

**2013 SENATE INDUSTRY, BUSINESS, AND LABOR**

**SB 2050**

# 2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2050  
January 16, 2013  
Job Number 17288

Conference Committee

Committee Clerk Signature



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

Relating to workers' compensation permanent partial impairment determinations; and to provide for application

## Minutes:

Testimony Attached

Chairman Klein opened the hearing.

Jennifer Clark, Legislative Counsel: Said she is here in a neutral capacity and that she worked with the Work Comp review committee during the interim. This came up through committee discussions on issues that are brought before committee members. This committee typically listens to injured workers and they talk about their situations and what went right and what went wrong and then they have recommendations that come out of that. This bill amends one provision of the workers comp permanent, partial, impairment law. It is not their wage loss; it's not the medical benefits. This is after they have reached their maximum improvement. If it reaches to a high enough level, it's possible that they may get a set sum amount based upon the damage to their body, whole body impairment. That is what we are talking about here, it's that benefit. She gave the example; someone has been injured, they were approved, they had their entire medical paid for, they had wage loss paid for. We are talking about how much damage has been done to your body that we are going to reimburse them for, one lump sum. She continues going over the bill.

Chairman Klein: Said that in the past we could go from zero to one hundred and what this would do would be to keep it within those parameters.

Jen: It's what WSI thought and what the injured worker thought. So if you go to that super doc, independent doctor, your parties have the understanding that the presumption isn't going to be higher than what the injured worker thought but it isn't going to be lower than what WSI thought. They get some evidence that shows it's higher or lower but that isn't where your presumption is going to fall.

Senator Murphy: Said that in this case what we are proposing here is putting a floor on the lowest level. If the super doc finds lower than WSI, let's say WSI comes in and says it is 15%, and the super doc comes in and says it is 10%. You can't go lower than WSI so it would be at 15?

Jen: Said your presumption can't be lower, WSI may come in and say that the super doc really did find some good information and it is very valid and we didn't have that information when we came up with our number. That maybe enough to rebut that presumption to pull it lower. So it's not that you can't, it's that the presumption is going to lock in at that ceiling and at the floor.

Senator Murphy: Said maybe you need to define presumption for us.

Jen: She gave an example of a tennis match. Enough evidence must be gathered that it is clear and convincing, so it's a civil standard.

Chairman Klein: Said it not only sets the floor, it also sets the ceiling.

Jen: Right.

Senator Sinner: Asked who makes that decision on the question of presumption.

Jen: It might be administrative law judge or a district court judge or a Supreme Court justice.

Senator Andrist: Asked if the super doc has access to the records of the company doc and the workers doc so that he knows how much and why they allowed it.

Jen: Said she would defer to WSI on that.

Senator Sorvaag: Said he was still confused on this. He said the presumption is the ceiling, unless the super doc shows for some reason it shouldn't be the ceiling.

Jen: Said if this happened today there would be no ceiling or no floor. If WSI said 20% and the injured worker said 30%, super doc says 35%. The presumption is 35%. With this bill does is limit where the super docs presumption can come in. It can't be lower than WSI's number and it can't be higher than the injured workers number.

Senator Sorvaag: Said that she had stated earlier if there was enough evidence by the super doc, then the presumption becomes totally irrelevant and you could be above, so what is the purpose?

Jen: Said that the presumption could be rebutted.

Senator Murphy: Said that he thought when he read this that it put a floor on it. If the injured worker is at thirty and WSI is at twenty and the super doc finds fifteen, you can't go below twenty. I also read that if the super doc went to forty this would still set the perimeters and it would go back to thirty. So this is to protect the worker from a lower evaluation then WSI, should the super doc find that, but it will not go above the claimant's doctor. Isn't it true that the super doc's work essentially for the insurance companies?

Jen: Said she couldn't answer that.

Leroy Volk: In opposition. Leroy is an injured worker with previous experience with workmen's comp. He shared what happened to him and that they did not go with what the doctor said, but what WSI said. He feels people are never aware of changes in the law and that using a super doc is just another loop hole. He also said a lot of people never receive PPI because they don't know it is available to them.

