimony attachment 2.

Vice Chairman Kasper: I'm curious; your rates are cheaper in South Dakota?

Hale: Yes.

Vice Chairman Kasper: Are they the same exact type of business.

Hale: Identical.

Chairman Keiser: This is something to check into that South Dakota is cheaper.

Hale: I agree.

Representative Ruby: I know your business, but perhaps you industry is lower but operator industry is higher.

Steve Becker~North Dakota Professional Insurance Association. This is what we have always wanted all along. With the amendment, we support this bill.

Anyone here in opposition to HB 1408.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment 3.

Representative Ruby: There is some subsidization to rates. Does the chamber think that's equitable?

Shalhoob: Yes.

Tom Balzer~North Dakota Motor Carriers Association. We have to the private insurance and asked companies to sell coverage, would you? We received response from nobody. These are major insurance companies. A percentage in the trucking industry is 8% in North Dakota, Montana is 22%, Minnesota is 16% & South Dakota 7%, so all percentage wise, pretty much the same boat, but the key is the salary count. That is what's out there. We have the lowest rates in the country and in the past four years dividends have come back. If you open this up to private insurance, you pay insurance tax, commissions and profit. These are some of the issues we have.

Dave Kemnitz~President of North Dakota AFL-CIO. I question premiums cheaper in other states, maybe they are being subsidized?

Representative Ruby: This is first bill I've seen you not talk about the benefits to the employee, how do you know how employees are being treated in other states? You like the fight here with the one agency. I'm curious about that, have you looked into other states.

Kemnitz: You insinuate by your question, more rhetoric than I care to accept. I go to a conference with many states represented and we talk about our system and they talk about their claimant problems.

Representative Ruby: This is the first time you don't talk about employees.

Chairman Keiser: You have data on the pricing per \$100; do you have data on the ranking in terms of benefits? Ann Green, do you know anything.

Green: I think it's somewhere in the top 2/3.

Chairman Keiser: I'm curious about South Dakota, Washington and other state how their benefits stack up?

Hale: Those comparisons are North Dakota rates against other state insurance rates. Not retired or self insured rates. Other states where you have the three systems, the default is to go to the state and there the premiums are highest. That's what is getting compared to.

Chairman Keiser: I don't know who is right on quoting those rates.

Ann Green~Staff Counsel with WSI. My written testimony only addresses of self insurance. See testimony attachment 4.

Representative Ruby: I understand the concern you have being the regulator and as I read through it after the amendments were drafted, it struck me that we would allowing private insurance companies to sell. It should all be regulated through the Insurance Department except if they went through WSI. Does that temper your opposition a bit?

Green: It doesn't answer all the questions.

Representative Ruby: I think we answered some of that with the reinsurance. I will make this statement to see if you agree, since they are purchasing from an insurance provider and they disagree with payments they would have would it be handled through the courts.

Green: Arguably, yes.

Russ Hanson~Executive Vice President of AGC. I oppose this bill.

Anyone here is to testify in the neutral position?

Larry Maslowski~Senior Analyst and Director, Consumer Protection Property & Casualty Division. See testimony attachment 5.

Chairman Keiser: What if the liability exceeds the reserves of the self insured and the insurer?

Maslowski: The industry that deals with this, that going to be included in the pricing of that product.

Chairman Keiser: I want access to the guarantee fund.

Maslowski: Right now the self insured has no access to the guarantee. Self insured is not contributing to the guarantee fund, the self insurer is going down.

Chairman Keiser: Could we have them contribute.

Maslowski: That would be really unique, I don't know.

Vice Chairman Kasper: For self insured WSI plans are they consider ARRISA plans as well.

Maslowski: I don't have an answer to that.

Representative Ruby: Does companies order reinsurers, would they pay into the funds through their tax? Who pays into the fund?

Maslowski: It's by assessment.

Chairman Keiser: Closes the hearing on HB 1408. What are the wishes of the committee?

