

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Industry, Business, and Labor Committee was assigned five studies. In addition, the chairman of the Legislative Council assigned to the committee the responsibility to review Workforce Safety and Insurance (WSI) premiums, benefits, and accountability and transparency methods and the results of the WSI consultant reviews of claims processing, human resources, and management areas.

Section 2 of House Bill No. 1299 (2007) directed a study of the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association.

Section 28 of House Bill No. 1018 (2007) directed a study of wireless providers in the state and how wireless service impacts the business climate in the state.

Section 2 of House Bill No. 1218 (2007) directed a study of the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state.

Section 21 of House Bill No. 1018 directed a study of the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness.

Section 19 of House Bill No. 1018 directed participation in the Department of Commerce Renaissance Zone Conference to review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the

projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities.

The Legislative Council also assigned to the committee the responsibility to receive a report from the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies pursuant to North Dakota Century Code (NDCC) Section 26.1-36.4-06; a report from WSI on recommendations based on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program as provided under Section 65-06.2-09; and a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks and any proposed legislation the Department of Financial Institutions determined necessary to replace Title 7 as required by Section 7 of Senate Bill No. 2295 (2007).

Committee members were Representatives Rick Berg (Chairman), Bill Amerman, Tracy Boe, Donald L. Clark, Mark A. Dosch, Glen Froseth, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigesaa, and Steve Zaiser and Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

WORKFORCE SAFETY AND INSURANCE REVIEW

Background

In 1919 the Legislative Assembly created the Workmen's Compensation Bureau to provide "sure and certain relief" for work injuries regardless of fault. From 1919 until 1931, the bureau was governed by a commission within the Department of Agriculture and Labor. In 1931 the Legislative Assembly removed the bureau from the Department of Agriculture and Labor and made the bureau a separate agency administered by three full-time commissioners. The governance of the bureau remained under the direction of the commissioners until in 1989 the Legislative Assembly replaced the commissioners with an executive director appointed by the Governor and serving at the pleasure of the Governor. The Legislative Assembly also created a Workers' Compensation Advisory Council, equally representing employers and employees, to advise the bureau.

The 1991-93 biennial report of the Workers' Compensation Bureau revealed that the bureau had an

unfunded liability of over \$240 million at the end of fiscal year 1993. The report indicated that the "largest obstacle for fund solvency has been inadequate premium rates to finance the spiraling cost of claims." In response to the financial insolvency of the bureau, in 1995 the Legislative Assembly adopted a number of bills in an attempt to reform the workers' compensation system in the state.

In 1997 the Legislative Assembly adopted House Bill No. 1440, which removed the authority of the Governor to appoint the director of the Workers' Compensation Bureau. The bill also replaced the Workers' Compensation Advisory Council with the Workers' Compensation Board of Directors, which was to be appointed by the Governor from lists of names submitted to the Governor. The bill authorized the board of directors to appoint the director and "[a]ssist the bureau in formulating policies and discussing problems related to the administration of the bureau, while ensuring impartiality and freedom from political influence." Although the structure of the organization remained the same for some time, in 2003 the Legislative Assembly changed the name of the Workers' Compensation Bureau to Workforce Safety and Insurance. The Legislative Assembly also expanded the number of members of the organization's board of directors from 10 members to 11 members. In 2007 the Legislative Assembly adopted House Bill No. 1460, which included a provision that allowed the Governor to reject a list of proposed board members submitted to the Governor.

In April 2007 the director of WSI was charged with misapplication of entrusted property and conspiring to disclose confidential information and was placed upon administrative leave by the board of directors. In October 2007 the Secretary of State approved for circulation an initiated measure to require the Governor to appoint the director of WSI. In January 2008 the WSI Board of Directors authorized the expenditure of over \$300,000 for two consulting firms to conduct a review of the WSI claims process and a review of the human resources and management functions of WSI.

In January 2008 the Legislative Council chairman assigned to the committee the responsibility to conduct a review of WSI issues, including:

- Workforce Safety and Insurance premiums, including a review of the treatment of businesses with similar classifications and experience history and a comparison of premium rates to other states in the region.
- Workforce Safety and Insurance benefits for similar injuries in various locations in North Dakota and as compared to benefits in other states in the region.
- Workforce Safety and Insurance accountability and transparency methods.
- The results of pending consultant reviews of WSI regarding the agency's claims review process and human resources and management areas.

Testimony and Committee Considerations

Injured Worker Concerns

The committee received testimony from injured workers and representatives of injured workers. In addition to opening meetings for testimony, the chairman of the committee invited injured workers who had concerns with the handling of their claims to contact the Legislative Council staff to discuss their concerns. Testimony from injured workers generally focused on concerns with respect to independent medical examinations, preexisting conditions, difficulty in dealing with the procedures and processes required in filing claims and a belief that WSI is not responsive to the injured worker, return-to-work programs, and the lack of availability of legal representation for injured workers.

In response to the invitation of the chairman of the committee to contact the Legislative Council staff with concerns relating to WSI, 57 individuals contacted the office. Each individual who visited with the Legislative Council staff and who provided a name and contact information was offered the opportunity to sign a release of information so that the committee could review that individual's workers' compensation claim and discuss the claim with representatives of WSI. The Legislative Council staff also provided each individual with information regarding the continuing jurisdiction review process undertaken by WSI and an application form for that review process. In addition, the Legislative Council staff provided each individual with information regarding the Legislative Council's Workers' Compensation Review Committee if it appeared the individual may be eligible for review of that individual's claim by that committee.

Seventeen individuals signed releases and submitted the releases to the Legislative Council office. At the request of the committee chairman, the Legislative Council staff requested each member of the committee to contact one individual who signed a release so that the committee member could hear the concerns of that individual. Committee members also were given the opportunity to visit with a representative of WSI to attempt to better understand the decision of WSI. Upon completion of their visits with the individuals who signed releases, committee members were asked to report to the committee regarding the concerns of the injured workers.

Several of the injured workers who signed releases or who testified before the committee expressed frustration with the independent medical examination process. An injured worker may be required by WSI to submit to an independent medical examination by a duly qualified doctor designated or approved by WSI. The purpose of the independent medical examination must be for the review of the diagnosis, prognosis, or treatment of the injured worker or for a review of fees. North Dakota Century Code Section 65-05-28 provides that the injured worker may designate a doctor to be present at the examination. If the doctor performing the independent medical examination and the injured worker's doctor disagree with respect to the diagnosis, prognosis, or treatment of the injured worker or the review of fees, WSI is required to appoint an impartial doctor to perform an examination and report to WSI.

Injured workers expressed frustration with the fact that many independent medical examinations are conducted at locations outside the state and by doctors from outside the state. Injured workers expressed concerns regarding whether the independent medical examinations are conducted by qualified medical professionals. In addition, injured workers argued that independent medical examinations by out-of-state medical providers who are paid by WSI should not prevail over treatment decisions made by the doctors who have treated the injured workers.

Testimony by representatives of WSI indicated that independent medical examinations are required infrequently. From July 2006 through December 2007, WSI identified 193 independent medical examinations as being completed. Of that number, 60 were conducted within the state and 82 were conducted within 10 miles of the borders of the state. A representative of WSI testified that it is difficult to find a doctor within the state who is willing to perform a critical review of a colleague's diagnosis or treatment and that it often is difficult to find a doctor who possesses expertise in a particular medical specialty. Therefore, many of the independent medical examinations are performed by out-of-state doctors. It was explained that the reason for the high number of examinations performed within 10 miles of the border of the state was due to the availability of appropriate medical facilities in which to conduct the examinations in border cities such as Moorhead, Minnesota. Information provided by WSI indicated that 58 percent of the independent medical examinations performed between July 2006 and the end of December 2007 resulted in findings favorable to WSI, 26 percent resulted in findings unfavorable to WSI, and 16 percent resulted in mixed findings. Representatives of WSI contended that independent medical examinations were required only when there were concerns with the diagnosis or treatment of the injured worker or when something within an injured worker's claims file did not appear to be right. The October 2008 performance evaluation of WSI conducted by an independent audit firm selected by the State Auditor indicated that WSI has been using independent medical examinations appropriately and effectively.

North Dakota Century Code Section 65-05-15 provides the conditions under which benefits may be paid when a compensable injury combines with a noncompensable injury, disease, or other condition. An injury attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or condition is not compensable unless the employment of the individual substantially accelerates its progression or substantially worsens the severity of the injury.

A number of injured workers contended that WSI frequently uses a preexisting injury or condition as an excuse to avoid paying benefits for a work injury. It was argued that spinal injuries and repetitive motion injuries were often deemed by WSI to be preexisting conditions. Injured workers contended that years of manual labor contribute to injuries that WSI classifies as preexisting conditions or aggravations of preexisting conditions.

Representatives of WSI testified that determinations of compensability are made based upon medical evidence and medical histories of the injured workers. It also was stated that decisions must be based upon state statute and that WSI is responsible only for work-related injuries and is not a general insurer. Although the most recent performance evaluation of WSI indicated that no claims reviewed appeared to have been inappropriately denied, the evaluation suggested that "North Dakota statute is aggressive in empowering the claims payer to deny claims based on prior injuries or pre-existing conditions."

Many injured workers expressed frustration with WSI claims handling procedures and the responsiveness of WSI. Included among the concerns were difficulty in understanding rights and obligations of the injured worker and a general belief that the WSI claims employees were working against the injured worker rather than trying to help. There also were complaints relating to rude treatment of injured workers by WSI employees and delays in the resolution of claims. In addition, individuals expressed concerns regarding a lack of accountability at WSI due to the governance structure of WSI.

