

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2059

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2059

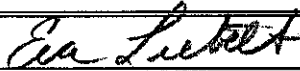
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7187

Committee Clerk Signature



Minutes:

Chairman Klein: Open the meeting with Senate Bill 2059.

Representative George Keiser: In review we find it's not fair for an injured worker to have to pay for his attorney fees. We want them to be able to present their case to an attorney and

have it paid for. We need to find a true independent overview is what this bill attends to do.

Pay attorney fees up to five hundred dollars to review the case.

Discussion held on whether five hundred dollars is enough.

Jennifer Clark, Legislative Council: How much review do you want on this bill draft?

Chairman Klein: Was there anything you want to talk about that he may of missed?

Jennifer Clark: OIR is advocating for the correct decision, not for WSI or the injured employee.

Jody Bjornson, General Counsel with WSI: (Testimony Attached.) In favor of Bill 2059.

Discussion on the amount of funding.

Bill Schalhoob, North Dakota Chamber of Commerce: (Testimony Attached). In opposition of Bill 2059.

Discussion on his written testimony.

Chairman Klein: Closed the hearing on Senate Bill 2059.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2059

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7389

Committee Clerk Signature

Minutes:

Chairman Klein: Senator Wanzek you were going to take a look at it and see what changes could be made.

Senator Wanzek: The intention of this bill is good. I believe it's an effort to allow that injured worker one last chance at having his own attorney. It would result in him being better prepared for a potential administrative hearing or getting good sound advice that you wouldn't be going anywhere with this claim. We're trying to find the right wording to assure that the claimant can at least have some money to have his case looked at.

Chairman Klein: Senator Wanzek would you like some more time on this?

Senator Wanzek: Yes I would.

More discussion on what would be the best wording for the amendment.

Chairman Klein: Closed hearing on 2059.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2059

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7454

Committee Clerk Signature

Minutes:

Chairman Klein: Committee opens your books to bill 2059.

Senator Wanzek: I did get some amendments from Jennifer at the Legislative Council and I didn't feel completely comfortable with it, so I made some adjustments, and I thought we would go through the changes. (Explains the amendment).

Discussion followed.

Motion made to approve the amendment by Senator Behm, as proposed by Senator Wanzek.

Seconded by Senator Wanzek.

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Do pass as amended, Senator Wanzek. Seconded by Senator Andrist.

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Floor Assignment: Senator Wanzek

FISCAL NOTE
Requested by Legislative Council
03/05/2009

Amendment to: Engrossed
SB 2059

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
Revenues						
Expenditures						
Appropriations						

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 provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review process or for review of a settlement offer and provides for a report to the Legislative Assembly. Attorney fees are capped at \$500 and costs at \$150.

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 SB 2059 w/ House Amendments

BILL DESCRIPTION: Post-OIR Attorney Fees Bill

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 provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review process or for review of a settlement offer and provides for a report to the Legislative Assembly. Attorney fees are capped at \$500 and costs at \$150.

FISCAL IMPACT: The proposed legislation will increase attorney fee payments, but the potential increase is not anticipated to be material in relation to current premium rate and reserve levels. Based on historical OIR utilization and resolution data, the anticipated attorney fee and cost increase could be up to \$120,000 per year. To the extent this provision increases future utilization; future premium rate levels will be adjusted accordingly.

DATE: March 5, 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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	03/05/2009

FISCAL NOTE
Requested by Legislative Council
01/29/2009

Amendment to: SB 2059

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
Revenues						
Expenditures						
Appropriations						

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

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The proposed legislation provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review process and provides for a report to the Legislative Assembly. Attorney fees are capped at \$500 and costs at \$150.

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 SB 2059

BILL DESCRIPTION: Post-OIR Attorney Fees Bill

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.

