

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1262

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1262
1/16/2017
26932

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Study of the regulation of workforce safety & insurance and report to the legislative management.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing of HB 1262.

Representative M Nelson-District 9: Attachment 1.

4:20

Rep Kasper: The legislative action, why you choose to have the Insurance Commissioner & Safety Development director to study opposed to a legislative study?

Nelson: This is a complicated issue; I think doing it this way would be more efficient.

Rep Ruby: Don't you think before they go whole process of developing the plan, they should study & evaluate first before they develop? You talked about hiring a third party to before the evaluation & development of the implementation plan. It seems another layer of expense & burden that would be much more difficult. If it's not workable, then there is no need to develop a plan.

Nelson: It does say it may, not that they have contract with a 3rd party. It leaves some flexibility. I feel the plan will come out when you study & evaluate it.

Rep Ruby: The department comes up with a fiscal note, you used a cost benefit analysis. Do you think there will be a cost & a benefit of doing it under a plan that might be devolved? That's more private than government.

Nelson: Yes, it's often more used. I do believe there is more efficiencies, we are duplicating the expertise twice. It should be more efficient to do it in one place instead of two.

Chairman Keiser: Anyone else here to testify in support, opposition?

Anne Green~Legal Service Director of Workforce Safety & Insurance (WSI):
Attachment 2.

12:32

Rep Beadle: Do you see an inherent conflict in dealing with the adjudication of a claim while also keeping in mind what the balance & solvency of the fund?

Green: I asked that question myself when I started 17 years ago, is there a conflict? As I have come to know & be part of the organization, you could argue it one of 2 ways. Either it's I drank the cool-aid or the check & balances inherent within the organization that keeps an eye on the fund.

Rep Beadle: I could argue whether the 1st priority should be above the 2nd priority about whether the workers or the fund comes first. Do you know whether the other 3 states regulate themselves that are monopolistic like ND?

Green: Depending on the jurisdiction, in ND it's WSI. In the other monopolistic environments, there is a dept of labor & industry, which acts as an umbrella to sometimes a number of other agencies.

Rep Kasper: Your testimony says managed & regulated in the worker's compensation fund. Tell me the difference between the management of funds & the day to day operations?

Green: The fund is handled internally through our division finance, through policy holder's services division. Our division of finance handles the budgeting, expenditures & the day to day operations. Our policy holder's division handles things like the underwriting premiums & making of rate.

Rep Kasper: The fund itself, who is managing the investment of the assets in watching to be sure that, that is the fund?

Green: The State Investment Board.

Rep Ruby: You mentioned that this was studied in 2009 & studying it again would likely yield the same results. Was it all studied or was the bill considered (inaudible).

Green: It was a combination of both.

Chairman Keiser: Just a clarification, it is true in all other states that have worker's comp, it's being run but it's under the umbrella of financial institution department. I don't know of an agency that we haven't provided more oversight than WSI. We moved it back to the governor because it was under a board. Now, an advisory board, they cannot make policy decision, they can only be made through the governor's office. In addition, no state has the interim WSI committee that oversees the daily activities, literally of the agencies. The legislature plays an oversight role; much larger than any state I know. What we would gain here, I'm not certain. Don't you think we have enough management of WSI?

Green: Absolutely, not only from the legislative branch but also the executive branch, as well as the judicial branch.

Chairman Keiser: It's much easier for a WSI claim to go through the court system than just a regular insurance claim.

Green: Yes.

Russ Hanson~Associated General Contractors of ND: We are in opposition of HB 1162 & exercise caution. I went to a national convention for WSI & other state said that ND has set the bar & the rest of us are chasing it. We think things are working.

Rep C Johnson: The actual grievance procedure that an employee goes through to get a bad shake on an insurance claim with WSI?

Hanson: There are a number of processes that are available if they feel aggrieved.

Chairman Keiser: Would WSI come up & address that issue.

Green: Are you asking about the appeal process for an injured worker or for an employer?

Rep C Johnson: That right.

Green: Any decision is appealable in terms of a benefit, a rate classification or a finding that an employer is an employer doing work in ND. They have 30 days to appeal a decision in writing from the date that we issue it. Once they appeal that, they are entitled to an administrative hearing through the office of administrative hearings, that is heard by a judge who issues a written opinion. If they don't like that opinion, either WSI or the injured worker/employer can appeal to the district court. If any of the parties don't like that decision, either the employer, WSI or injured can appeal to the supreme court.

Chairman Keiser: Supreme court is final.

Green: Yes.

Arik Spencer~ND Motor Carriers Association: We echo Mr Hanson testimony.

