

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1035

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

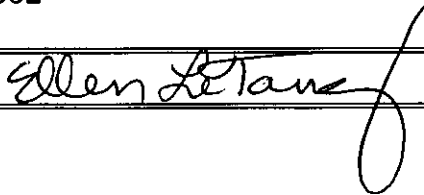
### House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 7, 2009

Recorder Job Number: 6662

Committee Clerk Signature



### Minutes:

A BILL for an Act to amend and reenact section 65-04-02 of the North Dakota Century Code, relating to workforce safety and insurance reserves.

**Chairman Keiser:** I'll call the House Industry, Business and Labor Committee into session.

**Representative Berg:** Talked about the summary of three bills the Legislative Council staff for House Industry, Business and Labor. See attachments 1, 2, & 3. Take 1035, "cut to the quick of this controversy". What we need is reserves at a certain financial level. The reserve can't be more 140% of what we need, nor can it be less than 120%. Concept behind that is we will never be in a deficit, we will always have adequate reserves and at the same time, we won't keep reserves more than we need. How do we get to 140% or what is that cap? This bill attempts to define this much more clearly. New language in Section 2 says that available surplus means net assets, but does not include funds designated or obligated to specific programs. We have a 50 million dollar safety grant program that wouldn't be counted. All other assets would be counted and offset by the liabilities.

**Chairman Keiser :** Thank you, any question for the committee for Representative Berg?

**Representative Ruby:** By taking that amount of those funds as the surplus, doesn't that reduce the amount that somebody might get in the discounts, because that is now not figured

in to reach the cap. Plus we are raising the cap from 40 to 50%, is that going to result in fewer accounts or possible higher?

**Representative Berg:** If you don't have surplus there should be no discounts. We ended with a discount just because we our investments were doing well. Some decisions WSI made, saved tremendous money. Whether or not to receive a discount, an employer will depend on long term what the reserve is. The board can make that decision on how to handle this. Another issue is that we don't have premiums artificially low. What is critical here is long term is that we get to a point where annual premiums we charge are the appropriate premiums to cover the claims that year. Plus, not to build or deplete a surplus, that we have uniformity there. The reason it went up to 150%, by changing that to more standard accounting principles, it would have had more than 140%. We don't want to create a different board or change things, that why we changed it to 150%. All assets would be included. Example, buildings, owns a building, that's an asset. You can sell a building or rent, so that should be in my opinion, counted on your balance sheet. Even though, at that time, one of the options is not to include that. Unrealized gain and losses, was not to include unrealized gains, but in include unrealized losses. If you an investor in the stock market, the value of your portfolio can be determined every hour of every day. If you have a stock that is bought for a dollar and now it worth ten dollars, it's truly worth ten dollars it not worth a dollar. This bill takes all the assets and pulls them together. Today you will have to ask what their reserved would be, but quite frankly, today with the markets, we could have left it at 140%.

**Chairman Keiser:** Further questions

**Vice Chairman Kasper:** One of the things we discussed during the interim committee is the available surplus definition. When I look at available surplus funds, from my minds eye with WSI future claims, that to me is cash or readily available cash. We did have that discussion

whether or not the buildings and those assets are to be included in available surplus. I frankly of the opinion that it should not be included in the surplus because you are not going to go off and sell your building to sell a claim. We are going to pay claims with readily cash. I see your definition does leave the buildings in there. What would be the effect if we took the building and those types of assets out of the definition of available surplus to the concept that you are trying to get towards.

**Representative Berg:** That is a debate the committee is to wrestle with. My argument would be in running an organization like WSI, I could buy a building in every community. I could have 100 million dollars in real estate that wouldn't be part and that would be fair. Whatever this committee decides is fine. What we ended up was really two problems. One was really two problems; one was based on one definition of this, WSI had more money in their reserves than they should have by law and that came out by the consultant's report. What we need to do is to define it what's before you is far as my (didn't finish thought). We need to address that too, but by doing this cap, this definition keeps it simple for all times.

**Representative Ruby:** When you mentioned that you have more in the reserves that is legally suppose to have, they can either refund that back or have a program that would then encumber that part of the balance and that would get them within the law. As I'm reading this, basically, money that is designated for programs is off the table.

**Representative Berg:** Again, my understanding of designated programs would be legislative designated that they would stamp.

**Chairman Keiser:** Chairman Keiser explains the difference of reserves & surplus and they are not the same thing. This is a surplus bill. This is part of the problem that WSI is an unusual organization. There is not one general fund dollar that goes in it. It is funded 100% by premiums from employers. They have taken those and they have created the reserve and

everything else. They have bought building with it. So, you have to ask yourself if it neutralized tomorrow, what would happen to the building? Would it be an asset? What the interim committee said it was unclear. The agency contacted me and said what about the question about the safety program? The Legislature said have it with allocated money to it, we haven't spent it, is that in or out? This bill clarifies that. This bill will say that when we designated that you have a safety program is that money goes on the books as an expense once you developed your program. The building is another issue. Clearly the stocks, the anticipated value of loss or profit is built into actuarial statement. The committee suggested "treat this like a business" from a financial standpoint. When you run your financial statement and this for the committee to decide, treat it like a business and the building is in or it is out. If it's out it's more like a government agency and if it is in is more like a business agency.

**Representative Berg:** You're right. I would like to put it into perspective. The other bills pass today, it will never be an issue to balance the books because they have a requirement by statute for what they need to do. These also are for long term. What I would like to make is government and legislature let you deal with the crisis and so does the press. What we need is 100%, we don't need 120% to cover future claims. However, if we were at 100%, and our investment dropped 30-40%, we would be underfunded today by hundreds of millions dollars. We would have a crisis today. The reason we don't have a crisis is because thinking long term we have adequate reserves and we have checks and balances. I don't think we'll that in the future as you take the politician out.

**Chairman Keiser:** Further questions for Representative Berg. Anyone else here to testify on HB 1035?

**Cindy Ternes~Director of Finance**

**Testimony 4**

**Chairman Keiser:** Further questions? Cindy, why go up to 150 why not leave it at 140?

**Ternes:** The 10% is funded by non dollars because it is based on the reserve.

**Chairman Keiser:** Where is the fiscal or actuarial note? John do you have something on that?

**Halverson:** We did not get a request from Legislative Council.

**Chairman Keiser:** This is a first and we want it documented. We will not take action until we receive it.

**Representative Amerman:** I will ask this question so you can understand it. Part of the things removed are safety issues & educating programs which started out at 40 million dollars. If I understand this, it would be removed as far as determining surplus. Correct?

**Ternes:** Answer pertains to attachment 4, WSI Funds Status Chart-Net Assets Excluded from Surplus.

**Representative Amerman:** This will be removed as far as this bill is concerned. The money going to be invested in the stock market?

**Ternes:** Currently funds are not needed but are invested.

**Representative Amerman:** These funds that you don't want to be counted are hopefully used to make money.

**Ternes:** Until they are being used.

**Chairman Keiser:** Further questions.

**Representative Schneider:** At 130% to formulate net assets doesn't that lower the percentage?

**Ternes:** I don't understand.

**Representative Schneider:** At 130% total reserves plus surplus now, if you factor in the new formula of net assets wouldn't that lower the percentage?

**Ternes:** Correct

**Representative Schneider:** Factoring in this new formula, hypothetically, what would your new percentage be?

**Ternes:** 124%

**Representative Schneider:** The formula changes (inaudible).

Chairman Keiser: Further questions from the committee? Anyone else here to testify in support?

**Bill Shalhoob~North Dakota Chamber of Commerce:** I also represent approximately 12 other businesses. We understand the differences that are being talked about here. What WSI is proposing in terms of expenses is that they will rather carry them under balance sheet as prepaid expense, as an asset as a prepaid expense based on the Legislative intent. They want to dispense them immediately. The balance sheet good that day at that moment it changes the claim when it goes out or something comes in. That will eliminate a program they think is going out and if there is a carryover that will go back in the next biennium and then that will become part of the reserves. Trying to do over a biennium instead of this moment in time, we are ok with that. On the amendment we would like to look a little bit more, understanding that the bill income reducing property and produces income in there because it's rented. There is also a depreciation taken out on the other side so the net effect of taking the building out of there may not be as much as anybody thinks is because depreciation run against that. We have a concern property around the state and number of business had a concern when they built that building. That was not considered appropriate use of funds. We are in a depressed period and this will not always be the case. We are not talking about a market that is going down but in a market will go up. We would like to look at building should not be a part of that.

**Vice Chairman Kasper:** If we amended the definition of building which is excluded to be only the main headquarters of WSI and any other building WSI owns in the future will be counted as surplus, will that resolve your concern?

**Shalhoob:** I'm not sure because I have not seen the amendment. If legislature allows the purchase of all these buildings that has to run through the governess bill. I have not seen the governess bill. The answer is "I don't know".

**Chairman Keiser:** Do we pay property taxes on that building?

**Shalhoob:** I believe we do.

**Chairman Keiser:** Anyone else in support of 1035? Seeing none is there anyone to testify in opposition?

#### **Opposition**

**Dave Kemnitz~ND AFL-CIO** I'm neither in support or opposition.

**Chairman Keiser:** Are you in opposition or support?

**Kemnitz:** Attachment 5

**Chairman Keiser:** Question as far as Mr. Kemnitz.

**Vice Chairman Kasper:** The elimination of discounting reserves, how do you see that enhancing the benefits for injured worker if we took that step because from what I understand if we eliminate the discount we would have to have high costs for premiums from employers to provide the benefits? We would overfund that reserve way more than what it currently is. How do see that helping injured workers?

**Kemnitz:** Having some hind sight, when the reserve was discounted about four ago. Dividends appeared as a result of surplus. If the reserves are beyond what it's needs are, the pressure than should be turned to restoring some of the benefit levels that were removed in the 90's. The pressure could be applied to the agency being more responsible to take care of



the claimants that need it the most. We say if you discount the reserve and if you provide dividends, take away what should have been there for the claimants.

**Vice Chairman Kasper:** If we discounted the reserved and enhanced the benefits, that would be ok with you?

**Kemnitz:** Somewhat of a loaded question for the individual to understand. Explains about previous years situations.

**Chairman Keiser:** Any further questions. Just as a reminder, about four years ago, we did not discount the reserves but we adjust the reserves required. We had it at 100% of the reserve requirement and the Legislature through policy made the decision that there will never be a 100% requirement at anytime. So we did reduce the level of reserve required. That instantly had an impact on surplus. The dollars were still in the fund, so over night there was what appeared to be an extensive surplus that was really nothing more shift from reserve to surplus dollars. Any more questions on 1035.

**Representative Berg:** What is unclear is what should be counted as an asset or not. That is the decision of the committee.

Chairman Keiser: Anymore opposition to 1035? Why is Berg standing up in the opposition. Laugh. Anyone here to testify in neutral position?

**Representative Schneider:** Question for Representative Berg. The 130% reference, was that the actual numbers from this chart?

**There was discussion between Berg, Representative Schneider, & Ternes.**

**Chairman Keiser:** We are going to close the hearing on HB1035. We have on this bill a proposed amendment. We will wait the actuarial statement, simply because the way I read the law, we are suppose to have one.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6778 Starting at 18:05 minutes

Committee Clerk Signature *Ellen LeTang*

**Chairman Keiser:** Opened discussion on 1035. This bill relates to workforce safety and insurance reserves. Vice Chairman Kasper is carrying this bill. This bill deals with the surplus primarily in attempting to define what is and what is not part of the surplus.