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FISCAL IMPACT: The proposed legislation will increase attorney fee payments, but the potential increase is not anticipated to be material in relation to current premium rate and reserve levels. Based on historical OIR utilization and resolution data, the anticipated attorney fee and cost increase could be up to \$120,000 per year. To the extent this provision increases future utilization; future premium rate levels will be adjusted accordingly.

DATE: January 29, 2008

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:	328-6016	Date Prepared:	01/29/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2059

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
Revenues						
Expenditures						
Appropriations						

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 provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review process. Attorney fees are capped at \$500 and costs at \$150.

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: SB 2059

BILL DESCRIPTION: Post-OIR Attorney Fees Bill

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 provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review process. Attorney fees are capped at \$500 and costs at \$150.

FISCAL IMPACT: The proposed legislation will increase attorney fee payments, but the potential increase is not anticipated to be material in relation to current premium rate and reserve levels. Based on historical OIR utilization and resolution data, the anticipated attorney fee and cost increase could be up to \$120,000 per year. To the extent this provision increases future utilization; future premium rate levels will be adjusted accordingly.

DATE: December 26, 2008

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:	328-6016	Date Prepared:	12/26/2008

PROPOSED AMENDMENTS TO SENATE BILL NO. 2059

Page 1, line 12, after the underscored period insert "The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2059

Page 1, line 12, after the underscored period insert "The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08."

Page 2, after line 29, insert "6. The organization shall report the number of injured employees per year that were eligible under this section to the Senate and House of Representatives Industry, Business and Labor Committees during each legislative session."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2059: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2059 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to provide for a report to the legislative assembly;"

Page 1, line 12, after the underscored period insert "The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08."

Page 2, after line 29, insert:

"SECTION 2. REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.

Workforce safety and insurance shall report the number of injured employees per year that were eligible for payment of attorney's fees and costs under section 1 of this Act to the senate and house industry, business and labor standing committees during the sixty-second legislative assembly."

Page 3, line 1, replace "This" with "Section 1 of this"

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2059

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2059

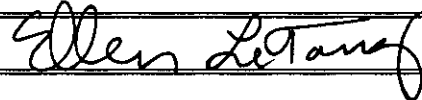
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9892

Committee Clerk Signature



Chairman Keiser: Opened the hearing on SB 2059 relating to WSI payment of an injured employee's attorney's fees for a case review, provide for a report to legislative assembly & provide for application.

Jennifer Clark~Legislative Council. SB 2059 creates a new type of payment that WSI may issue to injured employees. It's a payment of attorney's fees and costs would be available after the certificate has been issued from the office of independent review. So you get somebody who is appealing your decision. They have gone through the office of independent review and at that point when they have once completed that OIR process, there are able to go to an attorney and have their recorded reviewed and get some advice on what they think their next step should be. That advice needs to be obtained before they go to the administrative hearing if they choose appeal that administrative (?). This is separate from any other attorney's fees that WSI pays for. It is creating new opportunities, you gone through OIR; you need some profession advice on what to do here. Perhaps it's a matter of why WSI has made the decision they have made and explain that to the claimants. Perhaps that gives that opportunity to review the case and here are some strong points or no to strong points in appealing your case to the administrative hearing. It gives them that professional evaluation. On page three it's got a report to the 62nd legislative session to senate & house Industry,

Business and Labor committees and the application provision that applies regardless of the day the injury, it has to be when you received your certificate from OIR. You must first receive your certificate of completion from OIR and that attorney counsel patient must take place after the certificate but before your hearing is conducted. The hearing we are referring to is your administrative hearing and law judge. Under subsection two, we have your limitations on what fees and costs can be paid. We limited attorney's fees that are paid by WSI to \$500, you cost limited to \$150, so its \$650 total that they can max out here. It has to be a North Dakota licensed attorney and WSI may deny fees and cost if they determine to be excessive and frivolous. The billing requirements are set up in subsection three, approved reimbursement costs in subsection four and the costs that will not be paid in set out in subsection five. That is your summary of SB 2059.

