

**2011 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1056**

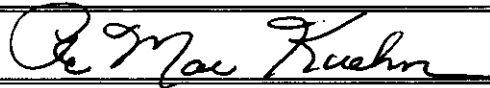
# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1056  
January 10, 2011  
12722

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Independent performance evaluation of WSI.

### Minutes:

**Representative Ruby:** I chaired the Interim Worker's Comp. Review Committee. This was a bill draft that I asked Jennifer to draft. It was not a request by WSI but it was a discussion that I was hearing about. The performance evaluation is performed every biennium. When the changes were made to WSI in the early 90's there was a need for that because they wanted to review all areas of performance. Now some of these are repetitive. When changes are made on a recommendation, it takes some time to implement the changes. Then it could take a couple of years before an effect is seen. With that we are back in another performance evaluation that might ask to see something similar. I asked a bill be drafted that would move it to once every 4 years. The other advantage is the cost. Every evaluation is about \$240,000. There was some discussion about keeping the evaluation on a biennial basis and just reduce the number of elements. Depending on what elements are chosen, they could affect the same ones that we are trying to give more time. WSI presented an amendment to pass out.

**Chairman Keiser:** I don't understand on the amendment what Section 2 means. They can't do any performance evaluations? For a two-year period they can't come forward with anything?

**Representative Ruby:** Yes, that would automatically set it to the four years immediately.

**Chairman Keiser:** Anyone else in support?

**Rob Forward~Staff Attorney, WSI:** (see attached testimony #1)

**Vice Chairman Kasper:** Can you give me an idea of the number of staff and hours put in for an audit?

**Rob Forward:** We had nine elements from the last performance evaluation. That takes nine different managers and their subordinates. That would be about 18 to 30 people in helping implement the performance evaluation recommendations. I don't know how many hours.

**Representative Clark:** Does that \$240,000 include the cost of the consultant or the cost for both the consultant and the department?

**Rob Forward:** That is just the consultant fee. It doesn't count for WSI administrative time.

**Chairman Keiser:** Isn't it likely that if you wait every four years, the scope of each of your items just grows or the number of items grows. Issues come up that somebody wants to have looked at. When you have a four-year lag, they ask for more parts of each issue possibly.

**Rob Forward:** The number of elements is set by statute. I believe it is eight. If there are more requested, the auditor's office has a process to do that. The concern you have is that the recommendation number may increase. Understanding that might be a con. It is outweighed by the pros of having an administrative staff that has time to breathe and get the recommendations done appropriately and not just done so you get somebody off your back.

**Chairman Keiser:** Has anyone done an audit of the audits? Do we have any measurement of whether it serves the injured workers better?

**Rob Forward:** I don't think it exists. It exists anecdotally with the staff.

**Chairman Keiser:** Others in support?

**Bill Shalhoob, ND Chamber of Commerce:** (See attached testimony #2)

**Chairman Keiser:** Others in support? Opposition?

**Dave Kemnitz, President of ND AFL-CIO:** We oppose HB 1056 for a couple of reasons. We knew and agreed that the legislature needed tools to evaluate WSI. Then there was a board of directors that needed tools to do those evaluations effectively. Now the Board of Directors is an advisory which makes it more essential that they have tools and benchmarks. All of us are laypersons that don't have the expertise or time. That is why an auditor is hired and evaluations are done. My question is if something is recommended for change, if it doesn't happen in two years, what makes us think it is going to be done in four years. What is the enforcement? I am not comfortable with going to four years.

**Gordy Smith, State Auditor's Office** called to the podium.

**Chairman Keiser:** How does the department track the impact of the audits?

**Gordy Smith:** We don't do anything specific. The overall benefit is that many of the recommendations are agreed to and implemented by WSI. The original performance evaluation legislation came when WSI was set apart and was going to be governed by a board. The evaluation process was put into place to help legislators, the public, and the board to get a better handle on how things were going. Now things have changed. As an auditor, I could make an argument not for any change but I think that ignores the fact that

now WSI is under the Governor's control. I think there is a valid argument to say why is WSI looked at through a performance evaluation rather than Human Services, etc. or any other state agency. The last performance evaluation was required to bid, so their price included a trip out here during session to go over this document if the joint IBL Committees wanted. If you want that, they will come here with no additional cost.

**Chairman Keiser:** If we are paying for it, we want to meet them.

**Gordy Smith:** Should I try to get it before crossover?

**Chairman Keiser:** Yes.

**Chairman Keiser:** Closed the hearing. Wishes of the committee?

**Representative Ruby:** I move to adopt the amendment.

**Representative Kreun:** Gave the Second

**Voice vote motion for amendment:** **Passed.** Amendment is on the bill.

**Representative Kasper:** If we are having the evaluator come out, aren't we premature in taking action until we hear the evaluator?

