

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2321

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2321
February 4, 2013
Job Number 18194

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation wage

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Judy Lee: Said this doesn't happen very often but occasionally there is someone who is a volunteer firefighter or an ambulance service provider, EMS, who in the line of their duties as a volunteer end up having a serious injury. It was brought to her attention and they wanted to figure out how they would handle the lost wages. The definition for volunteer for WSI, is the IRS definition, which means no compensation at all. There is a modest compensation at best for some of the volunteers.

Senator Sorvaag: Asked if she was attempting to match it up with their wages in their other jobs.

Senator Lee: Said that has been part of their challenge. They can't compensate a physician, who might be highly compensated, but is a volunteer firefighter at a significantly higher rate than someone who might be a grocer.

Rob Forward, Attorney for Workforce Safety and Insurance: Written Testimony (1).

Senator Andrist: Asked if he was aware of any existing claims.

Rob: Said he was aware of three in the 9 ½ years he has been there.

Senator Murphy: Asked if there is any way to set this up so they all come in at the same and maybe set some type of health coverage or award without having any income.

Rob: Asked for an example.

Senator Murphy: Said because they come from all different walks of life with variable incomes, if anyone was injured could there be a limit on the PPI? Not looking at anyone's income.

Rob: Said there could probably be a separate class established just for volunteer firefighters. He thought Senator Lee was trying to set volunteer firefighters apart in this respect and provide an increased benefit that is not available to other injured workers.

Chairman Klein: Said the amount of money you were making at your other job is how we base the award.

Discussion continued on the coverage (16:38-19:22)

Joel Boespflug, North Dakota Fire Chief's Association: Asked for them to give some thought to the terminology on the different fire departments, on how they are or are not compensated. Some may be termed volunteer, some may be termed on call, but that pay may be only two dollars per call. He hoped those types would not be excluded from this type of opportunity. Firefighters aren't looking to be compensated at a very high level but rather a reasonable approach. If the defined benefit or coverage is something that is pursued, know the different makeups of the different fire departments. Many of the volunteer firefighters might be students or farmers with very little income. (19:30-21:00)

Chairman Klein: Said that they are trying to expand the benefit rather than look at one source of income. Currently the injured volunteer is compensated for both his injury and of course death benefits. The issue here is determining their loss wage benefits.

Joel: Said that was his understanding.

Chairman Klein: Asked Rob Forward if you're a volunteer organization and at the end of the year you are compensated for five dollars for every fire you attended, will that go against you in determining these wage benefits.

Rob: Said no.

Senator Sorvaag: Said this is based on their income, but we did discuss students who are volunteers who don't have much income, is there a base amount that they would get?

Rob: Said that there is a base if they have loss of earnings. If you are retired and don't have an income then there would be no loss of earnings when you get injured in the fire. There would be no wage loss replacement for you under the current system or no wage loss replacement under Senator Lee's bill either. In the example of the student that has a part-time job, he has some income so when he gets hurt doing volunteer firefighter work there is a loss of earnings. Then he would be entitled to sixty percent of the states average weekly wage. WSI information packet attached (2).

Discussion continued on the coverage (25:35-32:00)

Senator Sinner: Said he agrees that there should be a base level.

Chairman Klein: Said he feels this is an important issue and closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2321
February 6, 2013
Job Number 18399

Conference Committee

Committee Clerk Signature <i>Eric Lubbo</i>

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation benefits for volunteer fireman

Minutes:

Discussion

Chairman Klein: Opened the meeting.

Senator Andrist: Moved a do pass.

Senator Unruh: Seconded the motion.

Senator Sorvaag: Asked if there was a determination of what they were going to use or is WSI just going to figure out an average of what the salary would be.

Chairman Klein: Said this will provide for the injured worker the ability to bring both his wages into the determination of his loss wage benefit.

Senator Sorvaag: Said then there is a floor and a ceiling in that process.

Chairman Klein: Said correct, currently they use your work wages earned.

Senator Murphy: Said they would count their main occupation, but not more than one.

Chairman Klein: Said they would use both now and before they were using only one.

Senator Sinner: Said that there is still no benefit for unemployed worker or a retired worker that has no earned income at the time.

Chairman Klein: Said what he said was; if you're not making any money, retired, you wouldn't but if you were a student with a part-time job, you would drop to the bottom.

Senator Andrist: Said there would be no benefit for a retired worker who was injured as a firefighter, loss wage benefit.

Senate Industry, Business and Labor Committee

SB 2321

February 6, 2013

Page 2

Senator Laffen: Commented that there are other benefits in WSI. The one they are debating is strictly loss wages benefits. If you don't have any wages then there wouldn't be any benefits in this part of WSI.

Senator Sinner: Asked if that is true for unemployment, isn't that considered wages. That is reported as earned income.

Senator Sorvaag: Said it is not earned income, traditionally in the federal tax code it is not.

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

Floor Assignment: Senator Murphy

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2321
February 6, 2013
Job Number 18400

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation benefits for volunteer fireman

Minutes:

Vote

Chairman Klein: Opened the hearing.

Senator Andrist: Moved to recede the motion.

Senator Unruh: Seconded the motion to recede.

Chairman Klein: Said all in favor of the motion say I. That passed.

Senator Andrist: Moved to pass the amendment brought by Workforce Safety.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Andrist: Moved a do pass as amended.

Senator Unruh: Seconded the motion.

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

Floor Assignment: Senator Murphy

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2321

- 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 provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters.

- 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: 01/30/2013

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

BILL NO: SB 2321

BILL DESCRIPTION: Determining Compensation Benefits for Volunteer Firefighters

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 provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters.

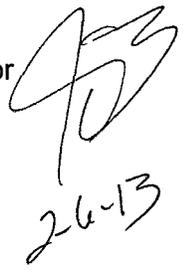
FISCAL IMPACT: The overall fiscal impact of this legislation is not quantifiable, but is considered to be unsubstantial. However, the fiscal impact on the volunteer fireman classification will result in future upward rate modifications as this increase in benefit is evidenced in the data. This upward adjustment will itself not be substantial.

DATE: January 30, 2013

13.0822.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

February 6, 2013



Handwritten signature and date: 2-6-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2321

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

Page 1, after line 17, insert:

"SECTION 2. APPLICATION. This Act applies to claims filed on or after the effective date of this Act."