**Vice Chairman Kasper:** One of the big questions is what do we do with the buildings?

**Chairman Keiser:** It moves the reserve to 150%

**Representative Ruby:** The way I look at it is, either you do one or the other, not both.

**Representative Boe:** As I recall, the building in.

**Vice Chairman Kasper:** I was going the other way with that because that the building is not going sold those houses WSI and their employees that pay claims. But, WSI could buy other buildings around the state.

**Representative Boe:** I guess that I misunderstood.

**Representative Gruchalla:** If the excess gets over 150%, what remedy is there to limit this to 150%?

**Chairman Keiser:** They did a few things but they could have done more. Bottom line is that they were just over at the end of the biennium. They could have reduced premiums. They also questioned about the dollars allocate for the safety program for the scholarship program. In their mind that money has been allocated even though it has not been spent. So, why are

we counting this in part of our reserves? If they took that money out they would have been under the 140% and technically they should have.

**Vice Chairman Kasper:** One or the other makes sense.

**Chairman Keiser:** I do think subsection two is important. How do we them to calculate it?

Representative Ruby, do you want to offer an amendment on line 11 to reduce 50 back to 40 and take the building out?

**Representative Ruby:** It depends if the building is in or out. If the building is in, yes and if not we should leave it at the change proposed.

**Chairman Keiser:** With this bill, the building is in.

**Representative Ruby:** If the committee chooses not to change that then I don't purpose to change it.

**Chairman Keiser:** There is government accounting and there is business accounting. Share my bias; I think the building should be in.

**Representative Ruby:** That's part of the problem.

**Chairman Keiser:** They can't build another building without our approval.

**Vice Chairman Kasper:** I move a Do Pass.

**Representative Ruby:** Second

**Representative Clark:** If we leave the building in, the surplus goes up, right?

**Chairman Keiser:** Down

**Representative Clark:** Your right that leaves surpluses where the money comes from. By leaving the building in, we are reducing the amount of money that would be available.

**Chairman Keiser:** No, because you are increasing the amount of money in by the value in it.

**Representative Clark:** OK.

**Vice Chairman Kasper:** We are taking out the specific programs the legislature has designated, such and the safety program.

**Representative Schneider:** We are giving them two more reasons to increase their surplus.

**Vice Chairman Kasper:** One of the key questions is "what really is an asset or what is part of a reserve & surplus". The key is paragraph 2 line 13.

**Chairman Keiser:** I agree. The building was not in the 40; we are putting the building in and go up to 50.

**Vice Chairman Kasper:** I think the building is in. I'm almost positive we talked about it. That's my contention that I had that they were counting the building to pay claims. I said that's not right because you are not going to sell your building. I think the building is currently in.

**Representative Vigesaa:** I believe it is. That chart that was handed out concerning the funds status, they had a column there that added if the building was excluded. At the end of October, we were at a 124% reserve if we took out the training. If the building was excluded it went to 123%, it didn't change it a whole lot. The investments will come back.

**Chairman Keiser:** Representative Schneider has suggested to the committee the defeat the proposal and reconsider the moving the 50 to 40.

**Vice Chairman Kasper:** Does Representative Schneider want to offer an amendment to go to 40% to see how that goes.

**Chairman Keiser:** Representative Schneider makes an amendment to the bill on line 11 reversing 50 back to 40 and keeping the building in. Representative Vigesaa seconded it.

**Representative Ruby:** I agree, that's the only way to go.

**Representative Sukut:** The building is now in & reduced to 140.

**Chairman Keiser:** Yes, and the current law is 140 and the building is in. The programs are also in the surplus.

**Representative Amerman:** I have heartburn over this and goes on to talk about why.

I will ask the clerk to take roll call on the amendment before us on line 11 from 50 back to 40.

**Committee Roll Call was taken with 12 yeas, 0 no, & 0 absent to pass HB 1035 as amended. The carrier is Vice Chairman Kasper.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/28/2009

Amendment to:           Engrossed  
                                  HB 1035

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill clarifies WSI's fund surplus requirement statute; establishes parameters should fund surplus levels fall outside of the statutory range; and modifies the premium level criteria for an employer Board position.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1035 with Conference Committee Amendments

BILL DESCRIPTION: Reserve Surplus Clarification Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature; establishes parameters should fund surplus levels fall outside of the statutory range; and modifies the premium level criteria for an employer Board position.

FISCAL IMPACT: No reserve or premium rate level impact is anticipated.

DATE: April 28, 2009

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	04/28/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/23/2009

Amendment to:        Engrossed  
                              HB 1035

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature and establishes parameters should fund surplus levels fall outside of the statutory range.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1035 with Senate Amendments

BILL DESCRIPTION: Reserve Surplus Clarification Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature and establishes parameters should fund surplus levels fall outside of the statutory range.

FISCAL IMPACT: No reserve or premium rate level impact is anticipated.

DATE: March 23, 2009

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*



item, and fund affected and the number of FTE positions affected.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	03/23/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/14/2009

Amendment to: HB 1035

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The engrossed bill clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1035

BILL DESCRIPTION: Reserve Surplus Clarification Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature.

FISCAL IMPACT: No reserve or premium rate level impact is anticipated.

DATE: January 14, 2009

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/14/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/07/2009

Bill/Resolution No.: HB 1035

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature and changes the range of required surplus levels from 120% to 140% to 120% to 150% of discounted reserve levels.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1035

BILL DESCRIPTION: Reserve Surplus Clarification Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation clarifies WSI's fund surplus requirement statute by excluding from surplus funds earmarked for specific programs or projects directed by the legislature and changes the range of required surplus levels from 120% to 140% to 120% to 150% of discounted reserve levels.

FISCAL IMPACT: No reserve or premium rate level impact is anticipated.

DATE: January 8, 2008

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/08/2008

January 12, 2009

VK  
1/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1035

Page 1, line 11, remove the overstrike over "~~forty~~" and remove "fifty"

Renumber accordingly

Date: Jan 12 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1035

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90184.0401 Title 0500

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Kasper Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigasaa	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment VC - Kasper

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

Date: Jan 12 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. \_\_\_\_\_

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Vice chairman Rep Kasper Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 12 No 1

Absent ☐

Floor Assignment Vice Chairman Kasper

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



**REPORT OF STANDING COMMITTEE**

**HB 1035: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1035 was placed on  
the Sixth order on the calendar.

Page 1, line 11, remove the overstrike over "~~forty~~" and remove "fifty"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1035

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

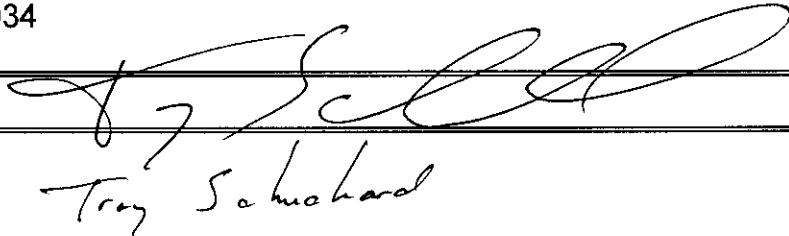
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10034

Committee Clerk Signature



Troy Schuchard

Minutes:

**Chairman Klein:** Opened HB 1035, Senator Wanzek absent.

**Rick Berg:** These two bills you are going to have this morning did come from the internal IBL committee. The first bill 1035 really is a result of a problem. The problem was that we had identified by statute what an adequate reserve would be. It ties into determining what your balance sheet is. What's counted as an asset and what is counted as a liability and there was differences of opinions of both within WSI and as with other state agencies and with the public. So this bill simply says it will take a look at the assets and liabilities of WSI the way you would look at any business and its balance sheet. With the one exception which is on line fourteen it would not include funds designated or obligated for pacific programs or projects pursuant to directive or pacific approval by the legislative assembly. That is the essence of the bill.

Discussion continued on surplus, assets, and liabilities.

**Cindy Ternes:** Director of Finance for Workforce Safety and Insurance: (See attachment #1)

**Chairman Klein:** Are we getting close to that bottom figure of a hundred and twenty percent?

**Cindy Ternes:** Currently being the end of December, we were at a hundred and thirty four percent.

**Senator Potter:** What is the ITTP update? And are you seeking to increase in the coming biennium this fall?

**Cindy Ternes:** ITTP Update is Information Technology Transformation Program. And yes we are seeking to have that re-appropriated.

**Senator Andrist:** Is it my understanding then that the effect of this bill would do reduce your discounted reserve level from thirty four percent to twenty eight percent?

**Cindy Ternes:** Pretty close. The effect of this bill would be to reduce the surplus factor over and above the discounted reserve level from thirty four to twenty eight.

Continued discussion and questions for Cindy.

**Jeb Oehlke:** representing North Dakota Chamber of Commerce testified in support of HB 1035. (See attachment #2)

**Senator Potter:** Is the Chamber concerned at all that WSI can set the level of the Safety Grants? WSI could reach into the surplus, spend it down under 120% and then the business community would have to kick in the premiums to pay for the Safety Grants apparently decided by the WSI Board of Directors, doesn't that concern you?

**Jeb Oehlke:** For the last decade the agency has been run in a fiscally sound manor. I think if it would mean dragging their below the 120% minimum, I don't believe they would reach in and dedicate that much to the fund.

**Russ Hanson:** Representing Associated General Contractors of North Dakota wanted to go on record in support of the bill. Commented what would happen if the reserve would go down to ninety percent and how the business community would react to a steep premium increase and how they would not like that.

**Gordy Smith:** Auditors office: Cindy did a good job of explaining everything. The bottom dollar figure of what you were owed to what you had left.

**Senator Nodland:** Are all state agencies using the G.A.P. program for their auditing practices?

**Gordy Smith:** Yes they are. The 80% of the audits we do have it done, and we are required to do so.

**Senator Potter:** The 120% figure where does that come from? The discounted reserve levels, that's the number we think we need to pay all of the claims currently existing on into the future? Is that correct?

**Gordy Smith:** There are a number of assumptions the auditors make, everything that has incurred to date after everything is paid off.

**Senator Potter:** That is what I understood, so somebody's best guess as to all the future costs including the inflation factor that is going to be in there, but we are saying we need a 20%

more than that in our reserves is that correct?

**Gordy Smith:** That is correct.

**Senator Potter:** And where does that number come from?

**Gordy Smith:** As far as I know, that was a decision made by the policy makers.

**Senator Andrist:** I have a little problem going with numbers that are 2 ½ months old because the market has been pretty devastated over that time period. Does anybody have figures as to where we are right now?

**Gordy Smith:** I am not aware of those numbers. I think we can expect to see if they were at 134% before the Legislative Session, they would be significantly lower. I don't know how low, but wouldn't doubt it.

**Senator Potter:** If the state surplus was at a negative instead of a positive and if the discounted reserve levels were at 85%, still all the current claims would be paid, correct? I

mean workers would still be paid and we would have time to adjust premium increases, correct?

**Gordy Smith:** I think that is a very good way of looking at it. You would want some approach to adjust those figures because I would not in any way suggest that the business community be shocked with something you could do in one year. I don't think it would be catastrophic for the immediate future.