Representative Schneider: Was there any discussions in the interim over on the senate side about the timing for appeals in 30 days. I guess for practical purposes, an injured worker will come to an attorney maybe four or five days before the 30 day deadline is due to make an appeal and often time the attorney then has to request a copy of the file from WSI. They get it and there is now what that person can make a determination whether they have a case or not in five days. They attorney could simply request an appeal, then the attorney is under obligation to continue forward with representation and WSI starts the ball rolling and they contact the office of administrative hearings, law judge and they have to incur that cost. Was there any discussion in that at all?

JClark: My recollection that during the interim process, there was some discussion that the injured employee can't go within that thirty days to see an attorney, how would that affect (?).

As I recall the discussion along the lines of nothing is stopping them from filing an appeal and withdrawing it at a later date. The committee balanced the concerns of do you want to risk

stretching the appeal process longer? The due process takes too long versus the need for that individual to find an attorney that may or may not be available within that 30 days or may or may not have completed that review within 30 days. It was discussed but we didn't take any action to change the 30 day limits.

Representative Thorpe: What would the attorney have to fill out and itemized for the injured worker & WSI. Billing this whole thing out, to an attorney you already used up the \$500, wouldn't you?

JClark: It's been years since I've had to do a private billing and I can tell you, it not an attorney's favorite thing to do. As far as practical application on how attorneys view this when they are dealing with WSI, refer to an attorney who has actually done. My understanding is that they used this frame work they used here is what they used for other billings. So any WSI attorney would follow the same procedure that they follow for their other billings. There are so many hoops to jump through, it not worth it.

Representative Thorpe: So you are plowing new ground.

JClark: No, it the homework they use.

Representative Schneider: Billing is not fun; I don't think it's unreasonable. It's consistent.

Representative Ruby: What are costs in addition to the fee or charge?

JClark: My understanding is it is the cost items including postage, copies, & mileage. What I'm looking here is on page two, lines 19-27 and those are some of the cost that might be included.

Chairman Keiser: They are not totally inclusive but they are examples.

Ann Green~Staff Counsel for WSI. See testimony attachment and attachments for amendments and attorney fees.

Representative Ruby: What do you hope to accomplish with by this bill.

Green: The bill provides the injured worker who has gone through the appeal process, they have a decision by WSI and that decision may be adverse as they have gone to the office of independent review. There's been a review and they have spoken with the folks of the office of administrative review and they are still not happy with the results. It give them one more opportunity to have a trained professional sit down, review that case and give them their legal opinion as to whether or not they want to continue on. What it does is after that OIR process, it gives that injured worker one more opportunity before they might incur the costs of hiring an attorney to take the claim to a hearing.

Chairman Keiser: I would like to share the interim committee's position on this because it addresses that very point. Dave Kemnitz said the point earlier; their major overriding issue is "sure & certain relief". This is a step in the right direction, in that you have to look at the injured claimants in the situation there in. Frequently, they are not the highest income earning people or educated on average. They typically have jobs where there are back injuries, arms, legs or body parts. They get injured, submit a claim, the agency makes a decision and they are not happy with it, they go to OIR, and OIR does in many cases, after review, positively impacted the decision. One thing you will hear is when you sit on the interim committee is OIR, it is not the office of review, it is within the department of WSI. Calling it totally independent isn't adequate, so now they have gone through OIR and they are still unhappy. If they want to go out and get an attorney, that's expensive and attorneys can't do pro bono work on this issue. Attorneys say that they can't even spend time on the case unless you pay me and the injured worker is put into the position of having to make the initial payment. If there is a legitimate claim and they win, injured worker will get their money back, but if they don't win, they are not going to get their money back. What this is, is to give the injured worker another step to what is unquestionable defined as an independent review. I can go out and find the attorney of my

choice and that attorney will look at the case not. We had a lot of debate whether \$500 was enough money & we won't know now for another two years from now if that's adequate. The attorneys we have talked to say that's not unreasonable because most often the issue is not the entire file, it's one part of it. The attorney can look at the issue and make a decision. The interim though that we would actually reduce the number of court cases.