Chairman Klein: Said that they are trying to protect you so when workers comp says it should be lower and the independent doctor said it should be higher, they can't go below what was agreed upon in the beginning.

Senator Murphy: Said he agrees with the Chairman. This bill will help injured workers to a least get something if the WSI doctor finds that. If the super doc finds less it wouldn't let them drop it to zero. He said that this is a protective bill for workers, in his estimation.

Chairman Klein: Commented that he doesn't know who will be paying for the super doc.

Senator Sinner: Said he would like to know a little bit more about Leroy's story. If this goes to an administrative law judge or some other determining body after someone wants to challenge the findings, who is going to pay your costs to defend and does that put a hardship on the worker to defend that?

Chairman Klein: Commented that the bureau will let them know on how they plan on working that out and whose responsibility it would be.

Jon Godfread, Greater North Dakota Chamber of Commerce: Written Testimony Attached (1).

Chairman Klein: Said that Jon is saying let the chips fall as they may. Where it is, it is, we made our determination.

Jon: Said that is right. From their understanding this PPI process will lead to, if it is disputed, a specialist who is specialized in that specific injury. He said that determination to them should be the trump and should be where it is. They are happy with that on either the high end or the low end. That is the system that was created and it seems to be working pretty well.

Senator Murphy: Said that he sees it as a benefit for a floor, for the worker, that the WSI doctor would provide the minimum. He said that he understands where Jon is coming from with the expertise of a specialist. He wonders if they aren't representing and have a bias towards paying less because they are working for an insurance company. That might not be accurate.

Jon: Said he doesn't know about it but he would rely on the doctor's code of ethics, the Hippocratic Oath and what they have to abide to. He wouldn't be able to comment on that to fully other than they are going to follow the same ethics that any other profession would.

Chairman Klein: Commented that it is hard to get a doctor in North Dakota to give an independent medical review.

Jon: Said that in the cases that he has seen, this is when they would send the cases down to Mayo to get a specialist to look at it. If anyone has been through a mayo work up they are coming to a pretty strong conclusion and that's what we feel should be relied upon.

Anne Green, Staff Counsel with WSI: Written Testimony Attached (2).

Chairman Klein: Said this goes to Leroy's question, it creates some more hoops to jump through. He would have to have someone help him go through this process. He would have to provide the clear and convincing evidence. He would have to say he wanted the super doc, would he not?

Anne: Said that is correct, he would have to engage that process.

Senator Andrist: Asked if you only used it nine times, is the whole super doc concept flawed? What did we do before we had the super doc?

Anne: Said she can't answer the question of what they did before the super doc. The value of the super doc is this; an injured worker gets the maximum medical improvement, he is entitled to a permanent partial impairment award. He gets the evaluation looks at it and says this isn't right; I am far more impaired than this something is terribly wrong. So the injured worker gets his own evaluation. That comes in and rates him someplace far differently than that original evaluation rated him. That is the value of the super doc. We have two medical professionals, two both schooled in the applications of the guides but we have two different results. The question is who is right. There are instances, particularly in real complex claims or situations where we are evaluating multiple things, a back and psychological trauma and were evaluating a head injury. Where there are layers of permanent partial impairment. That specialist is sometimes invaluable to get to the correct decision.

Senator Andrist: Said what you are saying even though it is rarely used, it is important tool. I guess what I am thinking is that often times the super doc evaluation costs more than the award.

Anne: Said that could be the case, but she doesn't have the numbers to support that.

Senator Andrist: Asked if the bureau pays for it.

Anne: Said that was correct.

Senator Laffen: Said he wanted to understand a little more about the super doc, if he was more of a specialist in that area.

Anne: Said that any physician who conducts an evaluation to access and to rate someone for a permanent partial impairment has to be qualified, trained, and accredited by the American Medicals Association process. They have a number of evaluators in the state

who provide evaluations for injured workers. If we get to a super doc situation that physician is not only going to be qualified in the guides, but will be qualified in his area of expertise, it's going to be a specialist.