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2321**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0822.01001

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

Motion Made By Senator Andrist 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) 7 No 0

Absent 0

Floor Assignment _____

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

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2321**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0822.01001

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

Motion Made By Senator Andrist 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) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

SB 2321: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2321 was placed on the Sixth order on the calendar.

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

Page 1, after line 17, insert:

"SECTION 2. APPLICATION. This Act applies to claims filed on or after the effective date of this Act."

Renumber accordingly

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2321

2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2321
March 20, 2013
Job 20218

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation wage loss benefit for volunteer firefighters

Minutes:

Testimony, attachment 1.

Hearing opened.

Senator Judy Lee: Introduced SB 2321, including background behind the bill. Summarized existing WSI compensation for firefighters. The bill determines how the wage replace would be determined for a volunteer firefighter.

2:49 **Representative Frantsvog:** What is an emergency or disaster volunteer?

Senator J. Lee: It would be firefighters, emergency service providers, ambulance, volunteers--all of those people we know as emergency service providers.

3:10 **Representative Frantsvog:** That also then would be inclusive in which identifies as a community response team member. Is that the same?

Senator J. Lee: There had been no inclusion apparently for these individuals whom we are trying to cover. In the bill, the language that does not have lines under it is current statute. This was amended in the committee on the Senate side. You're looking at line 13; I was looking above. It would be any of those individuals who would be volunteering to provide firefighting or emergency services.

4:23 **Representative Ruby:** Volunteer firefighters are included in both areas: the computation of the income from their business or employment, and additionally the volunteer firefighter can take in income from all employment. They are being separated out, over and above the others, on that point. Could it be likely that two volunteer firefighters who got hurt doing the same thing are going to be compensated differently?

Senator J. Lee: If the wages they are receiving at their regular jobs are disparate, there would be a difference in their compensation through WSI.

5:30 **Representative Ruby:** Why are we putting in all income for the firefighters but not for the other emergency responders?

Senator J. Lee: That was the wisdom of the Senate IBL committee. You might choose to do something different.

5:57 **Representative Kreun:** Was there any consideration given to police reserves or park reserves who volunteer their time for parades or things of that nature?

Senator J. Lee: We did not discuss that. We were thinking of those who are more likely to be involved in dangerous situations.

Support:

7:28 **Rob Forward, staff attorney at WSI:** Refer to written testimony, **attachment 1.**

8:48 **Representative N. Johnson:** In the Senate, was the only the application date?

Rob Forward: That is correct.

9:01 **Representative Boschee:** Are the terms emergency or disaster volunteer or community emergency response team member defined anywhere?

Rob Forward: When the committee started to discuss that with Senator Lee, I scrambled to look. Sorry, but I did not find out.

Representative Boschee: I am a volunteer with the Red Cross back home, and we respond to fires and hand out blankets. If I get burned, would I qualify for this? I understand the intention of direct service volunteers, but...

Rob Forward: The answer is no because you are a volunteer for the Red Cross, a private organization. This bill pertains solely to political subdivisions and volunteer firefighters.

9:56 **Representative Ruby:** There is a cap of weekly benefits as far as wage, isn't there?

Rob Forward: That is correct. Provided current amount.

10:26 **Representative Frantsvog:** Your testimony talks about a volunteer firefighter, but you make no mention of an emergency disaster volunteer or a community emergency response team member. Is that all inclusive?

Rob Forward: No. This exception in this bill only provides for increased benefits for volunteer firefighters; it does not apply to the other folks.

10:59 **Representative Frantsvog:** Why is it in the bill? I'm looking at line 13.

11:15 **Chairman Keiser:** We are taking the existing language and modifying it. The key is on line 12 with the reference to the Century Code, which might be specific to firefighters.

Rob Forward: That is the way the agency is interpreting this bill as well.

11:50 **Rob Forward:** If I could clarify further, we did not draft the bill. Aside from the application clause, we have not tinkered with the language. It is my understanding that the other language is put in there as clean up language to clarify the statute, but it does not go to the heart of the matter.

12:22 **Representative Kreun:** What do we do for police volunteers or police reserves who do not get paid?

12:54 **Rob Forward:** If the political subdivision has purchased coverage for them, there would be coverage. But the determination of their wage benefit would not be included in the bill's change. This bill applies only to volunteer firefighters. Gave example.

14:14 **Representative Kreun:** Who is going to pay the premium?

Rob Forward: The political subdivision.

14:27 **Representative Ruby:** The most significant change is that it is taking into account all the income, whether or not someone was initially covered. In your example of two occupations, one under coverage and the other not, it is taking that into consideration. Didn't existing law make sense along that line in that it was covering wages for coverage which was already existing?

15:09 **Rob Forward:** Yes. This exception for volunteer firefighters would be the only exception regarding how we calculate. It is my understanding that in many small communities, many volunteer firefighters are self-employed. If one of them were to be hurt while called out on a fire, WSI wage benefit for them would be zero.

15:48 **Representative Ruby:** If it wasn't important enough for them to be covered on their job... If they choose not to be covered, why should we assume that they would want to be covered when they are doing something else?

16:10 **Rob Forward:** That is a good point, and that philosophical debate is for this committee to discuss.

16:22 **Representative Kreun:** If we are looking at volunteers, wouldn't it behoove that political subdivision to have this kind of coverage for those individuals rather than having a state law?

16:51 **Rob Forward:** Are you speaking to disability policies?

Representative Kreun: Yes, a disability policy that would... If you need a volunteer fire department, none of those volunteer firefighters.... Are they all going to be covered under this bill and none of the volunteer disaster workers? Wouldn't they have their own coverage on there?

17:27 **Rob Forward:** I would expect that some of the political subdivisions have purchased a disability policy for their volunteers.

Representative Kreun: If we need this and some have it and some don't, why would we make it a state law?

Chairman Keiser: Please clarify. You use the word disability. Is this a wage replacement bill, or is it wage replacement and disability?

18:06 **Rob Forward:** In the workers comp industry, we refer to wage loss benefits, wage replacement as disability.

Chairman Keiser: But this is a wage replacement bill?

Rob Forward: Correct. It goes to how we calculate what your wage replacement is going to be.

18:23 **Representative N. Johnson:** There are two things I see happening in here. The first one is that we are adding classifications that can be considered volunteers by a political subdivision, as it was prior. Is it correct that the guts of the bill is actually likes 15-17 where it states that for a volunteer firefighter, you can use their other employments as a basis?

18:59 **Rob Forward:** Yes.

