

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2014**

Bill/Resolution No.: HB 1120

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 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.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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).*

No fiscal impact associated with this measure. DOCR-RR1 will continue paying a premium to Risk Management to participate in the RM Workers Compensation Program and the deductible program. If approved this measure will extend coverage to inmates working in the PIE Certification Program.

- 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.*

No fiscal impact anticipated

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.*

n/a

- 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.*

No material fiscal impact anticipated

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No material fiscal impact anticipated

**Name:** Dave Krabbenhoft

**Agency:** Department of Corrections and Rehabilitation

**Telephone:** 701-328-6135

**Date Prepared:** 01/02/2015

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1120**

# 2015 HOUSE STANDING COMMITTEE MINUTES

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

HB 1120

1/13/2015

21873

☐ Subcommittee

☐ Conference Committee

*Ellen Letang*

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

Modified worker's compensation coverage for prison industries work programs through roughrider industries.

### Minutes:

Attachment 1

**Rick Gardner~Director of Rough Rider Industries-On behalf of the Department of Corrections & Rehabilitation.** (Attachment 1).

3:31

**Representative M Nelson:** What happens to inmates that are permanently disabled for a period of time and their interment is over and they are out in society. How are they taken care of?

**Gardner:** They have coverage for them.

**Representative M Nelson:** Are they limited to 90%?

**Gardner:** I'm not sure.

**Representative Amerman:** If you have WSI coverage and the audit said it didn't comply; now this bill will put you back?

**Gardner:** We were working under the assumption that we were covered under state coverage, but statute points out that we were to get insurance coverage for that PIECP program on our own. We are asking to bring it back under the state's umbrella.

**Representative Ruby:** Under the excess coverage, were the provision of benefits defined the way they are under WSI or do you not have them at all?

**Gardner:** We never had them. We found out in an audit review.

**Todd Anderson~Director of the Risk Management Division:** OMB and Risk Management are in support of this bill.

**Representative Frantsvog:** Would you be providing the coverage for them?

**Anderson:** Yes.

**Representative Ruby:** The fiscal note says there is no impact, I assume that Roughrider Industries were covered under WSI and didn't have the access, were they paying premium just on those employees?

**Anderson:** Roughrider Industries was making a payment to WSI for PIECP inmate workers. We will now collect that and it will be the same dollar amount.

**Vice Chairman Sukut:** Is there anyone else here to testify in **support, opposition, neutral**. Closes the hearing. Committee, what are your wishes?

**Representative Lefor:** Motions a Do Pass on HB 1120.

**Representative Ruby:** Second.

**Vice Chairman Sukut:** Further discussion?

**Roll call was taken on HB 1120 with 14 yes, 0 no, 1 absent and Representative Amerman is the carrier.**

Date: Jan 20, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1120**

House Industry, Business & Labor Committee
☐ Subcommittee
                         
 ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment
☒ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation
☐ As Amended☐ Rerefer to AppropriationsOther Actions: ☐ Reconsider☐ \_\_\_\_\_
 Motion Made By Rep Lefor                      Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<u>Ab</u>		Representative Lefor	<u>X</u>	
Vice Chairman Sukut	<u>X</u>		Representative Louser	<u>X</u>	
Representative Beadle	<u>X</u>		Representative Ruby	<u>X</u>	
Representative Becker	<u>X</u>		Representative Amerman	<u>X</u>	
Representative Devlin	<u>X</u>		Representative Boschee	<u>X</u>	
Representative Frantsovog	<u>X</u>		Representative Hanson	<u>X</u>	
Representative Kasper	<u>X</u>		Representative M Nelson	<u>X</u>	
Representative Laning	<u>X</u>				

Total (Yes) 14 No 0Absent 1Floor Assignment Rep Amerman

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

**REPORT OF STANDING COMMITTEE**

**HB 1120: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1120 was placed on the Eleventh order on the calendar.

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1120**



# 2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1120  
3/9/2015  
Job Number 24469

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Eric Liebelt*

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

Relating to modified workers' compensation coverage for prison industries work programs through the Roughrider Industries

## Minutes:

Attachment

**Chairman Klein:** Opened the hearing.

**Rick Gardner, Director, Rough Rider Industries:** Written Testimony Attached (1). (:44-3:48)

**Chairman Klein:** This has been an issue you have hammered out working with interim committee, would you speak to the safety?