Representatives of WSI testified that WSI provides injured workers information regarding the claims process and the rights and responsibilities of the injured workers. In addition, the committee received information indicating that of the approximately 21,000 claims received each year, WSI approves about 92 percent, about 60 percent of which are approved within two weeks. The committee received data from independent customer service surveys conducted for WSI which indicated injured worker satisfaction with WSI has remained relatively steady since 2000 with scores of approximately 4.3 on a 5-point scale.

The Insurance Commissioner testified that treating WSI like an insurance company could provide accountability. The commissioner proposed making WSI subject to a market conduct examination, a financial examination, and an ongoing financial analysis.

The committee reviewed information regarding initiated measure No. 4, which was placed on the November 2008 general election ballot. The measure, which was approved by the voters, requires the Governor to appoint the director of WSI.

The committee received testimony suggesting that when the director of the agency was an appointee of the Governor, there was a greater degree of political influence over claims decisions. It was argued that the decision to move to a director appointed by the board of directors eliminated much of the political influence on claims decisions and insulated claims handlers and supervisors from political considerations. Representatives of WSI testified that inquiries from elected and appointed officials are handled through a constituency services process and a log is kept to record the contacts. Members of the committee expressed concerns regarding the potential for an increase in political influence of the claims process if the director is appointed by the Governor.

The committee considered a bill draft that would have provided a procedure under which an employee of WSI could file a statement with the director of WSI if the employee believed that a claims decision had been inappropriately made due to political influence. The bill draft would have required the director to investigate the statement and file a report of the investigation with the board of directors and the Legislative Council's Workers' Compensation Review Committee. Proponents of the bill draft argued that providing a procedure for reporting inappropriate political influence would be a means to protect employees of WSI and could serve as a deterrent to political interference in claims handling. A representative of WSI testified that the goal of the bill draft is commendable, but placing the onus on an employee of WSI to file a statement accusing an individual of exerting inappropriate influence is not likely to be an effective tool.

The committee received testimony from injured workers who contended the return-to-work program of WSI is ineffective and forces injured workers back to work too soon or into training and jobs for which they are not suited. North Dakota Century Code Section 65-05.1-01 provides that the goal of vocational rehabilitation is to return a disabled worker to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. Substantial gainful employment must offer the opportunity to restore the worker as soon as practicable and as nearly as possible to 90 percent of the worker's average weekly earnings at the time of the injury, or to 66 2/3 percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued, whichever is less. Representatives of WSI acknowledged that the return-to-work program likely results in some injured workers being trained for jobs other than what the injured worker would prefer. It also was contended that reality dictates that not every injured worker is physically able to continue in the job or occupation that the injured worker performed before an injury, and that unfortunately not every injured worker will be able to be restored to the injured worker's preinjury earning capacity.

In 1995 the Legislative Assembly changed the statutory provisions relating to the payment of attorney's fees for injured workers. Before the change, the agency was required to pay the attorney's fees for an injured worker following the constructive denial of a claim or a notice of an informal decision. House Bill No. 1208 (1995) provided that the agency was required to pay attorney's fees only when the injured worker prevailed in a dispute. The bill also limited the amount of fees that may be paid. Workforce Safety and Insurance has adopted administrative rules that set forth a fee schedule for the payment of attorney's fees in cases in which the injured worker prevails in an appeal.

The committee received testimony from injured workers and attorneys for injured workers contending that injured workers are not able to afford an attorney to fight an incorrect decision of WSI. It was argued that injured workers often are forced to accept a decision of WSI or accept a settlement offer due to the lack of legal representation. Although the Office of Independent

Review was created to provide injured workers an advocate to help resolve a dispute with WSI without having to resort to litigation, injured workers argued the office is not independent and does not help the injured worker.

Members of the committee also expressed concerns regarding the independence of the office and whether the office would be more effective if the office were not tied to WSI. However, others questioned whether the office could be as effective without the close working relationship with the claims handlers and supervisors at WSI. It was contended that the relationship allows for a greater degree of information sharing and open discussion regarding a claim.

A representative of the Office of Independent Review testified that the office attempts to help injured workers understand the basis of a decision by WSI and an understanding of the appeal process. In addition, it was contended the office provides a nonadversarial alternative resolution process. The committee received data indicating that the office has a decision modification rate of approximately 20 percent. If an injured worker uses the office, the injured worker is eligible to receive attorney's fees for prevailing in a claim that is later litigated.

The committee received testimony from injured workers contending that the administrative hearing process is unfair because WSI is able to modify or reject a decision of the administrative law judge. Representatives of WSI provided information to the committee relating to contested claims and litigation rates. The data indicated that over the last six years, WSI generally has issued approximately 32,000 notices of decisions per year. As a result of those decisions, approximately 1,200 orders are issued annually. Over that same time period, approximately 160 requests to 230 requests are made for administrative hearings. The report submitted by WSI indicated that WSI rejected 27 of the decisions of the administrative law judges over the six-year period. The committee also received data indicating that the number of disputed claims and litigated claims in this state is low compared with other states.

Medical Provider Concerns

The committee received testimony from medical providers which indicated that some medical providers may not be accepting patients who have suffered work injuries. The testimony suggested that some doctors were concerned the WSI managed care process interfered with the diagnosis and treatment decisions of doctors and jeopardized the standard of care of the injured workers. In addition, concerns were expressed regarding the WSI medical reimbursement rates and the amount of paperwork required in the handling of workers' compensation claims. Representatives of WSI testified that WSI regularly has met with representatives of medical providers to discuss reimbursement schedules. In addition, it was indicated that there has been discussion regarding the establishment of a preferred provider system.

Workforce Safety and Insurance Employees

The committee held a meeting at WSI and invited employees of WSI to address the committee regarding their concerns. The employees of WSI who testified indicated that, despite the negative publicity that WSI had received, the employees were dedicated to their jobs and to helping the injured workers and employers of the state. The testimony reflected frustration by the employees with comments made publicly that compared WSI employees with Nazis and with other statements that they believed misrepresented the situation at WSI.

Workforce Safety and Insurance Premiums and Financial Reserve

In 2005 the Legislative Assembly adopted House Bill No. 1531, which provided that the discount rate used by WSI in evaluating the financial reserves of WSI may not exceed 6 percent. The bill also required that the level of WSI financial reserves plus surplus must be at least 120 percent but may not exceed 140 percent of the actuarially established discounted reserve. The committee received data indicating that the funding ratio of WSI has not been less than 140 percent of unpaid loss reserve since 1999. To reduce the reserve level to move closer to the statutory limit, the WSI Board of Directors declared premium dividends in 2005, 2006, 2007, and 2008.

The State Auditor testified that the 2007 financial audit of WSI concluded that WSI was in violation of state law and that the financial reserve was about \$174 million in excess of the statutory limit. The State Auditor also testified that WSI did not take sufficient action to come into compliance with the law. Representatives of WSI contended that generally accepted accounting principles permit the exclusion of unrealized gains and other statutorily set-aside amounts from the determination of the allowable surplus amount. However, the State Auditor disagreed with the conclusions of WSI and requested an opinion from the Attorney General to attempt to resolve the question.

The committee considered a bill draft to define available surplus for the purposes of calculation of the level of WSI financial reserves. The bill draft, as originally discussed, would have provided that available surplus means earned surplus funds derived from realized net profits, but does not include unrealized capital gains, prepaid assets, and funds allocated or obligated to specific programs or projects. Committee members generally agreed that it is necessary to clarify which funds should be included or excluded from the determination of available surplus. Committee members also generally agreed unrealized capital gains should not be excluded from the calculation of available surplus and that available surplus should include net assets of WSI, but not include funds designated or obligated to programs or projects directed or approved by the Legislative Assembly. Committee members expressed concerns regarding whether the 140 percent upper limit on the level of financial reserves allowed is sufficient. The committee received testimony from a representative of WSI indicating that a reinsurance expert had recommended that the reserve level should be set at

150 percent of the actuarially established discounted reserve.

The committee reviewed financial data indicating that premium rates during the 1980s and early 1990s were insufficient to cover claims costs, which resulted in the insolvency of the workers' compensation fund. It was contended that premiums were kept artificially low for political reasons and that the resulting increases in premium rates in the mid-1990s likely was responsible for a number of businesses failing due to the increased cost of doing business in the state.

The committee reviewed a bill draft to require WSI to establish premium rates annually on an actuarial basis. The initial version of the bill draft considered by the committee would have provided that the statewide rates may not deviate by more than 10 percent from the actuarial indicators for that year. Proponents of the bill draft contended that it is necessary to statutorily mandate that premium rates be established on an actuarial basis to avoid problems similar to those experienced in the 1980s and early 1990s when political considerations, rather than actuarial determinations, guided premium setting. Committee members also generally agreed that it is necessary to provide WSI some flexibility to deviate from the actuarial indicated premium level by a limited amount on an annual basis. However, it also was agreed that the amount of that deviation should be limited so that the financial reserves of WSI could not be significantly reduced by keeping premium rates much lower than the recommended levels.

Reports of Reviews, Audits, and Evaluations

The committee received testimony from the consultants who were contracted to review the WSI claims process and the human resources and management functions of WSI. Marsh USA, Inc., conducted the review of the WSI claims process. Conolly & Associates conducted the review of the human resources and management functions.

The Marsh USA, Inc., report indicated that 475 claims files were randomly selected for review. The review of claims files rated the performance of WSI claims handlers with respect to 14 criteria. The overall scores for WSI exceeded industry standards with respect to new claims processing, timeliness of payments, medical cost containment, and communication. Workforce Safety and Insurance met industry standards with respect to medical only claims processing, investigation, denied or withdrawn claims, disability management, and reserving. The report concluded that opportunities for improvement existed with respect to three-point contacts, subrogation, action plans, and supervision.