19:05 **Representative Kasper:** I sell disability insurance. I know of no insurance company willing to cover volunteers on a group plan. As an individual, you could buy a product if you bought it for your employment where you are earning wages. But to have a political subdivision purchase a voluntary group benefit for volunteers, I have never heard of it.

19:38 **Chairman Keiser:** Is this discriminatory?

19:57 **Rob Forward:** I suppose an attorney representing someone who was denied his full wage loss benefit, I could make the argument that there is no rational basis to carve out volunteer firefighters and that this legislative body has not identified a good reason why volunteer firefighters should be separated out from the rest of the volunteers. I do not know how successful that argument could be, but it is an argument that could be made.

20:31 **Representative Kasper:** If the volunteers were covered because their volunteer work probably is not as dangerous as that of volunteer firefighters, do you think the wage impact to a political subdivision would not be as onerous as a volunteer firefighter benefit?

20:57 **Rob Forward:** We have not looked at that, but it sounds reasonable.

21:08 **Representative Vigesaa:** Can a political subdivision purchase workers compensation coverage for a volunteer fire department?

Rob Forward: Yes.

Representative Vigesaa: Do you have an idea how many may do that across the state?

Rob Forward: I do not know.

21:40 **Chairman Keiser:** I do believe they all do. Again, the court has ruled that if you have supervisory authority over volunteers, you had better have coverage for those people.

21:49 **Representative Vigesaa:** If a volunteer firefighter was injured during a duty and would have to be off work, he would more than likely get wage replacement benefits at the present.

Rob Forward: Correct.

Representative Vigesaa: Under current law, how would they calculate how much he would receive as a benefit?

Rob Forward: They would calculate it the same as for you and me. If we are working for someone and that employer is required to have coverage or has purchased coverage, they would use the income I am receiving from that employer.

Chairman Keiser: But they would not use the combined income if you had more than only that job.

Rob Forward: They would use the combined income if it were all secured. But if I am running a side business and am not covering myself, we are not allowed by law to figure that in for you, me, or any volunteer firefighter currently under the law.

23:00 **Representative Kasper:** Why don't we just require the political subdivisions to enroll all of their volunteers in WSI coverage? We could use the total income if so desired. Then we don't need this bill or we amend the bill.

23:19 **Rob Forward:** That would not solve the issue I think Senator Lee proposes to change. Even if they were required to purchase coverage, the currently law would allow us to calculate wage replacement using only covered employments.

Representative Kasper: I have no objection to using all income. But require that all volunteers must be covered, and use all their income.

Rob Forward: I am not prepared to respond to that.

24:02 **Chairman Keiser:** The actuarial note would change significantly if you are taking all volunteers. This is limited to just volunteer firefighters. They say it will increase it but modestly.

Opposition:

Neutral:

Hearing closed.

24:58 **Representative Kasper:** I thought I heard Rob say that most of the volunteers are covered by the political subdivisions anyway. Therefore, that premium is already being paid. So the issue then is the benefit is currently only the income for which they have a premium paid. If the volunteer is covered by the political subdivision and they are a doctor and WSI is paid there and here, then they have both incomes. But if it is a volunteer and they are a farmer who does not purchase WSI coverage, this income is not covered. So really are we talking about whether or not we're include all of the income for the volunteers?

Chairman Keiser: With this bill, that farmer's income would be taken into account.

Representative Kasper: Only if he is a firefighter.

Chairman Keiser: But if you expand it to everyone, then you could have lots. It would affect the fiscal note.

Representative Kasper: If the statement is that for the most dangerous occupation, the firefighter, it has a minimal effect on the cost, for the other volunteers responders, it should be less of an impact even though the benefit would be higher. Referred to the question regarding a potential discrimination action down the road.

Motion for a Do Not Pass recommendation made by Representative Ruby and seconded by Representative Kreun.

26:55 **Representative Ruby:** I would not support expanding it to everyone. The initial premise is taking in wages for which someone has not already secured covered. If I do not think it's important enough for me to be covered, then I should not expect to be covered under something else that I am doing which is not wage related. But then to expand that to everyone to clear up the discriminatory aspects... I do not like that this is discriminatory, but even if that were fixed, it's the premise of the changes in lines 15-17 with which I have a problem.

27:55 **Representative Kreun:** I agree with the thought process, but I do question that firefighters are the ones that create the most claims. Gave examples from police department. I cannot support this with just one entity.

28:36 **Representative Kasper:** I think the police department is already covered under WSI because I do not think they are volunteers.

Representative Kreun: I think you are right. The assumption is that firefighters are the worst in terms of claims. That is not necessarily true. The potential for this is to be discriminatory.

29:40 **Representative Boschee:** I plan to resist the do not pass. I support Representative Ruby if we wanted to take out the consideration of all income and leave it to what income is

covered under premium. But I think we have to take into account that the majority of our fire protection is from volunteers. I think this is an opportunity for us to provide support for those who are taking care of our communities.

30:17 **Representative Ruby:** I believe right now they are covered, as long as they are covered under their main occupation. I would support that if they didn't have that. If we take out including all wages, we do nothing; the bill really does not do anything else.

Representative Kasper: Called the question.

Roll call vote on motion for a Do Not Pass recommendation. Motion carries.

Yes = 8

No = 7

Absent = 0

Carrier: Representative Frantsvog

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: SB 2321

- 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						
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- 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 engrossed bill provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters and provides for application.

- 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.*
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- 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: 02/12/2013

WORKFORCE SAFETY & INSURANCE
2013 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2321

BILL DESCRIPTION: Determining Compensation Benefits for Volunteer Firefighters

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 provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters and provides for application.

FISCAL IMPACT: The overall fiscal impact of this legislation is not quantifiable, but is considered to be unsubstantial. However, the fiscal impact on the volunteer fireman classification will result in future upward rate modifications as this increase in benefit is evidenced in the data. This upward adjustment will itself not be substantial.

DATE: February 12, 2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2321

- 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						
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- 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			
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- 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 provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters.

- 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:*

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Name: John Halvorson
Agency: WSI
Telephone: 328-6016
Date Prepared: 01/30/2013

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

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The proposed legislation provides for the consideration of wages from all employment in determining compensation benefits for volunteer firefighters.

FISCAL IMPACT: The overall fiscal impact of this legislation is not quantifiable, but is considered to be unsubstantial. However, the fiscal impact on the volunteer fireman classification will result in future upward rate modifications as this increase in benefit is evidenced in the data. This upward adjustment will itself not be substantial.