Senator Murphy: Said that it is disingenuous to try and paint this issue with a brush that creates more hoops to jump through. I don't think that is the case at all. This has nothing to do with whether a super doc is going to be called or not. All this does is tamp down the finding, the radicalness of any super doc finding outside of the perimeters of the workers doctor or WSI's doctor. In fact it is simpler because it isn't going to be any more radical. It's the same amount of work essentially and has nothing to do with whether you call one or not. I don't think you can say that this throws something new in the mix. I don't think it should be typified that way. What do you think?

Anne: Said that she understands his point. WSI's position is however that if were trying to find the correct results the correct results is by our process by statute, the ability to go to an independent unrelated specialist, someone who is a super doc to make a determination. Based on the stats I provided sometimes those numbers come outside of those perimeters the lowest and the highest. WSI's point is, if we are looking for the right answer the path to the right answer, the correct evaluation based on the doc that we are going to say take all this information and make a decision. The correct answer is the answer the super doc provides, unqualified by a high number or a low number.

Chairman Klein: Asked how many cases are we dealing with.

Anne: Answered since 2001, 9.

Senator Sinner: Asked if any of those final findings on those nine have been challenged by WSI, on those three cases that were outside the range.

Anne: No.

Discussion followed about the number of workers that have sought another opinion.

Brian Klipfel, Director of Workforce Safety and Insurance: Said he wanted to address the claim that they only had seven since 2001 that went to the super doc. He said a lot of it has to do with the fact of their internal process itself. In 2010 they had a performance review done on WSI and one of the parts said that our impairment auditor does an outstanding job. He went on to talk about how WSI works.

Senator Unruh: Said that they are all aware how it works now and why groups think that it is not needed but her question is, why did the workers compensation review committee come up with this change?

Brian: Said that the workers compensation review committee process is a good process and they have injured workers come in and talk and there may be some policies that may be changed to benefit everybody.

Discussion continued.

Chairman Klein closed the hearing.

# 2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2050  
January 23, 2013  
Job Number 17564

Conference Committee

Committee Clerk Signature

*Eric Lubelt*

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

Relating to workers' compensation permanent partial impairment determinations; and to provide for application

## Minutes:

Discussion and Vote

Chairman Klein: Called the meeting back to order on SB 2050. Said that they heard the bill last week, he explained the bill as he understands it. The WSI board did recommend a do not pass. He asked if they find this necessary to move along and that they are here for discussion.

Discussion followed and Anne Green an Attorney for WSI came up to explain the presumption and the process of the Super Doc. (2:06)

Senator Murphy: Said he would like to say that in one particular case that he was aware of they had judgment from the workers' doctor that awarded 30% PPI and then the WSI doctor awarded 14 and then the super doc came in and zeroed it out. His tendency is to provide a floor for that injured worker. There is an awfully big difference between thirty and zero. If the super doc in this case would have found zero it would have ended up at 14%.

Chairman Klein: Asked if there is compensability at 14%.

Anne: Said compensability requires that floor of 14%, there is no award for anything below 14%.

Senator Laffen: Said technically the super doc could of said 13% and it would of ended up being zero as well?

Anne: Said that was correct.

Senator Laffen: Motioned a Do Not Pass.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes: 6 No: 1 Absent: 0



Senate Industry, Business and Labor Committee  
SB 2050  
January 23, 2013  
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Floor assignment: Senator Laffen

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2050

- 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).*

The proposed legislation establishes criteria for determining a prevailing PPI rating after a PPI rating determination is made by an independent doctor.

- 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.*



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**Agency:** WSI

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



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

**BILL NO: SB 2050**

**BILL DESCRIPTION: Permanent Partial Impairment (PPI) Rating Disputes**

**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 establishes criteria for determining a prevailing PPI rating after a PPI rating determination is made by an independent doctor.

**FISCAL IMPACT:** No significant fiscal impact is anticipated.

**DATE: December 26, 2012**

Date: 1/23/2013  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2050**

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	✓		Senator Murphy		✓
V. Chair. Laffen	✓		Senator Sinner	✓	
Senator Andrist	✓				
Senator Unruh	✓				
Senator Sorvaag	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Laffen

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

**REPORT OF STANDING COMMITTEE**

**SB 2050: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2050 was placed on the Eleventh order on the calendar.**

**2013 TESTIMONY**

**SB 2050**



Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2050  
January 17, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in opposition to SB 2050.