**Rick Gardner:** We have a very good safety track record. This applies to the PICEP program which currently employs two inmates in our sewing department, it is very low risk.

**Chairman Klein:** You are responsible for a lot of the tables we are sitting around right now?

**Rick Gardner:** Yes.

**Senator Campbell:** Are they not covered now?

**Rick Gardner:** If it is a non PICEP program that falls into the Department of Corrections. If they were to be hurt at work what this is speaking to basically those workers that are participating in the PICEP program which allow us to send goods in interstate commerce. It would speak to those and the way the law is written right now they would be uninsured. We would assume that the risk management division would cover that. We don't have excessive insurance for those right now.

**Chairman Klein:** This will take care of that?

**Rick Gardner:** Correct.

Chairman Klein: Closed the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1120  
3/9/2015  
Job Number 24474

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Eva Libelt*

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

Relating to modifies workers' compensation coverage for prison industries work programs through Roughrider Industries

### Minutes:

No Attachment

**Chairman Klein:** Committee back to 1120. I think it is a really important part of what they do out there, create jobs. Create something for those folks to do.

**Senator Sinner:** Moved a do pass.

**Senator Campbell:** Seconded the motion.

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

**Senator Campbell will carry the bill.**

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
HB 1120**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Sinner Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

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

**REPORT OF STANDING COMMITTEE**

**HB 1120: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1120 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1120**

**HOUSE INDUSTRY, BUSINESS, and LABOR COMMITTEE**  
**Chairman Keiser**

**Rick Gardner**  
**Director, Rough Rider Industries**  
**North Dakota Department of Corrections and Rehabilitation**  
**Presenting Testimony in House Bill 1120**  
**Tuesday, January 13, 2015**

Good morning Chairman Keiser and members of the Industry, Business and Labor Committee. My name is Rick Gardner and I am the Director of Rough Rider Industries. I am here on behalf of the Department of Corrections and Rehabilitation to provide supporting testimony regarding House Bill 1120.

There is a federal law, the Ashurst Sumners Act, which in part criminalizes the introduction of prison inmate manufactured goods into interstate commerce but is subject to a number of statutory exceptions. In 1978 there was a major prison riot in Pontiac, Illinois which was attributable to many factors, including overcrowding and old and obsolete facilities, but one factor that was identified was the lack of employment and training for inmates. The Congress responded with an amendment to the Ashurst Sumners Act which allowed certified prison industries programs to manufacture goods that could enter the stream of interstate commerce. The program is called the Prison Industries Enhancement Certification Program ("PIECP") The certification process required compliance with a number of federal statutory requirements, including consultation with local labor organizations to assure no displacement of employed workers, payment of wages that are not less than wages for similar work in the locality, and a system of workers compensation for the inmates employed in the program. The 1997 North Dakota Legislature enacted a modified workers compensation program and Rough Rider Industries was able to get its certification from the US Department of Justice shortly thereafter.

At some point in 2013, the Risk Management Division raised the question whether Risk Management's current excess and reinsurance program complied with the statutory requirements for reinsurance and excess coverage for the

modified workers compensation program for inmates working in Rough Rider's PIECIP program. In July of 2014, WSI completed an audit/safety and performance review of Rough Rider Industries Prison Industries Enhancement Certification Program and the modified program of workers compensation for inmates in the Rough Rider PIECP program. As a result of the review, the auditors concluded the North Dakota Department of Corrections and Rehabilitation ("ND DOCR") and Rough Rider Industries had not secured the statutorily required reinsurance or excess coverage specifically required under the modified workers compensation statutes, which was different than the coverage under Risk Management's current excess and reinsurance program.

It was determined it was not economically feasible for the ND DOCR and Rough Rider Industries to separately purchase the statutorily required excess or reinsurance coverage, in fact, it would be prohibitively expensive; however, Workforce Safety and Insurance ("WSI") and the Risk Management Division also determined that WSI's current excess and reinsurance program would provide adequate coverage for the modified workers compensation program.