The report of Conolly & Associates included several recommendations for changes in the management structure at WSI. Among the recommendations were:

1. Workforce Safety and Insurance's Board of Directors immediately should recruit an interim director to restore trust and faith in the capability of executive management and charge that director to make immediate and necessary executive and senior management employment decisions.

2. Workforce Safety and Insurance's senior management structure should be modified.
3. Human resource leadership must be strengthened and trust and confidence restored in that function.
4. The internal audit function must be reviewed to reestablish its independence and objectivity and restore its trustworthiness within WSI.
5. Workforce Safety and Insurance should adopt management performance benchmarks to measure continuously its effectiveness in terms of benefit delivery and level of benefits in comparison to other states.
6. Executive management of WSI should closely monitor claims issues in relation to evidence-based medicine and degenerative disease and aggravation issues.
7. Hardship cases should be referred to the director for review.
8. Workforce Safety and Insurance should restructure its review, hearing, and appeal process.
9. The WSI Board of Directors must increase mandatory meetings and board compensation.
10. Workforce Safety and Insurance should seek to become licensed and subject to examination and regulation by the Insurance Commissioner.

The committee also reviewed the State Auditor's followup report of the status of implementation of recommendations from the 2006 performance audit of WSI. That report indicated WSI had fully implemented 19 recommendations, partially implemented 36 recommendations, and not implemented 3 recommendations. Two recommendations were found to be no longer applicable. Workforce Safety and Insurance did not concur with the status of seven of the recommendations.

The committee reviewed the 2008 WSI performance evaluation report, which was prepared by an independent certified public accounting firm. The evaluation considered nine elements of the operations of WSI. The report of the evaluation included 46 recommendations. Workforce Safety and Insurance concurred with all but one of the recommendations. Although the committee had received testimony alleging that WSI had mishandled hundreds or thousands of claims, the evaluation, in its review of a random sampling of 250 claims, found no evidence of inappropriate handling of claims. However, the report suggested the law in this state relating to preexisting conditions was likely more conservative than other states.

It was contended that WSI has been subject to more audits, evaluations, and reviews than any other state entity. The committee received testimony from representatives of WSI indicating that WSI has been subject to 15 audits, evaluations, and reviews since 2004, 5 of which were being conducted in 2008. Representatives of WSI estimated that over 9,300 employee hours were devoted to responding to audits, evaluations, and reviews during the period beginning October 1, 2007, and ending September 30, 2008.

The committee considered a bill draft to require that the biennial performance evaluation of WSI include

performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate. Proponents of the bill draft contended that although several audits, evaluations, and reviews of the operations of WSI have been performed, policymakers need regular, specific performance measurements to accurately evaluate the effectiveness of WSI.

Mutualization of State Workers' Compensation Funds

The committee received reports from representatives of workers' compensation insurance carriers from Nevada and West Virginia. A state workers' compensation fund was created in Nevada in 1913. The fund experienced financial difficulties that ultimately led to the transition from a monopolistic state fund to a privatized system. The committee received testimony stating that, despite significant medical inflation from 1983 through 1987, workers' compensation rates in Nevada were not raised and the state fund became insolvent. The state fund was transformed into a private mutual insurance company in 1999. In 2007 the company demutualized and distributed \$850 million to its policyholders. In West Virginia the state fund that was created in 1913 became insolvent with an unfunded liability of over \$3 billion. In 2007 the transition from a monopolistic state fund system was initiated through the creation of a monopolistic mutual insurance company. Later the West Virginia workers' compensation market also was opened to competition. Representatives from both Nevada and West Virginia testified that mutualization of the state funds has led to lower premiums and improvements in claims handling services.

The committee considered a resolution draft to direct the Legislative Council to study the governance structure of WSI and determine the feasibility and desirability of mutualization of WSI. Proponents of the resolution draft contended that a study of the structure of governance at WSI may be necessary as a result of initiated measure No. 4. In addition, they argued that the information provided with respect to the mutualization and privatization of the state funds in Nevada and West Virginia indicated that the transitions in those states resulted in improved claims handling and a decrease in costs.

Discretionary Expenditures

The committee reviewed information relating to expenditures by state agencies and institutions for promotional purposes and for the payment of professional dues and memberships. Information provided to the committee indicated that a number of state agencies and institutions have the authority to expend public funds for promotional purposes pursuant

to a fiscal policy adopted by the Office of Management and Budget. In addition, the committee was informed that many state agencies and institutions expend public funds to pay service club and other membership dues for officers and employees of the agencies and institutions. A representative of the State Auditor's office informed the committee that the State Auditor would be providing additional information relating to this topic to the Legislative Council's Employee Benefits Programs Committee.

Recommendation

The committee recommends House Bill No. 1035 to provide that the level of financial reserves plus available surplus of WSI may not exceed 150 percent of the actuarially established discounted reserve. The bill excludes from the calculation of available surplus any funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly.

The committee recommends House Bill No. 1036 to require WSI to establish premium rates annually on an actuarial basis. The bill provides that the statewide average premium rate level may not deviate by more than 5 percentage points from the recommended actuarial indicated premium level for that year.

The committee recommends House Bill No. 1037 to require that the biennial independent performance evaluation of WSI address performance measurements, including a review of trends in workplace injuries; whether claims are being handled fairly and efficiently; whether claims or premium decisions have been subject to inappropriate political influence; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared with other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate.

The committee recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of the governance structure of WSI and determination of the feasibility and desirability of mutualization of WSI.

PHARMACY AND PHARMACIST REGULATION STUDY

Background

North Dakota Century Code Chapter 43-15 governs the regulation of pharmacists and pharmacies.

State Board of Pharmacy

North Dakota Century Code Section 43-15-03 provides for a State Board of Pharmacy consisting of five members appointed by the Governor upon the recommendation of the North Dakota Pharmaceutical Association. The individuals appointed to the board must be licensed pharmacists and must be members of the North Dakota Pharmaceutical Association. The term of office of members of the board is five years.

North Dakota Century Code Section 43-15-06 requires the board president to be a member of the board but provides that the secretary and treasurer do not have to be members of the board. The board is required to hire a pharmacist as the full-time executive director.

North Dakota Pharmaceutical Association

North Dakota Century Code Section 43-15-13.2 provides that the North Dakota Pharmaceutical Association consists of every person:

1. Who has secured a current annual license to practice pharmacy in this state.
2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a current license to practice pharmacy in this state.

North Dakota Century Code Section 43-15-30 provides that licensure as a pharmacist by the board entitles the person so licensed to a one-year membership in the North Dakota Pharmaceutical Association.

North Dakota Century Code Section 43-15-13.3 provides that the members of the association who have secured a current annual license to practice pharmacy in this state are entitled to all the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all the meetings of the association. The members of the association who have not secured a current annual license to practice pharmacy are entitled to all the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

North Dakota Century Code Section 43-15-13.4 mandates that the association is to receive 50 percent of the license renewal fees received by the board. The section allows the association to use the funds for payment of expenses of the association, including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and general operating expenses.

Pharmacy Operation

North Dakota Century Code Section 43-15-32 requires every store, dispensary, pharmacy, laboratory, or office selling, dispensing, or compounding drugs, medicines, or chemicals, or compounding or dispensing prescriptions of medical practitioners in the state, and every business carried on under a name which contains the words "drugs," "drugstore," or "pharmacy," or which is described or referred to in such terms by advertisements, circulars, posters, signs, or otherwise, to be under the charge of a registered pharmacist.

North Dakota Century Code Section 43-15-34 prohibits any person from opening, establishing, operating, or maintaining a pharmacy in the state without obtaining a permit from the board. Section 43-15-34.1 requires an out-of-state pharmacy that ships or delivers a dispensed prescription drug or legend drug into the state to hold a pharmacy permit issued by the board.

The section also provides that the part of the pharmacy operation dispensing the prescription for a resident of this state abide by state law and the rules of the board.

North Dakota Century Code Section 43-15-35 sets forth the requirements to operate a pharmacy in the state. The section requires that the management of a pharmacy must be under the personal charge of a pharmacist licensed in this state. In addition, the section establishes pharmacy ownership requirements. Those requirements have been the subject of litigation twice since the adoption of the requirements in 1963.

In 1963 the Legislative Assembly adopted legislation that provided that an applicant for a permit to operate a pharmacy must be a registered pharmacist or a partnership, each active member of which is a registered pharmacist, or a corporation or association, the majority of stock of which is owned by registered pharmacists actively and regularly employed and responsible for the management, supervision, and operation of the pharmacy. The legislation included an exception for the holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, for so long as the permitholder continues operations and renews the permit. The legislation also included an exception for hospital pharmacies furnishing service only to patients in the hospital. The legislation, which was codified as NDCC Section 43-15-35, faced a constitutional challenge that was ultimately decided by the United States Supreme Court in 1973 and another legal challenge in 1996-97.

In 1971 Snyder's Drug applied for a permit to operate a pharmacy in a portion of a Red Owl store in Bismarck. The State Board of Pharmacy denied the permit because the existing facilities of the applicant did not meet the standards required by the board and because the applicant failed to comply with NDCC Section 43-15-35(5), which required that the majority of the applicant's stock be owned by registered pharmacists in good standing, who are actively and regularly employed in and responsible for the management, supervision, and operation of the pharmacy. Snyder's Drug appealed the decision of the board to the district court arguing that Section 43-15-35 was unconstitutional in that it violated the equal protection and the due process clauses of the 14th Amendment to the United States Constitution and Sections 11 and 20 of the Constitution of North Dakota.

