

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1440

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1440  
January 26, 2011  
13484

☐ Conference Committee

Committee Clerk Signature

*Ellen Letang*

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

Relating to workers' compensation additional benefits payable

### Minutes:

**Chairman Keiser:** Opens the hearing on HB 1440.

**Scot Kelsh~District 11-Fargo:** When someone is injured and benefits are calculated on pre-Social Security, it's lowering their benefits and this corrects it and adds a little bit to their WSI benefits.

**Chairman Keiser:** Anyone else here to testify in support of HB 1440.

**LeRoy Volk~Injured Worker on WSI:** (See attached testimony 1) I'm concerned when I'm going to hit age 65. I called Social Security in Denver and they figured it would be 700 to 800 dollars more than what I would be getting if I would have stayed working the 15 years, what I would be getting now with disability. Sevolt, he is getting it until the day a dies. I drew up this plan (see attachment). It would be more fair that we, who are on disability, to get something out of it that that we are missing out of in supporting our families. It's going to hurt the economy. It's going to cost more lying around drawing welfare than disability.

**Chairman Keiser:** I'm going to have WSI explain current law and then have you come back.

**Jodi Bjornson~General Counsel with WSI:** (See attached testimony 2).

**Chairman Keiser:** I need you to understand how the current law works and how this proposal would literally do. Several years ago, the legislature made the decision that because of effect date, were able to carry forward their benefits. Following the passage of the law, the decision was made that at age 65, it's assumed that you retire. You transition from WSI reimbursement to Social Security. Now, we put in a formula and that's where they eventually came back and put in another formula because that was not fair because if you were hurt for 10 years before retirement, your income would have been increase gradually. There was no adjustment for that increase. That's where the ABP came in, we tried to come up with a formula that said, look, depending on how far away from Social

Security age, that you are injured and taken out of the workforce, you will have a disability payment plus ABP payment and that will go forward until you hit retirement or the age of 65, whichever ever comes first. At which time you will then go to the Social Security and ABP will carry on but you will lose the disability.

**Jodi Bjornson:** While they are receiving disability payments they are also eligible for Social Security disability. As they are receiving those 2 streams, Social Security Disability is getting a COLA (Cost of Living Adjustment) through the years. Worker's Comp Disability also gets a COLA. At the end when they hit 65, many times the claimants SSD transfer over to SSR. That rate has been building over the years that they have been injured just like the stream of disability benefits coming from WSI. The WSI benefit disappears, they go to SSR from SSD and then we pop back in there the post retirement benefit.

**Representative Ruby:** I realize the disability payment is tax free, is the additional benefits payable tax free as well?

**Jodi Bjornson:** Yes.

**Representative Nathe:** The WSI disability payments stop after 17 years?

**Jodi Bjornson:** No, that was just an example that I gave to illustrate the point.

**Representative Nathe:** No matter what age, as long as it gets him to 65?

**Jodi Bjornson:** Once they get to age 65, then this chart kicks in. We go to how many years they were on before retirement. They received disability benefits for 5 years preretirement and that how many years they are going to get after retirement. We correlate right now.

**Chairman Keiser:** Let's have our bill sponsor come back. Leo, would you walk us through the numbers, we understand all your policy issues. How would that change your numbers?

**LeRoy Volk:** Explains his chart. Social Security in Denver said with what I'm getting now and what I would be on top of it, they said roughly 800 to 900 dollars more a month than what I'm receiving now at 700 and some dollars now at disability pay.

**Chairman Keiser:** So is that SSD or WSI Disability?

**LeRoy Volk:** SSD.

**Chairman Keiser:** So you are receiving 800 less SSD today?

**LeRoy Volk:** Yes. If I retired now and take what WSI would give me now, I'm getting 700 and some with SSD and getting a little over a 1000 from Workman's Comp to make ends meet. OK, when I retire, I will be cut that down to a little over 500 that I would be getting from Workman's Com. Not only be getting about another 200 more from Social Security because I haven't paid in all these years.