**Senator Potter:** I have been told that in general, an 8% reserve is an adequate goal, for instance the States goal is 10%, is there a reason?

**Gordy Smith:** I don't have that information; I believe that would be up to policy makers. It is the policy makers' best guess as to what would keep the funds solvent even through troubled times.

**Rick Berg:** I can address the safety grants. I think I said 50 million and it may be 35 million. The way I envision that is if they spent the 35 million, it really doesn't matter to me, we just need to define that. There may be Legislators that feel they don't want those figures as part of the reserve figures for future costs or people who have been injured. Thinking about an appropriate reserve really depends on what you are doing. Someone who is playing the commodities market probably has a higher reserve than a bank. When I play Blackjack, I always have a reserve so I can double down. All I am saying is there is no magic number. I have always looked at reserves through 'worst case scenario's' views. I always want 100% reserve available in case we have had a plunge of whatever it is, doesn't affect or disrupt our business community.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

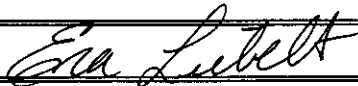
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11214

Committee Clerk Signature



Minutes:

John Bjornson: Explains the bill for the Senators and what the amendment will do.

Senator Andrist: If they had ten years would they look at it each year if the Dow comes back and it passes that 120?

John: As it states now they are required to modify each year. They're going to estimate one tenth. If it goes down they would establish a new rate.

Senator Potter: Just in reference to the bill we just passed is the actuary shooting between 120 and 140?

John: The actuary is shooting towards what they see is needed.

Chairman Klein: I believe that is correct, it's what is needed to cover all the claims.

John: This will modify the deficit either way.

Senator Potter: So if we fall to 110 percent on June 30 of the anticipated needs. Then they would say we are going to have a one percent increase this year in premiums over and above where the actuary is in we'd have one percent increase to try to restore.

John: They would have a one tenth of what they projected was needed.

Senator Andrist: Moved to pass the amendment.

Senator Potter: Seconded.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution No. 1035

Hearing Date: March 18, 2009

Row call vote: 7 to O.

Senator Potter move a do pass as amended.

Senator Andrist seconded.

Senator Potter to carry bill 1035.



March 16, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, notwithstanding section 65-04-01 the organization shall modify premium rates for the next year so that one-tenth of the difference between the actuarially discounted reserve and one hundred twenty percent of the actuarially discounted reserve is estimated to be collected during the following year.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

Renumber accordingly

Date: 3/18/09  
Roll Call Vote #: 1

## Senate

## Industry, Business and Labor

Legislative Council Amendment Number 90184.0504

Motion Made By Senator Andrist      Seconded By Senator Potter

[illegible]

Total (Yes) 7 No 0

Absent ☐

## Floor Assignment

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

Roll Call Vote #: 2

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

**REPORT OF STANDING COMMITTEE**

**HB 1035: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1035 was placed on the Sixth order on the calendar.

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, notwithstanding section 65-04-01 the organization shall modify premium rates for the next year so that one-tenth of the difference between the actuarially discounted reserve and one hundred twenty percent of the actuarially discounted reserve is estimated to be collected during the following year.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1035

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

**House Industry, Business and Labor Committee**

☒ Check here for Conference Committee

**Hearing Date:** April 15, 2009

**Recorder Job Number:** 11872

Committee Clerk Signature

*Ellen LeTang*

**Chairman Kasper:** Open the Conference Committee hearing on HB 1035 relating to workforce safety and insurance reserves.

**Representative Kasper:** It appears the Senate made one amendment on page 1, line 11, where you have changed the 150% reserve level back to 120%. We would like to hear the Senate's reasoning and why you felt you needed the change.

**Senator Klein:** The bill was amended of couple of times and John Bjornson was involved. The issue was when it drops below 120%, how do we get back to that level without strapping the employers? There was, where the language came up trying to move it up 10% a year rather than trying to get it in a shorter period of time. That was really what we were trying to address. Most of our discussion was centered around how will we get our fund back into that curve we need to without strapping the employers.

**Representative Kasper:** My apology that was a house amendment. Again, Senator Klein, if you would give a little explanation on the Senate amendment.

**Senator Klein:** While we were trying to get this into perspective of what happens when it drops below the level that we have set? How do we get back to that 120% and do it in a reasonable

fashion. It will take is some time to get it back to the 120% and we believe it would have burdened the employers.

**Representative Kasper:** How would you address with your amendment, the situation that the market continued to tumble and you want to claw back at the 1/10? Now we will get into a situation that we were 15, 20 years ago.

**Senator Klein:** We spent time, this is the .0600 version and Representative Berg along with John Bjornson spent time on this.

**Representative Keiser:** I brought a handout (see attachment). I believe the Senate amendment has some merits but I have some concerns. This letter is really at the heart of this bill. I have several concerns. One is why do we have a reserve? Will there be money to cover a crisis and with a lot of debate, what the appropriate level is? When we went from a non-discounted to a discounted reserve, suddenly WSI had for the last 2 years, this huge surplus. It was a discounted reserve the past few years and transferred money into surplus and what to do with that? We said you have to slim those down. The last 4 years the agency has been providing an amazing discount. But as we know and see here is the stock market has gone down. It appears that at this point in time, is if the 120, 140 appropriate? As we did have a big debate on our side and you folks did too, what should be included? We decided that they should and you concurred. What happen if this gets way down below 120%? What are we going to do? We have been offering employers big discounts and you have in law, that you have to be at 120, 140 percent. Part of this debate is the 120, 140 percent reasonable on the discounted basis? If it is, it's prudent and you want to truly protect injured workers, you better do everything in your power to make sure that we maintain that. If it required us to go back to employers to bring that premium up, that's the way it is or you cut benefits. The problem I have with the amendment as it was proposed is that several years we had another

trust fund that was going down and it was in the red. We had a governor who for political reasons alone, cut that premium rate twice, and sent the fund deeper into the red. We passed legislation that put into place that that could not happen. We have experience that when we went into deficit, the Fed's stepped in, they pay it, the state reimburses them plus interest and is obligated to immediately enact legislation to increase the rate, it's not optional. The department sent out notices of increase and I didn't budget for that. So this brings me back to a political standpoint, you go below 120, 110 percent and we say to them that you only have to come back 10% next year, so you come back a little bit. But then somebody makes a decision that we want to give another big discount and politically this is too hot. We are going to take money out of the reserve and we go down to 80% and next year it's still too hot, we are going to discount the reserve further. Now we are putting at risk our injured workers. The bottom line is 120% the right number, we've got to hold the employer's feet to the fire or the legislature in terms of benefits, make sure you have program that works. Right now the governor can circumvent and take it down and down.

**Senator Potter:** In this last scenario, didn't we just care of that by making sure the rate were within 5% of what the actuaries say? That the governor wouldn't be able to offer the discounts or is that a loophole that we forgot?

**Representative Keiser:** Excellent point and I'm glad that WSI are here. The attorneys can certainly answer this question. From my perspective, that's related but a separate issue. That is based on current year's utilization; they can only go so much off the actuary's estimate. It doesn't mean that couldn't spend this down.

**John Halverson~WSI.** The premium bill that Senator Potter referenced, it is a separate issue. We set premiums to cover next year's liabilities. That structure, we can't deviate more than 5% from the actuary's indication. This would be part 2, you see the language in the current bill



say notwithstanding, that section of the law, if it goes below 120%, then you surcharge above and beyond that. Really, two separate issues.

**Senator Potter:** We did not actually debate very long the idea of building and funding programs. We agreed with the House. This 120%, a 100% is what the actuary says is sound and prudent. The reason that we keep the reserves at that level to avoid further massive premium increases. The problem is that if we drop to 110%, in order to prevent future premium increases, we got to have a big premium increase. That was the current reason to come up with a way to step it up gradually so we don't burden the employers with claims that are out there 20, 30 years in the future, we are holding reserves for that. We have time to catch up to that and 10% is the way to moderate those premium increases. That seems to me the way to keep this protection that we are putting in place.

**Representative Kasper:** If the 10% were the number that is theoretically is a 10 year cycle to get back to whole. That's been our concern.

**Representative Keiser:** The scenario I gave is 10% in year one and if you drop it the second year and its 10%, is not 10 years. Every year, keep dropping the reserve and I will add that the reserve is more than to keep premium down in the future; it is good fiscal management of insurance.

**Representative Kasper:** WSI, do you track the reserves historically and provide us with this information for the last 10 years? Could you somehow address the 6% discount as far as the impact on the reserves for future liabilities?

**Halverson:** We currently discount at 5%.

**Representative Kasper:** For insurance companies, what level of reserves surplus percentage wise what are projected for future claims.

**Halverson:** It may vary.

**Representative Kasper:** On the claims side and give us those numbers too.

**Representative Keiser:** I had WSI wrote some amendments (see attachment).

**Halverson:** Goes over briefly over the amendments.

**Representative Keiser:** I can live with the one, the three year as long as it can't float.

**Senator Potter:** That is what we are all here to make sure that it is stable.

**Representative Kasper:** We will call another meeting and adjourns.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

## House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date:** April 17, 2009

**Recorder Job Number:** 11937

Committee Clerk Signature

*Ellen Retaney*

**Chairman Kasper:** As you recall at our conclusion of our first conference committee, I asked WSI share some information for us to look at and I'm going to ask WSI to walk through the attachments. See attachments

**Cindy Ternes~Director of Finances of WSI.** Goes over the graph-attachment B.

- ~ This is a position as of February 2009.
- ~ This goes from fiscal year 1998 through current date of February 2009.
- ~ These are audited numbers with the exception of the final February 28 numbers.
- ~ First row shows our unpaid lost reserves discounted at 5%. We were at 525 million and currently at estimated at 750 million. All of these figures are in millions.
- ~ The second row is total fund surplus. This is the amount of equity in the within the fund that is over and above the liability discounted reserves.
- ~ The third row show those two combined.

**Representative Kasper:** What we are showing on the green line is where we think we need to be and the reserves to cover and then we have the yellow line which is the actual history.

Now we are showing that as the circumstances have begun to change and the economy, the yellow line is beginning to move downward.

**Ternes:** That is correct. Continues on graph.

- ~ Look at the graph, the green being the reserves discounted where it is, the yellow being total reserve & surplus, the red and black tracks there, the red is the 120% target and the black is the 140%. So as of 2005, when that statute was passed, the yellow line should be between the red and the black. You can see that it only comes there in February of this year.
- ~ Continuing below, the undiscounted reserve amount in fiscal year 1998 we were at 875 million, currently estimated at 1.237 billion. You can see that our discount, if we were to pay all of these claims in full tomorrow, it would be 1.237 billion dollars.

**Senator Representative Kasper:** If we passed HB 1035 as is, we are lowering by 41 million the total financial reserves and surplus. Is that correct?

**Ternes:** Yes, that is correct.

**Senator Representative Kasper:** So then we would be just only 4 million dollars over the low end of the range at the end of February?

**Ternes:** That is correct.

**Representative Representative Kasper:** Let's continue on the chart.

**Ternes:**

- ~ Our unpaid liabilities estimated and discounted.
- ~ Our funding ratio, fiscal 1998 we were at 127.1% and that has increased all the way to 169% in 2005 and February currently at 126.1%.
- ~ Below there I listed below there the exclusions that HB 1035 would give us from available surplus and those do total 41.7 million.