Representative Schneider: I agree, it could actually save some money. Ms. Green, do you know how much it would cost to adjudicate an appeal with a full blown hearing?

Green: I can't say, easily a \$1000. Goes on to explain all the costs for an appeal.

Representative Schneider: Have you seen a rise in post claimants going to administrative hearings?

Representative Clark: I can't say I see an increase.

Representative Clark: Injured workers sometimes represented by people who are not licensed attorneys?

Green: No, they wouldn't be permitted to represent themselves.

Chairman Keiser: If you recall, WSI agreed to reopen the window on claims to make sure that the decision was made and about 11% of claims, there was some adjustment in the claims. This exposed us to more costs but the question is, "is it the right thing to do?" If we make an incorrect decision on a claim, shouldn't it be corrected? It's that simply, here your one additional opportunity. We think it's going to settle a lot of claims and be a positive effect.

Representative Amerman: What are you accomplishing with your amendment?

Green: The amendment came out of conversations was an aha moment. If WSI opposes the settlement, this is before the OIR process; we will pay the injured worker to take that

settlement out to an attorney and have them review the stipulation. The stipulation has the force and effect of a contract; it binds that injured worker to giving up rights under certain rights

under title 65. What we realized was when SB 2059 introduced, that the administrative rule is bound by the statute and says that you have to prevail to get to paid. If an injured worker was to take a stipulation and take it to an attorney and the attorney says this is a bad deal, don't take it, we would interpret that as no additional benefit paid. We thought it would make sense to incorporate our existing ability to have a stipulation reviewed in the same universe, which is win, lose or draw, you get that review.

Sebald Vetter~C.A.R.E. I support this bill but like would like more time. We would like more time for us.

Leroy Volk~Self. I feel there should be more time for us.

Chairman Keiser: How does this work with OIR?

Volk: They have the deadline on the paper; you have so many days to do it. It's almost impossible to get the paper work done.

Sylvan Leogering~North Dakota Injured Worker Support Group. I would like to comment the Worker's Compensation Review committee for looking at this issue and recognizing the dilemma. I support the bill in helping people help understand the odds and what the next step should be.

Chairman Keiser: Ann, can we call you back up and walk through the time table?

Green: its goes to OIR, starts a certificate of completion and what is on the certificate is the process of OIR is complete. If you disagree, with where you are at with OIR, you have 30 days to take this file to hearing for an appeal. The statute says that the period begins with notice is to the worker, sent by regular mail, that the office independent review assistance to the worker is completed. What that means as a practical matter, we are going to look at 30 days plus 3.

Chairman Keiser: So whenever that's mailed and you add three days for service, and then the clock starts.

Green: Correct but arguably this language says the period begins upon notice to the worker. So for some reason, I moved, I didn't get, it's not written in stone, we would look at it.

Chairman Keiser: If a claimant notified on the 1st and waited until the 29th to talk to an attorney, wouldn't an attorney just automatically send in.

Green: Absolutely, stop that time clock.

Chairman Keiser: Then meet with them 30 days later. When they have notified the agency to stop it, how long would they have for the next one?

Green: There are often times when we get a call from an attorney who says, I'm working with my client and I need additional time to look at this file. As a general rule, we are not going to be unreasonable about that. My point is that if we take criticism for taking too long, so we are careful about that.

Representative Amerman: You get three days of service the guy gets the letter of completion from OIR, will there be anything sent out where it says WSI will pay up to \$500?

Green: I suspect that as a procedural matter, one of the best places to give an injured worker notice of that new benefit, would be on the certificate of completion.

Chairman Keiser: Anyone here to testify in opposition?

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

Anyone here to testify in the neutral position, seeing none we will close the hearing on SB 2059. What are the wishes of the committee?

Representative N Johnson: The amendment.