**Representative Ruby: Move both sets of amendments he submitted and by the insurance department.**

**Representative Schneider: Second.**

**All in favor say aye's and no nay's.**

**Chairman Keiser: We have HB 1408 before us as amended. What are your wishes?**

**Representative Ruby: Motion to further amend to put amendment in place where it mentions director to put insurance commissioner and anywhere organization to put insurance department?**

**Vice Chairman Kasper: Second.**

**Chairman Keiser: What are the wishes of the committee?**

**Representative Ruby: Move a Do Pass as Amended.**

**Representative Gruchalla: Second.**

**Roll call was taken with a Do Pass as Amended on HB1408 with 5 yea's, 6 nay's, 2 absent.**

**Chairman Keiser: The motion fails. Do we have another motion?**

**Representative Amerman: Motion a Do Not Pass as Amended.**

**Representative N Johnson: Second.**

**Voting roll call was taken with a Do Not Pass as Amended on HB 1408 with 6 yea's, 5 nay's, 2 absent and Representative N Johnson is the carrier.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/04/2009

Amendment to: HB 1408

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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 amended legislation would allow employers to self-insure coverage for workers' compensation coverage in North Dakota.

**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**  
**2009 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

BILL NO: Engrossed HB 1408

BILL DESCRIPTION: Self Insurance of Workers Compensation

**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 amended legislation would allow employers to self-insure coverage for workers' compensation coverage in North Dakota.

Actuarial Analysis:

We are pleased to offer our preliminary thoughts regarding the potential rate and reserve level impact of House Bill 1408 as recently amended. We provided our thoughts regarding the bill in its original form in a document dated January 27, 2009. As we understand the proposed revisions, the amended bill will differ from the original in two respects:

- Responsibility for oversight and regulation of self-insureds, insurers and reinsurers will be shifted from WSI's Director to the Insurance Department.
- References to reinsurance and reinsurers in the original proposal will be replaced by references insurance and insurers. We view this change as simply one that will bring bill language into conformity with common insurance industry terminology – self-insureds purchase insurance (usually in the form of excess insurance) not reinsurance.



With the exception of clarification regarding the role of the insurance department, we believe that the comments contained in our January 21 document continue to be largely appropriate for the bill as amended. In particular, we note the following:

- The amended bill retains the limit on reinsurance/insurance to at most 80% of the underlying liabilities.
- WSI will continue to fill the role as ultimate guarantor for self-insureds. It is not clear how insured liabilities will be handled in the event that an insurance carrier defaults.
- The potential for rate increase and market dislocations will continue to exist.
- Issues related to retroactive benefit changes will remain.

Though self-insurance may offer long term advantages to employers in the state, we believe that it would be best to proceed cautiously, and only after the potential ramifications on North Dakota's workers' compensation market are better understood.

DATE: February 4, 2009

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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	02/04/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1408

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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 would allow employers to self-insure for workers' compensation coverage in North Dakota.

**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**  
**2009 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

BILL NO: HB 1408

BILL DESCRIPTION: Self Insurance

**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 would allow employers to self-insure for workers' compensation coverage in North Dakota.

Actuarial Analysis:

We are pleased to offer our preliminary thoughts regarding the potential rate and reserve level impact of House Bill 1408. As we understand the proposed legislation, it will permit self-insurance in North Dakota.

- North Dakota is one of four states that do not permit commercial insurance carriers to provide workers' compensation coverage. The other three are Ohio, Washington and Wyoming.
- North Dakota does not presently permit self-insurance. Wyoming does so in very limited circumstances. Both Ohio and Washington make the self-insurance option more generally available. However, Ohio and Washington have economies that are significantly larger than those of either North Dakota or Wyoming.

It is not our goal to discourage self-insurance in North Dakota. That said, we believe that there are several issues that deserve consideration by the legislature.

The introduction of Self-Insurance will likely generate a need for higher manual premium rates for the employers that

continue to purchase insurance coverage through WSI. The increased costs can be attributed to several factors, including:

- WSI's fixed expenses are not likely to decrease to the same extent that premium income declines. Thus expenses as a percentage of premiums are likely to increase, thereby generating the need for higher rates.
- Accounts with the best underwriting results will be the ones most likely to self-insure. As carrier of last resort, WSI will likely experience an overall decrease in underwriting results for its remaining book of business. Though WSI attempts to reflect such differences among employers through application of its experience rating plan, such formula driven approaches cannot reflect the more subtle differences in exposure to loss that a well trained risk manager would be able to identify.

