

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1036

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1036

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 7, 2009

Recorder Job Number: 6662 at 64:10 minutes on digital recorder & 6663

Committee Clerk Signature *Ellen Kelang*

Minutes:

**Chairman Keiser:** We will open on HB 1036

**Representative Berg:** This bill will refer to the chart from previous bill. The passage of this bill will eliminate different rate settings. When that is eliminated it will provide stable, steady benefits to workers and premiums to employers. Representative Berg goes on to explain.

**Chairman Keiser:** Questions for Representative Berg.

**Representative Schneider:** Which actuary would determine that? Is it internal WSI or third party?

**Representative Berg:** My answer would be not internal. There are professional standards they would have to adhere to.

**Chairman Keiser:** Further questions? Seeing none, is there anyone else in support of 1036?

**Bill Halverson:** I don't know if we have much more to add. I support this bill.

**Chairman Keiser:** Would you answer Representative Schneider's question, "what process the agency use to collect the actuary or standards used?"

**Bill Halverson:** We go over the process every four years. (inaudible).

**Chairman Keiser:** Further questions for John. Are there actuaries specialists in the worker's compensation arena or are they general actuaries?

**Bill Halverson:** Inaudible

**Chairman Keiser:** Do you have a summary of the rate increases over the last 10 or 15 years?

We will take a 5 minute break to make copies.

**End of digital tape recording 6662 at 70:35 minutes.**

**Start of digital tape recording 663 at 37 seconds.**

**Chairman Keiser:** We will call the Industry, Business, & Labor Committee back into session.

**Bill Halverson:** Explains attachment 1.

**Chairman Keiser:** Do you know the average since 1995.

**Bill Halverson:** What we have is historical premiums going back to early 80's all the way through the recent period.

**Chairman Keiser:** Do you know the average since 1995.

**Bill Halverson:** Premium changes are probably about on average.

**Chairman Keiser:** In percent, up or down?

**Bill Halverson:** We have seen inflationary increase.

**Representative Schneider:** With soaring medical costs, how does WSI keep premiums in check?

**Bill Halverson:** We have programs & fees to keep costs down.

**Representative Schneider:** Would it be accurate to say success in investments and some decreases benefits?

**Bill Halverson:** Inaudible. Investment is a separate issue.

**Representative Amerman:** In my mind there are different premiums. A group that pays a basic and a group that a minimum fee, is that correct? There is a premium deduction or dividend pay check.

**Conversation between Representative Amerman and Halverson about premiums.**

**Chairman Keiser:** It still has a 5% factor in it and as I look at the current rate, if the actuary recommends a 3% increase. We could technically go up to 8% which is more than 100% over what those actuaries recommended. Does that make you nervous?

**Bill Halverson:** We did do that scenario. His response is actuarial world is that precise?

**Chairman Keiser:** We will catch it next year if it goes wrong.

**Representative Johnson:** Actuary recommendation on rate settings, how often do you go with that specific rate & actual effect?

**Bill Halverson:** We do this each year and take effect July 1.

**Representative Ruby:** This bill gives the impression of a limiter of how much you can deviate from the actuarial. Why is it needed? Has the WSI or the Board deviated further in this in the past or things have been working fine. Why do we need this?

**Bill Halverson:** Representative Berg touches on that in his testimony.

**Chairman Keiser:** Further questions? Anyone else here to testify on HB1036?

**Bill Shalhoob~ND Chamber of Commerce and other businesses.** Business community is interested in a stable environment and we have a different take on premiums. Explains the different takes on premiums for business.

**Chairman Keiser:** Just a correction on what Bill said, we still have the \$250 deductible per claim, however, this committee and legislature has removed that for an employee that has reports the injury within 24 hours. This is part of the reason that we have been able to control costs.

**Russ Hanson~Association General Contractors Association of ND** We want to be on the record that we support the bill.

**Chairman Keiser:** Anyone else?

**Tom Balzer~ND Motor Carriers** We look at this piece of legislation very vital to the future of WSI. We want stability.

**Chairman Keiser:** Anyone else in support? Seeing there is no one, is there anyone to speak in opposition of HB1036?

**Dave Kemnitz~AFL-CIO** See attachment 2.

**Vice Chairman Kasper:** I think there is a misunderstanding of paragraph three.

**Dave Kemnitz:** I understand the 5% deviation from the actuarial response. Explains his concern.

**Vice Chairman Kasper:** With this market dump, I we can get more severe, the actuary looking at that would not be able to look at that concern for the future. They are only doing this a year at a time. We have some built in safe guards here.

**Dave Kemnitz:** It's a redundant question and also very restrictive to any adjustments. There are a lot of ifs.

**Chairman Keiser:** This is a complicated issue for the first session. Two issues and the first one is premiums and the other is surplus.

**Representative Thorpe:** Question directed to Chairman Keiser , HB 1035 by taking building off and HB 1036 (didn't finish statement).

**Chairman Keiser:** Impact reserve requirements and related to. Any other questions? With that we will close the Hearing on 1036.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1036

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6778

Committee Clerk Signature
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**Chairman Keiser:** Passes out a handout 54-03-25 regarding bill & amendments affecting workforce safety & insurance fund—actuarial impact statement to help understand a WSI Bill. See attachment.

We will start with HB 1036, Representative N Johnson is carrying this bill & the fiscal note says “no impact”. The presentations were suggesting that this would help stabilize benefits & premiums. Dave Kemnitz did speak in opposition. Members of the committee, what are your wishes on HB 1036?