Chairman Keiser: We do have the amendment submitted by WSI.

Representative N Johnson: I would like to look at this.

Chairman Keiser: We will hold the bill give everyone a chance to review the amendment.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2059

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9895

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the hearing on SB 2059.

Chairman Keiser: What are the wishes of the committee?

Representative N Johnson: Moves the adoption of the amendment.

Representative Nottestad: Second.

Representative N Johnson: It seems reasonable that somebody can get settlement whether they can accept it or not. It makes sense.

Chairman Keiser: That was the intention and Representative Amerman can respond. That was what I thought we were doing in the interim committee that they had the opportunity seek an attorney's opinion.

Voice roll call was taken with all ayes, no nays.

Representative N Johnson: Moves a Do Pass as Amended.

Representative Vigesaa: Second.

Chairman Keiser: The state chamber testified in opposition to it. It does impact and have a fiscal effect on the cost to the fund. Having sat through interims, I recognize it has initial cost but I believe it's the right thing to do.

Representative N Johnson: It might initially cost some money, but in the long run, it might help the animosity for someone who is not connected to the organization and says “yes you have a case, no you don’t”, might help resolve some of the conflict.

Chairman Keiser: I agree.

Roll call was taken on SB 2059 for a Do Pass as Amended with 11 yeas, 1 nay, 1 absent and Representative Sukut is the carrier.

March 2, 2009

VR
3/2/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2059

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 3, after "review" insert "or settlement proposal"

Page 3, after line 2, insert:

"SECTION 2. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees for legal review of proposed settlement. The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 1 of this Act apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 1 of this Act. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal."

Page 3, line 9, after the period insert "Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act."

Re-number accordingly

Date: Mar 2, 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2059

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 N Johnson Seconded By Nottestad

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:

voice vote
all ayes

Date: Mar 2 - 2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2059

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 Johnson Seconded By Vigesaa

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

Total (Yes) 11 No 1

Absent 1

Floor Assignment Sukut

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

REPORT OF STANDING COMMITTEE

SB 2059, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2059 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 3, after "review" insert "or settlement proposal"

Page 3, after line 2, insert:

"SECTION 2. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees for legal review of proposed settlement. The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 1 of this Act apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 1 of this Act. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal."

Page 3, line 9, after the period insert "Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2059

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2059

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 11984

Committee Clerk Signature

Eva Lubett

Minutes:

Chairman Wanzek: Opened the Conference Committee hearing SB 2059. I would ask Representative Sukut if you would go through the explanation of what the amendment does and the reason why and we might see that it's a good idea and we can be done.

Rep. Sukut: I have an explanation from Legislative Counsel; I am just going to read that. The purpose of section 2 which is the amendment that has been added was to provide WSI the ability to pay up to five hundred dollars for an attorney review of a proposed settlement offer by WSI. If to whom the settlement was offered was not represented by counsel at the time of the offer of settlement, regardless if the injured employee elects to accept the settlement offer. Currently WSI has an administrative rule that allows it to pay up to five hundred dollars in the above circumstances; that WSI maintain this rule requires the claimant to accept the settlement offer before attorney fees or associated costs can be paid, the amendment would allow WSI to pay attorney fees and costs in this situation regardless of whether the settlement proposal is accepted by the claimant. WSI proposed this change in the interest of facilitating early settlement of claims and would expect financial implications to be insignificant.

Rep. Schneider: For practicality purposes how it works typically the first session deals with just the preparation of administrative hearings. If a client comes to you and wants an attorneys

counsel on their chances of hearing and the chances of their case, that's what section one applies to. But often times before they get to the administrative hearing stage or prior to the office of independent review the office of WSI will put forward a stipulation currently in statute there are provisions that allow an attorney to review that stipulation and get paid up to five hundred dollars. But only if the stipulation is agreed to and so that puts the attorney and the client in conflict, working to adopt the stipulation if may not be in the best interest. So I think what section two does is the other way the attorney fees will be paid for review of the stipulation is whether they choose to ultimately accept the stipulation or not.

