

## BALLOT TITLE

*This initiated measure would add two new sections to title 65 of the North Dakota Century Code providing for the appointment by the Governor of the director for the Workforce Safety and Insurance agency, the placement of its employees into the state personnel system, and for the appointment of independent administrative law judges to conduct hearings and make final decisions.*

## FULL TEXT OF THE MEASURE

**IF THE MATERIAL IS UNDERScoreD, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERScoreD OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.**

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

SECTION 1. Two new sections to Title 65 of the North Dakota Century Code are created and enacted as follows:

Workforce Safety and Insurance - Executive director - Governor to Appoint - Personnel. Notwithstanding any other provisions of law, the governor shall appoint a director of workforce safety and insurance who shall serve at the pleasure of the governor. The governor shall set the compensation and prescribe the duties of the director. Each employee of workforce safety and insurance must occupy a position in the classified service and must be subject to the provisions of the state personnel system provided in chapter 54-44.3.

Appointment of administrative law judges - Hearings. Notwithstanding any other provisions of law, workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law and orders. Rehearings must be conducted as hearings under chapter 28-32.

### **Initiated Measure Preliminary Review**

- **The initiated measure provides for the Governor to appoint the director, prescribe the director's duties, and set the compensation of the director.**
  - Despite these proposed changes, the WSI Board structure and delegated authority is left intact. This authority includes the duty to appoint the director and set the director's compensation. While current law that is in direct conflict with the initiated measure's provisions may be implicitly superseded by the measure, current law regarding the governance structure that is not in direct conflict with the measure creates questionable, if not conflicting, lines of authority.

For example, if the measure were to pass, the board would remain responsible for establishing policy, but would have no apparent authority over the director to carry out that policy.
  - Further ambiguity arises by the measures' lack of specificity regarding the duties of the director. At a minimum, the conflicting or unclear provisions created by the measure should be addressed by the legislature.
  - The board follows the Carver Model of Policy Governance. As implemented by the board, this model is structured on a direct reporting relationship of the director to the board. If passed, the measure creates significant conflicts in the board's established governance policies and reporting procedures required of the director. These conflicts would need to be reconciled.
- **The initiated measure provides for the placement of WSI employees into the state personnel system. Attachment A provides a listing of statutory exclusions to the state's personnel system.**

- While requiring WSI to move back into the state personnel system, the measure leaves existing law that allows for WSI to establish its own personnel system as well as specifically excludes WSI from the state personnel system in place. Again, while current law that is in direct conflict with the initiated measure's provisions may be implicitly superseded by the measure, the remaining conflicting law and/or ambiguities created should at least be addressed by the legislature.
- Under current law, WSI employees are "at-will" employees and WSI has its own personnel system. This system includes a pay for performance employee compensation program, a number of customized personnel policies, and a specified grievance procedure. WSI's biennial budget allocates funding to support its equitable pay system.

Although WSI's established personnel system may remain somewhat intact if the measure passes, employee salary adjustments may be limited to those adjustments authorized by the legislature for employees in the classified system. Further, WSI would be subject to a different grievance procedure, as provided in the state personnel system.

- The state personnel system's pay grades and position classifications vary significantly from WSI's established personnel system. The measure does not address how the current WSI salary position classifications and pay grade assignments will be impacted if the measure passes. It is not clear whether new pay grades and job classifications for WSI employees will be created in the state system, or if WSI's existing pay grades and classifications will somehow transfer into the state system. WSI employees may experience salary freezes or salary reductions depending upon how the transition is ultimately required to be implemented.
- **Retirement benefits-** We anticipate current employees who have previously enrolled in the

defined contribution plan will remain in this plan if the measure passes. However, we further anticipate new employees (those hired after the effective date of the measure, if passed) will not be eligible to enroll in the defined contribution plan as this plan is not available to classified state employees.

- The initiated measure requires WSI to contract with the Office of Administrative Hearings (OAH) for administrative law judges, provides that the administrative law judge's decisions are final, and administrative hearings must be conducted pursuant Chapter 28-32 (the Administrative Agencies Practices Act).
- Current law allows for WSI to arrange for hearing officers to issue recommended decisions. Like other agencies, the law allows WSI to amend the hearing officer's recommended decision. WSI is not required to exclusively contract with OAH for hearing officer services. However, WSI currently contracts with the Office of Administrative Hearings to hear WSI disputes. In addition, from 2003-2007, WSI on average has rejected hearing officers recommended decisions less than 6% of the time.
  - Again, although the measure states that rehearings must be conducted under Chapter 28-32, it does not repeal specific provisions regarding the appeal process applicable to WSI.
  - In addition, due to the measure's vagueness, it is not clear whether the measure will impact the director's authority under Chapter 28-32 to preside over administrative hearings or to appoint other personnel to preside over administrative hearings.
  - If the measure passes, it is also not clear whether WSI can only contract with OAH for hearing officer services, or whether separate contracts with other entities can be arranged for hearing officer services. These issues should be addressed by the legislature as well.