**Chairman Keiser:** Their coming out isn't going to change this decision.

**Representative Ruby:** Reflecting on this time to implement, I feel comfortable in moving this as a **Do Pass**.

**Representative Clark:** Gave the Second.

Roll Call Vote was taken on **Do Pass as Amended** on HB 1056.

Motion carried with **14 yes** and **0 no, 0 absent**.

**Rep. Frantsvog** will carry the bill.

## FISCAL NOTE

Requested by Legislative Council  
01/13/2011

Amendment to: HB 1056

**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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 requires the independent performance evaluation conducted by workers' compensation industry experts to be conducted every four years rather than every two years.

**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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1056

BILL DESCRIPTION: Independent Performance Evaluation

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires the independent performance evaluation conducted by workers' compensation industry experts to be conducted every four years rather than every two years.

**FISCAL IMPACT:** The funding for the independent performance evaluation conducted by workers' compensation experts is currently provided via a continuing appropriation. Based on the costs associated with the most recent evaluation, the proposed legislation will serve to reduce costs by approximately \$240,000 per biennium.

DATE: January 13, 2011

**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>	01/13/2011

## FISCAL NOTE

Requested by Legislative Council  
12/15/2010

Bill/Resolution No.: HB 1056

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 requires the independent performance evaluation conducted by workers' compensation industry experts to be conducted every four years rather than every two years.

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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1056

BILL DESCRIPTION: Independent Performance Evaluation

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires the independent performance evaluation conducted by workers' compensation industry experts to be conducted every four years rather than every two years, which currently exists.

FISCAL IMPACT: The funding for the independent performance evaluation conducted by workers' compensation experts is currently provided via a continuing appropriation. Based on the costs associated with the most recent evaluation, the proposed legislation will serve to reduce costs by approximately \$240,000 per biennium.

DATE: December 15, 2010

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:	12/22/2010



January 10, 2011

VR  
1/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1056

Page 1, line 2, after "insurance" insert "; and to provide for application"

Page 2, after line 8, insert:

**"SECTION 2. APPLICATION.** An independent performance evaluation under section 1 of this Act may not be initiated until after December 31, 2013."

Renumber accordingly

Date: 1-10-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1054

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0234.02001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Ruby Seconded By Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

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

Absent \_\_\_\_\_

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

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

Voice vote

Date: 1-10-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1056

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Ruby Seconded By Chris Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigasaa	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Frantsvog

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

**REPORT OF STANDING COMMITTEE**

**HB 1056: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1056 was placed  
on the Sixth order on the calendar.

Page 1, line 2, after "insurance" insert "; and to provide for application"

Page 2, after line 8, insert:

**"SECTION 2. APPLICATION.** An independent performance evaluation under section 1 of  
this Act may not be initiated until after December 31, 2013."

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1056

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1056  
February 15, 2011  
Job Number 14565

☐ Conference Committee

Committee Clerk Signature

*Erin Liebelt*

### Explanation or reason for introduction of bill/resolution:

Relating to independent performance evaluation of workforce safety and insurance and to provide for application

### Minutes:

Testimony attached

**Chairman Klein:** Opened the hearing on House Bill 1056.

**Representative Dan Ruby:** Introduced the bill. Stated that this came as a result of the discussions he heard about the evaluations. Every two years there are eight elements that are selected, and the workers' compensation review committee can select four, the auditors' office can select four and there is a provision that more can be selected if the auditor would bring the request and get approval from the workers' compensation review committee. He explains why it was biannual and the changes that are being made and why he saw the need for the changes. He is hoping to capture all the areas that need to be looked at and hoping to change how often they are being looked at.

**Chairman Klein:** Asked if this would go in effect before the 2013 biennium or after December 2013.

**Representative Ruby:** Yes. That was at the request of WSI.

**Senator Murphy:** Asked what the elements are and if they were categories of measurements.

**Representative Ruby:** He said that the elements could be dealing with the appeal process; they could be benefits levels or a wide variety of things. He also said that if the state auditor feels there maybe areas that are lacking or could use some review that would also be an element. He said that the companies hired to do the evaluations are national companies that have expertise in workers' comp policies benefits and practices. They compare where we fit with other states and what we have that others don't.

**Jennifer Clark, Legislative Council:** On the application as she reads it, it clarifies that the amendments state that they would start at the next performance evaluation. Typically it

would begin this next summer to be ready for the next Legislative session. This would delay this and say we are starting with that four year period, so they won't start one this summer.

**Rob Forward, Staff Attorney Workforce Safety and Insurance:** Testimony attached.

**Chairman Klein:** Asked if they are constantly in the audit process.

**Rob:** That is right and in addition we also have an internal audit department that does audits on WSI's behalf. They can also be taking place at the same time.