Senator Wanzek: We all as legislators get asked by an injured worker to intervene. I got the waiver and everything and went about the process for this individual and it came to my knowledge through the waiver that he had signed the settlement agreement. And I am assuming this is the kind of situation you are talking about where he didn't completely understand that or he seemed confused by that. I told him it was quite obvious that there isn't much anyone can do for you, as you more or less settled with them. So what you are saying in that kind of a situation an individual would qualify for council and reimbursement of that council in reviewing that settlement?

Rep. Schneider: That's correct. If a client were to come to you with a stipulation offered by WSI the attorney could then take a look at the stipulation, request a copy of the file, review it and see if the settlement is reasonable and give advice on way or another. The intent of the bill as a whole in both one and two is to hopefully reduce litigation.

Rep. Ruby: We understood the intent of the original bill this is brought to us and we thought it was a good addition to address when there is a settlement proposed, rather than just when there is a denial of claims.

Senator Horne: I would just like to ask the house members, whoever would like to respond. If the employee to who the settlement is offered is not represented by an attorney the time the offer was made. That doesn't mean the attorney representing the client or the injured worker, so it has to be his own personal attorney that has to be there to fit into this requirement?

Rep. Schneider: That's the way we would understand it.

Senator Wanzek: The only other question, I see him in the room here. You said this was brought forward by WSI? Not having a chance to hear from the business industry, I would ask that one of them come forward and comment.

Rep. Ruby: I don't recall any objections to it but you are welcome to ask.

Bill Shaloo: We don't have any objections to the amendments.

Senator Wanzek: I would also ask Jody Bjornson to come forward.

Jody Bjornson: The amendment was meant to be tagged on at the front end but it was moved on before we had a chance. The board is in support of this.

Senator Wanzek: What is your view; will this lead to less litigation and problems?

Jody: Yes, It would be nice to take a look at it before it goes to legislation.

Senator Wanzek: It brings in legal expertise sooner. Committee members how do you feel. It seems like we all are in agreement.

Senator Nodland: Made a motion for the Senate to accede to House Amendments.

Senator Horne: Seconded the motion.

Vote taken: Passed 6-0

Senator Wanzek: To carry to the Senate.

Rep. Sukut: To carry to the House.

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2059 as (re) engrossed

Senate IBL Committee

Check here for **Conference Committee**

- Action Taken SENATE accede to House Amendments
 SENATE accede to House Amendments and further amend
 HOUSE recede from House Amendments
 HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 690 --

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) X was placed on the Seventh order of business on the calendar.

Motion Made By Senator Nodland Seconded By Senator Horne

Senators			Y e s	N o	Representatives			Y e s	N o
Senator Wanzek	x		x		Rep. Sukut	x		x	
Senator Nodland	x		x		Rep. Ruby	x		x	
Senator Horne	x		x		Rep. Schneider	x		x	

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier Senator Wanzek **House Carrier** Rep. Sukut

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2059, as engrossed: Your conference committee (Sens. Wanzek, Nodland, Horne and Reps. Sukut, Ruby, Schneider) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 690 and place SB 2059 on the Seventh order.

Engrossed SB 2059 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2059



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2059
January 19, 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 six local chambers with total membership over 3,900 members ten employer associations. A list of those associations is attached. As a group we stand in opposition of SB 2059 and urge a do not pass from the committee on this bill.

The discussion on attorney fees has been on going for many sessions. We believe the issue was decided in a satisfactory manner in the 1995 session and do not see a reason to expand the review process in this way is a road we feel it is unwise to start to go down.

Thank you for the opportunity to appear before you today in opposition of SB 2059. I would be happy to answer any questions.