This bill came out of the Workers' Compensation Review Committee. It establishes criteria for determining a prevailing Permanent Partial Impairment (PPI) rating after a PPI rating determination is made by an independent doctor.


The current process requires two qualified rating providers to provide a Permanent Partial Impairment rating number to determine the award given to an injured employee based upon the permanent impairment an injury creates. If the numbers given by the rating providers are different, an independent doctor, who specializes in the specific injury, is hired to come up with the rating or number that will be used.

SB 2050 changes the process to create a high-low capped system of review, defaulting the PPI rating to the higher or the lower number if the expert's number is outside of the range of the first two numbers.

The Greater North Dakota Chamber has a number of concerns with this proposed process. First, we believe the process should rely on an expert's decision versus two prior ratings. The new system cuts both ways as the employee could win or lose based on the ratings that are not provided by an expert independent doctor. In addition, the proposed change does not focus on reaching a correct determination, which should be the only objective of the review process. Lastly, this situation occurs in very few instances of establishing PPI ratings, and according to WSI, there are approximately three cases related to this type of situation per year.

The Greater North Dakota Chamber led the efforts to reorganize WSI in 1995 and 1996. The GNDC has been working with the North Dakota Legislature ever since to create one of the finest systems in the nation and a benefit package above those offered in most states, properly serving North Dakota employers and employees and keeping WSI premiums some of the lowest in the nation.

Thank you for the opportunity to appear before you today in opposition to SB 2050. I would be happy to answer any questions.

Champions  Business

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**2013 Senate Bill No. 2050**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**January 16, 2013**

Mr. Chairman, Members of the Committee:

My name is Anne Green, Staff Counsel with WSI. I am here on behalf of WSI to provide information to assist the Committee in making its determination. WSI's Board of Directors recommends a Do Not Pass on SB 2050.

This bill originates from the Interim Legislative Workers Compensation Review Committee.

Permanent Partial Impairment ratings are an award given to an injured employee based solely upon the permanent impairment a compensable injury creates. Awards are based upon rating exams conducted under the sixth edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (here after *Guides*). In the event an injured employee suffers a permanent whole person impairment of greater than 14%, a one-time payment calculated by the appropriate statutory formula is awarded to the injured worker. This payment is not in any way connected with indemnity or time-loss benefits. It is simply a payment issued to compensate for the loss of ability.

Within the statutory scheme, should a medical dispute arise between two qualified rating providers, WSI has established a process to select a third independent doctor to review the disputed rating. We refer to this individual as a "Super Doc." By doing so, the parties are bound by the result of this third doctor as being presumptively correct. The result can only be rebutted by clear and convincing evidence to the contrary. It is, in essence, a dispute resolution tool.

This proposed amendment would create a high-low capped system of review that would adopt the third reviewer's opinion within the parameters established by the earlier reviews.

Permanent Partial Impairment evaluations cost on average \$2,026.44. More complex reviews range from \$4,000 to \$10,000. The value of an award at the threshold eligibility level, 14% whole person impairment, is currently \$2,790. This amount excludes any reimbursement WSI will make to an injured employee for travel to an evaluation, should the evaluator be in a community other than the injured employees.

The necessity of the "Super Doc" process is typically precipitated by a complex claim. Locating one qualified evaluating physician in complex claims is challenging. Locating a second, to engage the "Super Doc" process, even on a national level, is sometimes even more challenging. This is not to suggest that this resolution device is not worthwhile. It can be particularly useful in reaching the correct evaluation decision.

The proposed amendment, however, does not prioritize reaching the correct determination, but rather offers another review which may reach the "correct" result, but if that result is outside the window established by the first two exams, that correct result would be rejected. If our efforts are focused on reaching correct determinations, this further complication of an already complex process is not a solution.

This proposed solution is intended to affect a single case or two. Since 2001, WSI has used the current "Super Doc" process only nine times. Applying this proposed amendment to WSI's existing data, in three cases, the evaluation was outside the parameters established by the original opinions. Two were above the highest rating and one was below the lowest. Obviously the sample size is small but it illustrates that these final reviews can go both ways.

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