Following the performance audit, it was recommended that the ND DOCR work with WSI and the Risk Management Division to make necessary statutory and administrative rule changes relating to securing excess or reinsurance coverage under the Rough Rider Industries PIECP modified workers compensation program. This information was presented to the Interim Workers' Compensation Review Committee and the Committee was advised an agency bill would be submitted to clarify the excess and reinsurance coverage requirements. A copy of the WSI Internal Audit Report was also presented to the Committee and is attached and made a part of this testimony.

House Bill 1120 is the result of those efforts and a do-pass is requested.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.



# WSI

North Dakota Workforce  
Safety & Insurance

## **Internal Audit Report**

of the

Modified Workers'  
Compensation  
Coverage Program

Report Date:

July 16, 2014

Report No.

2015-01

**TABLE OF CONTENTS**

---

**TRANSMITTAL LETTER.....i**

**INTRODUCTION.....1**

    PURPOSE OF THE REVIEW .....1

    BACKGROUND INFORMATION.....1

    OBJECTIVES OF THE REVIEW .....1

    SCOPE AND METHODOLOGY .....1

**MODIFIED WORKERS' COMPENSATION PROGRAM .....2**

    EXCESS COVERAGE OR REINSURANCE .....2

    CLAIMS FOR WORKERS COMPENSATION BENEFITS .....2

    MINIMUM PREMIUM .....2

**REVIEW RESULTS .....3**

**APPENDIX.....A1**

    SAFETY INSPECTION – JAMES RIVER CORRECTIONAL CENTER .....A1

---

July 16, 2014

Members of the North Dakota Interim Workers' Compensation Review Committee

Members of Workforce Safety and Insurance Board of Directors

Mr. Bryan Klipfel, Director, Workforce Safety & Insurance

Transmitted herewith is the performance review of the modified workers' compensation coverage program and safety inspection of the Rough Rider Industries work programs. This report contains the results of our review for the fiscal years 2013 and 2014. The performance review contains a review of Rough Rider Industries' evidence of excess or reinsurance coverage, any claims for benefits, and minimum premium and allocated loss adjustment expenses.

This review was conducted as mandated in North Dakota Century Code Chapter 65-06.2. Included in the report are the review objectives, findings, and conclusions.

Sincerely,

Micole Kvas  
Internal Audit Director  
Workforce Safety & Insurance  
1600 East Century Avenue, Suite 1  
Bismarck, ND 58506

## **INTRODUCTION**

---

### **Purpose of the Review**

North Dakota Century Code (NDCC) section 65-06.2-09, requires Workforce Safety & Insurance (WSI) to perform a biennial safety review of the Rough Rider Industries work programs covered under NDCC chapter 65-06.2 "Inmates of Penal Institutions" and a biennial performance review of the program of modified workers' compensation coverage. If WSI makes any recommendation for a change in either program as a result of the review, WSI shall submit a report with the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

The performance review of the program for modified workers' compensation coverage was conducted by WSI's Internal Audit Department while the safety inspection of Rough Rider Industries' Prison Industry Enhancement (PIE) Certification work programs was conducted by a WSI Safety Consultant.

### **Background Information**

To allow Rough Rider Industries to transport inmate produced goods through interstate commerce under the PIE Certification Program, the modified workers' compensation coverage program was established to provide coverage for inmates incarcerated in the State Penitentiary system who are working in a certified prison industry program.

In accordance with NDCC section 65-06.2, WSI, in cooperation with the Department of Corrections and Rehabilitation (DOCR), adopted administrative rules and fee schedules for the modified workers' compensation coverage program effective May 1, 1998. In March 1999, the DOCR, on behalf of Rough Rider Industries, applied for participation in the modified workers' compensation coverage program.

### **Objectives of the Review**

Our overall objective was to evaluate the performance of the modified workers' compensation coverage program as mandated in NDCC section 65-06.2. Specifically,

- Objective 1: Verify excess coverage or reinsurance has been obtained.
- Objective 2: Identify any claims filed for workers compensation benefits.
- Objective 3: Verify premiums and other costs being collected.

### **Scope and Methodology**

Audit fieldwork was conducted in June and July 2014. The review period for which information was collected and reviewed was from July 1, 2012 through June 30, 2014. Internal Audit performed this review using criteria contained in the NDCC; North Dakota Administrative Code (NDAC); and employer account files maintained within WSI's Policyholder Services and Safety/Loss Control departments. To achieve the review objective, electronic documents from the employer account files were obtained from Policyholder Services and Safety/Loss Control departments. This documentation was evaluated and compared with requirements established by NDCC and NDAC. Specific methodologies are identified in the respective sections of this report.

