

**2013 HOUSE INDUSTRY, BUSINESS, AND LABOR**

**HB 1080**

# 2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1080  
January 14, 2013  
Job 17185

Conference Committee

Committee Clerk Signature

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

Relating to definition of wages and federal wages for National Guard employees, biennial report requirements, out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants

## Minutes:

You may make reference to "attached testimony."

Hearing open.

**Jodi Bjornson, General Counsel with Workforce Safety.** Refer to written testimony 1.

1:20 **Chairman Keiser:** Any questions on the first section?

**Representative Ruby:** How many people fall into that crack?

**Jodi Bjornson:** Minimal. In our assessment to meet all criteria of the bill, I can let the Guard speak to that specifically, but we estimate maybe three to ten.

**Chairman Keiser:** Would you please review the three areas of payment an injured worker can receive?

2:17 **Jodi Bjornson:** We have three areas of payment which and injured worker can receive. One area is for medical bills because of the work injury. WSI will step in a pay all of those bills according to a fee schedule. The second area is disability benefits, which this bill relates to. If you can't work, WSI will step in and pay a portion (about 66 2/3 percent) of your gross wages. Keep in mind, those wages that we consider have to have secured coverage by an employer. It is that pool of wages. Lastly, we have what we call a permanent partial impairment benefit. Someone is injured and cannot use their body like they could before. Because of that disability, they are impaired. We give them an impairment rating, and they get a lump-sum money disbursement as a result of that. Those are the three benefits you will likely be hearing about during this session.

3:34 **Chairman Keiser:** The 66 2/3 is not a magical number. That is a number because there are no taxes on that income, so it's a net income without the taxes applied.

**4:00 Representative Amerman:** In your testimony under Section 1, it says "a North Dakota National Guard member injured while serving on state active duty." Then it goes on and in about the third paragraph, it talks about federal wages and so on. To me, "state active" means fighting a flood and so on. Are their federal dollars there?

**4:40 Jodi Bjornson:** Guard member while working for the North Dakota Guard or on state active duty is receiving wages covered by the state. In the example, the individual has a federal job as their job outside of the Guard. State active duty is defined in the Century Code in the military title, and that means active service on behalf of the state under authority of the governor and at the expense of the state

**Chairman Keiser:** Could you give us an example of a case, hypothetical or real?

**Jodi Bjornson:** For example, we have a guard member employed in a federal job and covered in their regular job for their wages by the federal system. If they'd be injured in the course of their federal job, the federal Workers' Comp system would pick them up. The governor declares an emergency and the individual goes on state active duty with the Guard. In that state active duty, the person is injured. The injury is to the extent that he cannot go back to his federal job. When that state active duty ends and they are no longer covered by the state Workers' Comp, we are out of luck. It does not meet the definition of covered wages in North Dakota, so we can't replace any of those federal wages moving forward. That's why this bill would allow us to combine those two wage structures. Otherwise, he will not be covered in the federal system because he was not injured when doing the federal job. We're not going to cover him any longer because he's not on state active duty. So this is an in-between situation.

**7:00 Chairman Keiser:** Is this going to come out of reserve because we're not collecting on those wages?

**Jodi Bjornson:** We anticipate a minimal fiscal impact with this bill because of the minimal numbers. We would set the reserves appropriately, or the premium appropriately, to cover the anticipated increase.

**Representative Ruby:** Would the injured employee receive benefits based on the wages they were receiving on the guard activity?

**Jodi Bjornson:** That is the problem. The wages are less. We pay them based on a seasonal wage. Season wage works, the first 28 days we will pay them based on their full state guard salary. After that, it's 1/52 for the duration of the injury. That's what our seasonal law requires. If they are still injured when state active duty ends, I would expect that the disability benefit without this law would be significantly smaller.

**8:45 Jodi Bjornson:** Resumed written testimony, page 1, to cover the next change in Section 1. Elaborated on specific parts of the written testimony regarding definition of "wages."

9:24 Still in Section 1, the last change came from our claims department. These situations are occurring because of the nomadic nature of our employees. We have an influx of people coming in to work, and they may leave North Dakota and return to employment in their state of origin. So this is where this issue first prompted discussion. This section would enable us to consider non-covered wages received post-injury by an injured employee when WSI is determining the vocational rehabilitation options for the employee. At WSI, if someone cannot go back to their pre-injury job, we will try to work with them and get them back to a position, based on a list of various jobs. First, it's back to the job held before the injury. Then it's a modified position, maybe a position in the local pool for which your skills, background, and education could do. Then we look at the state wide. Can you do something within the state, based on those same characteristics? We go through this hierarchy and weed out the next best job option for you. That's what we're talking about in the vocational rehabilitation process.

11:00 Resumes written testimony, bottom of page 1, regarding the payment of disability benefits to injured workers who have resumed work in out of state or in an occupation where WSI coverage is not secured. What we are trying to do is strike a balance and allow WSI consider that non-covered, post-injury employment when determining a worker's capabilities. Provided an example at minute 12:07 of recording.

**Chairman Keiser:** Questions on that item?

12:50 **Representative Ruby:** As you were talking about someone who is self-employed, maybe farming but in another state, they wouldn't be necessarily covered. Then you use that to reduce some benefits or to reduce some of the disability payments?

**Jodi Bjornson:** The intent was we say we may consider those post-injury wages. So in that situation, when they are able to work on their own in a vocation such as farming, we will ultimately consider them employable at one of the levels of the hierarchy. It may reduce or discontinue the disability benefits.

13:57 **Representative N. Johnson:** Would that tend to discourage someone from trying to find another type of work and being engaged in something else?

**Jodi Bjornson:** I can see your point. The way we are looking at it, where do we strike the best balance in the overall scenario. If you have other ideas, we are certainly open to that.

14:37 **Representative Kasper:** Provided example from the private disability insurance marketing place. A lot of the disability plans will pay a proportionate disability benefit until the wages get back to a percentage of your pre-disability earnings. In that case, you encourage the employee to work because you are giving a benefit even if they are working by paying a percentage of the gap. Have you looked at that type of formula to incent an injured worker to work?

**Jodi Bjornson:** No, not in my discussions with the claims folks. That is an interesting option.

**Representative Kasper:** Offered to find one or two people who offer disability products to share information with Jodi Bjornson.