The legislation does not clarify how self-insured claims will be handled. We would recommend that issues surrounding the possible introduction of Third Party Administrators (TPA's) be resolved prior to the start-up of self-insurance.

We understand the legislation will require WSI to provide oversight of the self-insurance program, including:

- Determination of a potential self-insured's financial ability to meet its workers' compensation obligations. In addition, it will likely fall to WSI to determine the level of security funding, be it in the form of a bond, letter of credit or escrow account that could be required.
- Thus, administrative expenses for WSI are likely to increase further as individual account oversight expands (including the likely need for individual account actuarial evaluations).
- Possibly more problematic, such a role could produce liability issues for WSI if a self-insured employer defaults.

The legislation will require that WSI serve as the program's ultimate guarantor if loss reserves and any additional escrow account, letters of credit or bonds prove to be insufficient to cover the defaulting employer's WC liabilities. The result is that employer's that purchase insurance from WSI, most of which would not be qualified to self-insure, would be ultimately responsible for the short-fall in funding.

The potential for default on the part of self-insured's is very real. Even States that have significant oversight of self-insurance programs and the associated requirements for additional security funds often find that the retained funds from a defaulting employer are not sufficient to cover WC claims liabilities. Some states handle this situation by having self-insured's effectively reinsure each other. One example can be found in California. Participation in the Self Insurer's Security Fund (SISF) is mandatory for all non-governmental self insured's. In the event of default on the part of one member, other members are required to pick up the shortfall. Private insurance carriers cannot be assessed for any funding shortfall incurred by SISF. At the same time, insurers are required to participate in the California Insurance Guarantee Association (CIGA) which is similarly responsible for default by other traditional insurance carriers. We note that even with program oversight and collateral requirements, both SISF and CIGA have experienced significant defaults that have resulted in assessments to member entities.

The proposed legislation will permit self-insured's to purchase reinsurance coverage for as much as 80% of the self-insurer's WC liabilities. We see three issues here.

- With the ability to reinsure 80% of a self-insurer's liabilities, North Dakota will be coming very close to permitting competition from commercial insurance companies for large accounts.
- The legislation is not clear about which agency would be responsible for overseeing the reinsurers. The provision that coverage may be placed with "any reinsurer authorized to transact reinsurance in the State" could be interpreted to formally shift that responsibility to the State's Department of Insurance (DOI). Additional clarification may be in order.
- The proposed legislation is clear that WSI will act as the program's ultimate guarantor. It is not clear as to what will happen if a reinsurer defaults – many have in other states. Will WSI and its policyholders be left in a position of covering shortfalls for coverage placed with a commercial insurer?

Finally, we note that the existence of self-insurance will make the type of legislative reform related to past WC injuries much more difficult. We note that the legislature is presently considering several bills that increase benefits for past claims – among them:

HB-1101 – Which included an increase in dependency benefits  
HB-1247 – COLA's for prior TTD's  
HB-1285 – Continuation of PTD for surviving spouses  
HB-1410 – Modification of the Social Security Retirement (SSR) offset calculation

Employers that make the decision to self-insure based on cost estimates derived from the WC benefit structure in place at the time that decision is made will likely object. We can envision a few possible responses:

- Simple acceptance of the increases as a cost of doing business in the state
- More problematic – additional opposition to legislative benefit refinements
- Legal action that could possibly send any unanticipated retroactive cost increases to the State.
- A shift of the costs associated with any retroactive increases to WSI and as a result - to the employers that continue to purchase insurance through the WSI.

We hope our comments prove helpful.

DATE: January 27, 2009

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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/27/2009

January 28, 2009

VR  
1/30/09  
1063

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1408

Page 1, line 2, after the second "to" insert "purchase private insurance or"

Page 1, replace lines 7 through 14 with:

- "1. Notwithstanding contrary provisions of law, every employer required to provide workers' compensation coverage under this title shall secure the coverage under this title by:
  - a. Paying premiums and providing coverage through the state fund;
  - b. Providing coverage and qualifying as a self-insured employer under this title; or
  - c. Providing coverage and qualifying as a carrier-insured employer under this title.
  