~ Total Fund surplus at the bottom that would be total available fund surplus for dividends of 154 million.

~ Financial reserves & surplus for dividends after the effect HB 1035 would be 904 million.

**Representative Kasper:** The exclusions, the safety grants, revolving school loan and the ITTP; those are areas that are liabilities that have to be paid out and should not be counted as surplus.

**Ternes:** Those are funding areas that have been legislatively and board approved, they are not totally approved but funding has been set aside.

**Representative Kasper:** Because HB 1035 says we are not going to count them in for available reserve & surplus.

**Ternes:** Correct.

**Representative Kasper:** The purple on the first page, would you explain that?

**Ternes:** The purple line at the far right side shows the effect of HB 1035 approximately where we would be just above the 120%.

**Ternes:** Goes over attachment B-1.

**Ternes:** Goes over attachment C.

**Representative Kasper:** In the early 80's, where the premiums collected were going down and the claim costs increasing. What occurred to have the premiums go down?

**John Halverson:** Prior to 89, 90, that was the governor & administration at the time.

**Representative Kasper:** The governor was setting the policy in regards to what the premiums collected should be?

**Halverson:** That's correct.

**Ternes:** See attachment D. Proposed amendment. If the available surplus should decrease to less than 120%, that no dividend could be declared and the agency would bring that back

into compliance within 2 years. On the hind side, if the surplus would exceed the 140%, that too would be put back into compliance of that stated claims period.

**Senator Klein:** Since we are going from a 1/10 to 2 years, I'm looking for a direction why we went to 2 years.

**Ternes:** My thought would be should we not be able to be in compliance in 2 years, we would be back in session again. We are not playing catch up over 10 years.

**Senator Klein:** The legislature be back in 2 years not necessarily we need to be there for a particular reason?

**Representative Keiser:** Attachment E. The point is there is a reason that the reserves are there and it's not political. We have the worst of all worlds; you have health, salary replacement and the other associated benefits. Looking at this, is 120% adequate to insure the risk that you are exposed to. This should not be a legislative decision; this should be a regulatory question. If it falls below 120%, there should be severe penalties in his opinion. I personally have no problems with the 2 years.

**Representative Kasper:** When you look at the market, the yellow, you can see that it doesn't too long with a market change to influence of that fund.

**Representative Keiser:** I do think that yellow line has gone up in March and the first part of April. I suggest we not take action and think about these amendments to see if people are comfortable with them. The insurance department would take action in 2 years about the 120%.

**Senator Potter:** You point out in your testimony exactly why it is different. The reason why we have high reserves in an insurance company is they could flee or go out of business. This is a domestic that we won't let go out of business because we run it. Our concern here is the instability that took place when the reserve fell too low. We need to cushion the blow on North

Dakota premium payers. If it drops to 120 or 110, it's not the end of the world; it's only the beginning of the end of the world. What I'm hearing here is that we need to increase premiums rapidly to avoid increasing premiums rapidly. We need to work that down and maybe taking 10 years is too long. I didn't think that we would take 10 years to recover; I don't have that bleak of view. We have to make sure we don't react too rapidly, we are looking for stability. My reaction is that maybe 2 or 10 years is not right, maybe we can find something in-between?

**Representative Keiser:** You can see what did happen and it wasn't solely the market. That was a political decision. Number 1, that's out and number 2, the reality is, 120 is too low. We were already given a break on the premium by allowing it to go down to 120 and that brings the state exposure in. When it goes below 100, the state starts paying. If you want to extend the period of recovery, then you should extend at the same time the reserves.

**Senator Klein:** I need to see or hear examples. If we drop to 116 over the 2 year period what are we looking at for a premium percentage increase to the employers of the state?

**Halverson:** Every point on the reserve liabilities is 7 ½ million, so if we dropped 4 points, we are talking 30 million dollars. Goes on explaining the scenario with Senator Klein.

**Senator Potter:** When we look at the 80's, we can't justify what has happen there. I believe in actuaries, so even at 100%, I'm comfortable. I believe we've taken legislative action in this legislative session to prevent this from happening in the future by saying our rates vary no more that 5% from the actuarial sound data.

**Representative Keiser:** We had that answered and they said that the 2 are unrelated.

**Senator Potter:** I have a problem understanding how they are unrelated.

**Halverson:** HB 1036 is the one that related to the state wide premium levels. What this bill does is a separate issue.

**Representative Kasper:** So on the 5% variance in the rates for the future years, that's based upon expected claims for the next years and where we need to be to continue the reserve in the right direction.

**Halverson:** That's correct.

**Representative Kasper:** The reserve is all previous liabilities that the fund faces at that point in time?

**Halverson:** That's correct.

**Representative Keiser:** Based on 2 laws, the actuary comes in and says 5% increase in premium rate. We haven't reduced our premium rates and my premium is \$1000, it's going up to a \$1050? My premium, that's not what I paid in the past because we offered a huge discount on premiums that we took out of the surplus. That what this bill addresses is the use of that surplus to manipulate the dollars that are paid out of the premium. They are related but totally independent. If I don't want to take heat, I'll spend out of the surplus.

**Representative Kasper:** What this bill does is protect the reserve from being raided to keep next year's rates from going up.

**Representative Keiser:** Not the premium but the dollars.

**Halverson:** The premiums will go where they need to go. This is basically step 2, where is that surplus in the range.

**Senator Klein:** John, you folks feel comfortable along with the board the direction we need to take to make sure that we have a comfort level?

**Halverson:** We brought this information for discussion purposes; our board has not taken a position on this particular version.

**Representative Kasper:** I asked John Halverson to put together an amendment together to address some of the concerns. This is the work at this point.



**Representative Keiser:** If this were to be adopted, it would leave the governor very cautious not to drop it down to 120%, to do the right thing. Ask the actuaries how much I can take out without being political? That's the management control I hope we can have.

**Representative Kasper:** Another area that it impacts, I think it put a little tiger noose on the board to pay attention to their recommendations, which I think is good.

**Representative Kasper:** Closes the conference hearing on HB 1035.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

### House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date:** April 21, 2009

**Recorder Job Number:** 12064

Committee Clerk Signature

*Ellen Stang*

**Chairman Representative Kasper opens the Conference Committee hearing on HB 1035.**

**Representative Kasper:** We will try to move forward and come to some decision. Any new ideas to discuss?

**Senator Klein:** Is the 2 years to short of time that might be something of discussion.

**Senator Potter:** I asked John Bjornson in reference to the questions about possible political influence.

**Representative Kasper:** I received this email from Senator Klein, the level of financial reserves plus available surplus determined as of June 30 of any year, below 140% of the actuarial. The kind of reserve the organization may not issue premium dividends to the next year. So what we are saying is right now we don't have any lock up between 140 & 120?

**Senator Potter:** That was my understanding and I ask Bjornson and that is the case.

**Representative Kasper:** It was also written with the rest of the amendments above it and we are back at the 1/10. Is that your intent?

**Senator Potter:** That's not my intent.

**Representative Keiser:** If it's between 120 & 140, the agency cannot offer a discount?

**Senator Potter:** My understanding is currently they could and that came from our discussions here. This amendment would make it impossible.

**Representative Keiser:** Because it's between 120 & 140.

**Senator Potter:** That's correct.

**Representative Kasper:** There is a lock box from 140% and below, no dividends issued. If it's above 140% the intent would be to pay it down to 140%.

**Senator Potter:** That current with the language.

**Representative Keiser:** I don't like it. We gave them the parameters in last session of 140 to 160, thinking that 140 it shouldn't get below 140. We also set an upper parameter, which we really don't need if you think about it, the reason being if there is humongous surplus up there, then they should do something with that. It should go back to the people who paid it or go to the injured workers so they can't amass a super surplus and sit on it. This is why we put the upper limit on. To make the argument that if they go in between, you shouldn't be able to spend it down, it violates what we've tried to do to say live within this range and manage it properly. Really, you could set the limit at 140, because that what you would be doing. The reason in the House we accepted going down from 140 to 120 was that currently that 140 was including those statutory programs and the buildings as assets on the balance sheet. It's an interesting concept but I think we want from a policy standpoint say don't get the super surplus, if it happens, give it back somehow and keep it solvent. That is just my position.

**Representative Kasper:** One of the things we see is if the market, things can look good, then go bad in a very short period of time. I wonder if the volatility we are facing we ought to focus on just the next 2 years and with the idea that next session we are obviously we are going to have to look at this some time. What would be the best policy for the next few years?

**Senator Nodland:** That's really where I'm coming from and that could easily happen.

**Representative Kasper:** Right now we say that if the level of financial reserves plus available surplus determined on June 30, is above 140%, that a couple of months from now, market could be above. Then they start issuing dividends and then there is another 1000 point drop, maybe we should say that if it gets to 140%, it might have to be there for a year before you look at a dividend.

**Representative Boe:** Should both those triggers be at the same level? Should we have the parameter at 120 to 140 and the suspension of dividends be at 160% so you would have a softer landing into the zone instead of a cliff at 140%.

**Representative Keiser:** Some history why the language is in there. In the last interim before the market went bad and the end of the last interim, we had put into statute 140 & 160. There was an implication that they would operate between those 2 levels. Fortunately it never got below the 120. Because of the changes we made in this legislation earlier with the buildings & others, we still would have been at the 140. The reason this language as it is, was WSI last interim had a real quandary. They offered a humongous discount but they still weren't below 140 and that was a big question, are they in violation of the law?

**Halverson~WSI.** We did before last dividend, gone 4 years. The trouble was to get down.

**Representative Keiser:** We had a discussion that if you offered a 100% discount that take away all of the incentive to have safety in the workplace. That wasn't a good policy. Because the law wasn't clear, didn't spend it down, I can assure you that there were a lot of employers in this state who wanted greater benefits, saying, you are over your 160, why aren't you spending that down? It wasn't clear.

**Representative Kasper:** Did they have to bring it down within 1 year.

**Representative Keiser:** The next premium setting.

**Representative Kasper:** The handouts you give were dramatically larger.

**Senator Klein:** Our issue is to maintain that 120 and how do we get back to that? Our amendment took it at a tenth. I heard the comments that that's too long. Representative Keiser's was 2 years, after listening to the insurance department, we need to get back to that 120 at least. Is 2 years too soon, certainly 10 is too long, maybe we need to focus on those years and that will get us here to the end.

**Representative Kasper:** Are we looking at the down side, the 120?

**Senator Klein:** That's where I believe is the crux of the problem because the down side is where we could hurt ourselves in the long run. Certainly the up side has issues but down side is what we want to address because the market is dropping.

**Representative Kasper:** Are you making a motion on 4 years.

**Senator Klein:** I move that in the last line of Representative Keiser's proposed amendment from WSI, from 2 years to 4 years.

**Representative Kasper:** John, what is your reaction from 2 years to 4 years?

**Halverson:** There concern was to have enough flexibility to get the fund back to where it is. I can't speak specifically on behalf of the board, they need sufficient parameters.

**Senator Klein:** When you think about this market, we could start on raising the fees and be at \$14,000 and get them over the hump immediately or continue to trudge along. May be 4 years is too long. In 2 years, we could look at this. I'm trying to get some discussion going.

**Representative Keiser:** I can't support it, I would have put 1 year, you get below 120 and you are jeopardizing injured employees. If you say 2 years, that give the agency 1 year to play games and if you say 4 years, you have 3 years to play games. It will take a tough decision.