**15:50 Chairman Keiser:** Subsection b says that the organization may consider post-injury wages that were not factored into the coverage and in determining vocational rehabilitation options and the disability benefits. You're asking for authority to consider them, not that you have to or are implementing anything.

**Jodi Bjornson:** Yes, gives us the ability.

**16:35 Jodi Bjornson:** Resumed written testimony to explain Sections 2 and 3.

**Chairman Keiser:** You are asking for specific additional information to be included in that report, are you not?

**Jodi Bjornson:** It looks that way, but no, we're not. We're simply removing the reference to the biennial report under 65-02-06.1 and leaving that same information included in the annual audit. We just took that language and moved it to 65-02-09, so it reads the same as it is in 65-02-06.1. We are going to provide the same information in two places.

**18:00** Resumed written testimony to explain Section 4. Elaborated on why death claims have been added to this provision.

**19:58 Chairman Keiser:** In some cases, North Dakota has the best benefits in the country, and in other cases, not. In the case of a death benefit, we have \$300,000. If we discover that they have applied in North Dakota and South Dakota. We still own \$300,000. If they applied in a state that has, say, \$100,000, do we not still own \$200,000? Why should an injured worker in North Dakota lose \$200,000 because they applied in another state as well?

**Jodi Bjornson:** I see your point. The way Workers' Comp is set up in the United States is for separate systems. You can elect benefits in one state. That is your sole remedy. If a coordination of benefits were allowed, for example where each state or jurisdiction applied to pays what it allows, imagine how complicated that could come if they apply in several jurisdictions. The benefits apply to disability as well as death.

**22:00** Resumed written testimony to elaborate on Section 5. (23:15) This stemmed from an occurrence. Provided example.

**23:50 Representative M. Nelson:** It says rehab services, too. If someone is in long-term rehab program and he happens to go into jail, are the rehab benefits suspended when the person is incarcerated.

**Jodi Bjornson:** Yes, that is how it works. Disability and rehab benefits do terminate. It because very challenges to comply with any voc rehab because it requires work outside the penal institution.

24:35 **Representative Kasper:** Your assumption here is that after 30 days, there is a possibility that if someone served several years, that they have recovered from their disability or have been rehabilitated. Is that why you want them to reapply?

**Jodi Bjornson:** Yes. Go through the reapplication process. Tell us and show us that you are still entitled after that time.

**Representative Kasper:** Isn't it possible that you could enter into agreements with the prison and jail system within North Dakota to report to you whether a prisoner who had had a work-related injury prior to incarceration has been rehabbed or still continues to be disabled or injured? If that injured worker, pre-incarceration, comes out still needy, he wouldn't have to go through all this trouble of reapplication, which could be overwhelming for someone who was and continues to be disabled.

**Jodi Bjornson:** We will continue to pay the medical bills for that person during the duration of the claim. We are just talking about the disability component. Any information the penal institutions have would be helpful in making the determination for disability benefits. We personally have not worked with the person or have seen that person in years. The application process would be helpful. The other side of the argument is that the person is there and is out of our system not because of the work injury because of choice they've made. To be consistent, I go back to the point that we treat them like anyone else whose disability benefits have been discontinued for reasons other than the work injury.

27:16 **Chairman Keiser:** If a person doesn't go to prison and disability benefits are suspended for any reason, they can come back and any time to be evaluated and possibly resume benefits.

27:39 **Jodi Bjornson:** Section 6 has to do with the permanent partial impairment awards. It is a long section for a couple of small changes. We're doing clean up. Returned to written testimony to elaborate on Section 6.

**Chairman Keiser:** Any questions? This is an improvement in benefit.

**Jodi Bjornson:** Walked through testimony, page 3, to elaborate on Sections 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17.

30:30 **Representative Amerman:** So regarding the threshold for amputation going from 16 to 14, that is an improvement in benefits?

**Jodi Bjornson:** Yes. The threshold going to 14% is going to provide additional PPI awards to more people.

**Chairman Keiser:** On page 7, Subsection 3, towards the bottom. I understand we had language in there probably to push CorVel so that the report would be done in a timely fashion. Why shouldn't we have a requirement that these vocational reports be done in a timely fashion? By striking that, we take out the requirement that the vocational report be done, whether internally or by out outside vendor like CorVel.

31:45 **Jodi Bjornson:** We are doing that internally as a matter of policy. If you think it is necessary for us to have a law that says to do that, I guess that's your prerogative. We felt it is a change that is better managed internally, like we do for our claims adjusters. It is a good business practice, which we do.

32:26 Begins to elaborate on Section 12. Draws attention to paragraph 3, overstrike for lines 10-12. Returned to written testimony over Section 12. Highlighted Subsections 3 and 6 of Section 12. If they are not compliant under Subsection 6 two times, disability benefits are terminated. Section 3 says benefits are suspended if you are noncompliant. For the same types of noncompliance under subpart 6, your benefits are terminated after two instances of noncompliance. The situation occurred where an adjuster was uncertain which section to apply. What we are intending to do is to have one set of noncompliance factors as set forth in number 6, eliminate the ones in number 3, so everyone is treated the same.

34:35 **Chairman Keiser:** I see those are two very different things. If a person is noncompliant and you suspend them, that sends the person that their benefits are suspended with, I assume, information about termination of benefits if they do that again. So the person brings himself back into compliance. Right now, if benefits are not suspended after the first issue of noncompliance, how does the person know? If the person goes forward and is noncompliant again, and then the roof caves in and they are terminated. How do we let people know after the first situation of noncompliance what the implications are of a second act of noncompliance?

**Jodi Bjornson:** There is a formal appeals process where we give them notice, outline exactly what the noncompliance is, what they have to do to get into compliance, and what will happen if they do not get back into compliance. They can appeal that, and they can provide information about the situation. Bjornson continued to explain the appeal process through various levels.

**Chairman Keiser:** So this is actually better for the injured workers because if they go into noncompliance once, they won't have benefits suspended. They will get notification but their benefits will continue. But if they have another episode of noncompliance, the benefits would be terminated.