DATE: January 30, 2013

Date: 3-20-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2321**

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 Kreun

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) 8 No 7

Absent 0

Floor Assignment Frantsvog

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

REPORT OF STANDING COMMITTEE

SB 2321, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (8 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2321 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2321

**2013 Senate Bill No. 2321
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Rob Forward, Staff Attorney of Workforce Safety & Insurance
February 4, 2013**

My name is Rob Forward. I am a staff attorney at Workforce Safety & Insurance (WSI) and on behalf of the agency I am here to support SB 2321 and propose an amendment. The WSI Board of Directors supports the bill with the proposed amendment.

This bill would increase benefits by changing the calculation of disability benefits for volunteer firefighters.

Currently, all injured workers' disability benefits are calculated using amounts they earn from all employers that have to carry workers' compensation coverage, but income from employers that are not required to have coverage, and have not voluntarily purchased it, is not included. For example, if John Doe is an injured worker employed by Bobcat and John Doe is also a self-employed farmer and he has not purchased coverage for himself when he farms, only the income from Bobcat will be used to calculate his disability benefits. If SB 2321 were to become law, John Doe's farming income would be included in the calculation of his disability benefits along with the wages from Bobcat if he were to be injured as a volunteer firefighter. Note that John Doe would still be subject to the same maximum and minimum benefit levels as all other injured workers.

WSI's actuaries predict that although an upward adjustment for this particular rate classification would happen, the bill would not have a substantial fiscal impact.

WSI asks that an application clause be added to the bill to avoid administrative confusion over the claims affected by this legislation. I have attached a copy of a proposed amendment that applies the change to claims filed on or after the effective date.

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2321

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

Page 1, line 17, insert "**SECTION 2. APPLICATION.** This Act applies to claims filed on or after the effective date of this Act."

Renumber accordingly

WSI Informational Packet Contents

- 1) WSI Background, Positives, and Challenges Document
- 2) Historical WC Benefit Legislation
- 3) WSI Fund Position Chart
- 4) WSI Quick Facts
- 5) WSI Quick Guide to WC Benefits

WSI Background

Workforce Safety & Insurance (WSI) was established in 1919 as an exclusive state fund for workers compensation insurance. Today, North Dakota is one of four remaining monopolistic workers compensation systems in the United States. The others are Ohio, Washington, and Wyoming.

WSI, a state entity, functions as the sole provider of workers compensation insurance in the state of North Dakota. There are no provisions for self-insurance or private insurance for purposes of workers compensation. If a business has significant contacts in North Dakota, they must insure with WSI.

WSI has 247.14 authorized full-time employees (FTEs). Claims for occupational injury and disease are filed with WSI and adjudicated by in-house agency claim adjusters. Currently, WSI processes approximately 24,600 claims per year. WSI services about 24,000 employers with a covered workforce of 370,000 workers. Annual earned premiums amount to \$250 million per year.

WSI is a special fund agency funded solely by employer premiums, which provides for the payment of medical and wage loss benefits as well as administrative expenses. WSI receives no General Fund dollars.

WSI Positives

Good Benefits. North Dakota's benefit structure is set by statute and compares quite favorably to other jurisdictions. Benefits provided include:

- Lifetime, deductible-free medical benefits related to the work injury.
- Weekly disability benefits ranging up to a maximum of \$995/week (125% of North Dakota's State Average Weekly Wage (SAWW) which is \$796 per week).
- A post-retirement benefit (additional benefit payable-ABP) when disability benefits cease at time of eligibility for social security retirement benefits.
- Cost of living adjustments (COLAS). Long-term disability recipients are eligible for COLAS after 3 years and receive increases equivalent to the increase in the SAWW.

This year's COLA was 9.9%. COLAs have averaged 5.0% over the last decade and 6.1% over the last five years.

- Vocational Rehabilitation benefits that provide for up to two years or more of retraining.
- Death benefits of up to \$300,000.

Additionally, numerous benefit and policy provisions have been passed by previous Legislative Assemblies that have served to enhance the benefits and services provided to injured workers **(Attachment A)**.

Good Payor. Based on a recent medical and hospital fee schedule analysis, WSI reimbursement for physician services equates to 189% of Medicare reimbursements and WSI reimbursements for hospital services ranges between 155% (Inpatient) and 169% (Outpatient) of Medicare reimbursements.

Low Premiums. Over the last decade, and before any dividends are issued, North Dakota has continually been ranked the lowest premium state in the country (2012 Oregon Premium Study). Statewide premium rate levels have been stable with small inflationary increases.

North Dakota rates are the lowest in the country and nearly 50% below the median state in the study.

Neighbor states rates compared to North Dakota:

South Dakota—1.9x higher (3.8x higher with 50% dividend factored in)

Minnesota—2.0x higher (4.0x higher with 50% dividend factored in)

Montana—2.5x higher (5.0x higher with 50% dividend factored in)

Other monopolies rates compared to North Dakota:

Wyoming—1.7x higher (3.4x higher with 50% dividend factored in)

Washington—2.1x higher (4.2x higher with 50% dividend factored in)

Ohio—1.8x higher (3.6x higher with 50% dividend factored in)

Low incidence of time-loss claims. Time-loss claims account for only 12% of the total claims in North Dakota compared to 20% in other jurisdictions. North Dakota employees have a good work ethic, and if they are injured, they want to get back to work. WSI's Return to Work programs greatly assist these efforts.

Safety and Loss Control. WSI has a dedicated safety/loss control unit and provides a number of safety discount programs. Employers meeting the requirements receive additional discounts in premium.

Administratively efficient. WSI has an 8.2% administrative expense ratio (FY 2012). Workers' compensation industry expense ratios typically range between 25% and 35%. As a monopoly, North Dakota does not incur the marketing, broker, tax, and other fees incurred by other private workers compensation insurers.

Unexpended appropriations are returned to the WSI Fund. Historically, WSI staff have been good financial stewards returning to the WSI fund unexpended appropriations in the amount of \$10.4 million in the 2007-09 biennium, \$9.3 million in the 2009-11 biennium and an estimated \$4.5 million for the current 2011-13 biennium.

Low litigation. Overall litigation requests represent less than one percent of total claims filed.

Good Service and Overall Customer Satisfaction. Periodic injured worker and employer customer satisfaction surveys independently conducted for WSI consistently rank in the "high" satisfaction category, with ratings typically over four on a scale of one to five.