## **MODIFIED WORKERS' COMPENSATION COVERAGE PROGRAM**

### **Excess Coverage or Reinsurance**

NDCC sections 65-06.2-06 and 65-06.2-07 require Rough Rider Industries to secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund. The organization (WSI) may not provide the additional excess coverage or reinsurance. In addition, Rough Rider Industries must secure excess coverage or reinsurance to qualify for the modified workers' compensation coverage program. NDAC section 92-01-04-02 requires the DOCR to provide annual documentation of excess or reinsurance coverage to WSI.

Since the beginning of the modified workers' compensation coverage program in 1999, it had been determined that coverage available under the Risk Management Fund and its excess carrier were sufficient to meet the statutory requirements. WSI had been receiving a verification letter from the State's Risk Management Division annually indicating:

"This is to advise you that the excess and reinsurance coverages are in place to meet the requirements of N.D.C.C. § 65-06.2-06 and 65-06.2-07 with regard to the Rough Rider Industries Enhancements Certification Program. Said coverages will be provided by the North Dakota Risk Management Fund and its excess carrier."

WSI received this verification letter prior to the 2013 fiscal year, but did not receive one prior to the 2014 fiscal year, as Risk Management and DOCR were reviewing whether the prior interpretation/construction of the statutory requirements had been correct. The State's Risk Management Division has indicated that there is a limited amount of coverage available through the Risk Management Fund and its excess carrier, however there is no separately purchased workers' compensation excess or reinsurance coverage. It has been determined that it has not been feasible for Rough Rider Industries to separately purchase workers' compensation excess or reinsurance coverage.

It has since been determined by WSI and the State's Risk Management Division that the excess/reinsurance coverage maintained by WSI's third party is adequate for the purposes of covering Rough Rider Industries at this time regardless. WSI's current reinsurance coverage is for claims/events in excess of \$3 million and up to \$30 million. WSI has had excess/reinsurance coverage in place by a third party during calendar years 1999-2002 and 2010 to the present. The Risk Management Division and DOCR have indicated they will seek to clarify the necessary NDCC sections during the next legislative session. In addition, the applicable NDAC sections will be updated.

### **Claims for Workers Compensation Benefits**

All claims for workers' compensation coverage benefits must be filed according to NDCC section 65-05-01. Between the period of July 1, 2012 and June 30, 2014, there were no inmate injury claims filed.

### **Minimum Premium**

NDAC section 92-01-04-03 requires Rough Rider Industries be billed an annual amount equal to WSI's minimum premium charge to cover the expense of issuing coverage. WSI billed and Rough Rider Industries has paid the minimum annual premium of \$250 for the premium periods of July 1, 2012 through June 30, 2014.

## REVIEW RESULTS

---

Internal Audit noted reinsurance or excess coverage was not secured by the DOCR:

Internal Audit recommends the DOCR work with WSI and the State's Risk Management Division to make the necessary language changes to all applicable sections of the North Dakota Century Codes and Administrative Rules relating to securing excess or reinsurance coverage under the modified workers' compensation program. If necessary language changes are not made, the Rough Rider Industries PIE Certification Program should be discontinued and the workers' compensation account cancelled if at any point in time the excess/reinsurance coverage is no longer maintained by WSI's third party.





**North Dakota  
Workforce Safety  
& Insurance**  
*Putting Safety to Work*

**SAFETY INSPECTION  
REPORT**  
EMPLOYER SERVICES /  
LOSS CONTROL DIVISION  
SFN 10740 (09/2011)

1600 EAST CENTURY AVENUE, SUITE 1  
PO BOX 5585  
BISMARCK ND 58506-5585  
TELEPHONE 1-800-777-5033  
Toll Free Fax 1-888-786-8895  
TTY (he ring impaired) 1-800-366-8888  
Fraud and S fety Hotline 1-800-243-3331  
[www.WorkforceSafety.com](http://www.WorkforceSafety.com)