**Senator Andrist:** When you say it saves two hundred and forty thousand dollars, is that what you spend for a performance audit?

**Rob:** That is the cost of the performance evaluation. The auditors' office puts out an RFP and they usually will bring in someone with some national experience.

**Chairman Klein:** That is the actual costs of the audit, not the cost of the people who help the auditors find the information.

**Rob:** That is correct, that is the cost of the contract.

**Bill Shalhoob, North Dakota Chamber of Commerce:** Testimony attached.

**Gordy Smith, Auditors' Office:** Neutral on the bill. The performance audit verses a performance evaluation, the performance audit would have to follow certain standards and the AG's office had an opinion in 1999 that said if you use the word audit, you have to have it done by a CPA. We made sure we got firms that had lots of workers' comp experience across the country so we changed that to performance evaluation. He also talked about the different elements that are looked at in the performance evaluations.

**Chairman Klein:** Closed the hearing.

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1056  
February 16, 2011  
Job Number 14612

☐ Conference Committee

Committee Clerk Signature

*Eva Lubelt*

### Explanation or reason for introduction of bill/resolution:

Relating to independent performance evaluation of workforce safety and insurance and to provide for application

### Minutes:

Discussion and Vote

**Chairman Klein:** Opened the hearing on engrossed House Bill 1056. The change on the bill was to move it from the biannual to once every four years.

**Senator Schneider:** Stated that he was gone for part of the hearing and wanted to know how often other state agencies are subjected to performance evaluations.

**Chairman Klein:** Said he didn't know but that in 1997 when workers' comp performance evaluation was taken away from the Governors' committee and moved to the independent agency that is when the Legislation required a biannual audit. He said unless the auditor's office or Legislature can ask for a performance audit, since it is moved back to the Governors' office they felt it would be okay.

**Senator Schneider:** Said that there is more accountability and so there probably is not a need to have a performance audit every two years.

Senator Murphy: Moved a do pass.

Senator Andrist: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Klein to carry the bill



Date: 2/16/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1056

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Murphy Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

**REPORT OF STANDING COMMITTEE**

**HB 1056, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1056 was placed on the Fourteenth order on the calendar.**

**2011 TESTIMONY**

**HB 1056**

#1

**2011 House Bill No. 1056**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Rob Forward, Staff Attorney**  
**Workforce Safety & Insurance**  
**January 10, 2011**

Good Morning, Mr. Chairman and Members of Committee:

My name is Rob Forward. I am a staff attorney at Workforce Safety & Insurance (WSI) and on behalf of the agency I am here to testify in favor of HB 1056.

HB 1056 proposes to change the frequency of WSI's independent performance evaluations. Currently, WSI undergoes an evaluation every two years. The proposed change would alter the frequency of the evaluations to once every four years.

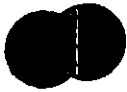
This proposal is a product of the Workers' Compensation Review Committee from the summer of 2010. The Committee recognized that while WSI should be scrutinized, there is a burdensome impact of dealing with evaluation recommendations every two years. WSI usually does not have enough time between evaluations to fully implement recommendations while simultaneously conducting its regular business. This, at times, creates a drag on the core work of the agency and negatively affects efficiency.

Please remember that there is a difference between independent performance evaluations and financial audits. The financial audits of WSI are conducted annually and the proposed change in HB 1056 would not affect that frequency. Further, legislative oversight continues during sessions and during the interim.

Finally, the bill's fiscal note shows that it would reduce costs by approximately \$240,000 every biennium.



This concludes my testimony. I'd be happy to answer any of your questions.



#2



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1056  
January 10, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal 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 and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. I have attached a list of those parties to my testimony for this hearing only. As a group we stand in support of HB 1056 and urge a do pass from the committee on this bill

The savings from the change from a two year to four year audit by workers' compensation industry experts is significant and should be captured. Controls including state audits, legislative oversight, an interim session of the legislature and internal reporting requirements and external groups are sufficient for insuring the agency is doing the job it is intended to do.

Thank you for the opportunity to appear before you today in support of HB 1056. I would be happy to answer any questions.

*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

**2011 Engrossed House Bill No. 1056**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Rob Forward, Staff Attorney**  
**Workforce Safety & Insurance**  
**February 15, 2011**

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North Dakota Chamber of Commerce  
HB 1056  
February 15, 2011

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The savings from the change from a two year to four year audit by workers' compensation industry experts is significant and should be captured. Controls including state audits, legislative oversight, an interim session of the legislature and internal reporting requirements and external groups are sufficient for insuring the agency is doing the job it is intended to do.

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