The district court granted summary judgment in favor of Snyder's Drug, concluding that NDCC Section 43-15-35 violated the equal protection and the due process clauses of Section 1 of the 14th Amendment to the United States Constitution and Sections 11 and 20 (currently Article I, Sections 21 and 22) of the Constitution of North Dakota. The State Board of Pharmacy appealed the decision of the district court to the North Dakota Supreme Court.

In *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 202 N.W.2d 140 (N.D. 1972), the North Dakota Supreme Court affirmed the district court decision as it related to the unconstitutionality of NDCC Section 43-15-35 under the due process clause of the 14th Amendment to the United States Constitution. In making its decision, the North Dakota Supreme Court relied upon a 1928 decision of the United States

Supreme Court. In that case, the United States Supreme Court held that a Pennsylvania law that required that a pharmacy be 100 percent owned by pharmacists was unconstitutional. The United States Supreme Court determined that a state may not "under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them" in *Liggett Co. v. Baldridge*, 278 U.S. 105 (1928).

The State Board of Pharmacy appealed the decision of the North Dakota Supreme Court to the United States Supreme Court. In *North Dakota Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973), the United States Supreme Court overruled the *Liggett* decision and reversed the decision of the North Dakota Supreme Court. The case was then remanded back to the North Dakota Supreme Court.

Upon remand, the North Dakota Supreme Court upheld the constitutionality of the law in *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 219 N.W.2d 140 (N.D. 1974). The North Dakota Supreme Court determined that the reasons given in support of the ownership law were reasonable. Among the reasons given in support of the law were:

1. The professional and ethical standards of pharmacy demand the pharmacist's concern for the quantity and quality of stock and equipment. A drug which has deteriorated because of improper storage facilities can be a detriment to public health. A drug not in stock poses a threat to the individual who needs it now. Decisions made in conjunction with the quantity and quality of stock and equipment by nonregistered-pharmacist owners could be detrimental to the public health and welfare.
2. Supervision of hired pharmacists by registered-pharmacist owners would be in the best interests of public health and safety.
3. Responsibility for improper action could be more readily pinpointed when supervision is in registered-pharmacist owners.
4. The dignity of a profession and the morale and proficiency of those licensed to engage therein is enhanced by prohibiting the practitioner from subordinating himself to the direction of untrained supervisors.
5. If control and management is vested in laymen unacquainted with pharmaceutical service, who are untrained and unlicensed, the risk is that social accountability will be subordinated to the profit motive.
6. The term "pharmacy" was intended to identify a particular type of establishment within which a health profession is practiced and, thus, was intended to be more than a mere means of making a profit. He who holds the purse strings controls the policy.
7. Doctor-owned pharmacies with built-in conflict-of-interest problems could be restricted.

The pharmacy ownership law was challenged again in the mid-1990s. In 1996 Medcenter One decided to expand its pharmacy at the hospital to make pharmacy

sales to the general public. The State Board of Pharmacy, through its legal counsel, informed Medcenter One that the "exemption for community/retail pharmacies set forth in N.D.C.C. 43-15-35 would [not] be available to Medcenter One Hospital Pharmacy." The opinion of the board's legal counsel concluded that "[b]efore July 1, 1963, there were two type[s] of pharmacy permits for two types of pharmacy practice, one for hospitals serving only patients in that hospital and one for community/retail pharmacies. When N.D.C.C. 43-15-35 was amended effective July 1, 1963, the legislature recognized that distinction in permits and pharmacy practice and codified that distinction by providing that N.D.C.C. 43-15-35 does not apply to hospital pharmacies furnishing service only to patients in such hospital or to community/retail pharmacies holding a permit on July 1, 1963." Although the Bismarck Hospital Pharmacy was the beneficiary of the hospital exemption because that was the type of pharmacy practice it was engaged in on July 1, 1963, the opinion concluded that "Medcenter One Pharmacy is not now (32 years later) entitled to an additional exemption for community/retail pharmacies, because it was not engaged in that type of practice on July 1, 1963."

Medcenter One sought and received a declaratory judgment from the district court which concluded that the unambiguous language of NDCC Section 43-15-35 did not differentiate between hospital and retail pharmacy permits and held that Medcenter One, as the continuous holder of a permit since before 1963, was exempt from the pharmacist-ownership requirements. The North Dakota Supreme Court affirmed the decision in *Medcenter One v. North Dakota State Bd. of Pharmacy*, 561 N.W.2d 634 (N.D. 1997). The North Dakota Supreme Court stated that Section 43-15-35 clearly and unambiguously describes two exemptions to the pharmacist-ownership requirements. The first exemption is for pharmacies that held permits on July 1, 1963, and have not discontinued operations or failed to renew their permit. The court concluded the plain language of that exemption applies to all pharmacy permit holders on that date, not just retail or nonhospital pharmacies. The second exemption applies to hospital pharmacies furnishing service only to patients in the hospital. The court concluded if the Legislative Assembly had intended the first exemption only to apply to retail or nonhospital pharmacies, it would have limited that exemption with appropriate language.

North Dakota Century Code Section 43-15-35, as amended by the Legislative Assembly in 2007, retains the pharmacist ownership requirements. House Bill No. 1299 (2007) created an exception from the requirements for an applicant for a permit to operate a pharmacy which is a hospital if the pharmacy for which the hospital seeks a permit to operate is a retail pharmacy that is the sole provider of pharmacy services in the community and is a retail pharmacy that was in existence before the hospital took over operations. A hospital operating a pharmacy under that exception may operate the pharmacy at any location in the community. House Bill No. 1350 (2007) established an exception from the ownership requirements for an applicant for a

permit to operate a pharmacy which is the owner of a postgraduate medical residency training program if the pharmacy is colocated with and is run in direct conjunction with the postgraduate medical residency training program.

2007 Legislation

In addition to the two bills that created exceptions to the pharmacist ownership requirements, two other bills were considered by the Legislative Assembly which related to the State Board of Pharmacy and the North Dakota Pharmaceutical Association. House Bill No. 1148 (2007), which failed, would have repealed the statutory provisions relating to the North Dakota Pharmaceutical Association and would have removed the requirement that the members of the State Board of Pharmacy be appointed upon the recommendation of the association. The bill also would have prohibited the board from requiring that a pharmacist be a member of any association as a requirement for initial licensure or for license renewal and would have prohibited the board from using licensure fees to pay a pharmacist's membership dues to a professional association. Senate Bill No. 2387 (2007), which also failed, was identical to House Bill No. 1148.

Testimony and Committee Considerations State Board of Pharmacy and the North Dakota Pharmaceutical Association

The committee received testimony regarding the relationship between the State Board of Pharmacy and the North Dakota Pharmaceutical Association.

Representatives of health care facilities and hospital pharmacists expressed opposition to the mandatory association membership for pharmacists licensed in the state. The only other professional association in which membership is mandatory for licensees is the State Bar Association of North Dakota. A representative of the North Dakota Healthcare Association contended that the State Board of Pharmacy should be restricted to licensing and regulatory activities while the main functions of a professional association are to provide advocacy, communication, data collection, and education. Representatives of hospital pharmacists contended that because the North Dakota Pharmaceutical Association receives 50 percent of the pharmacist licensing fees, a conflict of interest is created and the leadership of the board and the association frequently act in concert and do not represent the interests of hospital pharmacists.

Representatives of the State Board of Pharmacy and the North Dakota Pharmaceutical Association testified that the board and the association work closely to protect the interests of consumers in the state as well as cooperate with the North Dakota State University College of Pharmacy to provide training and educational opportunities for pharmacists. The executive director of the board testified that the integration with the association was statutorily adopted in 1989, with little opposition, to address financial issues experienced by the association and to encourage more involvement in the association by pharmacists. Because of the

relatively small number of pharmacists in this state, it was argued that mandatory membership is necessary to sustain the association and to get involvement from all pharmacists. With respect to the membership of the board, the executive director indicated that the board frequently has included a hospital pharmacist. In addition, the executive director stated that the board has proposed adding two members to the board, a registered pharmacy technician and a public member. The executive director also stated that the board has a conflict of interest policy and that no conflict exists between the board and the association.

A representative of the North Dakota Pharmaceutical Association testified that the association and the board have agreed to allow pharmacists to opt-out from the association. A pharmacist electing to opt-out may request the return of the \$100 portion of the \$200 licensure fee that is forwarded to the association. However, under the law, each licensed pharmacist remains a member of the association. The representative of the association testified that the association attempts to be inclusive and seeks the participation of all licensed pharmacists regardless of whether a pharmacist works in a hospital or a retail pharmacy.

The committee received information from a representative of the State Auditor's office which indicated that the approximately \$1 million reserve held by the State Board of Pharmacy was equal to about four years of operating revenue for the board. Although the total amount was quite high compared with other boards, the number of years of operating revenue was not out of line with the amounts held by other boards.

The committee considered a bill draft to eliminate the statutory connection between the State Board of Pharmacy and the North Dakota Pharmaceutical Association. The bill draft also added a registered pharmacy technician and a public member to the State Board of Pharmacy and reduced the maximum amount that the board may charge for an annual license from \$200 to \$100. Proponents of the bill draft argued that membership in a professional association should be voluntary and that removing the statutory connection between the board and the association would eliminate concerns with respect to conflicts of interest.