2. As used in this chapter:
  - a. "Carrier-insured employer" means an employer that provides workers' compensation coverage through a guaranty contract insurer.
  - b. "Guaranty contract insurer" means an insurer that is authorized under titles 26.1 and 65 to transact workers' compensation insurance in this state. An insurer may not be authorized to transact workers' compensation insurance in this state unless the insurer's policy provides workers' compensation coverage that meets or exceeds the coverage required under title 65.
  - c. "Self-insurer" means an employer or group of employers that has been authorized under this chapter to carry its own liability to its employees covered by this title.

**Carrier-Insured employers.**

1. An employer may qualify as a carrier-insured employer by establishing to the insurance commissioner's satisfaction that the employer is insured by a guaranty contract insurer. A carrier-insured employer must have proof of insurance filed with the insurance department.
2. The insurance department may suspend or revoke the authorization of an insurer to issue workers' compensation insurance policies in this state if the insurance department finds the company failed to comply with the insurer's obligations under this title or failed to comply with the orders of the insurance department.
3. The insurance department shall adopt rules addressing:
  - a. Proof of insurance requirements;
  - b. Guaranty contract expiration, cancellation, and termination requirements for carrier-insured employers; and

c. Insurance department revocation of authorization to be a carrier-insured employer.

**Qualification - Self-Insurers.**

Page 1, line 15, replace "director's" with "insurance commissioner's"

Page 1, line 20, replace "director" with "insurance commissioner"

Page 2, line 1, replace "director" with "insurance commissioner"

Page 2, line 3, replace the first "director" with "insurance commissioner" and replace the second "director" with "insurance commissioner"

Page 2, line 7, replace "organization" with "insurance department"

Page 2, line 8, replace "director's" with "insurance commissioner's" and replace "insure" with "ensure"

Page 2, line 12, replace "director" with "insurance commissioner"

Page 2, line 19, replace "director" with "insurance commissioner"

Page 2, line 22, replace "director" with "insurance commissioner"

Page 2, line 30, replace "director" with "insurance commissioner"

Page 3, line 3, replace "reinsure" with "insure"

Page 3, line 4, replace "reinsurer" with "insurer" and replace "reinsurance" with "insurance"

Page 3, line 5, replace "reinsurer" with "insurer"

Page 3, line 6, replace "reinsurance" with "insurance"

Page 3, line 8, replace "organization" with "insurance department"

Page 3, line 10, replace "organization" with "insurance department"

Page 3, line 13, replace "director" with "insurance commissioner"

Page 3, line 20, replace "director" with "insurance commissioner"

Page 4, line 5, replace "director" with "insurance commissioner"

Page 4, line 7, replace "director" with "insurance commissioner"

Page 4, line 9, replace "director" with "insurance commissioner"

Page 4, line 10, replace "director's" with "insurance commissioner's"

Page 4, line 13, replace "director" with "insurance commissioner"

Page 4, line 17, replace "director" with "insurance commissioner"

Page 4, line 18, replace "director" with "insurance commissioner"

Page 4, line 24, replace "director" with "insurance commissioner"

Page 4, line 28, replace "director" with "insurance commissioner"

Page 4, line 30, replace "director" with "insurance commissioner"

Page 5, line 2, replace "organization" with "insurance department"

Page 5, line 7, replace "organization" with "insurance department"

Page 5, line 13, replace "organization" with "insurance department"

Page 5, line 18, replace "director" with "insurance commissioner"

Page 5, line 21, replace "organization" with "insurance department"

Page 5, line 28, replace "director" with "insurance commissioner"

Page 6, line 6, replace "organization" with "insurance department"

Page 6, line 8, replace "director" with "insurance commissioner"

Page 6, line 11, replace "director" with "insurance commissioner"

Page 6, line 15, replace "director" with "insurance commissioner"

Page 6, line 16, replace "director" with "insurance commissioner"

Page 6, line 21, replace "director's" with "insurance commissioner's"

Page 6, line 22, replace "director" with "insurance commissioner"

Page 6, line 23, replace "director" with "insurance commissioner"

Page 6, line 28, replace "director" with "insurance commissioner"

Page 6, line 31, replace "director" with "insurance commissioner"