36:50 **Jodi Bjornson:** In application, this is what happens. We tend to go with 6. But if we go with subsection 3, there could be a potential cycle of non-compliance. That's why I see subsection 6 as being the better remedy.

**Chairman Keiser:** Is there any consideration for time period between episodes of noncompliance? For example, what if it is six years between episodes?

38:15 **Jodi Bjornson:** In my experience, we try so hard to not make it noncompliance. In the scenario that you described, the voc rehab consultant or our intimal folks would contact the individual to see if something could be worked out. Only in the most severe cases do we go through with these. This area of litigation is very difficult to win.

38:51 **Representative Ruby:** What would facilitate a suspension under this noncompliance?

**Jodi Bjornson:** We can best explain that by going through some of the requirements in Section 6, line 13, page 9. This section spells out what is noncompliance.

39:50 Returns to written testimony, last paragraph of page 3, to complete explanation of Section 12. Vocation plans are required under Subsections 4, but in Subsection 6 they are not. So what we are doing is trying to hold the same standard to the voc plans under both Subsections 4 and 6. The claims folks wanted consistency.

**Chairman Keiser:** Questions?

41:00 **Representative Ruby:** Regarding the reporting. Is it possible that the organization can provide the information at all times rather than just contained in a final report, or will there still be a final report with a deadline? If anyone requires, is it always available as of the current date, or do you still wait for a final deadline to file a full report for the vocational rehab?

**Jodi Bjornson:** I can get you those numbers and see where the voc rehab folks come in; I do not have them with me. They are monitored closely and are to be issued timely. They are within a time period.

**Representative Ruby** clarified.

42:27 **Chairman Keiser:** This language was placed in there when we had a contract with an outside vendor. Now that we've moved it to something internal, it is a much smoother process. We do not have to rely on sending information out and getting a report back. We are more integrated and are dedicated to getting people back to work. Our system is working on a timely bases. If you can get numbers for us, Ms. Bjornson, that would be great.

**Support:**

43:10 **Colonel Dave Thiele, director of personnel for the North Dakota National Guard:** I am here on behalf of Major Sprynczynatyk, the adjutant general, testifying in favor of particularly Section 1 of HB 1080.. As Jodi Bjornson already pointed out, we had a case in 2011. The gap in coverage which was identified, which 100 days of state active duty will show you the gaps, particularly over two separate years. A federal employee, like me, if I am hurt on state active duty, typically we will just cut the orders and send me back to my regular job. if I cannot go back to my regular work, then WSI has to look to pick that up. But because of the unintended consequences of that language where it says you have to have had coverage, they were not able to pay benefits. So we worked with WSI, drafted this language, and that will solve the problem. It is very narrow, and it will not add to cost. I think there is confusion on the prisoner issue. When they use the word *rehabilitation*, that only applies to non- medical coverage. Medical coverage continues and is covered by WSI. It is simply the vocational rehabilitation which is stopped.

**Opposition:**

**Neutral:**

**Hearing closed.**

**Representative Ruby** moves do pass.

**Representative Gruchalla** seconds the motion.

**Chairman Keiser:** I think these are excellent changes. We are going to benefit the injured federal employees working in the state. We're streamlining the processes where we can.

**Roll call vote** on a do pass motion: 14 yes, 0 no, 1 absent.

**Carrier: Representative Ruby**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2012**

Bill/Resolution No.: HB 1080

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

see attached

- 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.*

see attached

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

**Telephone:** 328-6016

**Date Prepared:** 01/04/2013

**WORKFORCE SAFETY & INSURANCE  
2013 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1080**

**BILL DESCRIPTION: WSI Injury Services Bill**

**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 allows WSI to consider federal wages when determining the average weekly wage of a National Guard member injured while serving on state active duty; enables WSI to consider non-covered wages received post-injury by an injured worker when WSI is determining vocational rehabilitation options or entitlement to disability benefits; combines biennial report reporting requirements into one section of law rather than two; allows WSI to recoup any benefits paid should a person seeking benefits because of the death of an employee receive benefits from another state for the same injury; provides for a discontinuation of benefits for those incarcerated in excess of 30 consecutive days and a suspension of benefits for those incarcerated between 3 and 30 days; corrects an oversight from prior legislation within the permanent partial impairment (PPI) statute; updates terms used in the Rehabilitation Chapter, 65-05.1, to reflect the vocational rehabilitation program is now in-house and is no longer a contracted service; eliminates the provision in the Rehabilitation Chapter that allows for suspension of benefits for certain types of vocational rehabilitation noncompliance; and provides that a work search is required for those injured workers who do not meet the criteria of the vocational rehabilitation options, but are capable of performing some type of work.

**FISCAL IMPACT:** We don't anticipate the various provisions of this legislative proposal to have a significant impact to statewide premium or reserve levels.

**DATE: December 26, 2012**

Date: 1-14-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1080**

**House Industry, Business, and Labor Committee**

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider  Consent Calendar

Motion Made By Ruby Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper					
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Ruby

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

**REPORT OF STANDING COMMITTEE**

**HB 1080: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1080 was placed on the Eleventh order on the calendar.

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1080

# 2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1080  
February 13, 2013  
Job Number 18884

Conference Committee

Committee Clerk Signature



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

Relating to definition of wages and federal wages for National Guard employees, biennial report requirements, out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants

### **Minutes:**

Testimony Attached

Chairman Klein: Opened the hearing.

Jodi Bjornson, General Counsel for Workforce Safety and Insurance: **Written Testimony Attached (1).**

Questions were asked during testimony (2:30-29:50)

Chairman Klein: Said we have a guard member, federal attorney and he is sand bagging and he hurts himself and can't go back to being an attorney. That's what we are saying here; we will include what he was earning as a federal attorney and before we couldn't.

Jodi Bjornson: Said that is correct and going forward if he is still injured and can't go back to that federal job...we would like to be able to reimburse him for those federal wages he is losing when he is supposed to return to that job and can't because of the work injury.

Senator Sorvaag: Asked if they would look to see what they were making at any previous job, so when they are back to whole but doing it on the side.... you must have something as a guideline.

Jodi Bjornson: Said when it is to the extent of a significant full time job.