**Senator Potter:** It's different from other insurance companies because it has the full faith and credit of North Dakota, the injured worker is made to be whole. If it falls to 100% of the anticipated claims that's actually sound, no one is going to go without the benefits in the short

run and we have the time to adjust to it. The whole point to keeping the claims reserves at the level is to moderate humongous premium rate increases in the future which could lead businesses closes down or leaving the state. We are just trying to stabilize here. This is not a dire situation to fall to 110% as you see it to be.

**Representative Kasper:** I would draw you back to our history on our chart. I'm concerned about a potential political decision.

**Senator Potter:** We dealt with the premium side by saying that the premiums have to be actuarial sound and we have taken that decision away from any political decision. What I heard you say prior, that we were discounting the reserves from a political standpoint which is why I have the amendment drafted.

**Representative Kasper:** You amendment deals with the up side, we are now on the down side.

**Senator Potter:** That's right, but how do we get to the down side. Politically, how do we get to the down side, the only way we can do that is to give the reserves away as discounts? We prevent that from happening and we have the premiums set at the rate they are suppose to be, how do we get in that trench again? I don't see the potential that you see there. What I'm looking out for is not to see big premium increases for our employers on a short term basis.

**Representative Keiser:** There is not one dollar of general fund appropriation that has ever been spent to my knowledge, in worker's comp.

**Senator Potter:** Doesn't mean that it can't be.

**Representative Keiser:** It does, it's in the statue, premiums do come from the employers and it is an enterprise fund, it will be funded by the employers of our state. If you allow this fund to truly get in trouble, you might try to introduce an appropriation from the general fund; I can't say it won't pass.

**Representative Kasper:** I will pull out my constitution book out and say this may be unconstitutional.

**Senator Potter:** If it's statue, statues can be over ruled.

**Representative Keiser:** Point is that we have created this program and it is monopolistic state, but statutorily, to my knowledge we have not used any general fund.

**Halverson:** Strictly an employer fund.

**Representative Keiser:** Change that whole concept, now we are making a significant change.

**Senator Klein:** Have we had a second?

**Senator Nodland:** Second.

**Representative Boe:** This is for this amendment?

**Representative Kasper:** Reads amendment 2 years to 4 years (see attachment).

**Voting roll call was taken on amendment to change 2 years to 4 years, motion failed with a vote of 4 yes, 2 no, 0 absent.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1035

### House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date:** April 23, 2009

**Recorder Job Number:** 12151

Committee Clerk Signature

*Ellen Letang*

**Chairman Kasper opens the Conference Committee hearing on HB 1035.**

**Representative Kasper:** It's my goal to finish this bill today. WSI did take some board action that there will be an amendment that I would considered. I also have another amendment that I want to be considered in that light and the easy amendment that does with the number of board members and how they are elected. Representative Keiser, was this one you sort of worked on?

**Representative Keiser:** No, I didn't work on it but they brought it to me. See amendment attachment 1.

**Representative Keiser:** Moves to adopt Amendment #1.

**Senator Potter:** Second.

**Voting roll call was taken on Amendment 1 with 6 yes, 0 no, 0 absent, motion on amendment passes.**

**Representative Kasper:** Further discussion?

**Representative Kasper:** The last meeting we talked about some changes to the reserve levels and what we would allow as far as levels of reserve in dividend payouts. We asked WSI to get a board feel for where the board is at.



**John Halverson:** WSI. See amendment attachment 2 labeled A. Page 1, line 13, after 2, it used to say to insure compliance but the board suggest that we change it to, so the organization is estimated to come into compliance. For the most part there is consistence; it's consistent with the provision of the 140. They did support this version as is otherwise.

**Representative Kasper:** Any discussion on this amendment?

**Representative Keiser:** The reason you put the estimated to come into compliance is relative to the 120 is that under the 140, it for the two to come into compliance so the two would be consistent?

**Halverson:** That correct.

**Representative Keiser:** I could certainly support the change in the language providing that our minutes of this subcommittee reflect legislative intent to indicate that the intent, even though we are using the term estimated to the intent of this language is that they have an obligation, their estimate actually does take them into compliance. If it doesn't happen because it is an estimate and things do change, that understandable but that this doesn't provide a loophole of any form, not to move it back into compliance just because it says estimated. I think that's the intent of the board and by changing this language we are not changing the intent.

**Representative Kasper:** The reason you are using estimated is of potential market fluctuations?

**Halverson:** Precisely.

**Senator Potter:** I think that fine and I understand why you would us estimated. What concerns me is that we are saying that you must give discounts if you are over 140%, but you may give discounts between 120 & 140 percent and then you somehow have to raise

premiums to come into compliance if you are under 120. If the whole idea is stability, it would seem to me in that area 120 & 140, we shouldn't be giving discounts.

**Senator Klein:** In section 3, the premiums dividends issued may not 50%. Have we not exceeded that in the past?

**Halverson:** The last 4 years we've had 40, 50 & 62, there is some debate and discussion whether 62 was too large. The board discussion last June was, at what point do you go down?

**Senator Potter:** That 50% is enough flexibility to get where you need to get?

**Halverson:** At that 50% you can go 2 years and still be before the 140. The organization will still be in compliance.

**Senator Potter:** You don't see it as some kind of legal conflict?

**Halverson:** No, what that provision would insure that we are still compliance with the bill, they put the cap how much we (inaudible).

**Senator Potter:** Conceivably, you would never be able to achieve the goal if the investment would be gone so well that we can't discount below 50, you might actually be getting up to 150, 160, or 170.

**Halverson:** That would be a good position to be in.

**Representative Keiser:** Just to follow up on Senator Klein's comment, if we have historically given 60%, is there a reason to change this from 50 to 60 to give you flexibility?

**Halverson:** The precedence has been set. The board was comfortable.

**Representative Kasper:** Let's go to amendment #3.

**Halverson:** This version was prepared at the request of the chairman. (See amendment #3 attachment).

**Representative Kasper:** I have 2 concerns, one, the market volatility and two, different management structure at WSI.

**Representative Keiser:** Did the board take a position on this?

**Halverson:** No.

**Representative Keiser:** Since this is new, does the business have any input on that suggestion?

**Representative Kasper:** They might.

**Senator Potter:** I like this as a business man but I still think what has happened in the past and what could happen with all the unknowns we have over the next 2 years. I have no problem keeping it at that level to see how everything works. I also want to hear what the business area.

**Senator Klein:** Under current applications, where do we start paying those dividends?

**Halverson:** In the past legislation 2005, that where the fund really evolved, it got to a point where it historically never been, the debate started how much it amounts? If you look at the last 4 years in recent history, we have been over that 140 the day the law passed. Over the last 4 years the board said well we have to get rid of this excess, we need to work our way back down back to the 140. We really haven't come to the situation where we are below 140; it's only in the past few months that we've come back into compliance.

**Representative Kasper:** When the board has these discussions, when you are over the 140, did the discussions center around, let get down to 140 or try to get down to 130?

**Halverson:** It was to work our way down to the 140.

**Senator Klein:** With the market now and some of the changes we've made in the law, it will certainly put a strain on the fund, is that a concern now that the board has to look out a ways to see?

**Halverson:** I don't want to speak on behalf of the board but based on my work with the board, we are in a situation now if this bill passes, we will be at the 125% level now. I don't see

foresee the board now contemplating dividends for the coming year. We have put the employers on notice. I don't see it going in that direction.

**Senator Potter:** If the market were to bounce back to 10,000 by the 30<sup>th</sup> of June and your numbers were telling you that you were at 135%, you would be in the zone where you are suppose to be but premium payers in North Dakota would basically getting a 62% increase by not having the dividends?

**Halverson:** Yes, effectively more than that.

**Senator Potter:** Would you feel that there would be an opportunity to soften that by aiming it at 130%?

**Halverson:** It's definitely a discussion that I would bring to the board.

**Senator Potter:** If we pass this amendment?

**Halverson:** That wouldn't be an option.

**Senator Klein:** What is that number? What is the level for stability, 140, 130, not exactly sure and I very supportive of what we are doing here but I'm not sure that 140 is that number.

**Bill Shalhoob~North Dakota Chamber of Commerce and all of the business groups.** We also understand the need for the amendment. Our feeling at this point is that we would suggest that 130 that's been brought up. It gives the board, which is a new board and management, some flexibility in there without being rigid. It protects the fund by 75 million dollars. It doesn't say you will, it say you may. Our feeling is that it's a great idea and we favor the amendment.

**Representative Kasper:** I'm going to give you a hypothetical, if you get above 130%, which we are pretty close, we move up 37 million, the market goes up 6, 7 or 8 million points and by June 30, we are up. It would be then your hope that there would be some type of dividend?

**Shalhoob:** No, my feeling is that you are getting the board & the governor the flexibility but I really don't anticipate that there will be any dividend below 140.

**Representative Kasper:** When you say you don't foresee a dividend below 140, what the use of putting something in there below 140?

**Shalhoob:** I feel it allows the advisory board and the governor the flexibility to do what they are supposed to do, advise the governor.

**Senator Potter:** What you are looking for is stability and flexibility?

**Shalhoob:** Yes because we are operating under a new scenario with a new board.

**Senator Potter:** What about falling back into the period where we had some unfunded claims. Have you addressed them and are you leery of going back to the 1980's?

**Shalhoob:** I'm not based on the actuarial side on the rate side.

**Representative Kasper:** I would like to throw an idea out, on number 4 where we at a 140% before the dividend can be paid, say we went to 130, so you would be above 130 to pay a dividend, if the board chose to pay a dividend and the reserve is above 130 but below 140, that dividend would be limited to 40% of previous premium.

**Senator Potter:** I think that's an excellent suggest, that was the one thing if we changed it to 130, we were giving it no direction on what the amount could. It's a very good idea.

**Representative Keiser:** What was the rate?

**Representative Kasper:** Between 130 and 140 reserve level, a dividend could be paid out at the discretion of the board but that dividend would be limited to 40% of the previous year's premium, no more than that amount. We are putting that limiter on so that we don't crush that potential reserve down below 130, with the idea, we would look at it in 2 years.

**Nodland:** We have 3 triggers.

**Representative Keiser:** Moves to amend amendment #3 to read to 130% of the actuary established discount reserve and if the reserve levels are at 130 – 140 , then the maximum amount that could be paid would be 40% of the previous year's premium.

**Senator Potter:** Second.

**Voting roll call was taken on the amendment, motion carries 6 yes, 0 nays, 0 absent.**

**Representative Keiser:** Moves that the Senate recede from their amendments and amend HB 1035.

**Senator Nodland:** Second.

**Voting roll call was taken on the HB 1035 for the Senate to recede their amendments, motion carries 6 yes, 0 nays, 0 absent and Representative Kasper is the carrier.**

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number HB 1035 (, as (re)engrossed):

Date: April 15, 2009

Your Conference Committee House 1BL

**For the Senate:**

**For the House:**

Apr. 21			Apr. 21		
YES / NO			YES / NO		
Sen Nodland *	*		Ch Kasper *		*
Sen Klein *	*		Rep Keiser *		*
Sen Potter *	*		Rep Boe *	*	*

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ -- \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>change from 2 to 4 years</u>	

MOTION MADE BY: Sen Potter

SECONDED BY: Sen Nodland

OTE COUNT 4 YES 2 NO 0 ABSENT

PROPOSED AMENDMENTS TO ENGROSSED HB NO. 1035

Page 1, line 1, after "reenact" insert "subdivision a of subsection 1 of section 65-02-03.1 and"

Page 1, line 2, after "to" insert "the workforce safety and insurance board of directors and"

Page 1, after line 3 insert:

**SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:

a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was ~~at least ten thousand dollars but~~ less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at large representatives. Except for the employer at large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.