Page 7, line 2, replace "director" with "insurance commissioner"

Page 7, line 5, replace "organization" with "insurance department"

Renumber accordingly

Date: Jan 28 - 2009

Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. 1408**

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number Rubis amendments Inc. Dept amendments

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Ruby Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

all aye's no nays



Date: Jan 28-2009

Roll Call Vote # 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1408

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number further amend

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*always, no nays.*

Date: Jan 28-2009  
Roll Call Vote # ~~2~~ 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1408

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		7	Representative Amerman		7
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson		7	Representative Schneider	7	
Representative Nottestad		7	Representative Thorpe		7
Representative Ruby	7				
Representative Sukut					
Representative Vigesaa		7			

Total (Yes) 5 No 6

Absent 2

Floor Assignment \_\_\_\_\_

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

Date: Jan 28 - 2009  
Roll Call Vote # 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1408

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Amerman Seconded By N Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper		✓	Representative Boe		
Representative Clark		✓	Representative Gruchalla		✓
Representative N Johnson	✓		Representative Schneider		✓
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby		✓			
Representative Sukut					
Representative Vigesaa	✓				

Total (Yes) 6 No 5

Absent 2

Floor Assignment Johnson, N

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

**REPORT OF STANDING COMMITTEE**

**HB 1408: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1408 was placed on the Sixth order on the calendar.

Page 1, line 2, after the second "to" insert "purchase private insurance or"

Page 1, replace lines 7 through 14 with:

- "1. Notwithstanding contrary provisions of law, every employer required to provide workers' compensation coverage under this title shall secure the coverage under this title by:
  - a. Paying premiums and providing coverage through the state fund;
  - b. Providing coverage and qualifying as a self-insured employer under this title; or
  - c. Providing coverage and qualifying as a carrier-insured employer under this title.
2. As used in this chapter:
  - a. "Carrier-insured employer" means an employer that provides workers' compensation coverage through a guaranty contract insurer.
  - b. "Guaranty contract insurer" means an insurer that is authorized under titles 26.1 and 65 to transact workers' compensation insurance in this state. An insurer may not be authorized to transact workers' compensation insurance in this state unless the insurer's policy provides workers' compensation coverage that meets or exceeds the coverage required under title 65.
  - c. "Self-insurer" means an employer or group of employers that has been authorized under this chapter to carry its own liability to its employees covered by this title.

**Carrier-insured employers.**

1. An employer may qualify as a carrier-insured employer by establishing to the insurance commissioner's satisfaction that the employer is insured by a guaranty contract insurer. A carrier-insured employer must have proof of insurance filed with the insurance department.
2. The insurance department may suspend or revoke the authorization of an insurer to issue workers' compensation insurance policies in this state if the insurance department finds the company failed to comply with the insurer's obligations under this title or failed to comply with the orders of the insurance department.
3. The insurance department shall adopt rules addressing:
  - a. Proof of insurance requirements;
  - b. Guaranty contract expiration, cancellation, and termination requirements for carrier-insured employers; and

- c. Insurance department revocation of authorization to be a carrier-insured employer.

**Qualification - Self-Insurers.**

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Page 2, line 1, replace "director" with "insurance commissioner"

Page 2, line 3, replace the first "director" with "insurance commissioner" and replace the second "director" with "insurance commissioner"

Page 2, line 7, replace "organization" with "insurance department"

Page 2, line 8, replace "director's" with "insurance commissioner's" and replace "insure" with "ensure"

Page 2, line 12, replace "director" with "insurance commissioner"

Page 2, line 19, replace "director" with "insurance commissioner"

Page 2, line 22, replace "director" with "insurance commissioner"

Page 2, line 30, replace "director" with "insurance commissioner"

Page 3, line 3, replace "reinsure" with "insure"

Page 3, line 4, replace "reinsurer" with "insurer" and replace "reinsurance" with "insurance"

Page 3, line 5, replace "reinsurer" with "insurer"

Page 3, line 6, replace "reinsurance" with "insurance"

Page 3, line 8, replace "organization" with "insurance department"

Page 3, line 10, replace "organization" with "insurance department"

Page 3, line 13, replace "director" with "insurance commissioner"