Company Name <b>Roughrider Industries PIE</b>		Name of Company Representative <b>Melissa Kleven</b>	Telephone Number <b>701-253-3628</b>
Inspection Location Address <b>James River Correctional Center</b>		Account Number	Inspection Date <b>5/22/2014</b>
Item #	Hazard(s) Identified		
	<p>A safety inspection was completed on May 22, 2014 for the purpose of NDCC 65-06.2-09. At the JRCC there were two employees that work approximately four months out of the year and about three days each of those four months. The work consists of using chemicals to clean material and sewing.</p> <ul style="list-style-type: none"><li>• Each employee said they use Personal Protective Equipment (PPE) for cleaning materials and safety glasses while using the sewing machine.</li><li>• Both employees were trained on how to use the eyewash station if case chemicals were splashed in the eyes.</li><li>• They knew where the Material Safety Data Sheets (MSDS) were located. The MSDS book was right next to the work stations and was able show the MSDS for each chemical used.</li><li>• They knew where the safety glasses or goggles are located along with the masks.</li></ul>		
Recommendation	Review the requirements for the Global Harmonization of the Right-to-Know, then train employees on the new Safety Data Sheets standards that are beginning to be in effect.		
	<a href="https://www.osha.gov/dsg/hazcom/index.html">https://www.osha.gov/dsg/hazcom/index.html</a>		

Abatement Procedure(s)

Customer Representative <b>Melissa Kleven</b>	Date <b>5/22/14</b>	WSI Representative <b>Jeff Mooridian</b>	Date <b>5/22/14</b>
--	------------------------	---	------------------------

**SENATE INDUSTRY, BUSINESS, and LABOR COMMITTEE****Chairman Klein****Rick Gardner****Director, Rough Rider Industries****North Dakota Department of Corrections and Rehabilitation****Presenting Testimony in House Bill 1120****Tuesday, January 13, 2015**

Good morning Chairman Klein and members of the Industry, Business and Labor Committee. My name is Rick Gardner and I am the Director of Rough Rider Industries. I am here on behalf of the Department of Corrections and Rehabilitation to provide supporting testimony regarding House Bill 1120.

There is a federal law, the Ashurst Sumners Act, which in part criminalizes the introduction of prison inmate manufactured goods into interstate commerce but is subject to a number of statutory exceptions. In 1978 there was a major prison riot in Pontiac, Illinois which was attributable to many factors, including overcrowding and old and obsolete facilities, but one factor that was identified was the lack of employment and training for inmates. The Congress responded with an amendment to the Ashurst Sumners Act which allowed certified prison industries programs to manufacture goods that could enter the stream of interstate commerce. The program is called the Prison Industries Enhancement Certification Program ("PIECP") The certification process required compliance with a number of federal statutory requirements, including consultation with local labor organizations to assure no displacement of employed workers, payment of wages that are not less than wages for similar work in the locality, and a system of workers compensation for the inmates employed in the program. The 1997 North Dakota Legislature enacted a modified workers compensation program and Rough Rider Industries was able to get its certification from the US Department of Justice shortly thereafter.

At some point in 2013, the Risk Management Division raised the question whether Risk Management's current excess and reinsurance program complied with the statutory requirements for reinsurance and excess coverage for the



modified workers compensation program for inmates working in Rough Rider's PIECIP program. In July of 2014, WSI completed an audit/safety and performance review of Rough Rider Industries Prison Industries Enhancement Certification Program and the modified program of workers compensation for inmates in the Rough Rider PIECP program. As a result of the review, the auditors concluded the North Dakota Department of Corrections and Rehabilitation ("ND DOCR") and Rough Rider Industries had not secured the statutorily required reinsurance or excess coverage specifically required under the modified workers compensation statutes, which was different than the coverage under Risk Management's current excess and reinsurance program.

It was determined it was not economically feasible for the ND DOCR and Rough Rider Industries to separately purchase the statutorily required excess or reinsurance coverage, in fact, it would be prohibitively expensive; however, Workforce Safety and Insurance ("WSI") and the Risk Management Division also determined that WSI's current excess and reinsurance program would provide adequate coverage for the modified workers compensation program.

Following the performance audit, it was recommended that the ND DOCR work with WSI and the Risk Management Division to make necessary statutory and administrative rule changes relating to securing excess or reinsurance coverage under the Rough Rider Industries PIECP modified workers compensation program. This information was presented to the Interim Workers' Compensation Review Committee and the Committee was advised an agency bill would be submitted to clarify the excess and reinsurance coverage requirements. A copy of the WSI Internal Audit Report was also presented to the Committee and is attached and made a part of this testimony.