*Same given
to House.*

THE VOICE OF NORTH DAKOTA BUSINESS



The following associations support our testimony and position on WSI issues:

AGC of ND
ND Grocers Association
ND Motor Carriers
ND Hospitality Association
ND Petroleum Council
ND Automobile Dealers Association
ND Implement Dealers Association
ND Retail Association
ND Petroleum Marketers
ND Health Care Association

The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:

Chamber of Commerce of Fargo Moorhead
Greater Bottineau Area Chamber of Commerce
Hettinger Area Chamber of Commerce
Kenmare Association of Commerce
Minot Chamber of Commerce
Oakes Area Chamber of Commerce
Bismarck-Mandan Area Chamber of Commerce

THE VOICE OF NORTH DAKOTA BUSINESS

PO Box 2639 Bismarck, ND 58502 Toll-Free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
WWW.NDCHAMBER.COM NDCHAMBER@NDCHAMBER.COM

2009 Senate Bill No. 2059
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Jodi Bjornson, General Counsel
Workforce Safety & Insurance
January 19, 2009

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors supports this bill.

WSI staff attended the Interim Legislative Workers' Compensation Review Committee meetings to provide input on the issues discussed during the Committee meetings. WSI staff assisted in the development of this bill which proposes to provide attorneys fees and costs for a consultation regarding a request for rehearing after successful completion of the Office of Independent Review process, but before rehearing is conducted. Attorneys' fees are capped at \$500 per administrative order and costs \$150 per administrative order.

The provisions of this bill regarding reimburseable expenses and billing requirements for the consulting attorney stem from WSI's current administrative rule governing payment of fees and costs for an injured workers' attorney. It makes sense that the billing requirements provided in this bill are consistent with those that already exist for injured workers' attorneys.

We anticipate attorney fees and costs could increase by \$100,000 to \$120,000 per year. This is based on historical Office of Independent Review utilization and resolution data. If costs are greater than estimated, future premium rate levels will increase accordingly.

This concludes my testimony. I would be happy to answer any questions at this time.

2009 Engrossed Senate Bill No. 2059
Testimony before the House Industry, Business, and Labor Committee
Presented by: Anne Green, Staff Counsel
Workforce Safety & Insurance
March 2, 2009

Mr. Chairman, Members of the Committee:

My name is Anne Green, Staff Counsel with WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors supports this bill.

WSI staff attended the Interim Legislative Workers' Compensation Review Committee meetings to provide input on the issues discussed during the Committee meetings. WSI staff assisted in the development of this bill which proposes to provide attorneys fees and costs for a consultation regarding a request for rehearing after successful completion of the Office of Independent Review process, but before rehearing is conducted. Attorneys' fees are capped at \$500 per administrative order and costs are capped at \$150 per administrative order.

The provisions of this bill regarding reimbursable expenses and billing requirements for the consulting attorney stem from WSI's current administrative rule governing payment of fees and costs for an injured workers' attorney. It makes sense that the billing requirements provided in this bill are consistent with those that already exist for injured workers' attorneys.

We anticipate attorney fees and costs could increase by \$100,000 to \$120,000 per year. This is based on historical Office of Independent Review utilization and resolution data. If costs are greater than estimated, future premium rate levels will increase accordingly.

The amendments passed by the Senate do two things: 1.) Clarify that the attorney's fees and costs under section one of this bill are for the purpose of the initial consultation and review of a claimant's case and are separate from and independent of attorney's fees and costs already provided for in section 65-02-08, and, 2.) Require WSI to report to the 2011 senate and house industry, business and labor standing committees on the number of claimants eligible for payment of attorney's fees and costs under section 1 of this bill.

WSI proposes to add an additional amendment that is attached for your consideration. This amendment adds a new section to chapter 65-02 and is completely separate from Section 1. The purpose of this amendment is to provide WSI with the ability to pay up to five hundred dollars for an attorney's review of a proposed settlement offer by WSI, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement, regardless if the injured employee elects to accept the proposed settlement offer.