**Chairman Keiser:** Would you also get SSD?

**LeRoy Volk:** No. I would be only getting 200 dollars more a month on Social Security now than what I am with disability.

**Chairman Keiser:** So you will get 900?

**LeRoy Volk:** I would get 900 dollars.

**Chairman Keiser:** Currently you are getting 1700 dollars and what you are suggesting is you would only end up with 1400 dollars if you retired per month?

**LeRoy Volk:** Right.

**Chairman Keiser:** So you would take a reduction in income.

**LeRoy Volk:** Right.

**Chairman Keiser:** When you retire?

**LeRoy Volk:** Right.

**Chairman Keiser:** Do most people that are employed normally take a reduction when they retire?

**LeRoy Volk:** To a certain, yes, but they had a chance to build up their income but us injured workers didn't. I had to wait 7 years to get on disability. We didn't have a chance to build up.

**Chairman Keiser:** If we were to pass this bill, how would that change your numbers down here if you were to retire?

**LeRoy Volk:** I would get a little more money.

**Chairman Keiser:** Do you know how much?

**LeRoy Volk:** I would figure about 200 dollars more. In another 3 years the cost of living increase would be up there anyway.

**Chairman Keiser:** Anyone else here to testify support in HB 1440?

**Dave Kemnitz~President of the North Dakota AFL-CIO:** We support this citizen and as the chair said, it's very complicated. Leo has some points.

**Chairman Keiser:** LeRoy if you sign a release for the committee, I will ask WSI to run your numbers so we can see the numbers. We will hold this bill up until we get that information back.

**Chairman Keiser: Anyone here to testify in opposition of HB 1440?**

**Tom Belzer~Representing Bill Shalhoob-North Dakota Chamber of Commerce:** (see attached testimony 3)

**Chairman Keiser: Is there anyone else here to testify in opposition, in neutral position to HB 1440? Closes the hearing on HB 1140.**

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1440  
February 2, 2011  
13896

☐ Conference Committee

Committee Clerk Signature

*Ellen Letang*

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

Relating to Workers' Compensation additional benefits payable.

## Work Committee Session Minutes:

**Chairman Keiser:** Opened the work committee session on HB 1440.

**Representative Nathe:** It provides a bridge from the loss of earnings for the injured person before retirement supplemental pay.

**Chairman Keiser:** Could you review the fiscal note?

**Representative Nathe:** The fiscal note is 27 million dollars on the reserve fund plus it would premium rates would increase between 1 and 1.5 %, so it would be 1.75 million a year.

**Chairman Keiser:** Do we have a motion?

**Representative Boe:** Do Pass.

**Representative Gruchalla:** Second.

**Chairman Keiser:** Further discussion?

**Representative Nathe:** I do think it's a well intentioned bill and we had some good testimony. In light of the fiscal note and increases in the future, I can't support this bill.

**Roll call was taken for a Do Pass on HB 1440 with 4 yeas, 10 nays, 0 absent and the motion fails.**

**Chairman Keiser:** A Do Pass fails, is there an alternative motion?

**Representative M Nelson:** May I move to amend the bill. What I would like to do and it would reduce the fiscal note effect is the offset. The \$77 dollar offset is not continuing after retirement and I would like to amend the bill in such a way that that offset would continue so that it would not increase that retirement but would stay the same.

**Chairman Keiser:** We will hold this bill and would you get Legislative Council to draft this amendment and we will look at this bill.

**Representative N Johnson:** Would that also required that WSI do a fiscal note?

**Chairman Keiser:** Yes. Closes the hearing.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1440  
February 7, 2011  
14105

☐ Conference Committee

Committee Clerk Signature

*Allen Letang*

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

Workers' Compensation additional benefits payable.