House Bill 1120 is the result of those efforts and a do-pass is requested.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

**WSI**

North Dakota Workforce  
Safety & Insurance

# **Internal Audit Report**

of the

**Modified Workers'  
Compensation  
Coverage Program**

Report Date:

July 16, 2014

Report No.

2015-01

---

**TABLE OF CONTENTS**

---

<b>TRANSMITTAL LETTER.....</b>	<b>i</b>
<b>INTRODUCTION.....</b>	<b>1</b>
PURPOSE OF THE REVIEW .....	1
BACKGROUND INFORMATION.....	1
OBJECTIVES OF THE REVIEW .....	1
SCOPE AND METHODOLOGY .....	1
<b>MODIFIED WORKERS' COMPENSATION PROGRAM.....</b>	<b>2</b>
EXCESS COVERAGE OR REINSURANCE .....	2
CLAIMS FOR WORKERS COMPENSATION BENEFITS.....	2
MINIMUM PREMIUM .....	2
<b>REVIEW RESULTS .....</b>	<b>3</b>
<b>APPENDIX.....</b>	<b>A1</b>
SAFETY INSPECTION – JAMES RIVER CORRECTIONAL CENTER .....	A1

---

July 16, 2014

Members of the North Dakota Interim Workers' Compensation Review Committee

Members of Workforce Safety and Insurance Board of Directors

Mr. Bryan Klipfel, Director, Workforce Safety & Insurance

Transmitted herewith is the performance review of the modified workers' compensation coverage program and safety inspection of the Rough Rider Industries work programs. This report contains the results of our review for the fiscal years 2013 and 2014. The performance review contains a review of Rough Rider Industries' evidence of excess or reinsurance coverage, any claims for benefits, and minimum premium and allocated loss adjustment expenses.

This review was conducted as mandated in North Dakota Century Code Chapter 65-06.2. Included in the report are the review objectives, findings, and conclusions.

Sincerely,

Micole Kvas  
Internal Audit Director  
Workforce Safety & Insurance  
1600 East Century Avenue, Suite 1  
Bismarck, ND 58506

## **INTRODUCTION**

---

### **Purpose of the Review**

North Dakota Century Code (NDCC) section 65-06.2-09, requires Workforce Safety & Insurance (WSI) to perform a biennial safety review of the Rough Rider Industries work programs covered under NDCC chapter 65-06.2 "Inmates of Penal Institutions" and a biennial performance review of the program of modified workers' compensation coverage. If WSI makes any recommendation for a change in either program as a result of the review, WSI shall submit a report with the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

The performance review of the program for modified workers' compensation coverage was conducted by WSI's Internal Audit Department while the safety inspection of Rough Rider Industries' Prison Industry Enhancement (PIE) Certification work programs was conducted by a WSI Safety Consultant.

### **Background Information**

To allow Rough Rider Industries to transport inmate produced goods through interstate commerce under the PIE Certification Program, the modified workers' compensation coverage program was established to provide coverage for inmates incarcerated in the State Penitentiary system who are working in a certified prison industry program.

In accordance with NDCC section 65-06.2, WSI, in cooperation with the Department of Corrections and Rehabilitation (DOCR), adopted administrative rules and fee schedules for the modified workers' compensation coverage program effective May 1, 1998. In March 1999, the DOCR, on behalf of Rough Rider Industries, applied for participation in the modified workers' compensation coverage program.

### **Objectives of the Review**

Our overall objective was to evaluate the performance of the modified workers' compensation coverage program as mandated in NDCC section 65-06.2. Specifically,

- Objective 1: Verify excess coverage or reinsurance has been obtained.
- Objective 2: Identify any claims filed for workers compensation benefits.
- Objective 3: Verify premiums and other costs being collected.

### **Scope and Methodology**

Audit fieldwork was conducted in June and July 2014. The review period for which information was collected and reviewed was from July 1, 2012 through June 30, 2014. Internal Audit performed this review using criteria contained in the NDCC; North Dakota Administrative Code (NDAC); and employer account files maintained within WSI's Policyholder Services and Safety/Loss Control departments. To achieve the review objective, electronic documents from the employer account files were obtained from Policyholder Services and Safety/Loss Control departments. This documentation was evaluated and compared with requirements established by NDCC and NDAC. Specific methodologies are identified in the respective sections of this report.