Currently, WSI has an administrative rule that allows it to pay up to five hundred dollars in the above circumstances, but WSI maintains this rule requires the claimant to accept the settlement offer before attorney's fees or associated costs can be paid. This rule is also attached for your review. WSI would like to obtain the ability to pay attorney's fees and costs in this situation regardless of whether the proposal is accepted by the claimant. Rather than wait several months to change this rule through the administrative rule making process, we submit it is more timely and efficient to simply amend this bill to make the desired change in the law. The law would then "trump" the administrative rule.

This concludes my testimony. I would be happy to answer any questions at this time.

PROPOSED AMENDMENTS TO ENGROSSED SB NO. 2059

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 3, after "review" insert "or settlement proposal"

Page 3, after line 2, insert:

Section 2. A new section to chapter 65-02 of the North Dakota Century Code is amended and enacted as follows:

"Attorney's fees for legal review of proposed settlement. WSI shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions 2(d) and 2(e) of section 1 apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of Section 1. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal."

Page 3, line 9, after the period insert "Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act."

Renumber accordingly

- j. The names and addresses of any witnesses to the injury, if known.
2. Following receipt of the employer's notice of injury, the organization shall determine whether a claim has been filed by the injured worker. If no claim has been filed, the organization shall notify the injured worker by regular mail addressed to the worker at the address given by the employer or at the last-known address of the worker that the employer's notice has been received and shall inform the worker of the filing requirements of North Dakota Century Code section 65-05-01.

History: Effective January 1, 1996; amended effective July 1, 2006.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-01.4, 65-05-01.5

92-01-02-03. Informal hearing. Repealed effective April 1, 1997.

92-01-02-04. Rehearing - Formal hearing. Repealed effective April 1, 1997.

92-01-02-05. Notice of formal hearing - Specification of issues. Repealed effective April 1, 1997.

92-01-02-06. Evidence. Repealed effective April 1, 1997.

92-01-02-07. Subpoenas - Depositions. Repealed effective April 1, 1997.

92-01-02-08. Information not presented at a formal hearing. Repealed effective April 1, 1997.

92-01-02-09. Decision. Repealed effective April 1, 1997.

92-01-02-10. Appeal. Repealed effective April 1, 1997.

92-01-02-11. Attorneys. Any party has a right to be represented by an attorney at any stage in the proceedings regarding a claim. An attorney who represents an injured worker in a proceeding regarding a claim shall file a notice of legal representation prior to or together with the attorney's first communication with the organization.

History: Amended effective June 1, 1990; April 1, 1997; April 1, 2008.

General Authority: NDCC 65-02-08, 65-10-03

Law Implemented: NDCC 65-02-08, 65-10-03

92-01-02-11.1. Attorney's fees. Upon receipt of a certificate of program completion from the office of independent review, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme

court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred twenty-five dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at sixty dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to seventy dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at thirty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
 - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.
 - b. Two thousand five hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.
 - c. Five thousand one hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held. If the employee prevails after an evidentiary hearing and the organization wholly rejects the recommended decision, and the employee appeals from the organization's final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.

- d. Five thousand seven hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Seven thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
 - e. Nine thousand three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
 - f. One thousand four hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.
 - g. Five hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.
 - h. Should a settlement or order amendment offered during the OIR process be accepted after the OIR certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.
 5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
 6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.
 7. The following costs will be reimbursed:

- a. Actual postage, if postage exceeds three dollars per parcel.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at eight cents per page.
 - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
 - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.
8. The following costs will not be reimbursed:
- a. Facsimile charges.
 - b. Express mail.
 - c. Additional copies of transcripts.
 - d. Costs incurred to obtain medical records.
 - e. On-line computer-assisted legal research.
 - f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

92-01-02-11.2. Attorney time statements. An attorney representing a claimant shall submit to the organization, at least once a month, a statement of the time spent representing that claimant during that month. The statement must include the name and claim number of the claimant represented, the type of work performed, which attorney or legal assistant performed the work, and the dates