Page 3, line 20, replace "director" with "insurance commissioner"

Page 4, line 5, replace "director" with "insurance commissioner"

Page 4, line 7, replace "director" with "insurance commissioner"

Page 4, line 9, replace "director" with "insurance commissioner"

Page 4, line 10, replace "director's" with "insurance commissioner's"

Page 4, line 13, replace "director" with "insurance commissioner"

Page 4, line 17, replace "**director**" with "**Insurance commissioner**"

Page 4, line 18, replace "director" with "insurance commissioner"

Page 4, line 24, replace "director" with "insurance commissioner"  
Page 4, line 28, replace "director" with "insurance commissioner"  
Page 4, line 30, replace "director" with "insurance commissioner"  
Page 5, line 2, replace "organization" with "insurance department"  
Page 5, line 7, replace "organization" with "insurance department"  
Page 5, line 13, replace "organization" with "insurance department"  
Page 5, line 18, replace "director" with "insurance commissioner"  
Page 5, line 21, replace "organization" with "insurance department"  
Page 5, line 28, replace "director" with "insurance commissioner"  
Page 6, line 6, replace "organization" with "insurance department"  
Page 6, line 8, replace "director" with "insurance commissioner"  
Page 6, line 11, replace "director" with "insurance commissioner"  
Page 6, line 15, replace "director" with "insurance commissioner"  
Page 6, line 16, replace "director" with "insurance commissioner"  
Page 6, line 21, replace "director's" with "insurance commissioner's"  
Page 6, line 22, replace "director" with "insurance commissioner"  
Page 6, line 23, replace "director" with "insurance commissioner"  
Page 6, line 28, replace "director" with "insurance commissioner"  
Page 6, line 31, replace "director" with "insurance commissioner"  
Page 7, line 2, replace "director" with "insurance commissioner"  
Page 7, line 5, replace "organization" with "insurance department"  
Re-number accordingly

2009 TESTIMONY

HB 1408

HB 1408  
Representative Dan Ruby  
January 28, 2009

Mr. Chairman and members of the committee, House Bill 1408 gives North Dakota businesses more options and flexibility for workers compensation coverage. As you heard on Monday we are one of only four states that have a monopolized system for worker's comp coverage.

With my proposed amendment, House Bill 1408 would allow businesses to choose to stay in the current state run system, self insure or purchase coverage from a private insurer. This bill does not eliminate or convert the current agency in any way but allows it to compete with private insurers.

The language you see before you was intended to be copied from Washington state and with the amendment allows more options for business in this state. I think this is the right approach for the employer and the employee.

You might be wondering why we should make this change with the current condition of WSI. I would say that this is the perfect time to take this step. As we learned earlier this week, with the discussion about the study of mutualization of WSI, this is usually done when the state's fund is in extreme debt. The reason other states do a graduated approach to move toward privatization is to get their funds in order so they can compete with the private sector. We don't have that issue. As a matter of fact, we are told we have the lowest rates in the country. Over-all we might have the lowest rates. But not for most businesses. You will hear from opponents today telling you this will cause some businesses to leave the WSI agency to the detriment of their industry. As a business owner I don't think it is fair to ask others to pay more for coverage so other industries can get a break. This is an insurance product not a socialistic program. I think this is the right thing to do and the right time to do it.

Mr. Chairman and members of the committee I ask for a do pass recommendation and would stand for any questions. Thank you!



# Testimony on **HB 1408** – WITH OFFERED AMENDMENTS

By: Robert L. Hale  
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Chairman and members of the Committee.

I'm here today to urge you to do two things.

First, adopt the amendment presented by Representative Ruby to this bill.

Second, actively and aggressively support this bill.

As everyone in North Dakota is aware WSI has had some less than favorable publicity over the last year or more. As a businessman that is required to fund WSI and at the same time have no say in the decisions made or premiums charged I must say North Dakota is not doing itself any favors by maintaining a monopoly worker's compensation system.

North Dakota is one of 3 states that maintain a monopoly system. 47 states permit a multi-option system.

The bill before you – with the amendment – would permit North Dakota businesses to choose amongst three options:

1. To use the state system,
2. To set up a self-insurance program
3. To provide worker's compensation insurance through a private insurance carrier.