Renumber accordingly



# Vote for Amendment 1

## REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1035 (, as (re)engrossed):

Date: Apr. 23 - 2009

Your Conference Committee House 1BL

For the Senate:

For the House:

	YES / NO		YES / NO
<i>Apr 23</i> * Sen Nodland	*	Ch Kasper	* <i>Apr 23</i>
* Sen Klein	*	Rep. Keiser	* <i>Apr 23</i>
* Sen Potter	*	Rep Boe	* <i>Apr 23</i>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>Amendment 1</u>	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

OTE COUNT 6 YES 0 NO 0 ABSENT — Amendment carries

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

That the Senate recede from its amendments as printed on page 894 of the Senate Journal and page 1062 of the House Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." Insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.

4."

Page 1, line 17, replace "3." with "5."

Renumber accordingly

# Amendment 3

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

That the Senate recede from its amendments as printed on page 894 of the Senate Journal and page 1062 of the House Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." Insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.

4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred forty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.

5."

Page 1, line 17, replace "3." with "6."

Renumber accordingly

# Vote for Amendment 3

## REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number HB 1035 (, as (re)engrossed):

Date: Apr 23, 2009

Your Conference Committee House IBL

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen Nodland	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sh. Kasper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Keiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Potter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Boe	<input checked="" type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>Adopt # 3 w/ further amend</u>	

MOTION MADE BY: Keiser

SECONDED BY: Sen Potter

→ see attachment

VOTE COUNT 6 YES 0 NO 0 ABSENT

VK  
4/24/09  
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

That the Senate recede from its amendments as printed on page 1062 of the House Journal and page 894 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 1, line 1, after "reenact" insert "subdivision a of subsection 1 of section 65-02-03.1 and"

Page 1, line 2, after "to" insert "the workforce safety and insurance board of directors and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was ~~at least ten thousand dollars but~~ less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at large representatives. Except for the employer at large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer."

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.
4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.
5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization

2 of 2

may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.

6."

Page 1, line 17, replace "3." with "7."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number HB 1035, as (re)engrossed):

Date: Apr 23-2009

Your Conference Committee House 1BL

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen Nodland	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ch. Kasper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Keiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Potter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Boe	<input checked="" type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1062 - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: Apr. 23 - 2009

CARRIER: Kasper

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Keiser

SECONDED BY: Sen Nodland

OTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1035, as engrossed:** Your conference committee (Sens. Nodland, Klein, Potter and Reps. Kasper, Keiser, Boe) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1062, adopt amendments as follows, and place HB 1035 on the Seventh order:

That the Senate recede from its amendments as printed on page 1062 of the House Journal and page 894 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 1, line 1, after "reenact" insert "subdivision a of subsection 1 of section 65-02-03.1 and"

Page 1, line 2, after "to" insert "the workforce safety and insurance board of directors and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was ~~at least ten thousand dollars but~~ less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at large representatives. Except for the employer at large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer."

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.
4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.



5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.

6."

Page 1, line 17, replace "3." with "7."

Renumber accordingly

Engrossed HB 1035 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1035

## WSI major issues

### Future Governance

- Board of directors appointed by the gov
- Same, but gov also hires the CEO
- Insurance dept oversight
  - Market conduct
  - Fiscal
- Mutual company with limited private competition
- Full private market

### Restore the Public Confidence

- Investigate the public charges
  - True or False
    - True – present solutions to fix
    - False – hold those sources accountable
- Ask for additional input from
  - Employees and Injured workers
  - Employers
  - Service providers

### Legislative changes to improve WSI

- Safety – if we eliminate inquiries we can lower premiums and increase benefits.
- Efficiency, Accountability and transparency in workers compensation
- Benefits
- Premiums
- Innovation

Public/Commercial/Rick and it's called WSI major issues

October 2008

**SUMMARY OF INJURED EMPLOYEE CONTACTS -  
INDUSTRY, BUSINESS, AND LABOR COMMITTEE**

As part of the comprehensive review of Workforce Safety and Insurance during the 2007-08 interim by the Industry, Business, and Labor Committee, the chairman of the committee invited individuals who had concerns regarding the handling of claims by Workforce Safety and Insurance to contact the Legislative Council office to share those concerns.

The Legislative Council staff logged contacts from 57 individuals. In visiting with those individuals, the Legislative Council staff attempted to gain an understanding of the concerns and offered to provide the individuals information regarding the deliberations of the Industry, Business, and Labor Committee. 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 Industry, Business, and Labor Committee could review that individual's workers' compensation claim and discuss the claim with representatives of Workforce Safety and Insurance. The Legislative Council staff also provided each individual with information regarding the continuing jurisdiction review process undertaken by Workforce Safety and Insurance 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 Industry, Business, and Labor Committee to contact one individual who signed a release so that the committee member could hear the concerns of the injured worker. Committee members also were given the opportunity to visit with a representative of Workforce Safety and Insurance to attempt to better understand the decision of Workforce Safety and Insurance. 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.

Attached is a list of the names of the individuals who contacted the Legislative Council office. Included in the attachment is a notation regarding whether the individual signed and returned a release of information.

ATTACH:1

Salutation	Name	Address	City/State/Zip	Phone #	Phone # 2	Release
Ms.	Sheri Horing	4795 Laredo Drive	Fargo, ND 58103	701-306-5844		No
Mr.	Keith Murray	1282 Sixth Street East	West Fargo, ND 58078	701-281-1402		No
	James Hoffman			701-730-3263		No
	Jodi Novak	1506 Charwood Court	Grand Forks, ND 58201	701-775-0591		No
	Michael Pajalla	1620 Sixth Street North	Wahpeton, ND 58075	701-899-3249		Yes
Ms.	Donna Stumph			701-795-9304		No
Mr.	Mark Betts	5381 Fourth Avenue North	Grand Forks, ND 58203	218-779-1747		No
Mr.	Gary Speich	613 Sixth Street East	West Fargo, ND 58078	701-282-6254	701-277-4763	No
Mr.	Mike Kesler	227 15th Avenue NE	Jamestown, ND 58401	701-320-6173		No
Mr.	Art Poppe	P.O. Box 12633	Grand Forks, ND 58208	701-740-0008		No
Mr.	David Mattson	612 Third Avenue NE	Devils Lake, ND 58301	701-351-1783		Yes
Mr.	George St. Germaine	P.O. Box 324	St. John, ND 58369	701-477-5494		Yes
Mr.	William Chilton	P.O. Box 1713	Detroit Lakes, MN 56502	218-841-4836		No
Mr.	Starr Roberts	1514 Sixth Street South	Fargo, ND 58103	701-200-9112		Yes
Ms.	Becky Voelt	2714 10th Street South	Grand Forks, ND 58201	701-795-1161		No
Mr.	Douglas Capon			701-252-4042		No
Mr.	Kevin McGough	9360 150th Street South	Barnesville, MN 56514	218-789-7296		Yes
Mr.	Chris L. Zietz	944 Parkway Drive	West Fargo, ND 58078	701-729-1824		No
Ms.	Camille Retsey	151 150th Street North	Glyndon, MN 56547	218-498-2499		No
Mr.	Roger Johnson	902 28th Street SW	Fargo, ND 58103	701-232-8283		Yes
Mr.	Bruce Lee			701-549-3192		Yes
Mr.	Greg Freitag	1028 First Street, Apt. 203	Lake Port, MN 56554	218-849-8588		Yes
Mr.	Duane Tokach	700 South 12th Street Lot #30	Bismarck, ND 58504	701-250-1266		No
Mr.	Myron Jabs			701-490-0507		No
Mr.	Steve Dunn	P.O. Box 34	Lidgerwood, ND 58053	701-538-7725		No
Ms.	Terry Olmstead			701-775-2895		No
Mr.	Bill Westerholm	1003 14th Street South	Fargo, ND 58103	701-297-0490		Yes
Ms.	Ellen Anton			218-773-4572		No
Mr.	Marlin Hoyt	P.O. Box 12544	Grand Forks, ND 58208	701-772-3863		No
Mr.	Dan Dosch	214 NW 13th Street	Devils Lake, ND 58301	701-662-1137		Yes
Mr.	Terry Thedin	1245 11 1/2 Street North	Fargo, ND 58102			No
Mr.	Gary Smith	1333 Columbia Drive	Bismarck, ND 58504	701-258-6578		No
Mr.	Nathaniel Pittman	1416 East Avenue F	Bismarck, ND 58501	701-258-1650		No
Ms.	Judy Eizen	2443 West Country Club Drive, Apt. 3	Fargo, ND 58103	701-235-2541		No
Mr.	Henry J. Meyer	521 Ninth Avenue South	Wahpeton, ND 58075	701-640-2187		No
Mr.	Darren Knutsvig	P.O. Box 102	Buxton, ND 58218	701-847-2069	701-847-2942	Yes
Ms.	Lorna Johnson	3507 Kelly Street North	Fargo, ND 58102	701-235-4367		No
	Henry Smith					No
	Renee Briss	1299 98th Avenue NE	McHenry, ND 58464	701-676-2754		No
	Russell Robert	1623 North 10th	Wahpeton, ND 58075	701-899-0151		Yes
Mr.	Francis Rogstad	13250 145th Street SE	Bismarck, ND 58504	701-673-3389		No
Ms.	Mae Sitzloff	4961 44th Avenue SW, Apt. 103	Fargo, ND 58104	701-220-6331		No
Mr.	Craig Swanson					No
Ms.	Shirley Meagher	8796 70th Avenue North	Grand Forks, ND 58203			No
Mr.	Charles Morrell	2525 Broadway, Apt. 706	Fargo, ND 58102	701-445-7414		No
Mr.	Timothy McIntyre	3056 165th Avenue SE	Harwood, ND 58042	701-282-3238		No
Mr.	Kent Hart	3931 Highway 85 South	Belfield, ND 58622	701-575-4758		No
Mr.	Russell Thompson	1436 Sheyenne Street	West Fargo, ND 58078	701-282-7276		Yes
Ms.	Becky Williams			701-683-5701		No
Mr.	Gary Medenwaldt		Fergus Falls, MN	218-739-4795		No
Mr.	Sylvan Loegering	602 Eighth Avenue East	West Fargo, ND 58078	701-730-1366		No
Ms.	Maria Nolasco	405 NE Third Avenue	Oriska, ND 58063			Yes
Mr.	Elton Beininger	53857 410th St	New York Mills, MN 56567			No
Ms.	Mariann Volk	810 2nd Ave NW	Mandan, ND 58554	701-667-0741		Yes
Mr.	Michael P. Menschel	2025 5th Ave East	West Fargo, ND 58078	701-526-0982		Yes
Mr.	David Gee	3017 16th Ave. S.	Moorhead, MN 56560	218-287-9866		Yes

**2009 House Bill No. 1035**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by: Cindy Ternes, Director of Finance**  
**Workforce Safety and Insurance**  
**January 7, 2009**

Mr. Chairman and Members of the Committee:

My name is Cindy Ternes and I am with Workforce Safety and Insurance (WSI). On behalf of WSI, I am here to testify in support of HB 1035, a proposal submitted at the request of the Interim Legislative Industry, Business, and Labor Committee. This proposal serves to clarify the definition of "available surplus" and extends the upper limit of required reserves plus surplus from 140% to 150% of discounted reserve levels.