Financially Stable. A financially secure fund benefits both injured workers and businesses. Favorable investment returns have resulted in additional surplus growth. Fund investment returns for Fiscal Years 2010, 2011, and 2012 were 11.94%, 13.26%, and 6.14% respectively. The current FY 2013 year-to-date return from July through November 2012 is 5.48%.

State law outlines the required surplus levels which are 20% to 40% of reserve liabilities. WSI's surplus ratio (as of 11/30/12) is at 50% (**Attachment B**). To the extent WSI exceeds statutory surplus requirements dividends must be issued to policyholders. Total dividends declared in seven out of the past eight years have amounted to nearly \$600 million ranging between 40% and 62%, including an approximately \$140 million dividend for the current policy year.

Recent annual financial audits conducted by an external firm have been unqualified and free of findings.

WSI Challenges

Increased Workloads. The increased economic activity within the state has resulted in increased staff workloads. WSI conducted a workload assessment for many of the departments within the agency. A sampling of workload indicator information comparing 2012 workloads to 2008 workloads is as follows:

<u>Workload Measures</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>% inc 08-12</u>
Number of Claims Filed	21,061	20,544	19,388	21,693	24,643	17.01%
Claims filed with out-of-state address	2,604	2,766	2,689	3,619	5,383	106.72%
Documents Imaged	646,082	724,036	755,471	770,864	778,175	20.45%
Total Bills Entered	168,815	173,186	180,640	188,615	217,923	29.09%
Avg. Number of Calls per Day	493	495	509	543	668	35.50%
Number of Active Employer Accounts	19,777	19,946	20,316	21,552	23,812	20.40%
New Employer Applications Received	1,894	1,794	2,008	3,082	4,931	160.35%

FY 12 figures are as of 6/30/2012

In summarizing the information, workloads have generally increased between 17% and 35%. The effects of the heavier workloads are compounded by the overall increase in business complexity.

Increased Claim Complexity. Claim processing is becoming more complex. Claims with out-of-state addresses used to account for approximately 12% of all claims. Today, approximately 22% of all claims have out-of-state addresses. Managing the medical, return to work, and vocational rehabilitation for out-of-state claims, and working with out of state medical providers requires additional time and resources.

Increased Underwriting Complexity. Policyholder Services and Underwriting is becoming more complex. The coverage, compliance, and jurisdictional determinations for out of state companies have increased significantly. Delinquent premiums associated with out of state companies have increased as well, making the collections process more problematic.

Managing the more complex and increased workloads with existing staffing levels while at the same time trying to maintain an acceptable level of service has been a significant challenge. In

reviewing periodic performance measurements there has been deterioration in claim and bill processing times, an increase in the number of employers that are not in good standing, and an increase in WSI staff turnover. To help mitigate and reverse these trends, WSI has hired a number of temporary employees within various departments. Additionally, through attrition and turnover, WSI evaluates FTE positions as they come open to determine whether allocation elsewhere is necessary.

Safety Focus. Ensuring employers maintain a continued focus on safety in a low premium/high dividend environment continues to be challenging. In addition, the increased business activity has resulted in a demand for more specialized safety and loss control services.

Technology. WSI is in the midst of a multi-year system replacement project. Effective December 31, 2012 one of the major vendors on the project, Aon, was relieved of their duties with their contract being neither renewed nor extended. From here, WSI plans to find a new partner to fill Aon's role and to finish the project. The ongoing challenge will be to continue to work towards a successful implementation.

Historical Workers Compensation Benefit Enhancement Legislation2008 Legislation

- Establishes a vocational rehabilitation grant program (HB 1050)
- Provides up to two years of benefits for workers injured within two years of their presumed retirement date (HB 1051)
- Reduces the threshold for percentage of whole body impairment to qualify for a PPI award (HB 1055)
- Increases permanent partial impairment awards (multipliers) for the lower impairment levels (HB 1055)
- Expands eligibility for the scholarship program (SB 2114)
- Increases the annual cap that the organization can award in scholarships from \$300,000 to \$500,000 (SB 2114)
- Increases the maximum scholarship amount payable per applicant from \$4,000 per year to \$10,000 per year (SB 2114)
- Streamlines the personal reimbursement process for injured workers (SB 2114)
- Expands eligibility for the educational revolving loan fund (SB 2114)

2009 Legislation

- Provides for payment of eyeglasses and other devices if an injury occurs and damages those prescriptive devices (HB 1061)
- Provides for an extension of an additional 20 weeks to the current 104-week limit for retraining programs (HB 1062)
- Increases the eligibility pool for job search benefits (HB 1062)
- Establishes pilot program to assess new methods of providing rehabilitation services (HB 1062)
- Establishes parameters of liability for medical expenses paid for treatment of unknown pre-existing conditions (HB 1063)
- Shortens eligibility period for cost of living adjustments (COLAs) for pre-1/1/06 total disability claims from 7 to 3 years (HB 1064)
- Expands COLA eligibility for pre-1/1/06 claims to include both permanent total and temporary total benefit recipients (HB 1064)
- Outlines coverage parameters for emergency volunteer healthcare practitioners (HB 1073)
- Increases the maximum disability benefit from 110% to 125% of the state's average weekly wage (SAWW) (HB 1101)
- Increases lifetime cap on death benefits from \$250,000 to \$300,000 (HB 1101)
- Increases burial expense from \$6,500 to \$10,000 and one-time payments for spouses and dependent children (HB 1101)
- Increases the dependency allowance from \$10 to \$15 per week per child (HB 1101)
- Increases pre-acceptance disability benefits from the minimum benefit rate to the standard rate (HB 1101)
- Increases travel and other personal reimbursements on aggravation claims to 100% (HB 1101)
- Provides up to six months benefits for the surviving spouse of a PTD that provided home health care during disability (HB 1455)
- Provides that OAH conduct WSI hearings and that OAH's decisions are final (HB 1464)
- Provides for a study of the post-retirement benefit structure to be conducted during the interim (HB 1525)
- Provides that WSI outline reasons for disregarding a treating doctor's opinion (HB 1561)
- Resolution to study workers' compensation laws regarding pre-existing injuries (HCR 3008)
- Resolution to study injured worker access to legal representation (HCR 3013)
- Establishes a clear and convincing evidence standard to rebut the presumption clause (SB 2055)
- Provides door to door reimbursement of mileage to attend medical appointments (SB 2056)
- Establishes a PPI schedule award for the partial loss of eye sight (SB 2057)
- Distinguishes an independent medical exam (IME) from an independent medical record review (IMR) (SB 2058)
- Provides for attorney fees and costs for review of a claim after OIR completion (SB 2059)
- Provides for a rehab training expense for maintaining a second household or traveling more than 25 miles to school (SB 2419)
- Provides that WSI make a reasonable effort to designate an IME doctor within a certain radius of worker's residence (SB 2431)
- Shortens the time period in which an injured worker can request a change of doctor (SB 2432)
- Provides that WSI notify injured workers of work search obligations (SB 2433)