Chairman Klein: Said so what you are saying is...you can't double dip, you will get reimbursed by the state of North Dakota and if you decide it is better in Minnesota and Minnesota excepts the claim, you just want the money back you invested in this injured worker.

Jodi Bjornson: Said right or if you receive money back for that jurisdiction you have now elected to go to that jurisdiction. We want our money back if you settled or if you actually had a claim accepted.

Senator Andrist: Said to be eligible in both states wouldn't the employer have to be paying premiums in both states?

Jodi Bjornson: Said maybe, sometimes the employers have coverage and sometimes they don't. It just depends but most of the time they do because it is based on the residence of the worker. If the claim is picked up in Minnesota, the employer might be hearing from the Minnesota industrial commission that they have a claim filed here.

Senator Andrist: Said if someone has filed a claim in another state, you shouldn't accept him, instead of letting him shop.

Jodi Bjornson: Said that would be easier but the problem is they have that ability to file wherever they like and we can't stop them and neither can the employer, it is their right.

Senator Andrist: Asked if they wouldn't have the ability to say...sorry you filed in Minnesota.

Jodi Bjornson: Said what we have in the law now is about as close as we can come to fixing it.

Chairman Klein: Said that in the code it was changed in some spots but not in all.

Jodi Bjornson: Said that is right, that threshold was changed from sixteen to fourteen in the matrix or that provision of the law that outlines the permanent partial impairments award. There are also scheduled injuries for which we are going to make sure an injured worker is compensated. To the extent that they don't qualify for an injury, some of the amputations and injuries to the eye, we are going to reimburse you anyway. They will be reimbursed at generally a higher rate. It's that section of the PPI law, just a little bit of a deviation.

Tim Wahlin, Chief of Injury Services at WSI: Said with respect to the additional income; the situation that will occur oftentimes is if there are non-covered earnings, a self-employment venture. When we are paying benefits it becomes a question of double dipping. If we are paying full time lost benefits and we see that other portion of their lives expanding significantly, they are asking permission to take into account the uptick in the other area. Either to adjust benefits or to write a plan based upon that increase. It is imprecise because when they look at self-employment earnings they generally look at tax returns. They are looking at a long period of time with a fluctuation on tax returns so you can actually compare year after year earnings that are adjusted based upon those particular tax returns. It becomes very imprecise when you are looking month to month because if you're self-employed there is dramatic fluctuation in your earnings. They do not have a formula on what to base it on because it fluctuates so much from individual to individual.

Chairman Klein: Asked if this is the annual WSI cleanup bill.

Tim Wahlin: Said that's what this bill is.

Chairman Klein: Closed the hearing.

Senate Industry, Business and Labor Committee

HB 1050

February 13, 2013

Page 3

Dave Thiele, National Guard: In support of the bill.

# 2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1080  
February 19, 2013  
Job Number 19189

Conference Committee

Committee Clerk Signature



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

Relating to definition of wages and federal wages for National Guard employees, biennial report requirements, out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants

## Minutes:

Discussion

Senator Murphy: Asked Jody Bjornson, WSI, if this was a housekeeping bill.

Jody Bjornson, General Council for WSI: Said they do look at it as a hodgepodge of things that have come up in the interim that they would like to see addressed.

Senator Murphy: Said that there is a lot here and he wanted to take a good look at it and he did. His concern is with section 5. When he found out how difficult it would be for someone who goes to jail for more than thirty days, to have to reapply before receiving disability benefits again, he finds that to be a bit disingenuous. Isn't it the case that these people are pretty much just cut off forever? This would make it really difficult to ever get benefits again.

Discussion and question continued on discontinuation of benefits during incarceration. (2:04-28:00)

Dean Haas: Said he did draft the reapplication statute. The standards for reapplications and initial disability awards are vastly different. For a reapplication you not only have to show your medical condition has changed since then and you also have to show actual wage loss according to the North Dakota Supreme Court cases. That is the standard just for disability; you have to show at the time of application that you were holding a job down. It would preclude anyone that was incarcerated from getting back on benefits unless they were actually able to go and find a job and then at that time their condition worsened. They then would have a job to base the new wage on to reapply. The people who get out of jail will not be eligible. When they went into jail they were already deemed disabled by workers compensation. When they get out they will still have that disability but now they are not going to be able to find that job to base an actual wage loss on. (28:37-31:50)

Jody Bjornson: Said that she would point out that he is right to the extent that the initial reapplication standard and the initial claim for disability standards are different. One is a loss of earnings capacity and one is actual wage loss but she does think under these circumstances that the possibility is left open, and the case law supports that, if you can show that you tried to seek work and you couldn't because of your disability that there is a possibility for them to look at that.

Chairman Klein: Closed the meeting.

# 2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1080  
March 26, 2013  
Job Number 20484

Conference Committee

Committee Clerk Signature

*Eva Letelt*

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

Relating to definition of wages and federal wages for National Guard employees, biennial report requirements, out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants

## Minutes:

Discussion and Amendment

Chairman Klein: Opened the meeting. Said the discussion is around the incarceration issue.

Senator Murphy: Went over his amendment. The original bill would make it virtually impossible for those people to ever receive benefits again and this changes it. **Amendment Attached (1)**. (1:00-3:49)

Chairman Klein: Said what the original version proposed was to eliminate the benefits after thirty days of incarceration.

Tim Wahlin, Chief of Injury Services for Workforce Safety and Insurance: Said in this particular section the reason for the addition was that they were running into situations where you had times of significant incarceration. That particular injured worker when being released from incarceration because their benefits were suspended, they were reinstated upon release. It created a situation where upon release your multiple years down the road where we had an injured worker who was dramatically less employable. It could be because the skill sets had gone stale or because they had added issues with respect to being incarcerated limiting their employment options. Once those benefits would restart our chances of meaningfully rehabilitating them was dramatically less. The question became is that properly charged to the employer of injury.

Senator Murphy: Said this just takes on incarceration but would still say when they are discontinued, for whatever reason that they don't get to go back on. They would have to file a reapplication for disability benefits. They would have to meet all these other barriers as well.