There is absolutely no valid reason to not allow North Dakota businesses the same options in providing worker's compensation insurance employers of over 95% of all employees in the United States have.

I've listened to those who are afraid of change, to those who are afraid that valid competition will somehow "harm" WSI. I've listened to the claims that North Dakota's rates are the lowest in the nation. If this is the case why not allow other options – then we will see if this claim is true.

I run businesses in North Dakota, South Dakota and Washington State. My North and South Dakota businesses are identical. My worker's compensation premiums are not – they are higher in this state.

If there is a serious interest in making North Dakota attractive to business and industry moving here this is one major step that will send a message that North Dakota is finally ready to take down its artificial barriers that force business to pay more for less.

There is no delicate way to say it. The only reason to vote against this bill – with the amendment – is because of fear, protectionism and self-interest. WSI is not a benefit to business nor is it the best system to provide for employees who have accidents while on the job.

Let's send a message that North Dakota is moving forward; That North Dakota isn't afraid of the unknown; That North Dakota believes in choice and that North Dakota is working to shrug off its reputation as a protectionist state.

I urge each of you to vote a **DO PASS** on this bill with the amendment presented by Representative Ruby.

I'd be pleased to respond to any questions and I hope there are some penetrating questions.

Thank you for you time this afternoon.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1408  
January 28, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical 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 representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to HB 1408 and urge a do not pass from the committee on this bill.

The Chamber has had many discussions over the years at both the committee and board level about the benefits and liabilities of self insurance, which HB 1408 addresses, and privatization, which it does not. Our position has not changed. WSI is at its heart an insurance pool. North Dakota, relatively speaking, is a small state with a very finite number of employers making up that pool. The first and probably only employers to leave the pool will be positive balance employees with low claims history and in categories with low liability. What will be left are negative balance employers with high liability because of the nature of their business or their practices. Their rates will have to increase, most probably increase drastically, as the pool of employers shrinks. The businesses in this class, notably construction, trucking, oil development and other trades, are critical to the continued economic health of a small rural state like ours. If we increase their costs substantially with a change like this we will pay the bill every time we work on a road or building, public or private, transport goods into or out of our state, or develop our abundant energy resources. We believe this concept is not in the best long term interest of the business community or the state and would a do not pass.

Thank you for the opportunity to appear before you today in opposition to HB 1408. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

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**2009 House Bill No. 1408**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**January 28, 2009**

Mr. Chairman, Members of the Committee:

My name is Anne Green, Staff Counsel, with WSI. I am here today to testify in opposition to House Bill 1408. The WSI Board of Directors unanimously opposes this bill.

WSI is the sole provider of workers compensation coverage and benefits in the state. North Dakota employers have continually enjoyed the lowest premium rates in the country. Additionally, North Dakota employers have benefited from premium dividends during the previous four policy years.

Self insurance becomes a viable option when policyholders need to insulate themselves from market cycles. It is during these periods of volatility that employers, out of necessity, may consider self-insurance as a means of stabilizing their own workers compensation environment. These market cycles may cause fluctuations in pricing and the availability of adequate workers' compensation coverage which employers' may find cost prohibitive. These circumstances are not reflective of the current rating structure in North Dakota.

HB 1408 is silent on a number of issues. Where does responsibility lie for the administration of sound claims management, the payment of claim benefits and implementation of rehabilitation services? May third party administrators (tpa's) establish business operations in North Dakota and pay benefits to injured workers? If WSI continues to adjudicate Title 65, do they receive a fee for doing so from the self-insured? May an employer who opts for a program of self-insurance adjudicate their own claims? Is the self-insured employer obligated to

provide an injured worker an appealable decision if they disagree with the way their employer has adjudicated their claim? Does WSI continue to operate as regulator ensuring claims are adjudicated in conformance with North Dakota workers compensation law?

As these questions are answered, infrastructure challenges must be addressed. Analyzing the ability of a North Dakota employer to sustain a self-insurance program will require subject matter experts. The management of applications for self-insurance, the determination and maintenance of appropriate security, the handling of ongoing participation, insolvency, claims management oversight and injured worker appeals in the self-insurance realm will require staff resources. The creation of a division of WSI to handle a new line of business is difficult to quantify in dollars.