2007 Legislation

- Provided funds for the purchase or adaptation of motor vehicles for the catastrophically injured (HB 1038)
- Provided increased post-retirement additional benefits for certain injured workers (HB 1038)
- Expanded the population that is eligible for death benefits (HB 1038)
- Shortened eligibility period for cost of living adjustments (COLAs) from seven years to three years (HB 1038)
- Expanded the eligibility pool for WSI's revolving loan fund (HB 1038)
- Provided inflation adjustment for long-term Temporary Partial Disability benefit recipients (HB 1140)
- Provided funds for the purchase or adaptation of motor vehicles for catastrophic and exceptional circumstance claims (HB 1411)
- Provided benefits for firefighters and law enforcement officers in the event of a false positive test (SB 2042)

2005 Legislation

- Established additional safety incentives (HB 1125)
- Established ongoing funding for safety education, grant, and incentive programs (HB 1125)
- Added retraining options for injured workers (HB 1171)
- Established an injured worker educational revolving loan fund (HB 1491)
- Increased the non-dependency death award (HB 1506)
- Increased post-retirement additional benefit payments (SB 2351)

2003 Legislation

- Increased lifetime cap on death benefits from \$197,000 to \$250,000 (HB 1060)
- Established a \$50,000 home remodeling and vehicle adaptation allowance for catastrophic injured workers (HB 1060)
- Increased the maximum amounts for scholarship awards (HB 1120)

2001 Legislation

- Increased certain permanent partial impairment awards (HB 1161)

1999 Legislation

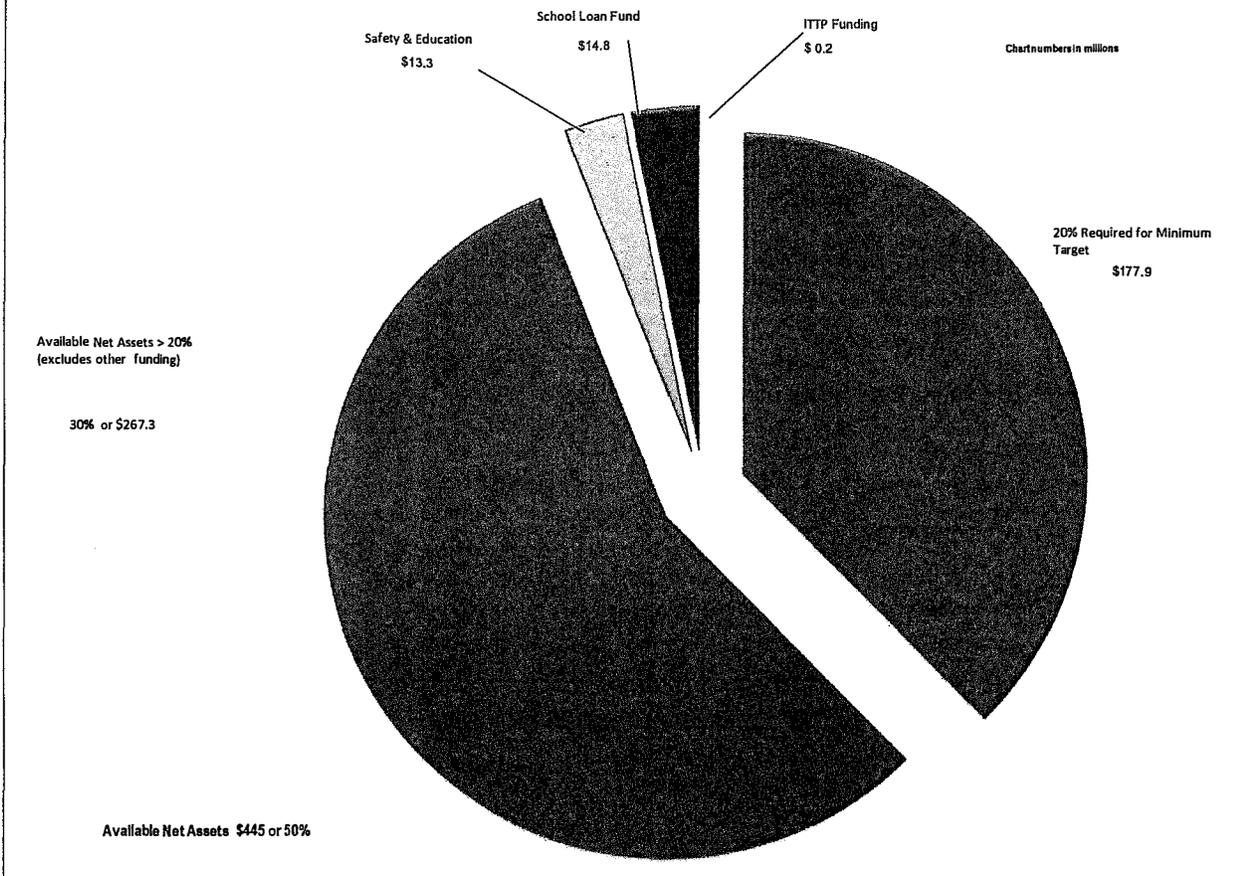
- Increased permanent partial impairment awards for the severely impaired (HB 1422)
- Increased the maximum disability benefit from 100% to 110% of the State's Average Weekly Wage (SB 2214)
- Shortened the waiting period for eligibility for cost of living adjustments from 10 years to 7 years (SB 2214)

1997 Legislation

- Increased weekly death benefits for surviving spouses (SB 2116)
- Created the Guardian Scholarship program (SB 2116)
- Established a post-retirement additional benefit (SB 2125)