Tim Wahlin: Said with respect to the amendment that is within 65-05-08, changing actual wage to earning capacity that will have a significant fiscal note. When they were in litigation regarding a particular injury as that litigation began progressing the injured worker would continue to file claiming that there was a worsening of condition. As you litigated something through it never ended. You would continue on litigating as they continued filing a claim of worsening of condition. Actual wages is very measurable because you have actual wages ending. That is the reason for putting this in there. It is creating an end to the litigation process at some point and time.

Chairman Klein: Said there are some issues that you see in what Senator Murphy has crafted here?

Tim Wahlin: Said there are. (7:58-8:22)

Senator Murphy: Said he can believe what he is telling him but he has a big concern about the possibility that anyone who is incarcerated is going to get back on.

Discussion on the incarcerated injured worker (9:00-27:00)

**Senator Murphy: Made a motion to adopt the amendment, 13.8030.01001.**

**Senator Sinner: Seconded the motion.**

Discussion continued on section five and adjusting the thirty day period and the meaning of actual wage loss (28:00-36:55)

**Roll Call Vote: Yes - 2 No - 5 Absent - 0 Motion failed**

Chairman Klein: Said he would like to extend the thirty consecutive days to 180.

Discussion and comments (39:20-48:30)

Senator Sinner: Said as this bill was submitted it changes the law from being anybody that is incarcerated currently their benefits are just suspended, no matter how long they are in there. This law will have a huge positive impact on the fund as it is written.

Bryan Klipfel, Director of Workforce Safety and Insurance: Said that it won't have a huge impact. There aren't that many claimants that are incarcerated that reapply. It may have some impact on the positive part of the fund. When we look at these we look at how they are going to impact the fund. This one wouldn't have much impact at all.

Senator Sinner: Asked why the necessity to change the law if there is very little fiscal impact.

Bryan Klipfel: Said the reason they looked at changing the law was a fairness issue. If you are incarcerated for a long period of time and all you have to do is come out and reapply for your benefits, where if it is anybody else with discontinuance of their benefits they have to go through the reapplication process.

Senator Murphy: Asked if it wouldn't stand to reason that everybody else has a chance to get a job but these people don't because they are in prison. Can we just delete this section and not try to correct it? Let it go for a couple of years until we figure out some compromised language.

Bryan Klipfel: Said that is your decision. The law the way it was presented was for fairness. Those people that are incarcerated have opportunities for training also. A lot of times when you are incarcerated the fact that you have a felony on your record impedes your ability to get a job. You may have the training. They are worked with through job service on welding and different things so they would have skills when they come out.

Chairman Klein: Closed the meeting.

# 2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1080  
March 26, 2013  
Job Number 20501

Conference Committee

Committee Clerk Signature <i>Eva Leibel</i>
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## Explanation or reason for introduction of bill/resolution:

Discontinuation of benefits during incarceration

## Minutes:

Discussion
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Senator Murphy: Said in section five of 1080; if you're in prison you get no benefits that make sense. If they get out and they have healed, they don't get any benefits. But by the standards that we have, to get out of prison and to successfully reapply, it is a virtually impossible situation. He has suggested that the employee could reapply on the standard with which they were originally awarded. If they are still in that shape they would still qualify. The other thing is if we lengthened it out to perhaps six months then those people between thirty days and six months would be able to come back on as they are now. The long-term folks would be in tougher shape.

Chairman Klein: Said if you have something you want to work on with Mr. Wahlin overnight, we will pick this up tomorrow. He closed the meeting.

# 2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1080  
March 27, 2013  
Job Number 20545

Conference Committee

Committee Clerk Signature

*Eva Lebelt*

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

Discontinuation of benefits during incarceration

## Minutes:

Discussion, Amendment and Vote

Chairman Klein: Handed out the Klein amendment and discussed the changes.  
**Amendment Attached, 13.8030.01002, (1).**

Discussion continued on the incarcerated employee getting out of prison and having to reapply for benefits.

**Senator Laffen: Moved to adopt the 13.8030.01002 Amendment.**

**Senator Murphy: Seconded the motion.**

**Roll Call Vote: Yes - 7 No - 0 Absent - 0 Motion Passed**

**Senator Laffen: Moved a do pass as amended.**

**Senator Unruh: Seconded the motion.**

**Roll Call Vote: Yes - 5 No - 2 Motion Passed**

**Floor Assignment: Senator Klein**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2012**

Bill/Resolution No.: HB 1080

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

see attached

- 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.*

see attached

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  
**Telephone:** 328-6016  
**Date Prepared:** 01/04/2013

**WORKFORCE SAFETY & INSURANCE**  
**2013 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1080**

**BILL DESCRIPTION: WSI Injury Services Bill**

**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 allows WSI to consider federal wages when determining the average weekly wage of a National Guard member injured while serving on state active duty; enables WSI to consider non-covered wages received post-injury by an injured worker when WSI is determining vocational rehabilitation options or entitlement to disability benefits; combines biennial report reporting requirements into one section of law rather than two; allows WSI to recoup any benefits paid should a person seeking benefits because of the death of an employee receive benefits from another state for the same injury; provides for a discontinuation of benefits for those incarcerated in excess of 30 consecutive days and a suspension of benefits for those incarcerated between 3 and 30 days; corrects an oversight from prior legislation within the permanent partial impairment (PPI) statute; updates terms used in the Rehabilitation Chapter, 65-05.1, to reflect the vocational rehabilitation program is now in-house and is no longer a contracted service; eliminates the provision in the Rehabilitation Chapter that allows for suspension of benefits for certain types of vocational rehabilitation noncompliance; and provides that a work search is required for those injured workers who do not meet the criteria of the vocational rehabilitation options, but are capable of performing some type of work.

**FISCAL IMPACT:** We don't anticipate the various provisions of this legislative proposal to have a significant impact to statewide premium or reserve levels.