### Committee Work Session Minutes:

**Chairman Keiser:** Opens the work session on HB 1440.

**Representative M Nelson:** Based on the understanding of the amendment, it would alter the base rate to be used ABP benefits at the time of retirement eligibility. The ABP would be based on the worker's compensation disability benefit rate less any applicable Social Security disability offset rather before Social Security offset as it exist currently. It would impact only those future ABP recipients that were also on SSD at the time of retirement eligibility. The change has no impact for those who were solely receiving workman's compensation benefits at the time of retirement. We have not sent this off to our actuaries for a detailed review as you requested. Based on our internal assessment the proposed amendment will serve to reduce the base rate for ABP calculations purposes by approximately at 17.5 for future ABP recipients receiving SSD benefits at the time of retirement. The base rate will remain unchanged. Based on these assumptions the proposed amendment would serve to reduce the fiscal note to some extent. It's estimated that the bill with the amendment would result in discounted reserve level increase of approximately 23 million as compared to 27 million in the existing bill. The amendment would also impact future industries and it would result in a premium rate level of approximately 1.5 million as compared to 1.75.

**Representative Nathe:** Provide a bridge between loss of earnings and supplement retirement pay.

**Chairman Keiser:** ABP payments stop when you reach Social Security age, for some claimants, there is a reduction in income. This language would, one, maintain the ABP payment until death versus Social Security and two adjusts the percentages of the additional payable on a new schedule. What do your amendments do over and above that?

**Representative M Nelson:** On page 1, line 15, what that does is it maintains the deduction after retirement. As it was the benefits would have increased the amount of the



deduction at retirement, the amendment would make it stay the same. The second was housekeeping cleanup.

**Chairman Keiser:** Any questions for Representative M Nelson? Do we have a motion on the amendments?

**Representative M Nelson:** Moves the amendments.

**Representative Gruchalla:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was taken on amendment 11.0708.01002 for HB 1440 with 13 yeas, 1 nay, 0 absent.**

**Chairman Keiser:** Amendment passes, what are the wishes of the committee?

**Representative M Nelson:** Do Pass as Amended.

**Representative Amerman:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was taken for a Do Pass as Amended on HB 1440 with 4 yeas, 10 nays, 0 absent.**

**Chairman Keiser:** Is there another motion.

**Representative Nathe:** Moves for a Do Not Pass as Amended.

**Representative Vigesaa:** Second.

**Chairman Keiser:** Further discussion?

**Chairman Keiser:** This is a difficult issue, you have earnings, you maintain those earnings while you are working, then you retire, the day you retire those earning goes away and you move to some other program. In the case of a non-injured worker, you go to Social Security. not I do take a significant a hit to the day I retire. The real question isn't to maintain benefits into retirement that match your pre-retirement. When you are injured for more than 10 years, you lose the opportunity to make more money so that your Social Security goes up. We have tried to put adjustments in there and if those adjustments aren't adequate, we need to address the adjustments. I do support our current policy.

**Representative M Nelson:** Looking at LeRoy's situation, normally we would say that someone's income could be 70% of what it was when they were working, to maintain their

lifestyle. LeRoy's life when he retires will not change. This is the amount of benefits that it takes for a worker to survive, life won't change.

**Representative Boe:** When you choose to retire, we get to choose the date to retire; someone else picks up the date for LeRoy. He was force to take that date, he has no options.

**Chairman Keiser:** I agree 100%, maybe that something we need to work on but not here. Further discussion?

**Roll call was taken for a Do Not Pass as Amended on HB 1440 with 10 yeas, 4 nays, 0 absent.**

**FISCAL NOTE**  
Requested by Legislative Council  
02/09/2011

Amendment to: HB 1440

**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 extends additional benefit payable (ABP) benefits for the lifetime of the injured worker versus the corresponding pre-retirement disability duration; increases the ABP benefit rates; and modifies the base rate for purposes of calculating the ABP.

**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 1440

BILL DESCRIPTION: Additional Benefit Payable

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 extends additional benefit payable (ABP) benefits, a post-retirement benefit available at time of retirement eligibility for post-1995 claims, for the lifetime of the injured worker versus the corresponding pre-retirement disability duration; increases the ABP benefit rates between 100% and 300% depending on the duration of the pre-retirement disability period; and modifies the base rate for purposes of calculating the ABP.