Net Asset Detail November 30, 2012

Attachment B



	Actual June 2011	Actual June 2012	Y-T-D Nov 2012
NET ASSETS or "SURPLUS"	\$ 393,127,850	\$ 374,604,802	\$ 473,631,583
Estimated Discounted Financial Reserves	814,023,000	865,645,000	889,713,945
Net Assets (Surplus)	\$ 393,127,850	\$ 374,604,802	\$ 473,631,583
2009 HB 1035 Allowable Deductions from Net Assets (Surplus)			
Safety & Education Grants	8,561,019	18,406,760	13,300,692
Revolving School Loan Fund	14,877,759	14,842,186	14,831,686
ITTP/AIM Update	3,035,684	706,652	221,707
Total Exclusions from Net Assets (Surplus)	26,474,462	33,955,598	28,354,085
Available Fund Surplus	\$ 366,653,388	\$ 340,649,204	\$ 445,277,498
	45.0%	39.4%	50.0%

2

Workforce Safety & Insurance 2005 - 2012 Quick Facts

Category	2005	2006	2007	2008	2009	2010	2011	2012
Employer accounts	19,586	19,756	19,672	19,777	19,946	20,316	21,552	23,812
Earned premiums (\$millions) ¹	\$108.4	\$121.6	\$128.1	\$143.0	\$160.7	\$153.7	\$191.8	\$255.9
Fund surplus, with applicable discount on liabilities (\$millions) ^{2, 5}	\$421.0	\$428.8	\$466.8	\$386.0	\$265.6	\$336.2	\$393.1	\$374.6
Declared Premium Dividends (\$millions) ⁵	\$51.2	\$52.6	\$67.9	\$91.6	\$0.0	\$76.5	\$102.0	\$142.5
Actual premium dividends ⁸	\$52.9	\$55.6	\$67.9	\$97.5	-\$3.3	\$74.9	\$108.0	\$144.5
Investments (\$millions)	\$1,169	\$1,201	\$1,301	\$1,259	\$1,084	\$1,213	\$1,351	\$1,435
Investment returns	7.20%	3.45%	10.33%	0.57%	-10.25%	11.94%	13.26%	6.14%
Average annual premium adjustment ⁴	7.9%	5.3%	3.0%	2.2%	2.5%	-2.5%	3.4%	0.6%
Covered workforce	311,200	318,240	326,100	332,170	340,915	340,117	348,743	369,996
Medical-only claims filed	17,424	19,268	19,022	18,771	18,161	17,029	19,036	21,681
Wage-loss claims filed	2,463	2,320	2,287	2,290	2,382	2,359	2,657	2,966
Total claims filed	19,887	21,588	21,309	21,061	20,543	19,388	21,693	24,647
Total claims filed per 100 Covered Workers	6.39	6.78	6.53	6.34	6.03	5.70	6.22	6.66
Wage-loss claims filed per 100 Covered Workers	0.79	0.73	0.70	0.69	0.70	0.69	0.76	0.80
General Administrative and ULAE Expenses (\$millions)	\$16.7	\$17.4	\$20.7	\$28.0	\$23.6	\$25.9	\$24.4	\$28.4
General Administrative Expense and ULAE Ratio	15.4%	14.3%	16.2%	19.6%	14.7%	16.9%	12.7%	11.1%
Indemnity benefits paid (\$millions)	\$36.9	\$37.0	\$35.2	\$44.8	\$42.5	\$44.8	\$47.6	\$54.4
Medical benefits paid (\$millions)	\$47.8	\$42.4	\$48.0	\$54.8	\$69.0	\$64.7	\$72.6	\$76.1
Allocated Loss Adjustment Expense (ALAE) paid (\$millions)	\$3.8	\$3.3	\$3.5	\$3.9	\$3.3	\$3.9	\$4.0	\$3.7
Total paid benefits (\$millions)	\$88.5	\$82.7	\$86.7	\$103.5	\$114.8	\$113.5	\$124.2	\$134.2
Maximum weekly wage-loss benefit	\$577	\$624	\$653	\$689	\$832	\$853	\$905	\$995
Minimum weekly wage-loss benefit	\$315	\$341	\$356	\$376	\$399	\$410	\$435	\$478
Claims adjudicated within 14 days	72%	63%	55%	55%	54%	52%	49%	47%
Claims Reported within 14 days	75%	83%	85%	86%	85%	85%	86%	86%
Litigation requests	224	209	231	160	153	184	200	190
Injured Worker Independent Customer Satisfaction Survey (1 to 5 scale) ⁶	4.35	4.38	4.28	4.25	4.34	4.16	4.23	4.15
Employer Independent Customer Satisfaction Survey (1 to 5 scale) ⁷	4.20	4.21	4.05	4.07	4.13	4.11	4.22	3.67
WSI employee turnover rate	8%	12%	10%	16%	4%	2%	5%	7%

¹Reflects earned premiums before reinsurance and dividends

²Previously noted as total fund surplus - includes net assets designated for discount (6% discount 1999-2004, 5% discount thereafter)

³Previously noted as reserved fund surplus & contingency reserve.

⁴ Calculated by Actuary - Rate Review

⁵Restated FYs 05 & 06 due to prior period adjustment

⁶Starting with FY07 the injured worker survey population includes claims 60-120 days post acceptance, closed claims, claims open > 1 year, and denied claims

⁷Starting with FY07 the employer survey questions were changed to address new programs in Employer Services

Quick Guide to Workers Compensation Benefits

Wage Replacement and Additional Benefits:

Temporary Total Disability (TTD)

- An injured worker receives tax-free wage-loss benefits equal to $\frac{2}{3}$ ^{rds} of the worker's pre-injury gross weekly wage, plus \$15 per week for each dependent child, subject to statutory maximums and minimums.
- TTD benefits are provided for a period of up to 104 weeks or the date the injured worker reaches maximum medical improvement, whichever occurs first.
- North Dakota's maximum weekly wage-loss benefit is 125% of the State's Average Weekly Wage (SAWW). For Fiscal Year 2013 the maximum is \$995 per week.
- North Dakota has one of the highest minimum wage-loss benefit rates in the country. The minimum benefit is 60% of the SAWW or 100% of the worker's pre-injury net wages, whichever is less. The minimum benefit for Fiscal Year 2013 is \$478 per week.

Temporary Partial Disability (TPD)

- An injured worker who is able to return to work but earns a wage lower than their pre-injury wage receives temporary partial disability (TPD) benefits equal to $\frac{2}{3}$ rds of the difference between their pre-injury and post-injury earnings.
- The partial disability benefits and post injury wages may not exceed the pre-injury wages and may not exceed five years. The five year cap on benefits can be waived in catastrophic cases.