**DATE: December 26, 2012**

13.8030.01002  
Title.02000

Prepared by the Legislative Council staff for  
Senator Klein

March 26, 2013

*AK*  
3/27/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 4, line 1, replace "thirty" with "one hundred eighty"

Page 4, line 7, replace "thirty" with "one hundred eighty"

Renumber accordingly

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1080**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8030.01001

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

Motion Made By Senator Murphy Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein		x	Senator Murphy	x	
Vice Chairman Laffen		x	Senator Sinner	x	
Senator Andrist		x			
Senator Sorvaag		x			
Senator Unruh		x			

Total (Yes) 2 No 5

Absent 0

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

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

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1080**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8030.01002

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

Motion Made By Senator Laffen Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

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

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

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1080**

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 Laffen Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Laffen	x		Senator Sinner		x
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Klein

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

**REPORT OF STANDING COMMITTEE**

**HB 1080: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1080 was placed on the Sixth order on the calendar.

Page 4, line 1, replace "thirty" with "one hundred eighty"

Page 4, line 7, replace "thirty" with "one hundred eighty"

Renumber accordingly

**2013 CONFERENCE COMMITTEE**

**HB 1080**

# 2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1080  
April 10, 2013  
Job 21059

Conference Committee

Committee Clerk Signature



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

Relating to definition of wages and federal wages for National Guard employees, biennial report requirements, out-of-state claim filing, and discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants; and to provide for application

## Minutes:

You may make reference to "attached testimony."

Meeting called to order. Roll taken.

Representative Ruby: If there is a substantive change, Chairman Keiser puts it into conference committee to take a look at the reason behind it. Summarized change added by Senate dealing with the amount of time that someone is incarcerated and have the benefits be continued. There would be a length of suspension, correct?

Senator Laffen: I think that's correct, just the one change from 30 days to 180 days.

Representative Ruby: What was the discussion on that?

Senator Sorvaag: Actually, this idea was fairly contentious on our side. I think mostly between the two parties. The thought in committee was that it is possible that somebody could have a fairly minor infraction and end up with 30 days. I'm not sure how we defined fairly minor. We still think that this idea of having to reapply for benefits again once you come out of incarceration made sense. We thought it made more sense for a larger infraction, something that had kept you there for a little longer time. That was really our only discussion in committee.

Rep. Ruby: Was the six months fairly arbitrary or was there a certain crime level that would set that six months, or is three months something.

Senator Sorvaag: I think it was fairly arbitrary, but I think we were trying to get to the point as we are raising the penalties for some crimes, whether it's DUI, etc., 30 days isn't much. Even six months isn't a lot to have to reapply for benefits was the idea; if somebody is picked up, goes in for three months, it brings them back where they were. It really wasn't

based on any statistics or anything like that. We're still looking at that as a pretty small timeframe to be incarcerated compared to somebody that goes in for five or ten years.

Sen. Sinner: As you may know, I opposed this part of the amendment, not because of the time period at all, but because of the way the reapplication states the individual has to show wage loss in order to get benefits. In this case, no one will receive benefits because there isn't a way to show wage loss. We have people coming out of incarceration that are injured, that are still injured and now have a criminal record; what are even their chances of getting a minor job to show that wage loss. That's why I opposed this amendment. Not only that, what we're doing folks, by doing this, is putting people on the welfare system; putting people to the expense of the taxpayers, rather than the benefit that they had from their lost wages on a premium that was paid and they were found eligible. That's why I opposed this part of this act.

Senator Laffen: Sen. Sinner's discussion reminded me of what we debated on this. My thought on this was if I had an employee, and they did something wrong and had to go in for 30 days, I am likely to hire them back when the person comes out. I would have spent a lot of time getting that employee up and running and training them, etc. Proving wage loss would be fairly simple if they didn't come back at 30 days. At 180 days, I think our thought was we're not likely to hire that employee back. It just sort of created that separation of the seriousness of the crime and what's going to happen. At 30 days, we thought it was just a little too harsh not being able to get those benefits back.

Representative Ruby: Any questions. I don't have any other questions.

Senator Sinner: I'll add to that also that a person can be incarcerated for 30 days for failure to pay their child support, and for many other minor offenses. That's another reason why we pushed for a little longer period. Most cases, people who are incarcerated for 180 days have committed something quite serious. In most cases, that's probably a felony. That's another reason why we moved it out a little farther.

Representative Ruby: I think you made the case that 30 days is too short. I was just wondering why the one for six months, if 90 days (3 month) level would be set if that's something that would bring it down a little bit. I don't know how many people that affects in the current system.

Senator Sinner: I made the request of Legislative Council on those numbers, if they had any numbers of people that are incarcerated that had lost benefits or that had benefits suspended. They apparently had made the request of WSI, and there were no number available, nothing. As a matter of fact, I believe this provision, this law, came about because of one case where a person had been incarcerated for 10 years and came out and had their benefits reinstated. That was the testimony that I recall from our committee meeting.

7:26 Representative Ruby: Further discussion. I think the proper motion would be if we're going to accept the amendments that the House would accede to the Senate amendments.

Representative Frantsvog: I move the House accede to Senate amendments.

House Industry, Business and Labor Committee  
HB 1080  
April 10, 2013  
Page 3

Senator Sorvaag: Seconded the motion.

Rep. Ruby: The clerk will call the roll.

**6 YES 0 NO 0 ABSENT**

**MOTION CARRIED**

**HOUSE ACCEDE TO SENATE AMENDMENTS AS PRINTED ON HJ PAGE 1202**

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **House Industry, Business and Labor**

Bill/Resolution No. 1080 as (re) engrossed

Date: 4-10-2013

Roll Call Vote #: 1

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House ~~Senate~~ Amendments on ~~HJ/S~~ page(s) 1202 -- 1202  
~~1004~~ -- ~~1006~~

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

((Re) Engrossed) 1080 was placed on the Seventh order of business on the calendar

Motion Made by: Frantsvag Seconded by: Sorvaag

Representatives	4-10	Yes	No		Senators	4-10	Yes	No
Ruby	✓	✓			Laffen	✓	✓	
Frantsvag	✓	✓			Sorvaag	✓	✓	
Gruchalla	✓	✓			Sinner	✓	✓	

Vote Count Yes: 6 No: 0 Absent: \_\_\_\_\_

House Carrier Ruby Senate Carrier Laffen

LC Number B.8030 . 01002 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1080:** Your conference committee (Sens. Laffen, Sorvaag, Sinner and Reps. Ruby, Frantsvog, Gruchalla) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1202 and place HB 1080 on the Seventh order.

HB 1080 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY**

**HB 1080**

① HB 1080  
1-14-2013

**2013 House Bill 1080**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**January 14, 2013**

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance (WSI), I am here today to testify in support of HB 1080. The WSI Board of Directors supports this bill.