**Reserve Level Impact:** The proposed legislation can be expected to increase discounted reserve levels for existing claims by approximately \$23 million. To the extent additional claims emerge the cost estimates would be higher.

**Rate Level Impact:** The proposal will serve to increase the costs associated with future claims. Currently, it is estimated that 30 Permanent Total Disability claims which ultimately convert into ABP claims will arise out of each injury year. Based on this assumption, the proposal will serve to increase statewide premium rate levels by 1.0%, or by approximately \$1.5 million per year.

DATE: February 9, 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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/09/2011

## FISCAL NOTE

Requested by Legislative Council  
01/19/2011

Bill/Resolution No.: HB 1440

**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 extends additional benefit payable (ABP) benefits, a post-retirement benefit available at time of retirement eligibility, for the lifetime of the injured worker versus the corresponding pre-retirement disability duration and increases the ABP benefit rates.

**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 1440

BILL DESCRIPTION: Additional Benefit Payable

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 extends additional benefit payable (ABP) benefits, a post-retirement benefit available at time of retirement eligibility for post-1995 claims, for the lifetime of the injured worker versus the corresponding pre-retirement disability duration and increases the ABP benefit rates between 100% and 300% depending on the duration of the pre-retirement disability period.

**Reserve Level Impact:** The proposed legislation can be expected to increase discounted reserve levels for existing claims by \$27 million. To the extent additional claims emerge the cost estimates would be higher.

**Rate Level Impact:** The proposal will serve to increase the costs associated with future claims. Currently, it is estimated that 30 Permanent Total Disability claims which ultimately convert into ABP claims will arise out of each injury year. Based on this assumption, the proposal will serve to increase statewide premium rate levels between

1.0% and 1.5%, or by approximately \$1.75 million per year.

DATE: January 23, 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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	01/23/2011

Date: Feb 2 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1440

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

Motion Made By Rep Boe Seconded By Rep Gruchalla

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 4 No 10

Absent 0

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

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

motion fail

11.0708.01002  
Title.02000

Prepared by the Legislative Council staff for  
Representative M. Nelson  
February 3, 2011

VR  
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, line 15, overstrike "before" and insert immediately thereafter "after"

Page 1, line 21, remove the overstrike over "~~of disability~~"

Renumber accordingly



Date: Feb 7, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1440

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0708.01002

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Nelson Seconded By Rep Gruchalla

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 13 No 1

Absent 0

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

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

Date: Feb 7, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1440

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

Motion Made By Rep M Nelson Seconded By Rep Amerman

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 Vigessaa		✓			

Total Yes 4 No 10

Absent \_\_\_\_\_

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

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

motion fails

Date: Feb 7, 2011

Roll Call Vote # 3

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1440

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.6708.01002

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>		Representative Amerman		<input checked="" type="checkbox"/>
Vice Chairman Kasper	<input checked="" type="checkbox"/>		Representative Boe		<input checked="" type="checkbox"/>
Representative Clark	<input checked="" type="checkbox"/>		Representative Gruchalla		<input checked="" type="checkbox"/>
Representative Frantsvog	<input checked="" type="checkbox"/>		Representative M Nelson		<input checked="" type="checkbox"/>
Representative N Johnson	<input checked="" type="checkbox"/>				
Representative Kreun	<input checked="" type="checkbox"/>				
Representative Nathe	<input checked="" type="checkbox"/>				
Representative Ruby	<input checked="" type="checkbox"/>				
Representative Sukut	<input checked="" type="checkbox"/>				
Representative Vigesaa	<input checked="" type="checkbox"/>				

Total Yes 10 No 4

Absent 0

Floor Assignment Rep Nathe

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

25-014

**REPORT OF STANDING COMMITTEE**

**HB 1440: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1440 was  
placed on the Sixth order on the calendar.

Page 1, line 15, overstrike "before" and insert immediately thereafter "after"

Page 1, line 21, remove the overstrike over "~~of disability~~"

Renumber accordingly

2011 TESTIMONY

HB 1440

These are the figures on wages for the average person over a 15 year period. This is what they would be missing out on from Social Security when they reach age 65.