WSI worked with the Interim Legislative Industry, Business, and Labor Committee seeking clarification of this statute. One item remains unclear, thus WSI requests an amendment excluding real estate from the available surplus calculation as this asset does not represent liquid available funds. The amendment is attached to this testimony.

Also attached is a chart which outlines WSI's fund surplus position as of June 30, 2008 and October 31, 2008. The first two columns represent current law and include all assets in the calculation of surplus. The third column represents "available surplus" as proposed in House Bill 1035. The fourth column represents "available surplus" as proposed in House Bill 1035 with the WSI amendment excluding real estate.

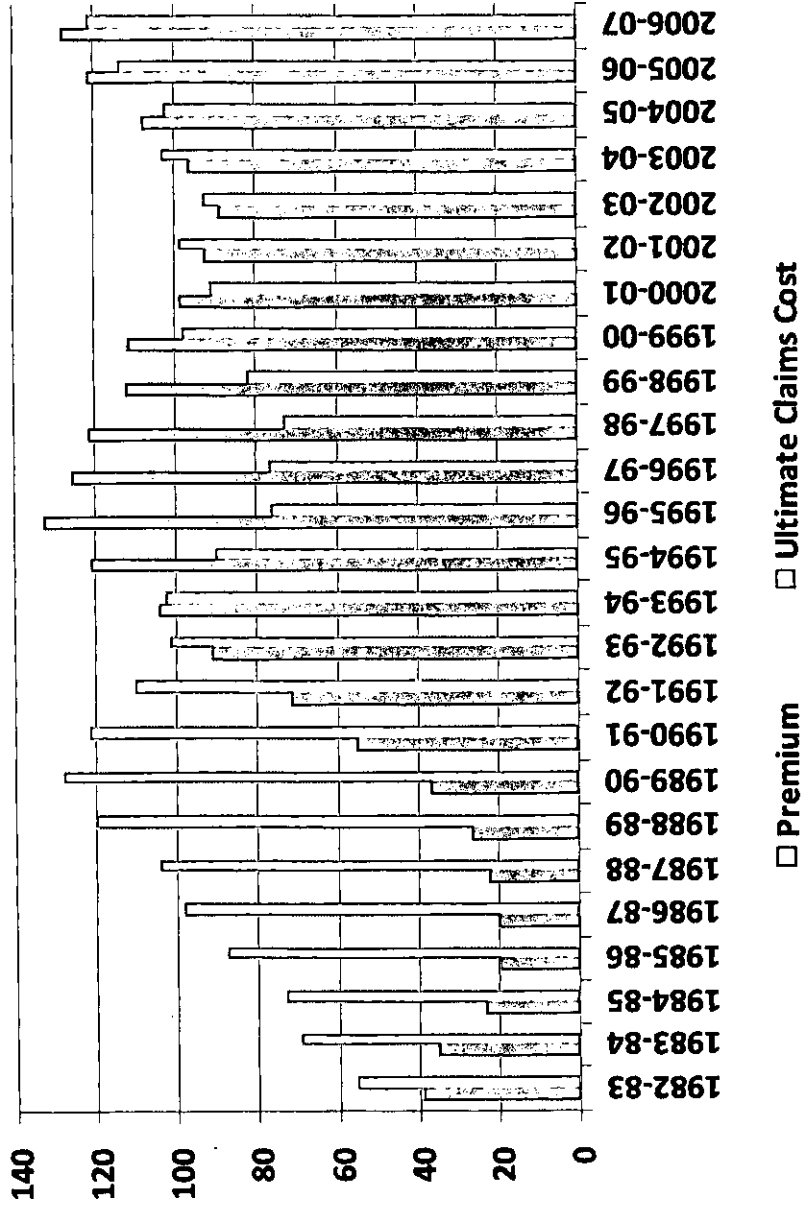
In conclusion, the resulting impact of the proposed legislation is as follows:

- WSI's surplus position under current law as of October 31, 2008 is 30% of discounted reserve levels;

- WSI's surplus position as proposed in HB 1035 would be 24% of discounted reserve levels; and
- WSI's surplus position as proposed in HB 1035 with the WSI amendment would be 23% of discounted reserve levels.

This concludes my testimony. I would be happy to answer any questions at this time.

# North Dakota – Workforce Safety and Insurance Premiums vs. Ultimate Claims Costs (\$ in millions)





WSI FUND STATUS					(All numbers in thousands)
	Current Law Range 120 - 140%		Proposed Legislation Range 120-150%	Proposed Legislation Range 120-150% + Building Exclusion	
	AUDITED 06/30/08	ACTUAL 10/31/08	ACTUAL 10/31/08	ACTUAL 10/31/08	
Discounted Reserve Levels	740,600	745,400	745,400	745,400	
Available Surplus	385,992	223,486	178,929	168,218	
20% Lower Limit	148,120	149,080	149,080	149,080	
40% Upper Limit	296,240	298,160	372,700	372,700	
50% Upper Limit (Proposed)					
Available Surplus over / (under) 40% of Reserve Levels	89,752	(74,674)			
Available Surplus over / (under) 50% of Reserve Levels			(193,771)	(204,482)	
Net Assets Excluded from Surplus					
Safety Education, Grants & Incentives			20,231	20,231	
Revolving School Loan Fund			14,983	14,983	
ITTP Computer Conversion			9,343	9,343	
Real Estate				10,711	
Total Net Assets excluded from Surplus	0	0	44,557	55,268	

PROPOSED AMENDMENT TO HOUSE BILL NO.1035

Page 1, line 14 after "include" insert ", real estate owned by the organization.

Renumber accordingly

**House I, B&L January 7, 2009 Hearings on HB 1035, 1036 & 1037**  
**Remarks of David L. Kemnitz, President, ND AFL-CIO, Bismarck, ND.**

**HB 1035-HB 1036- HB 1037— In Opposition**

We are taking this opportunity to express our concern of the business community's seemingly narrow focus concerning Worker's Compensation. The proponents of HB 1035 mention that they are especially interested in keeping premiums low, premiums that are already the lowest in the nation, and that HB 1035, 1036 and 1037 (heard today) will help ensure low premiums.

The legislative changes in 1995, 1997, 1999 and 2001 cut claimant benefits, reduced claimant ability to adequate legal counsel, and shifted in substantial and systemic ways the bureau's mission of serving injured workers. These changes beginning in 1995 were perpetrated in the name of liability reduction, alleged claimant abuses, and inappropriate political decisions in setting premium rates and other decisions concerning claimant benefits and service.

During the 1993 session and the interim legislative studies of 1993-4 the ND AFL-CIO and others suggested that the premium rate shortfall and premiums needed to balance the system could be "amortized" over a 20 to 30 year period. This in effect would have given everyone time to examine and adjust the North Dakota Workers' Compensation system in administrative, claimant service and benefits, medical and rehabilitation providers as well as employer concerns on premium rates.

A much different approach was taken in which virtually all of the blame for the shortfall in WC insurance reserves was blamed on claimant abuse of the system, attorney costs in representing claimants, and alleged generous benefits. Premiums were skyrocketed and the obvious result was revolt in the employer community. The so called reforms of 1995, 1997, 1999 and 2001 left the claimants with increased burdens in proving their claim and the extent of their injuries. The resultant effect of these changes impaired claimants in their ability to recover socially, economically, medically and vocationally.

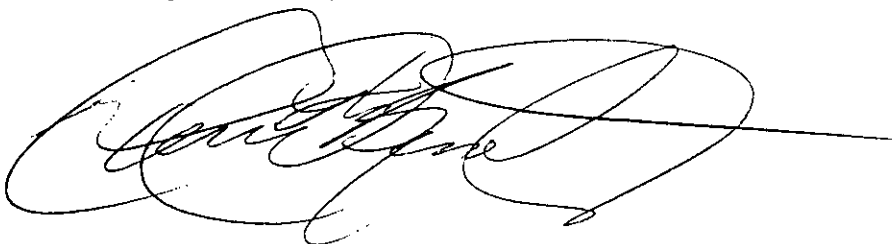
Additionally in our estimation the 1995 changes in NDCC Chapter 65-01-01 systemically altered the primary mission of the North Dakota's Workers' Compensation Bureau from assuring sure and certain relief to job injured workers, their families and dependents to one of primarily limiting the liability of the fund.

The end result of all these changes is certainly shown in a very healthy insurance reserve and surplus evidenced in huge annual dividends to employers, the building of a modern and architecturally astounding home for the Workers' Compensation agency, and talk of the mutualization (privatization) of the entire system.

If the time ever came to methodically and compassionately revisit and restore claimant benefits, access to service and bureau mission to one of service to injured workers, their families and dependents, it is now. In our view the mission of a sole-source, monopolistic Workers' Compensation system, that forbids any and all other civil action or claim for relief, must be instructed to serve the interests of the state in such a way that the injured workers', their families and dependents do not become the burden of society and community but rather be assisted to the point that they are as economically and socially viable, respected and competitive as any other citizen.

To begin we suggest that the Workers' Compensation system be overhauled and claimants overall immediate and future financial security be improved, that barriers to claimant recovery for medical, income replacement, vocational, physical and mental health, to name a few, be defined and addressed to the benefit of the injured workers, that dignity and respect be afforded to claimants through complete confidentiality in claims processing and outside interests, no matter how well intentioned, be barred from access to claimant files. In addition, the discounting of WC insurance reserves and the resultant dividends be discontinued and that those monies be set aside to address present and future claimant services, benefits and rehabilitation costs.

Thank you for the opportunity to respond and for the committees' hospitality in listening to our position and explanation of opposition to HB 1035, 1036 and 1037.



**2009 Engrossed House Bill No. 1035**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by: Cindy Ternes, Director of Finance**  
**Workforce Safety and Insurance**  
**March 3, 2009**

Mr. Chairman and Members of the Committee:

My name is Cindy Ternes and I am the Director of Finance for Workforce Safety and Insurance (WSI). On behalf of WSI, I am here to testify in support of Engrossed HB 1035, a proposal submitted at the request of the Interim Legislative Industry, Business, and Labor Committee.

This proposal serves to clarify the definition of "available surplus". WSI worked with the Interim Legislative Industry, Business, and Labor Committee seeking clarification of this statute.

Attached is a chart which outlines WSI's fund surplus position as of December 31, 2008. The first column represents current law and includes all assets in the calculation of surplus. The second column represents "available surplus" as proposed in Engrossed House Bill 1035, excluding those funds identified as designated or obligated to specific programs or projects pursuant to a directive or specific approval by the legislative assembly.

The resulting impact of the proposed legislation is as follows:

- WSI's surplus position under current law as of December 31, 2008 is 34% of discounted reserve levels; and
- WSI's surplus position - as proposed in Engrossed HB 1035 – as of December 31, 2008 would be 28% of discounted reserve levels.

This concludes my testimony. I would be happy to answer any questions at this time.