**Section 1.** This section allows WSI to consider federal wages when determining the average weekly wage of a North Dakota National Guard member injured while serving on state active duty. WSI bases disability benefits, also called wage replacement benefits, on wages from employment where WSI insurance coverage is secured by an employer. This amendment is intended to cure an inequity WSI encountered during the past biennium due to this coverage requirement.

By way of example:

1. A Guard member is injured while serving on state active duty,
2. He is released from state active duty,
3. He is to return to his pre-injury federal employment, but cannot do so because of his physical injury.

Without this proposed change, the individual could not have his federal wages included in disability benefit calculations because federal employees are covered under a separate federal workers compensation system. In other words, no WSI coverage is obtained for the federal wages, so the federal wages cannot be considered by WSI. As a result, the Guard member is not eligible for disability benefits for the federal wages. This amendment will close the unintended gap in coverage and ensure that the Guard member receives appropriate disability benefits.

The next change in this section clarifies that the definition of "wages" found in 65-05-31(a)(3) only applies to Chapter 65-04, used to determine wages for purposes of employer payroll reporting.

Finally, the last change in this section enables WSI to consider non-covered wages received post-injury by an injured employee when WSI is determining vocational rehabilitation options for the employee. As previously mentioned, WSI bases disability benefits on wages from employment where WSI coverage is secured. WSI has encountered situations where an injured employee may receive disability benefits based on employment where WSI coverage is secured, and then engages in an occupation where WSI coverage is not secured (self-employment). As a result, WSI continues to pay disability benefits based on the covered employment, but the injured employee is

also able to work and is earning income at the same time which WSI arguably cannot consider. This provision would allow WSI to consider the noncovered, post-injury employment.

**Sections 2 & 3.** These sections combine WSI's Biennial Report reporting requirements into one section of law rather than two. Currently there are two sections of the law that set forth what is to be included in the WSI Biennial Report. This proposed change simply combines all requirements into one section of law.

**Section 4.** The next section of the bill contains the statute that governs when injured workers file claims in both North Dakota and other jurisdictions for the same injury. Currently if a worker files an identical claim in another state, North Dakota benefits are suspended until the other jurisdiction accepts or denies the claim. If the other jurisdiction accepts the claim, North Dakota law requires WSI to stop paying benefits and attempt to recoup what has already been paid.

WSI proposes to add death claims to the statute so that if death claims are made in North Dakota and in another jurisdiction, they are handled the same as non-death claims. We believe death claims were not originally included in the statute because of an oversight.

Also, WSI proposes to change the wording of the statute so that the operation of this law is not dependent upon another jurisdiction issuing an administrative decision. Currently an argument exists that the statute is not triggered, and WSI is not able to terminate benefits if, instead of a formal decision, the other jurisdiction enters into a settlement agreement with an injured worker. The proposed new language would close this loophole and eliminate any argument that claims in other jurisdictions that are resolved by settlement agreements are not controlled by this statute.

**Section 5.** This section of the bill proposes to change how disability benefits are restarted after an injured employee is released from incarceration. Currently, if an injured employee who is receiving disability benefits becomes incarcerated for more than seventy-two consecutive hours, disability benefits are suspended. Upon release, the disability benefits are immediately reinstated regardless of the length of incarceration. So, for example, if an injured employee has been in the penitentiary for ten years, their disability payments restart as soon as they are let out without any explanation or reapplication process.

The proposed change would create a tiered process so that if an injured employee is jailed for a period of between seventy-two consecutive hours and thirty consecutive days, disability benefits would be immediately restarted. But, if an injured employee spends more than thirty consecutive days in jail, he or she would be required to reapply just as any other injured worker, before receiving disability benefits again.

**Section 6.** During the 2011 Legislative Assembly, Permanent Partial Impairment awards (PPI) were reviewed. These one-time awards for the loss of function based upon a compensable injury were changed. Ratings for these awards were changed to the sixth edition of the *American Medical Association's Guides to the Evaluation of*

*Permanent Impairment* from the fifth edition. This alteration was anticipated to affect the size of PPI awards. To more closely align the previous awards under the fifth edition with those under the new sixth edition, the initial award threshold was lowered from a 16% whole person impairment to a 14% whole person impairment. This change is reflected in 2011 HB 1055.

In 2011, this change was overlooked within the scheduled awards for amputations and loss of sight. As a result, this portion of the statute still reflects the 16% impairment level used with the fifth edition of the Guides. This legislation is intended to correct this oversight.

**Sections 7, 8, 9, 10, 11, 13, 14, 15, 16 & 17.** Prior to 2011, WSI contracted with a private vendor to provide vocational rehabilitation services to injured employees. 2011 SB 2021 provided WSI with the FTE authority to bring the vocational rehabilitation services “in-house”.

As follow-up to this transition, the workers’ compensation statutes assigning duties and describing roles in the vocational rehabilitation process require further amending to more accurately account for this change. For example, the proposed changes in these sections replace descriptors like “vocational consultants” with more appropriate language assigning those roles to the “organization.” It also removes the timeline placed within the law mandating contractor performance. Finally, it harmonizes the usage of the term “injured employee” to describe those employees seeking benefits.

**Section 12.** The changes proposed within this section are intended to rectify a statutory inconsistency. Currently, consequences for non-compliance with vocational rehabilitation and medical treatments while in the vocational rehabilitation process are contained not only within subsection 6 of section 65-05.1-04, but also within subsection 3. Unfortunately, the consequences are slightly different. Subsection 3 suspends benefits during noncompliance, and subsection 6 discontinues benefits after two instances of noncompliance without good cause. This inconsistency allows for differing consequences for the same actions depending upon which subsection the organization cites in any resulting determination. This change will remove the consequences of suspension suggested in subsection 3 and use those within subsection 6 for all acts of non-compliance, thereby treating all injured employees the same.

Additionally, changes within subsection 4 will also clarify that injured employees must continue to seek appropriate work irrespective of whether they receive a vocational plan issued under subsection 4 or subsection 6 of section 65-05.1-01. In some circumstances, the plan under either subsection could be identical and yet the work search component could be different, again, leading to inconsistent results depending upon what provision of the statute the plan is issued. As a matter of consistency, the change is necessary.