1 week 40 hours @ \$10. per hour  
= \$400.00

\$7.80 per \$100.00 goes to Social Security =  
\$31.20 per week

\$31.20 x 4 weeks	\$ 124.80
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\$124.80 x 12 mo.	\$ 1,497.60
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3 years	\$ 4,492.80
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6 years	\$ 8,995.60
---------	-------------

9 years	\$13,478.40
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12 years	\$17,971.20
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15 years	\$22,464.00
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**2011 House Bill No. 1440**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**January 26, 2011**

Mr. Chairman and Members of the Committee:

My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance. I am here today to provide information on HB 1440. This bill proposes to 1.) Extend post retirement benefits until the death of an eligible recipient and, 2.) Increase the amount of post retirement benefits an eligible recipient will receive.

Currently, an injured employee who is not able to return to work is entitled to disability benefits, commonly referred to as wage replacement benefits. In 1995, the Legislature enacted the retirement presumption law. Under this law, when an injured employee who is a disability benefit recipient begins receiving federal Social Security retirement benefits (SSR) or reaches Social Security retirement eligibility age, the injured employee is considered retired and disability benefits from WSI are discontinued.

However, the injured employee now becomes eligible for a post-retirement benefit called additional benefits payable (ABP). This benefit is a percentage of an injured workers' disability benefit and the duration of payment of this benefit is equivalent to the length of time the injured employee received disability benefits. For example, assuming a full retirement age of 65, an employee who is injured at age 48 would receive 45% of his disability benefit for 17 years or until death, whichever occurs first. If we assume a disability benefit rate of \$400 per week, then the ABP would be \$180 per week.

The current bill before you will allow an ABP recipient to receive benefits for life, rather than for the length of time they received disability benefits during the pre-retirement

term, and to receive a considerably larger disability payment than is currently made. For example, assuming a full retirement age of 65, a worker who is injured at age 48 would receive 100% of his or her disability benefit until death. If we assume a pre-retirement disability benefit rate of \$400 per week, then the ABP would be \$400 per week for life.

The adequacy of North Dakota's post-retirement benefit structure was recently reviewed in the *2010 Performance Evaluation of Workforce Safety and Insurance* by Sedgwick Claims Management Services, Inc. This study was a result of 2009 HB 1525 which ultimately directed WSI to study North Dakota's post-retirement benefit structure. After conducting its evaluation, Sedgwick noted this benefit type was unique to North Dakota and concluded the current system in place "...appears to be a reasonable way to supplement retirement income for those injured workers who are most disabled". *Performance Evaluation p. 86*. No major changes to the current structure were recommended.

However, Sedgwick did provide recommendations for legislation which were reviewed by the interim Workers' Compensation Review Committee and proposed legislation was brought forward by this Committee. The proposed legislation was to address a reported inequity in the current benefit structure for those injured employees injured close to his or her retirement age. This bill was HB 1051, and was passed out of this Committee on January 10, 2011, with a 14-0 "do pass" vote. It also passed the House with a 94-0 "do pass" vote.

WSI's actuaries estimate the reserve level increase for existing claims will likely be approximately \$27 million on a discounted basis. In addition, the proposed legislation will serve to increase the costs associated with future claims. The premium rate level increase is anticipated to be between 1% and 1 ½ %, or approximately \$1.75 million a year.

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





Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1440  
January 26, 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 opposition to HB 1440 and urge a do not pass from the committee on this bill.

We have had several discussions about Additional Benefits Payable (ABP) in past legislative sessions. It has been clearly established that North Dakota is one of the few or the only state that even has this benefit. Their purpose is to provide a bridge between loss of earnings in the injured years before retirement and supplement retirement pay. The proposal in HB 1440 goes far beyond those intentions. The cost of \$27 million to the discounted reserve levels and \$3.50 million per biennium to statewide premium rate levels are not appropriate considering the intent of the benefit.

Thank you for the opportunity to appear before you today in opposition to HB 1440. I would be happy to answer any questions.