Permanent Total Disability (PTD)

- For injuries resulting in permanent total disability, temporary total disability (pre-January 1, 2006), or death, benefit recipients are entitled to supplementary benefits (cost of living adjustments or COLA's) after three consecutive years of disability. Annual adjustments equal the percent increase in the SAWW.

Offsets

- WSI offsets social security disability benefits when the injured worker is receiving total disability benefits from WSI and has also qualified for Social Security Disability benefits. WSI's offset is 50% of the initial benefit paid by the Social Security Administration (SSA). The offset amount is neither changed nor adjusted for the annual cost of living adjustments (COLAs) the injured worker receives from the SSA.
- WSI offsets social security retirement benefits for 1989 to 1995 injuries that resulted in Permanent Total Disability. The amount of the offset is based on a ratio of their wages at time of injury to the current state's average weekly wage and cannot exceed 40% of the injured worker's weekly social security retirement benefit. WSI's conversion from offsetting an injured worker's social security disability benefits to offsetting an injured worker's social security retirement benefits may not result in a decrease in the aggregate amount of benefits received from both sources.

Retirement

- For workers injured during their post-retirement years, disability and vocational rehabilitation benefits are capped at three years. Lifetime medical and Permanent Partial Impairment (PPI) benefits related to their work injury are not affected.
- For post-1995 injuries, wage-loss benefits end at the time of social security retirement eligibility at which time the wage-loss benefits convert to an Additional Benefit Payable (ABP), a post retirement benefit.
- Up to two years of benefits are allowed for those workers injured within two years of their presumed retirement date.

Revolving Loan Fund

- This fund is for injured workers, surviving spouse, or dependent children of an injured worker.
- Maximum amount payable to an individual may not exceed \$50,000 and is payable for up to five years.
- Loans must be repaid within 20 years and may not exceed the rate of 1% below the Bank of North Dakota's prime rate.

Additional Benefit Payable (ABP)

- For post-1995 injuries, North Dakota offers an additional benefit commencing at the time of retirement, when wage-loss benefits end.
- The amount and duration of this benefit are commensurate with the benefit amount the injured worker was receiving at the time of retirement eligibility and the length of time the worker was disabled before retirement.
- Catastrophically injured workers receive an additional benefit of 100% of their disability benefit at the time of their discontinuance for the remainder of their lifetime.

Vocational Rehabilitation Benefits

- Qualified injured workers may receive payment for up to 104 weeks of retraining, tuition and costs, with continued medical coverage. Wage-loss benefits (Rehab Allowance) continue through the completion of the program. WSI may extend an additional 20 weeks to the 104-week limit for those injured workers in a vocation rehabilitation training programs.
- WSI pays an additional 30% allowance for maintaining a second domicile and also pays up to a 30% mileage allowance for travel to and from a retraining program.
- Qualified injured workers may also be eligible for scholarships and low-interest loans through an educational revolving loan fund.
- Upon completion of retraining, wage loss benefits can extend for up to two months to assist the injured worker in their work search. Additionally, if eligible, injured workers can receive up to one year of post rehabilitation benefits, a partial rehabilitation benefit based on earning potential.

Permanent Partial Impairment Benefits (PPI)

- PPI benefits are one-time, lump-sum cash awards paid in addition to medical, wage-loss, and vocational rehabilitation benefits.
- PPI benefits are determined as a percent of whole-body impairment, and paid according to a schedule that assigns a multiplier to each percent of impairment starting at 14%.
- The current PPI benefit rate for Fiscal Year 2013 is 35% of the SA WW (currently \$279) times the multiplier in effect on the date of the impairment evaluation.

Death Benefits

- A surviving spouse receives a weekly benefit that equals $2/3^{\text{rds}}$ of the decedent's pre-injury gross weekly wage, subject to statutory maximums and minimums.
- Incidental expenses are paid at the time of death in the amount of \$2,500 for the surviving spouse and \$800 for each dependent child.
- Burial expense reimbursement is up to \$10,000.
- The lifetime cap on death benefits, paid on any one claim, is \$300,000.
- WSI *does not* offset social security survivor's benefits.
- A non-dependency death award in the amount of \$15,000 is issued to the closest surviving relative for workers who died as a result of a compensable work injury and have no surviving dependents.
- A surviving spouse may receive up to six months of a decedent's benefits if the decedent was permanently and totally disabled for at least 10 years, was married to the surviving spouse for at least 10 years, and the surviving spouse provided WSI approved home health care for the decedent.
- Scholarships are provided for dependents and spouses of workers who died as a result of a compensable work related injury. The maximum amount payable on behalf of an applicant is \$10,000 per year for no more than five years. The total amount of scholarships awarded for any one year cannot exceed \$500,000.

Medical Benefits:

- WSI pays for all reasonable and necessary medical care of a work injury, at no cost (no co-pays; no deductibles) to the injured worker.
- There is no maximum dollar limit on medical coverage.
- WSI can pay an allowance of up to \$75,000 for remodeling or adaptations to homes and up to \$100,000 for vehicles and vehicle adaptations for the catastrophically injured.

① SB 2321
3-20-2013

2013 Engrossed Senate Bill No. 2321
Testimony before the House Industry, Business, and Labor Committee
Presented by: Rob Forward, Staff Attorney
Workforce Safety & Insurance
March 20, 2013

Good morning Mr. Chairman and Members of Committee:

My name is Rob Forward. I am a staff attorney at Workforce Safety & Insurance (WSI) and on behalf of the Agency I am here to support engrossed SB 2321. The WSI Board of Directors supports this bill.

This bill would increase benefits by changing the calculation of disability benefits for volunteer firefighters.

Currently, all injured workers' disability benefits are calculated using amounts they earn from all employers that have to carry workers' compensation coverage, but income from employers that are not required to have coverage, and have not voluntarily purchased it, is not included. For example, if John Doe is an injured worker employed by Bobcat and John Doe is also a self-employed farmer and he has not purchased coverage for himself when he farms, only the income from Bobcat will be used to calculate his disability benefits. If SB 2321 were to become law, John Doe's farming income would be included in the calculation of his disability benefits along with the wages from Bobcat if he were to be injured as a volunteer firefighter.

WSI's actuaries predict that although an upward adjustment for this particular rate classification would occur, the bill would not have a substantial fiscal impact.

The application section, requested by WSI in the Senate, clarifies that the proposed changes in this bill apply to claims filed on or after the effective date.

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