Pharmacy Operation

The committee received testimony from representatives of the State Board of Pharmacy and the North Dakota Pharmaceutical Association urging the retention of the pharmacy ownership restrictions. In addition, several retail pharmacists argued that the ownership restrictions benefit the consumers of the state by contributing to a higher level of service and a guarantee of pharmacy access in rural areas. Pharmacists from rural communities stated that competition from chain store pharmacies would likely result in the closing of rural pharmacies because the chain stores could use loss leaders to bring customers into the stores. Although large chain stores have offered \$4 generic prescriptions, independent community pharmacists contended that the \$4 offers were simply a

marketing gimmick and that independent pharmacies in the state likely are able to match that price for many prescriptions. In addition, the committee was presented data indicating that the average price per prescription in this state is significantly lower than the national average. However, they argued that it would be difficult to compete with the marketing of the large chain stores. Independent community pharmacists contended they provide a higher level of service to their customers and are able to take more time to examine the needs of their customers than pharmacists working for the large publicly traded chain stores that are profit-driven.

Representatives of hospitals and hospital pharmacies testified that the ownership restrictions prevent hospitals from providing a full range of services to patients and reduces access to pharmacies in rural areas. They also argued a pharmacist practicing in a hospital setting has no less ability or concern for a patient than a retail pharmacist and provides an equally high level of service to patients.

Representatives of Wal-Mart and Walgreens argued that the ownership restrictions are unfair to North Dakota consumers and cause consumers in this state to pay more for prescription drugs than consumers in other states. According to a study presented by a representative of North Dakotans for Affordable Healthcare, repealing the ownership restrictions would save consumers and health insurers millions of dollars in prescription drug costs, which could generate nearly another \$50 million in additional consumer spending, create additional jobs, and generate additional tax revenue for the state. It was also argued that chain store pharmacists provide services equivalent to independent pharmacists.

The committee received testimony from an individual who questioned why he is unable to purchase \$4 generic drugs from a chain store pharmacy in Fargo, but can drive across the bridge to Minnesota to purchase the drugs at a lower price. He argued the pharmacy ownership restrictions are archaic and unfair to consumers in this state. In addition, he contended that a significant amount of money is leaving this state through the purchase of cheaper prescription drugs in other states.

Although committee members were concerned that consumers in this state have access to affordable prescription drugs, there also was concern regarding the impact on independent pharmacies and rural pharmacies if the pharmacy ownership restrictions were repealed. Despite receiving a significant amount of information regarding the financial impact of repealing the ownership restrictions, questions remained regarding the actual impact on the state. Committee members agreed that the committee could reach no consensus on the issue and that the issue would be discussed extensively during the 2009 legislative session.

Recommendation

The committee recommends Senate Bill No. 2039 to eliminate the statutory integration of the State Board of Pharmacy and the North Dakota Pharmaceutical Association, to add two members to the State Board of

Pharmacy--a registered pharmacy technician and a public member, and to reduce the maximum amount the State Board of Pharmacy may charge for an annual pharmacist license from \$200 to \$100.

WIRELESS STUDY

Background

2007 Legislative Proposal

Following a study by the Legislative Council's Economic Development Committee during the 2005-06 interim, the Legislative Council recommended House Bill No. 1027 (2007), which included provisions that would have provided a sales tax exemption for the gross receipts from sales of wireless service provider equipment that is an integral part of a new or expanding wireless service provider. The bill failed to pass.

Wireless Industry Growth

Statistics from the Federal Communications Commission (FCC) indicate the number of mobile wireless subscribers in the United States has increased from 92,000 in 1984 to over 217,000,000 on June 30, 2006. By June 2005 the percentage of wireless subscribers per 100 population in the United States exceeded the percentage of wire telephone lines. The FCC also reports that the number of wireless subscribers in North Dakota has increased from 388,609 in June 2005 to 481,655 in June 2006. In 2006 the Public Service Commission reported that the number of wireless accounts had surpassed the number of traditional wire telephone lines in the state. According to the Commission on International Trans-Regional Accreditation, the international wireless association, the current estimated number of wireless subscribers in the United States is over 245,000,000. The Commission on International Trans-Regional Accreditation also reports that by the end of 2006, there were over 195,000 cell sites in the United States.

Universal Service Fund

In 1996 the United States Congress adopted the Telecommunications Act of 1996 to require interstate telecommunications carriers to contribute to a Universal Service Fund to subsidize telephone service to low-income households and rural and high-cost areas. During the first 10 years of the existence of the Universal Service Fund, over \$44 billion was collected as a result of surcharges assessed on consumers' telephone bills. Distributions from the Universal Service Fund support four purposes--high-cost areas, low-income households and individuals, schools and libraries, and rural health care. A majority of the distributions have been for the purpose of high-cost support. In 2006 approximately \$4.1 billion was distributed through the high-cost support program. Under the high-cost support program, funds are distributed directly to telecommunications providers that operate in high-cost areas. Distributions under the high-cost support program are made to providers on a per subscriber basis and may be made to landline and wireless providers. Records of the FCC indicate that the share of distributions to wireless carriers increased from

3.3 percent in 1997 to approximately one-third of the total by early 2006.

High-cost payments to providers for subscribers in this state increased from about \$21 million in 1998 to nearly \$80 million in 2006. According to the 2006 FCC *Monitoring Report on Universal Service*, Western Wireless was the recipient of the largest share of payments in North Dakota for 2003, 2004, 2005, and 2006. The report indicates that Western Wireless received \$17,824,152 in payments in 2006. The North Dakota provider receiving the second largest amount of payments for 2006 was Northwest Dakota Cellular of North Dakota LP with payments of \$7,275,264. Two other carriers received over \$5 million in payments in 2006--BEK Communications Cooperative (\$5,167,026) and SRT Communications, Inc. (\$5,003,316).

Public Service Commission Role

Although the Public Service Commission has no specific regulatory authority over wireless providers operating in the state, the commission has launched a program designated as the *Wireless Outreach Initiative: Zap the Gap/Connecting Consumers*. After launching the initiative in 2005, the commission held forums throughout the state regarding wireless service and held a statewide wireless conference in September 2005. The commission describes the *Zap the Gap* portion of the initiative as being designed to:

1. Encourage wireless investment in North Dakota, especially currently underserved areas through the collection of information from consumers to determine areas where there is demand but low wireless coverage.
2. Provide a clearinghouse of useful planning information for wireless companies, including approximations of the number of wireless telephones per capita in different counties in the state, traffic counts on major roads, and lists of suitable structures for wireless antennas.
3. Help facilitate discussions between communities that want wireless service and providers that may be able to fill the gap.
4. Identify strategies to advocate the state's interests in wireless matters with other government agencies.

The *Connecting Consumers* portion of the initiative is described by the commission as being designed to:

1. Help consumers with wireless questions and concerns that they may have with their current service.
2. Assist consumers by reserving an e-mail address for consumers wishing to contact the commission with questions and concerns over wireless telephone issues.

Testimony and Committee Considerations

The committee received testimony from representatives of the wireless industry indicating that the wireless service providers have made significant financial investments in the state over the last several years. Representatives of Verizon Wireless provided data indicating that the company invested approximately

\$130 million in building its network in this state since 2001. A representative of SRT Wireless testified that the business has invested over \$21 million in wireless development in its service area and has plans to continue to expand its service through the addition of more tower sites. A representative of Alltel testified that the company invested approximately \$80 million in the state between 2005 and the middle of 2007.

The committee received testimony from a representative of the Department of Commerce regarding the impact of wireless service in the state upon business development. To compete in the global market, key industries in the state such as agriculture, energy development, information technology, and tourism rely heavily upon the workforce and customers being able to have access to wireless communications throughout the state. Because of the increase in oil development in the western portions of the state, demand for wireless service and broadband access has increased substantially during the last few years.

Committee members expressed concerns that the lack of wireless service and broadband service in rural areas of the state hindered or discouraged economic development in those areas and may discourage young people from moving to or staying in rural areas. Although the rural nature of the state poses some problems with respect to the expansion of wireless service in the state, representatives of the wireless carriers contended that wireless and broadband services in this state are comparable with services provided in other states. The representatives of the wireless carriers indicated that expansion and enhancement of services in this state will continue as long as regulatory barriers, such as local ordinances restricting the building of towers, are minimized. The committee was assured that the merger of Alltel with Verizon Wireless would not affect the cost or availability of wireless service in the state or the continued expansion and enhancement of wireless services in the state.

The committee received testimony from a member of the Public Service Commission regarding activities of the Public Service Commission which are intended to aid the expansion of wireless service in the state. The commissioner testified that the commission has maintained a good relationship with representatives of wireless carriers and has encouraged wireless carriers to expand coverage in areas of the state that have demonstrated a need for additional coverage.

The committee considered a bill draft to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development. Proponents of the bill draft contended that additional investment in wireless infrastructure in the state is needed and a sales tax exemption would demonstrate to wireless providers that the state supports expansion of the businesses in the state.

Recommendation

The committee recommends Senate Bill No. 2040 to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development.

LICENSURE, EDUCATION, AND TRAINING OF ELECTRICIANS STUDY

Background

Licensure Requirements

North Dakota Century Code Chapter 43-09 provides that the State Electrical Board is responsible for licensing electricians. The State Electrical Board consists of five members appointed by the Governor. Section 43-09-09 requires any person undertaking or offering to undertake with another to plan, lay out, supervise, install, make additions, make alterations, or make repairs, in the installation of wiring, apparatus, or equipment for electric light, heat, or power to apply to the board for a license. The board is required to examine applicants and issue licenses to applicants that meet the qualifications established for that class of licensure.