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

**2013 House Bill 1080**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**February 13, 2013**

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance (WSI), I am here today to provide information on HB 1080. The WSI Board of Directors supports this bill.

**Section 1.** This section allows WSI to consider federal wages when determining the average weekly wage of a North Dakota National Guard member injured while serving on state active duty. WSI bases disability benefits, also called wage replacement benefits, on wages from employment where WSI insurance coverage is secured by an employer. This amendment is intended to cure an inequity WSI encountered during the past biennium due to this coverage requirement.

By way of example:

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2. He is released from state active duty, and
3. He is to return to his pre-injury federal employment, but cannot do so because of his physical injury.

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also able to work and is earning income at the same time which WSI arguably cannot consider. This provision would allow WSI to consider the noncovered, post-injury employment.

**Sections 2 & 3.** These sections combine WSI's Biennial Report reporting requirements into one section of law rather than two. Currently there are two sections of the law that set forth what is to be included in the WSI Biennial Report. This proposed change simply combines all requirements into one section of law.

**Section 4.** The next section of the bill contains the statute that governs when injured workers file claims in both North Dakota and other jurisdictions for the same injury. Currently if a worker files an identical claim in another state, North Dakota benefits are suspended until the other jurisdiction accepts or denies the claim. If the other jurisdiction accepts the claim, North Dakota law requires WSI to stop paying benefits and attempt to recoup what has already been paid.

WSI proposes to add death claims to the statute so that if death claims are made in North Dakota and in another jurisdiction, they are handled the same as non-death claims. We believe death claims were not originally included in the statute because of an oversight.

Also, WSI proposes to change the wording of the statute so that the operation of this law is not dependent upon another jurisdiction issuing an administrative decision. Currently an argument exists that the statute is not triggered, and WSI is not able to terminate benefits if, instead of a formal decision, the other jurisdiction enters into a settlement agreement with an injured worker. The proposed new language would close this loophole and eliminate any argument that claims in other jurisdictions that are resolved by settlement agreements are not controlled by this statute.

**Section 5.** This section of the bill proposes to change how disability benefits are restarted after an injured employee is released from incarceration. Currently, if an injured employee who is receiving disability benefits becomes incarcerated for more than seventy-two consecutive hours, disability benefits are suspended. Upon release, the disability benefits are immediately reinstated regardless of the length of incarceration. So, for example, if an injured employee has been in the penitentiary for ten years, their disability payments restart as soon as they are let out without any explanation or reapplication process.

The proposed change would create a tiered process so that if an injured employee is jailed for a period of between seventy-two consecutive hours and thirty consecutive days, disability benefits would be immediately restarted. But, if an injured employee spends more than thirty consecutive days in jail, he or she would be required to reapply just as any other injured worker would, before receiving disability benefits again.

**Section 6.** During the 2011 Legislative Assembly, Permanent Partial Impairment awards (PPI) were reviewed. These one-time awards for the loss of function based upon a compensable injury were changed. Ratings for these awards were changed to the sixth edition of the *American Medical Association's Guides to the Evaluation of*

*Permanent Impairment* from the fifth edition. This alteration was anticipated to affect the size of PPI awards. To more closely align the previous awards under the fifth edition with those under the new sixth edition, the initial award threshold was lowered from a 16% whole person impairment to a 14% whole person impairment. This change is reflected in 2011 HB 1055.

In 2011, this change was overlooked within the scheduled awards for amputations and loss of sight. As a result, this portion of the statute still reflects the 16% impairment level used with the fifth edition of the Guides. This legislation is intended to correct this oversight.

**Sections 7, 8, 9, 10, 11, 13, 14, 15, 16 & 17.** Prior to 2011, WSI contracted with a private vendor to provide vocational rehabilitation services to injured employees. 2011 SB 2021 provided WSI with the FTE authority to bring the vocational rehabilitation services “in-house”.

As follow-up to this transition, the workers’ compensation statutes assigning duties and describing roles in the vocational rehabilitation process require further amending to more accurately account for this change. For example, the proposed changes in these sections replace descriptors like “vocational consultants” with more appropriate language assigning those roles to the “organization.” It also removes the timeline placed within the law mandating contractor performance. Finally, it harmonizes the usage of the term “injured employee” to describe those employees seeking benefits.

**Section 12.** The changes proposed within this section are intended to rectify a statutory inconsistency. Currently, consequences for non-compliance with vocational rehabilitation and medical treatments while in the vocational rehabilitation process are contained not only within subsection 6 of section 65-05.1-04, but also within subsection 3. Unfortunately, the consequences are slightly different. Subsection 3 suspends benefits during noncompliance, and subsection 6 discontinues benefits after two instances of noncompliance without good cause. This inconsistency allows for differing consequences for the same actions depending upon which subsection the organization cites in any resulting determination. This change will remove the consequences of suspension suggested in subsection 3 and use those within subsection 6 for all acts of non-compliance, thereby treating all injured employees the same.

Additionally, changes within subsection 4 will also clarify that injured employees must continue to seek appropriate work irrespective of whether they receive a vocational plan issued under subsection 4 or subsection 6 of section 65-05.1-01. In some circumstances, the plan under either subsection could be identical and yet the work search component could be different, again, leading to inconsistent results depending upon what provision of the statute the plan is issued. As a matter of consistency, the change is necessary.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 1, line 2, replace "2" with "1"

Page 1, line 9, remove "during incarceration"

Page 3, remove lines 26 through 31

Page 4, replace lines 1 through 7 with:

**"SECTION 5. AMENDMENT.** Subsection 1 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

1. When disability benefits are discontinued, the organization may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the organization. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:
  - a. The employee has sustained a significant change in the compensable medical condition;
  - b. The employee has sustained ~~an actual wage loss of~~ earnings capacity caused by the significant change in the compensable medical condition; and
  - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3."

Renumber accordingly

13.8030.01002  
Title.

Prepared by the Legislative Council staff for  
Senator Klein

March 26, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 4, line 1, replace "thirty" with "one hundred eighty"

Page 4, line 7, replace "thirty" with "one hundred eighty"

Renumber accordingly