These challenges and others are expanded in WSI's actuarial analysis which is contained in the fiscal note.

WSI currently offers two loss sensitive programs comparable to a self-insurance program. The large deductible program permits an employer to assume up to the first \$100,000 to \$250,000 of claims costs or higher in exchange for a significantly reduced premium. The second program, the retrospective rating program, also permits an employer to retain risk up to a predetermined level, usually 2 to 3 times the standard premium, with risk transferred back to the organization if claims costs pierce that level. Each of these programs resemble a self-insurance plan in terms of advantages, however, an insured is not subject to meeting and maintaining the extensive qualification requirements associated with a self-insurance plan. Additionally, a participant in WSI's programs is not responsible for the sometimes lengthy tail of a workers compensation claim once the ceiling of their liability is met.

Currently, participation in these programs is at records lows, likely due to the current favorable rating and coverage environment. These programs have the potential for further modification to more closely resemble a self-insurance program.

Self insurance becomes a necessity where the cost of workers compensation is prohibitively high or where significant annual premium increases force employers to retain risks to keep their business afloat. These circumstances are not reflective of the current workers compensation environment in North Dakota.

That concludes my testimony. I am happy to answer any questions that you may have.

**HOUSE BILL NO. 1408**

**Presented by: Larry Maslowski  
Senior Analyst and Director, Consumer Protection Property  
and Casualty Division  
North Dakota Insurance Department**

**Before: House Industry, Business and Labor Committee  
Representative George Keiser, Chairman**

**Date: January 28, 2009**

**TESTIMONY**

Good afternoon. Chairman Keiser and members of the House Industry, Business, and Labor Committee. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you in a neutral position on House Bill No. 1408 and to offer a friendly amendment.

The North Dakota Insurance Department is statutorily charged with the regulation of insurance companies and insurance agents seeking to do business in this state.

As we read the proposed bill language, we feel it imperative to explain and clarify a change in wording that would keep this bill, if enacted, consistent with general industry terminology.

Before describing the proposed change in wording, however, let me give you some background.

The North Dakota Insurance Department does not regulate nor do we have at this time any authority over Workforce Safety and Insurance (WSI). In fact over time WSI and the North Dakota Insurance Department have had occasion to discuss certain specific

circumstances in which the question of regulatory authority has come up. The result of these discussions has been if WSI does not provide coverage in certain areas, then those insurance companies seeking to provide coverage for certain areas can do so but are subject to regulation by the North Dakota Insurance Department.

The three areas which have come up and are treated in this manner are:

Employers Liability Coverage - Other states in which workers' compensation coverage is provided by private insurance companies generally use the National Council of Compensation Insurers (NCCI) standard work comp forms and loss costs. The standard form includes a coverage for Employers Liability (instances that are not covered by the work comp policy). Since WSI does not provide this coverage, private companies can and do offer this coverage; thus, we regulate Employers Liability coverage policies.

High Deductible Coverage - WSI offers a high deductible program to its employers with a cap up to \$250,000. This deductible is not covered by WSI; therefore, private insurance companies have sought and been approved by the Department to provide insurance for this exposure.

Extra Territorial Coverage - WSI offers a time limited extra territorial coverage. Employers who need full-time extra territorial coverage cannot get coverage from the fund. Private insurance companies can write this coverage subject to regulation by the North Dakota Insurance Department.

With that, please turn to page 3, lines 3-7, or subsection 5 of the bill. As you read the proposed language, it uses the term "reinsurer" on line 3, "reinsurer" on lines 4 and 5, and "reinsurance" on line 6.

It would, in our opinion, be more correct to use the terms: "insure", "insurer", and "insurance".

True reinsurance is not regulated by the North Dakota Insurance Department. True reinsurance is the insurance that insurance companies buy to reduce their exposure. To our knowledge true reinsurance companies do not generally write coverage on the self-insured workers' compensation market. Instead regular insurance companies would write what is called Excess Workers' Compensation coverage. These companies are regulated by the North Dakota Insurance Department.

We ask your favorable consideration of this friendly amendment should you decide to go ahead with this bill.