North Dakota Century Code Section 43-09-11 establishes three classes of licensure and provides the experience and training requirements for those classes. That section provides that an applicant for licensure as a master electrician must have completed one year's experience as a licensed journeyman electrician. The experience requirement for an applicant for a journeyman electrician license, as amended by the Legislative Assembly in 2007, mandates completion of 8,000 hours' experience, which may not be obtained in fewer than three years. An applicant for licensure as a journeyman electrician who registers with the State Electrical Board as an apprentice after January 31, 2008, must have either successfully completed apprenticeship and training approved by the federal Bureau of Apprenticeship and Training and completed 8,000 hours' experience in installing and repairing electrical wiring, apparatus, and equipment or successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed 8,000 hours' experience. An applicant for licensure as a Class B electrician must have 18 months' experience in farmstead or residential wiring.

North Dakota Century Code Section 43-09-13.1 requires an apprentice electrician to register with the State Electrical Board within the first six months of employment. That section limits an apprentice electrician to working on installations only under the personal supervision of a licensed electrician. Under administrative rules adopted by the board, an electrical contractor is required to maintain records of all employees providing electrical work for that electrical contractor.

A license issued to an electrician is valid for one year and may be renewed upon payment of the license fee and proof of successful completion of continuing education as prescribed by the board but not to exceed 16 hours each biennium.

North Dakota Century Code Section 43-09-20 limits the scope of work of a Class B electrician to the installation of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of 2,500 or fewer population, and the installation of electrical equipment, appliances, and

apparatus used on farmsteads and one or two family residences in those municipalities.

North Dakota Century Code Section 49-09-25 authorizes the State Electrical Board to grant licenses to licensed electricians from any other state if that state similarly licenses electricians from this state and the other state has licensing qualifications equal to the qualifications required in this state.

Electrician Licensing in Bordering States

Under Minnesota law, an applicant for licensure as a journeyman electrician must have completed four years of training. However, the Minnesota Board of Electricity is authorized to provide for the allowance of one year of experience credit for successful completion of a two-year post-high school electrical course approved by the board. An applicant for a license as a master electrician must be a graduate of a four-year electrical course at an accredited college or university; have had at least one year's experience, acceptable to the board, as a licensed journeyman; or have had at least five years' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for electrical light, heat, and power. Minnesota law also provides for the licensure of a power limited technician. To be licensed as a power limited technician, an individual must be a graduate of a four-year electrical course at an accredited college or university; or must have had at least 36 months' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for power limited systems. However, the board may by rule provide for the allowance of up to 12 months (2,000 hours) of experience credit for successful completion of a two-year post-high school electrical course or other technical training approved by the board. Minnesota law requires that a master electrician must directly supervise the work of a power limited technician.

Under Montana law, an applicant for licensure as a journeyman electrician must have completed at least four years of apprenticeship in the electrical trade or four years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Montana law also provides a class of licensure designated as a residential electrician. An applicant for a residential electrician's license is required to furnish written evidence of at least two years of apprenticeship in the electrical trade or two years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. An applicant for a master electrician's license is required to provide written evidence of being a graduate electrical engineer of an accredited college or university and having one year of legally obtained practical electrical experience or of being a graduate of an electrical trade school and having at least four years of legally obtained practical experience in electrical work or at least five years of legally obtained practical experience in planning, laying

out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power. An apprentice electrician may work only under the supervision of a licensed electrician.

The South Dakota State Electrical Commission has adopted rules establishing experience requirements for electricians. The rules provide that for advancement from an apprentice electrician to a journeyman electrician, an applicant must complete four years of electrical training under the employment and supervision of a licensed electrical contractor or Class B electrician. A journeyman electrician seeking to become a Class B electrician must complete two years of electrical training under the employment and supervision of a licensed electrical contractor or Class B electrician. The rules require that the training must include a minimum of one year in residential or farmstead wiring. To advance from a journeyman electrician to an electrical contractor, an individual must complete two years of electrical experience under the employment and supervision of an electrical contractor in commercial and residential or farmstead wiring and additional training, including the technical knowledge to plan, lay out, and supervise the installation of electrical light, heat, and power in accordance with the National Electrical Code. Under South Dakota law and rule, an apprentice electrician must be personally supervised by a licensed electrician.

Testimony and Committee Considerations

The committee received testimony from a representative of the State Electrical Board who stated that the training and licensing requirements are in place to ensure safety for electricians and consumers. Because of the demand for electricians in this state, the board has been working to encourage high school students to enter the electrical trade. In addition, to help address the workforce shortage, the board has been attempting to enter reciprocal licensing agreements with other states. However, the agreements generally require that a journeyman electrician have 8,000 hours of experience, which is a national standard. The representative of the board testified that about 95 percent of the individuals who went through apprenticeship passed the journeyman test. The committee also received information indicating that the pass rate on journeyman examinations in this state compared favorably with other states.

The committee received testimony from a representative of the State College of Science regarding the education and training of electricians at the college. The testimony indicated that the college graduates approximately 55 students to 70 students annually, and approximately 40 percent to 45 percent of the students stay in the state. Because of the growth in the energy industry in this state and neighboring states, the demand for electricians has increased and salaries have increased.

The committee also received comments from the North Dakota Electrical Contractors Association, which supported the 8,000-hour experience requirement.

Committee members generally agreed that the training and education requirements are necessary to

protect the public and for the entering of reciprocity agreements with other states.

Conclusion

The committee makes no recommendation with respect to its study of the licensure, training, and classroom education requirements for electricians in the state.

COMMERCE DEPARTMENT STUDY

Background

1999-2000 Interim Study

The Legislative Assembly established the Department of Commerce in 2001. The legislation creating the department was the result of an interim study conducted by the Commerce and Labor Committee. That committee was directed to study the economic development efforts in the state, including the provision of economic development services statewide and related effectiveness, the potential for privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including potential transfer of the fund to the Bank of North Dakota.

During the 1999-2000 interim, the Commerce and Labor Committee reviewed the functions of the Department of Economic Development and Finance, the Division of Community Services, other state departments and agencies engaged in economic development activities, local economic development entities, and other groups and entities engaged in economic development activities in the state. With respect to the Department of Economic Development and Finance, the testimony indicated the three goals of the department were to develop a shared vision for economic development efforts in the state, build the local capacity and ability of communities to secure successful investment outcomes, and promote the state to create awareness and to generate leads for successful investment outcomes. The roles of the department included business assistance, business recruitment, business finance, minority business development, opportunity fund, program support, and special industry assistance. The testimony indicated that areas in which the department did not provide services included community development assistance, entrepreneurial development, and international trade and investment. The study also found that economic development services were lacking in program support in policy and planning, special industry assistance and telecommunications, state development strategic planning, technology development and transfer, and workforce preparation and development. The testimony indicated that although the department was improving services provided, there was a need to address globalization and international growth.

The Commerce and Labor Committee reviewed information regarding the funding of the department and information comparing the department's funding to the funding of development agencies of other states. The committee also reviewed the National Association of State Development Agencies' biennial report comparing

development agencies and services provided across the country.

With respect to the Division of Community Services, the Commerce and Labor Committee received testimony that the division's primary involvement in economic development was through community block grant funds. The testimony indicated the division worked closely with regional planning councils and the Department of Economic Development and Finance.

The Commerce and Labor Committee also received testimony with respect to privatization and consolidation privatization of state economic development services. Factors given to support privatizing economic development services included removing economic development from politicians, which results in continuity between administrations; providing greater expertise as economic development gets more complicated; dealing better with the private sector elements of economic development; allowing greater flexibility in responding to market changes; and getting the private sector to be involved and help fund economic development.

The executive director of the Department of Economic Development and Finance testified in opposition to complete privatization of the state's economic development efforts in part because of the need for public accountability if public funds are involved. However, the committee received testimony suggesting globalization might be a good example of an area that would benefit from private/public partnerships.

A representative of the Department of Economic Development and Finance testified that some potential benefits of private/public partnerships could include:

- Improved leadership roles in economic development;
- Improved vision and a strategic plan to guide the state's economic development;
- Reduced role of politics in economic development;
- Increased consistency in state development efforts;
- Leveraged public sector funds with private sector funds for economic development;
- Reduced state costs for economic development;
- Improved performance and accountability of economic development;
- Improved quality and professionalism of state development staff;
- Increased flexibility in how state economic development organizations manage resources;
- Reduced size of state government;
- Improved responsiveness of economic development in meeting the needs of business;
- Improved effectiveness of state, regional, and local economic development;
- Improved coordination of resources at all levels of economic development;
- Improved dialogue between private sector, executive, and legislative branches;
- Increased continuity in state development efforts when governors and legislators change;
- Increased use of private sector leaders as development ambassadors;

- Improved responsiveness by state development economic changes and business needs; and
- Improved information to better support state development.

The Commerce and Labor Committee received information from representatives of the National Association of State Development Agencies regarding privatization of state economic development services and associated trends. The committee was informed that the trend in privatization more frequently was implemented through a targeted approach, whereby privatization deals with one particular niche, versus a broad approach in which the privatization is general purpose. Typically, the targeted approach provided for a private, nonprofit board that oversees the activities of the public economic development agency. With a private advisory board, typically the Governor chooses the board members, and the Governor and the Legislative Assembly choose how to appropriate funds for economic development.

The Commerce and Labor Committee received testimony indicating that four of the primary objectives of states that privatize economic development services were:

1. Assisting in leveraging support of the private sector, primarily in the form of in-kind support versus financial support;
2. Creating a forum to get advice and counsel from the private sector;
3. Increasing the level of buyin from the private sector; and
4. Increasing the private sector's acceptance of state economic development programs.

A representative of the Bank of North Dakota testified that if economic development services were to be privatized, it would be necessary to reevaluate which organization should be in control of finances, and it is possible the Bank of North Dakota's role would be larger under those circumstances.