## **MODIFIED WORKERS' COMPENSATION COVERAGE PROGRAM**

### **Excess Coverage or Reinsurance**

NDCC sections 65-06.2-06 and 65-06.2-07 require Rough Rider Industries to secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund. The organization (WSI) may not provide the additional excess coverage or reinsurance. In addition, Rough Rider Industries must secure excess coverage or reinsurance to qualify for the modified workers' compensation coverage program. NDAC section 92-01-04-02 requires the DOCR to provide annual documentation of excess or reinsurance coverage to WSI.

Since the beginning of the modified workers' compensation coverage program in 1999, it had been determined that coverage available under the Risk Management Fund and its excess carrier were sufficient to meet the statutory requirements. WSI had been receiving a verification letter from the State's Risk Management Division annually indicating:

"This is to advise you that the excess and reinsurance coverages are in place to meet the requirements of N.D.C.C. § 65-06.2-06 and 65-06.2-07 with regard to the Rough Rider Industries Enhancements Certification Program. Said coverages will be provided by the North Dakota Risk Management Fund and its excess carrier."

WSI received this verification letter prior to the 2013 fiscal year, but did not receive one prior to the 2014 fiscal year, as Risk Management and DOCR were reviewing whether the prior interpretation/construction of the statutory requirements had been correct. The State's Risk Management Division has indicated that there is a limited amount of coverage available through the Risk Management Fund and its excess carrier, however there is no separately purchased workers' compensation excess or reinsurance coverage. It has been determined that it has not been feasible for Rough Rider Industries to separately purchase workers' compensation excess or reinsurance coverage.

It has since been determined by WSI and the State's Risk Management Division that the excess/reinsurance coverage maintained by WSI's third party is adequate for the purposes of covering Rough Rider Industries at this time regardless. WSI's current reinsurance coverage is for claims/events in excess of \$3 million and up to \$30 million. WSI has had excess/reinsurance coverage in place by a third party during calendar years 1999-2002 and 2010 to the present. The Risk Management Division and DOCR have indicated they will seek to clarify the necessary NDCC sections during the next legislative session. In addition, the applicable NDAC sections will be updated.

### **Claims for Workers Compensation Benefits**

All claims for workers' compensation coverage benefits must be filed according to NDCC section 65-05-01. Between the period of July 1, 2012 and June 30, 2014, there were no inmate injury claims filed.

### **Minimum Premium**

NDAC section 92-01-04-03 requires Rough Rider Industries be billed an annual amount equal to WSI's minimum premium charge to cover the expense of issuing coverage. WSI billed and Rough Rider Industries has paid the minimum annual premium of \$250 for the premium periods of July 1, 2012 through June 30, 2014.

## **REVIEW RESULTS**

---

Internal Audit noted reinsurance or excess coverage was not secured by the DOCR:

Internal Audit recommends the DOCR work with WSI and the State's Risk Management Division to make the necessary language changes to all applicable sections of the North Dakota Century Codes and Administrative Rules relating to securing excess or reinsurance coverage under the modified workers' compensation program. If necessary language changes are not made, the Rough Rider Industries PIE Certification Program should be discontinued and the workers' compensation account cancelled if at any point in time the excess/reinsurance coverage is no longer maintained by WSI's third party.



**EMPLOYER SERVICES /  
LOSS CONTROL DIVISION**  
SFN 10740 (09/2011)

**1600 EAST CENTURY AVENUE, SUITE 1  
PO BOX 5585  
BISMARCK ND 58506-5585  
TELEPHONE 1-800-777-5033  
Toll Free Fax 1-888-786-8695  
TTY (hearing impaired) 1-800-366-6888  
Fraud and Safety Hotline 1-800-243-3331  
[www.WorkforceSafety.com](http://www.WorkforceSafety.com)**

<b>Customer Representative</b> <b>Melissa Kleven</b>	<b>Date</b> <b>5/22/14</b>	<b>WSI Representative</b> <b>Jeff Mooridian</b>	<b>Date</b> <b>5/22/14</b>
---	-------------------------------	--	-------------------------------