Chairman Keiser: Anyone else here to testify in opposition, neutral position. Closes the hearing. What are the wishes of the committee?

Rep Kasper: Moves a Do Not Pass.

Rep Laning: Second.

Roll call was taken for a Do Not Pass on HB 1262 with 12 yes, 2 no, 0 absent & Rep Kasper is the carrier.

Date: Jan 16, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1262

House _____ 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 Rep Kasper

Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee		X
Rep Kasper	X		Rep Dobervich		X

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep Kasper

REPORT OF STANDING COMMITTEE

HB 1262: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
HB 1262 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1262

HB1262

Rep. Marvin E. Nelson, District 9

1/16/2017

House Industry, Business and Labor

HB1262 Directs the Insurance Commission and the Director of WSI to develop a plan to transfer the regulation of WSI to the Insurance department. They may use a third party.

There is to be an analysis of the costs and benefits of such a move. I believe since the Insurance Dept. already regulates insurances such as health insurance and disability that there likely will be savings to be found.

There is to be a report of their findings and plan by June 1 2018.

WSI is fundamentally and insurance, a state owned insurance company, one of the three major socialist institutions created by the Non-Partisan League in North Dakota. The other two being the State Mill and Elevator and the State Bank.

Perhaps today, it's greatest unusual characteristic is that it is a state owned insurance company that regulates itself, and indeed regulates its customers. This sets up a conflict where it is very difficult to offer sure and certain relief while looking out for the interests of the insurance company.

I would note that there can also be a perceived unfairness brought about by the situation, even when a "customer" is treated fairly. It would be somewhat like the situation if you received a citation by a trooper and then went to dispute it and found the trooper was now the judge. He might treat you very fairly, but the situation would create the doubt.

Moving the regulation to the Insurance Dept. would remove those types of doubts, and I believe by fundamentally an insurance company like other insurance companies would help make it more familiar to people as they have claims and appeals.

I would also note that moving the regulation would make it easier to allow private Worker's Compensation Insurance in some specialized cases. I would also point out that while the law says only WSI can provide worker's compensation insurance that groups such as firefighters today are buying disability policies to cover their members that are effectively worker's compensation policies. The current coverage is deemed uncertain or insufficient so they spend extra money to receive adequate coverage.

2017 House Bill No. 1262
Testimony before the House Industry, Business, and Labor Committee
Anne Jorgenson Green, Legal Services Director
Workforce Safety & Insurance
January 16, 2017

Mr. Chairman, Members of the Committee:

My name is Anne Green. I am the Legal Services Director for Workforce Safety and Insurance (WSI). I am here to testify on House Bill 1262. The WSI Board of Directors opposes this bill.

HB 1262 provides for a study relating to whether WSI should be regulated by the Insurance Commissioner.

Since 1919, the workers compensation fund has been managed and regulated by WSI to adjudicate the claims of injured employees and protect the solvency of the fund. The Insurance Department is well versed in the regulation of many lines of insurance, but currently, they do not regulate workers compensation.

This body considered 2009 HB 1160 that would have required examination of WSI by the Insurance Commissioner. HB 1160 failed 5-89.

The fiscal note provided by the Insurance Department for the 2009 bill indicated they would require 5 new FTE's at an estimated cost of \$1.16 million. That proposal would have also increased WSI administrative costs, including an estimated \$100,000 for examination costs, an additional FTE and funding for training and resources to prepare periodic and annual filings to conform with statutory accounting principles. The cost in training personnel and the duplication of expertise did not seem to be a prudent investment of resources.

That said, WSI has no objection to transparency. We are periodically subject to

a number of audits, reviews, and evaluations. Ongoing reviews include:

- 1) Independent Performance Evaluations performed by a firm selected by the State Auditor's Office that has workers compensation industry expertise.
- 2) Annual Financial Audits, which includes an actuarial peer review, performed by a firm selected by the State Auditor's Office.
- 3) An annual reserve review conducted by WSI's consulting actuaries.
- 4) An annual premium rate review conducted by WSI's consulting actuaries.
- 5) During the interim, the Legislative Workers Compensation Review Committee meets with WSI representatives to monitor system trends and workers' compensation developments.
- 6) WSI maintains an internal audit function that routinely reviews various functions and processes of the organization.

Transferring the regulation of the operation of workforce safety and insurance to the insurance department was researched and considered in 2009. At that time, it was considered a duplication of effort and cost prohibitive. Studying it again will likely yield the same result.

Should the legislature proceed with this study, no funding for a third party to conduct the study has been provided to either WSI or the Insurance Department.

That concludes my testimony. I am happy to answer any questions that you might have.