The Commerce and Labor Committee received testimony from a representative of the National Association of State Development Agencies which indicated that trends in economic development include the move toward centralization or creation of a mechanism to facilitate unification, such as creation of an economic development cabinet; unification through a single economic development budget; and proliferation of economic development at regional and local levels, whereby even if the state has some degree of control over centralization, it is difficult for a state to control or centralize at the local and regional levels.

The National Association of State Development Agencies surveyed state agencies regarding the provision of economic development services within the state and submitted the *NASDA Report to North Dakota on Potential Fine Tuning of State Economic Development Program*. The Department of Economic Development and Finance received high marks across the board in the survey, and negative observations indicated that perhaps there were too many economic development service providers within the state, and there did not appear to be a mechanism to coordinate

the state economic development services. The report encouraged the state to:

- Establish a central cabinet-level department of commerce to create more synergy among the state's economic development programs;
- Set up a regional network to support local economic development activities;
- Create a commerce cabinet to maximize cooperation and collaboration among the various state-funded entities that retain some economic development responsibilities;
- Create a unified economic development budget that would include all agencies that expend state funds for economic development and which would be submitted through the department of commerce; and
- Establish a private, nonprofit foundation to serve as an advisory panel for the department of commerce, which would oversee strategic planning and goal setting to guide the state's efforts to strengthen its economy, and which would set benchmarks with which to assess the effectiveness of the state's programs.

The Commerce and Labor Committee received testimony suggesting that if the committee considered consolidation of economic development services, existing state agencies could be consolidated into a larger agency, an entirely new agency could be created, or a combination of these two approaches could be used.

The director of the Department of Economic Development and Finance testified that creation of a department of commerce could increase efficiency, improve customer service, and provide coordination of economic development services and planning. A representative of the Bank of North Dakota testified that it was not realistic to have "one-stop" shopping for all economic development services.

The Commerce and Labor Committee received a recommendation from the Economic Development Association of North Dakota which proposed the creation of a North Dakota Department of Commerce, including the North Dakota Department of Economic Development and Finance, Tourism Department, Division of Community Services, Labor Department, and the North Dakota Workforce Development Council.

Senate Bill No. 2032 (2001)

As a result of its deliberations, the Commerce and Labor Committee recommended Senate Bill No. 2032 (2001). The bill provided for the creation of a department of commerce by consolidating the Division of Community Services, Department of Economic Development and Finance, and Tourism Department. The bill proposed that the new department would be administered by a commissioner of commerce. The bill provided for the creation of five specific divisions within the department--a division of community services, a division of economic development and finance, a division of tourism, a division of international trade, and a division of workforce development. The bill provided for the establishment of a North Dakota commerce cabinet and

allowed for the creation of a privately funded North Dakota development foundation.

During the standing committee hearing for Senate Bill No. 2032, there was additional testimony regarding the purposes of the proposed creation of the Department of Commerce. The chairman of the Commerce and Labor Committee testified that in light of a stagnant economy, it is necessary to provide an increased state commitment to economic development which focuses resources and establishes structure, assurances, and programs that provide confidence to investors and legislators. The chairman testified that there was support for additional resources for economic development but some concern with centralization. In addition, he stated there was substantial agreement on having a central cabinet and an economic development foundation, but skepticism regarding a unified economic development budget. The standing committee and conference committee testimony indicates that one of the greatest concerns with the bill was the inclusion of the Tourism Department within the Department of Commerce.

Standing committee testimony with respect to the creation of an economic development foundation indicated the main purposes of the foundation would be to develop a strategic economic development plan and to provide accountability with respect to economic development.

Senate Bill No. 2032, as enacted, consolidated the Division of Community Services, Department of Economic Development and Finance, and Tourism Department in the newly created Department of Commerce. The bill required the Governor, with the advice and counsel of the North Dakota Economic Development Foundation, to appoint the Commissioner of Commerce to administer the department. The bill provided that the department must consist of a Division of Community Services, a Division of Economic Development and Finance, a Division of Tourism, a Division of Workforce Development, and any other division determined to be necessary by the commissioner. Under the bill, after delayed implementation dates, the commissioner was required to appoint the division directors.

Senate Bill No. 2032 also created a North Dakota commerce cabinet composed of the directors of each of the department's divisions and of the executive heads or other authorized representatives of the State Board for Vocational and Technical Education (now named the State Board for Career and Technical Education), the State Board of Higher Education, the Bank of North Dakota, the Department of Agriculture, the Workers Compensation Bureau (now named Workforce Safety and Insurance), the Department of Transportation, Job Service North Dakota, the Game and Fish Department, and of any other state agency appointed by the commissioner. Under the bill, the cabinet was required to coordinate and communicate economic development and tourism efforts of the agencies represented and develop and make available before each regular session the Legislative Assembly a list that identifies economic development money included in the budget requests of the cabinet agencies.

Senate Bill No. 2032 also created the North Dakota Economic Development Foundation composed of at least 15 members, but not more than 30 members, appointed by the Governor. The bill provided that the purpose of the foundation would be to serve in an advisory role to the commissioner; develop a strategic plan for the development of value-added agriculture; develop a strategic plan for economic development in the state; and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the economic development strategic plan.

The duties of the Commissioner of Commerce, codified as NDCC Section 54-60-03, include:

1. Serving as chairman of the commerce cabinet.
2. Preparing the cabinet's list identifying economic development money included in budget requests of cabinet agencies.
3. Managing the operations of the department.
4. Assuming central responsibilities to develop, implement, and coordinate a working network of commerce service providers.
5. Advising and cooperating with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; research institutions; and with any individual or other private or public entity.
6. Reporting to the Legislative Assembly on the department's goals and objectives, activities and measurable results, and benchmarks.

Department of Commerce Divisions

Although Senate Bill No. 2032 consolidated the Division of Community Services, the Department of Economic Development and Finance, and the Tourism Department into the new Department of Commerce, the duties of those divisions and the officials supervising those divisions did not change.

The mission and duties of the Division of Economic Development and Finance and the duties of the director of the division are set forth in NDCC Chapter 54-34.3. Under Section 54-34.3-01, the mission of the division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;

4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the State Board of Higher Education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Inc., the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

Other statutory duties of the director of the Division of Economic Development and Finance include administering the finance office and implementing a certification program through which the division may provide training to assist local economic developers in meeting the needs of businesses.

The duties of the director of the Division of Economic Development and Finance are set forth in NDCC Section 54-34.3-04. Those responsibilities include:

1. Assuming central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the division.
2. Coordinating the program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development.
3. Advising, and cooperating with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any individual or other private or public entity, and calling upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the division and the state may benefit from up-to-date technical advice, information, and assistance.
4. Cooperating with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding.

North Dakota Century Code Section 54-34.3-13 requires the Department of Commerce to manage and administer the rural growth incentive program.

The duties of the director of the Division of Tourism are set forth in NDCC Section 54-34.4-02. Under that section, the director is required to:

1. Implement the state's tourism policy.
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division.
3. Measure and forecast visitor volume, receipts, and related social and economic impacts.
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks.
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means.
6. Participate in travel shows.
7. Supervise and administer visitor information centers that receive funding from the state.
8. Develop opportunities for professional and technical education and training in the visitor industry.
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism.
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state.
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism.
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within, the state, and, if necessary, recommend programs or policy changes to those agencies.

The responsibilities of the Division of Community Services are set forth in NDCC Chapter 54-44.5. Section 54-44.5-04 requires the division to:

1. Provide relevant information on pertinent topics and issues which relate to public policy development, interpretation, modification, and implementation.
2. Research, analyze, and recommend public policy for the Office of Management and Budget and the executive office.
3. Coordinate public policy implementation within the state.
4. Develop state energy conservation policy and manage federal energy conservation program activities between all levels of the public and private sectors regarding the prudent and efficient use of energy resources.
5. Develop, implement, and administer federal categorical and block grant programs assigned to the division.
6. Advise, coordinate, and assist cities, political subdivisions, and the state in all phases of state

and local planning for the physical development of the state.

7. Render financial assistance to any government planning agency within federal law or regulation.
8. Advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing planning activities of the state.
9. Implement a state facility energy improvement program.

2003 Legislation

In 2003 the Legislative Assembly made one significant change that affected the structure adopted in Senate Bill No. 2032. Senate Bill No. 2393 (2003) added to the responsibilities of the North Dakota Economic Development Foundation by requiring the foundation to recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population, monitor state and federal legislation and initiatives that may impact the state's economy and population, and serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population. The bill also required the Division of Workforce Development to monitor local, regional, and national public and private workforce development initiatives.

2005 Legislation

In 2005 the Legislative Assembly adopted legislation addressing economic development accountability, the structure of the Division of Economic Development and Finance and the Division of Community Services, and additional duties of the commissioner and the department.

House Bill No. 1203 (2005) defined a business incentive and required recipients of business incentives to enter a business incentive agreement with each grantor of the incentive. The bill required the business incentive agreement to include a description of the incentive, a statement of the public purpose of the incentive, goals for the incentive, a description of the financial obligation of the recipient if the goals are not met, a commitment by the recipient to continue operations in the jurisdiction in which the incentive is used for five years or more after the benefit date, the name and address of the parent company of the recipient, a list of all financial assistance by all grantors for the project, and the recipient's obligation if the recipient does not fulfill the business incentive agreement. The bill required the Department of Commerce to create state grantor recipient report forms and provided that before April 1, 2007, and each April 1 thereafter, each state agency that has granted a business incentive within the last five calendar years must file an annual state grantor report with the department. The bill required the department to publish a compilation and summary of the results of the state grantor reports for each calendar year beginning in 2007. The bill also required political subdivisions to maintain records of business incentives provided to

recipients and to prepare an annual political subdivision grantor report.