## WSI FUND STATUS

(All numbers in thousands)

	Current Law Range 120-140%	Engrossed HB 1035 Range 120-140%
	ACTUAL 12/31/08	ACTUAL 12/31/08
<b>Discounted Reserve Levels</b>	747,800	747,800
<b>Surplus</b>	255,548	255,548
20% Target	149,560	149,560
40% Target	299,120	299,120
Surplus over / (under) 140% Upper Reserve Level	(43,572)	(43,572)
<b>Net Assets Excluded from Surplus</b>		
Safety Education, Grants & Incentives		20,105
Revolving School Loan Fund		14,983
ITTP Update		8,738
<b>Total Net Assets excluded from Surplus</b>	0	43,826
<b>Total Available Surplus</b>	255,548	211,722
<b>% of Surplus vs. Discounted Reserve Levels</b>	34%	28%

#2



Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
HB 1035  
March 3, 2009

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota business. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing sixteen local chambers with total membership over 7,000 members and ten employer associations. As a group we stand in support of HB 1035 and urge a do pass from the committee on this bill.

Since the specific programs and projects referenced on line 15 are specifically authorized by the legislature and the funds are meant to be expended by the end of a given biennium, it is reasonable to exclude these funds when calculating the reserves. This change will allow WSI to better judge current reserves and set employer rates with more accuracy.

Thank you for the opportunity to appear before you today in support of HB 1035. I am happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*



**The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:**

Beulah Chamber of Commerce

Bismarck-Mandan Chamber of Commerce

Chamber of Commerce of Fargo Moorhead

Devils Lake Area Chamber of Commerce

Grafton Area Chamber of Commerce

Greater Bottineau Area Chamber of Commerce

Harvey Area Chamber of Commerce

Hettinger Area Chamber of Commerce

Jamestown Area Chamber of Commerce

Kenmare Association of Commerce

Minot Chamber of Commerce

North Dakota Chamber of Commerce

Oakes Area Chamber of Commerce

The Chamber Grand Forks-East Grand Forks

Wahpeton Breckenridge Chamber of Commerce

Williston Chamber of Commerce

Total Businesses Represented = 7,200 members

*THE VOICE OF NORTH DAKOTA BUSINESS*



**North Dakota  
Workforce Safety  
& Insurance**

*Putting Safety to Work*

*www.WorkforceSafety.com*

1600 East Century Avenue, Suite 1  
PO Box 5585  
Bismarck ND 58506-5585

HB 1035  
April 6, 2009

Dear Policyholder:

**Please ensure that all the information in this letter is properly communicated to those individuals in your organization responsible for financial planning and decision making.**

An uncertain national economy resulting in unparalleled investment losses and a reduced Workforce Safety & Insurance (WSI) surplus will likely mean a temporary halt to the practice of issuing premium dividend credits to North Dakota's employers. During the past four years, WSI has provided dividend credits of between 40%-62% to qualified North Dakota employers. Since 2004, more than \$270 million dollars in premium dividend credits have been declared by the WSI Board of Directors.

The 2005 Legislative Assembly established WSI's fund requirements to fall in the range of 120-140 percent of actuarially established discounted reserves. As of February 28, 2009 WSI's fund stood at 126%. In recent history, dividends were only declared when the fund was above 140%.

The WSI Board of Directors will meet in April to consider premium rate level recommendations. In June, the WSI Board will evaluate the current fund status and market conditions in order to make a recommendation on premium dividend credits. Reserves and premiums will also be impacted because of action taken by the 2009 Legislative Assembly which has provided an estimated \$4.6 million dollars for existing claims and \$3.3 million dollars per year in increased benefits for future injured workers claims.

North Dakota employers can utilize several new safety initiatives to help offset the potential loss of premium dividend credits. "Putting Safety to Work" programs reduce the number of claims and result in lower premiums. These efforts can reduce a qualifying employer's premium by up to 25%. Matching grants can also be obtained to assist in purchasing safety equipment that eliminates workplace hazards.

Information about the new safety discount programs and the grant programs are available on the WSI website directly at <http://www.WorkforceSafety.com/Safety/LossControl.asp>. Certain conditions and qualifications pertain to all the new safety discounts and grants.

Employers can also call WSI at 1-800-777-5033 for more information.



## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

That the Senate recede from its amendments as printed on page 894 of the Senate Journal and page 1062 of the House Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." Insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following three years. Premium rate levels may not be modified by more than ten percentage points per year from the premium rate levels that would otherwise be required.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

Renumber accordingly



st line

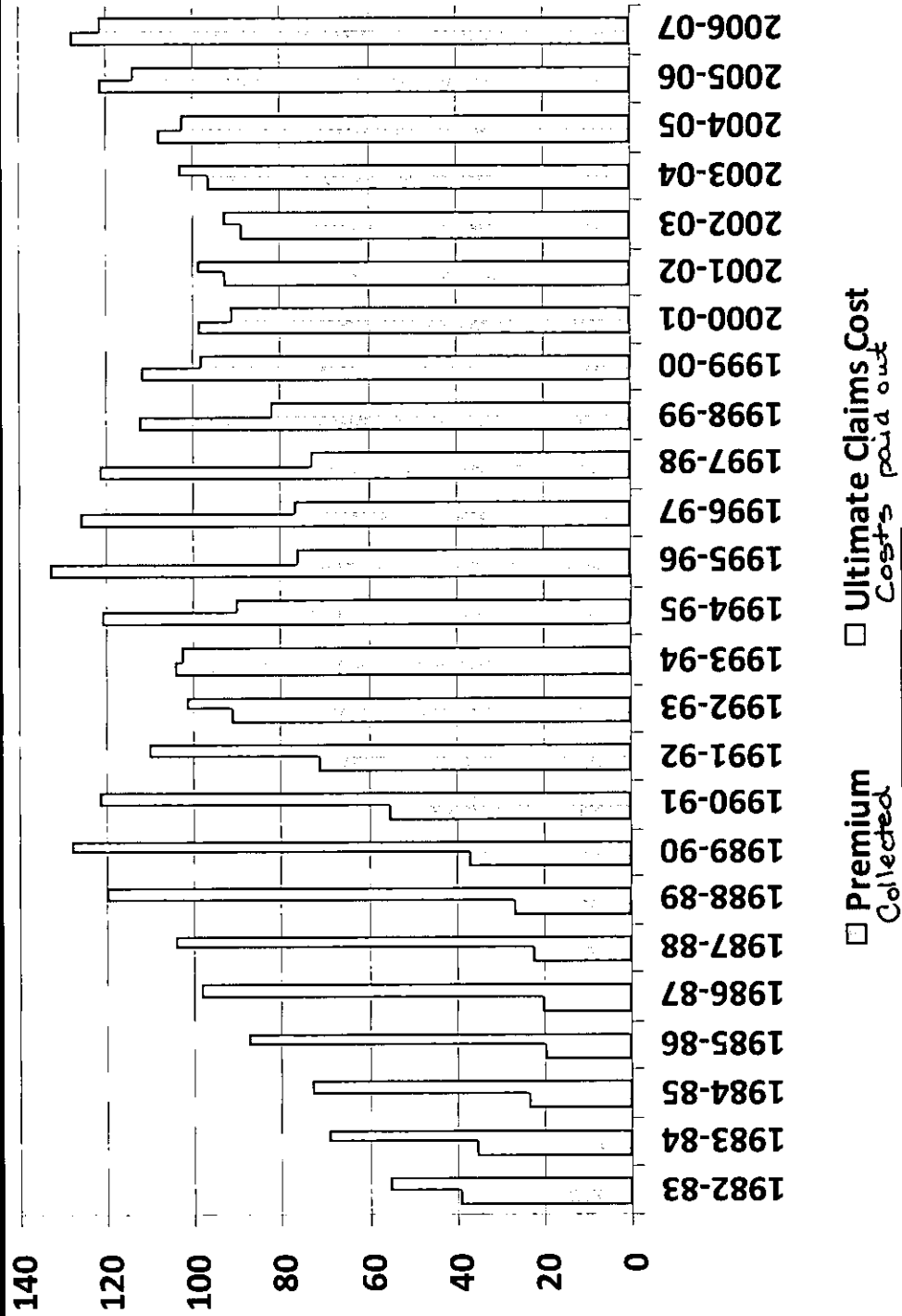
## Purple - Effect of HB 1035 Line

Total Fund Surplus after HB 1035	154,254
Total Financial Reserves and Surplus after HB 1035	904,454

<b>WSI FUND STATUS</b>		
(All numbers in thousands)		
	<b>Current Law Range 120-140%</b>	<b>Engrossed HB 1035 Range 120-140%</b>
	<b>ACTUAL 2/28/09</b>	<b>ACTUAL 02/28/09</b>
<b>Discounted Reserve Levels</b>	<b>750,200</b>	<b>750,200</b>
<b>Surplus</b>	<b>195,956</b>	<b>195,956</b>
20% Target	150,040	150,040
40% Target	300,080	300,080
Surplus over / (under) 140% Upper Reserve Level	(104,124)	(104,124)
<b>Net Assets Excluded from Surplus</b>		
Safety Education, Grants & Incentives		18,806
Revolving School Loan Fund		14,981
ITTP Update		7,915
<b>Total Net Assets excluded from Surplus</b>	<b>0</b>	<b>41,702</b>
<b>Total Available Surplus</b>	<b>195,956</b>	<b>154,254</b>
<b>% of Surplus vs. Discounted Reserve Levels</b>	<b>26%</b>	<b>21%</b>

# Premiums vs. Ultimate Claims Costs

(\$ in millions)



WSI

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

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3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

ReNUMBER accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

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Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." Insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, notwithstanding section 65-04-01, the organization may modify recommended premium rate levels by no more than ten percentage points the following year.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

Renumber accordingly

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**RBC – Regulatory Action Levels**

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RBC takes into account, on a formula basis:

1. asset risk
2. liability risk
3. interest rate risk
4. business risk

**If Company surplus < 200% RBC** ("*Company action level event*"), insurer must submit to Commissioner risk-based capital plan that

1. identifies the conditions leading to the company action level event;
2. proposes corrective action that will result in the elimination of the company action level event;
3. provides financial projections for the current year and at least the succeeding 4 years with and without the corrective action to give effect of the proposed corrective actions;
4. identifies key assumptions that impact the projections and the sensitivity of the financial projections to the assumptions;
5. identifies the quality of, and the problems associated with the insurer's business, including
  - a. assets
  - b. anticipated business growth and associated surplus strain
  - c. extraordinary exposure to risk
  - d. mix of business
  - e. use of reinsurance

*RESERVES*

**If Company surplus < 150% RBC** ("*Regulatory action level event*"), the Commissioner shall

1. require insurer to submit risk-based capital plan or, if applicable, a revised risk-based capital plan;
2. perform such examination or analysis of assets, liabilities, operations, and risk-based capital plan as the Commissioner deems necessary;
3. issue an order specifying corrective actions as the Commissioner determines are required

**If Company surplus < 100% RBC** ("*Authorized control level event*"), the Commissioner shall

1. take actions as required under "regulatory action level event";
2. take action to place the insurer under regulatory control if the Commissioner deems it to be in the best interests of the policyholders, creditors of the insurer and the public

**If Company surplus < 70% RBC** ("*Mandatory control level event*")

1. the Commissioner must take action to place the company under regulatory control