Senate Bill No. 2018 (2005) required the director of the Division of Economic Development and Finance to administer the International Business and Trade Office and permitted the director to contract with a third party for the provision of services for the International Business and Trade Office. The bill authorized the director to establish an International Business and Trade Office Advisory Board. The bill required the director to implement a certification program through which the division would provide training to assist local economic developers in meeting the needs of businesses. The bill established an Office of Renewable Energy and Energy Efficiency within the Division of Community Services. The bill also required the commissioner of the Department of Commerce to identify target industries to focus economic development efforts and designate one target industry as a special focus target industry. The bill required the commissioner to implement a program for use by state agencies to assist the agencies to present to the public a positive image of the state and required the commissioner to create and implement a business hotline program.

2007 Legislation

In 2007 the Legislative Assembly also made structural changes to the Department of Commerce.

House Bill No. 1018 (2007) required the Division of Workforce Development to develop and implement the state's talent strategy and a statewide intelligence coordination strategy and to administer a program to increase the use of higher education internships and work experience opportunities for higher education students. The bill required the division, in developing and implementing the state's talent strategy, to develop a comprehensive, consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction. The bill also required the division to continuously review, identify how to improve, and implement improvements to the state's system of workforce development, workforce training, and talent attraction. In addition, the division is required to develop and implement a system of performance and accountability measures for the state's system for workforce development, workforce training, and talent attraction.

House Bill No. 1018 required the Division of Workforce Development, in consultation with the Department of Career and Technical Education, Job Service North Dakota, and the Superintendent of Public Instruction, to develop and implement a program to assist public schools in promoting North Dakota career opportunities to students in grades 9 through 12. The bill also required the Department of Commerce to implement and administer a Beginning Again North Dakota pilot program to develop a database of skills and other assets of communities and residents to be used to advance the internal and external attitude and image of the state.

House Bill No. 1137 (2007) repealed provisions in NDCC Chapter 54-34.3 which related to the

establishment of an international business and trade office, a North Dakota American Indian Business Development Office, and a North Dakota women's business development office and reenacted similar provisions in Chapter 54-60. The bill changed the membership of the Value-Added Agriculture Promotion Board to provide that the board consist of a minimum of 9 members and a maximum of 11 members and added a representative of the Agricultural Products Utilization Commission as a member of the board. The bill required that the North Dakota Economic Development Foundation Executive Committee include up to three members at large and a treasurer in addition to the chairman, vice chairman, and secretary.

House Bill No. 1019 (2007) provided that the Workforce Enhancement Council consist of the private sector members of the Workforce Development Council, the director of the Department of Career and Technical Education, and the director of the Division of Workforce Development. The bill required the Workforce Enhancement Council to recommend to the Commissioner of Commerce the approval of grants to institutions of higher education assigned primary responsibility for workforce training to be used to create or enhance training programs that address workforce needs of primary sector companies. The bill also established a workforce enhancement fund.

House Bill No. 1027 (2007), which was introduced as a result of a study during the 2005-06 interim by the Economic Development Committee, included a proposal to require the Department of Commerce to have a division of innovation and technology. Although the bill failed to pass, many of the provisions of the bill were included within House Bill No. 1018. However, the proposal to create another division within the department was not included in House Bill No. 1018, nor in other bills containing provisions from House Bill No. 1027.

Testimony and Committee Considerations

The committee received testimony from representatives of the Department of Commerce regarding the organizational structure of the department. The Commissioner of Commerce testified that the number of programs implemented under the department has doubled to about 50 since the creation of the department. The commissioner indicated that the department appears to be organized in an efficient and effective manner with a structure that is conducive to teamwork among four divisions that share a common purpose in coordinating economic and community development activities. Because of the colocation of the various divisions into the department, administrative efficiencies have been achieved as well as providing uniformity in marketing.

An Office of Innovation and Strategic Initiatives was created within the department in May 2007. That office administers the centers of excellence and the InnovateND program. The commissioner testified that it does not appear necessary to provide for a statutorily required division of science and technology.

The committee received an update regarding the North Dakota Economic Development Foundation strategic plan benchmarks. The plan included six goals:

1. Develop a unified front for economic development based on collaboration and accountability.
2. Strengthen linkages between the state's higher education system and economic development organizations and private businesses.
3. Create quality jobs that retain North Dakota's current workforce and attract new skilled labor.
4. Create a strong marketing image on the state's numerous strengths, including workforce, education, and quality of place.
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy.
6. Strengthen the state's business climate to increase global competitiveness.

Within each goal, the plan includes specific benchmarks upon which to measure the effectiveness of the department. Data provided to the committee indicated the department has experienced success in working toward the goals since 2000. Among the successes cited by the department are:

- The state was ranked fourth in the *2007 State Competitiveness Report*.
- The state was ranked ninth by *Forbes* on the list of "Best States for Business."
- The state had the second highest percentage growth from 2000 to 2006 in academic research and development expenditures according to the National Science Foundation.
- Since 2000, 30,000 new jobs have been created in the state, 5,000 of which were created in 2007.
- Average annual wages have increased by over \$8,400 per person.
- Positive business stories in national media provided an advertising equivalency of more than \$2.4 million in 2007, and the number of media inquiries regarding North Dakota business topics doubled in a recent 12-month period.
- The state experienced net job growth in all industries targeted in the plan--advanced manufacturing, energy, tourism, value-added agriculture, and technology-based business.
- The state is one of three states to increase the number of manufacturing jobs between 2000 and 2006.
- The state's gross domestic product grew to over \$26 billion in 2006.
- The state led the nation in the growth of exports in 2007 and global sales expanded to over \$2 billion.
- The state's manufactured exports exceeded \$2 billion in 2007, which was an increase of over \$500 million since 2006.

Representatives of the department presented information regarding the department's efforts to set performance goals and tie employee salary increases to those goals. During the last year, 63 employees set

424 goals. Of those goals, 108 were exceeded, 291 were met, and 25 were not met.

Committee members generally agreed that the department and the North Dakota Economic Development Foundation were making progress in meeting the expectations and that the performance measurements of the department were indicating success in achieving the goals of the strategic plan. Members of the committee expressed some concerns regarding economic development funding at the local level and the dedication of state resources to assist local economic development entities.

Conclusion

The committee makes no recommendation with respect to its study of the Department of Commerce.

RENAISSANCE ZONE CONFERENCE

The committee participated in the Renaissance Zone Conference held on February 6, 2007. The conference was attended by more than 60 individuals, and 42 communities were represented at the conference. Approximately 700 renaissance zone projects have been approved and 500 projects completed in the 42 cities that have created renaissance zones. The report of the Renaissance Zone Conference, which was also required to be submitted to the Workforce Committee, indicated that no significant issues were identified which required attention. However, the report included four recommendations for enhancements to the renaissance zone program:

1. Extend the 15-year period for a renaissance zone.
2. Include the cost of demolition if demolition is necessary for a project.
3. Eliminate the one-half mile requirement for the allowed three-block island.
4. Allow the historical tax credits to be transferred to new owners.

The Workforce Committee reviewed and considered those recommendations.

INSURANCE COMMISSIONER REPORT

The committee received a report from a representative of the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies pursuant to NDCC Section 26.1-36.4-06. That section, which was adopted by the Legislative Assembly in 1995, provides that premiums charged for individual health insurance policies during a rating period could not vary from lowest to highest rate by a ratio greater than 6 to 1 after August 1, 1995, and by a ratio of greater than 5 to 1 after August 1, 1996. The legislation also provided that gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.

The report of the Insurance Commissioner indicated that a survey was developed using 1994 data to evaluate the impact of the 1995 legislation on companies that were selling individual policies. The initial survey indicated that 10 of 13 companies that responded were

using gender rating; 4 companies were using durational rating; 1 company had a ratio exceeding 6 to 1; 3 other companies had a ratio exceeding 5 to 1; and 12 of the companies intended to continue selling policies in the state. An annual report from 1994 indicated 26 companies were issuing policies in the state with a total premium amount of \$76 million. The total number of policies was 33,322, and the total number of lives covered by the policies was 64,458.

In 2007, 13 companies were issuing policies with a total premium amount of \$101 million. The total number of policies was 23,729, and the total number of lives covered by the policies was 43,738. The report suggested that the decrease in companies issuing policies and the number of policies issued may have been impacted by the modified community rating law but also likely was impacted by other factors.

WORKFORCE SAFETY AND INSURANCE REPORT

Pursuant to NDCC Section 65-06.2-09, the committee received a report from WSI regarding the status of the modified workers' compensation program performance audit and the Roughrider Industries safety audit. The modified workers' compensation program was established in 1997 to provide workers' compensation coverage for inmates in prison work programs and to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program. The report indicated Roughrider Industries was found to be in compliance with all components of the WSI risk management program. The audit of the modified workers' compensation coverage program indicated that the program is effective.

COMMISSIONER OF FINANCIAL INSTITUTIONS REPORT

The committee received a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks. The commissioner reported that there has not been any state-chartered building and loan association in this state since the 1970s. The commissioner testified that Senate Bill No. 2295 (2007) included a repeal of NDCC Title 7 which becomes effective August 1, 2009. The commissioner indicated that one credit union is seeking to convert to a state-chartered building and loan association. The report also indicated that there is a significant advantage to being a federally chartered savings and loan as opposed to holding a state charter. The commissioner testified that he would draft proposed legislation to replace Title 7 if requested to do so, but likely will not support the legislation. The commissioner also testified that replacement of Title 7 will also require significant administrative rule changes.