**Representative N Johnson:** One of the questions I asked them basically “what are they doing now”? Now they are going with the actuarial now and they are not doing the variance of five. My question is do they need the five?

**Representative Amerman:** Someone told me that this 5% didn't pan out very good.

**Chairman Keiser:** I do not recall, but I do know that we implemented that Representative Glassheim, Berg, & myself, developed a formula for the insurance trust fund. That has worked extremely well. It's a floating rate. Goes on to explain answer to question.

**Representative Vigesaa:** We've seen that graph where the claims were far exceeding the premiums, I have to assume that actuary was recommending large increases in premiums and the governed said no.

**Chairman Keiser:** That is correct, but there were also other drivers.

**Representative Amerman:** Who makes the decision of the 4 or 5% up or down?

**Chairman Keiser:** The board organization which is under the governor. I'm not sure.

**Representative Schneider:** I agree with the bill. I have a concern with the five. That seems to be a bit premature. I think it would be a better bill if we left the first sentence of the new language and strike the second sentence.

**Representative Ruby:** I move a Do Pass.

**Representative N Johnson:** Second.

**Representative Ruby:** I think with the language the limiters are just more clarification.

**Chairman Keiser:** If you put limiters on it as you do here, what you are impart doing is establishing a one year lag on bad news. Theoretically, somebody says you need a 10% increase and you actually get a decrease. That's what happened in the Unemployment Insurance Trust Fund.

**Vice Chairman Kasper:** If we just stuck with the statement "the organization shall establish premium rates annually on an actuarial basis".

**Representative Schneider:** I want to make sure that we are not letting actuarials run state government.

**Vice Chairman Kasper:** Another question, who is the organization now with the initiated measure having passed.

**Chairman Keiser:** I believe the organization is WSI and WSI is under the control of the control of the governor.

**Committee Roll Call was taken on HB 1036 on a Do Pass with 8 yeas, 5 nos, 0 absent and Representative N Johnson will be the carrier.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: HB 1036

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 maintains that premium rates shall be established annually on an actuarial basis and requires that the statewide average premium rate level not deviate by more than 5 percentage points from the statewide actuarial indicated rate.

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 1036

BILL DESCRIPTION: Premium Rates 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 maintains that premium rates shall be established annually on an actuarial basis and requires that the statewide average premium rate level not deviate by more than 5 percentage points from the statewide actuarial indicated rate.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: December 26, 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>	12/26/2008

Date: Jan 12-2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1036

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 Rep Ruby Seconded By Rep. N Johnson

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) 8 No 5

Absent 0

Floor Assignment Rep N. Johnson

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

REPORT OF STANDING COMMITTEE (410)  
January 12, 2009 10:39 a.m.

Module No: HR-05-0162  
Carrier: N. Johnson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1036: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1036  
was placed on the Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1036

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1036

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10035

Committee Clerk Signature

*Eva Letell*

Minutes:

Representative Rick Berg: This bill has to do with the solvency of WSI. Today there are only four states in this country that have a monopoly, like we do. Twenty one of the states formed as a monopoly went to the private sector. I think you could go back to every single one of them, where they had huge reserves. The reality is when politicians are in charge of rates we try to keep them as low as possible regardless of what is needed. If we look at the eighties we were spending eighty million dollars a year on claims and are premiums were only twenty million dollars. And no one sounded the alarm this went on for eight to ten years. I believe we would be providing better customer service to injured workers and businesses in North Dakota if we weren't a monopoly. Passage of this bill will never put us in that financial straight to create that public movement to switch from what we're doing to a monopoly. So I am putting the needs of the agency ahead of my own personal beliefs here. What this bill does is very simply it says an actuary, a third party actuary will come and say here what increase we need next year. The board can decrease or increase by five percent. It gives the board some wiggle room or the governor or whoever ends up deciding those rates. In my opinion the next year the actuary will come back and say you know I told you that you needed a ten percent now you need a fifteen percent because you only did five. Then the board would have the flexibility to

have to increase no less than ten percent and no more than twenty percent. Really what this does is puts a safeguard in the system that doesn't micro manage the board but says premiums will always be set on a third party actuary. When you want to grow jobs and grow your state you want to keep these rates as low as you possibly can.

Anne Green, Staff Counsel for WSI: Written testimony in support of the bill.

Chairman Klein: Under current policy we are using the actuaries to set that rate?

Anne: Correct.

Senator Horne: Can you tell us how you come up with that rate?

Anne: We have a company that looks at data a independent actuary we have been using them for a number of years. When we get the report back the board makes a recommendation.

Jeb Oehlke, North Dakota Chamber of Commerce: Written testimony in support of the bill.

Tom Balzer, North Dakota Transportation Association: We are in favor of this bill and look at this one of the best things we can do in this session to make sure the future of WSI is protected.

Chairman Klein: We have that opportunity to address this issue every time we come if we see it is being mishandled.

Russ Hanson: Go on record in support of the bill. The legislature sets the policy and it's in your hands.

Chairman Klein: Closed the hearing.

Senator Potter: Motion for a do pass.

Senator Nodland: Seconded.

Roll Call Vote: Yes: 6 No: 0 Absent: 1

Floor Assignment: Senator Potter.



**REPORT OF STANDING COMMITTEE (410)**  
March 3, 2009 1:21 p.m.

**Module No: SR-38-3943**  
**Carrier: Potter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

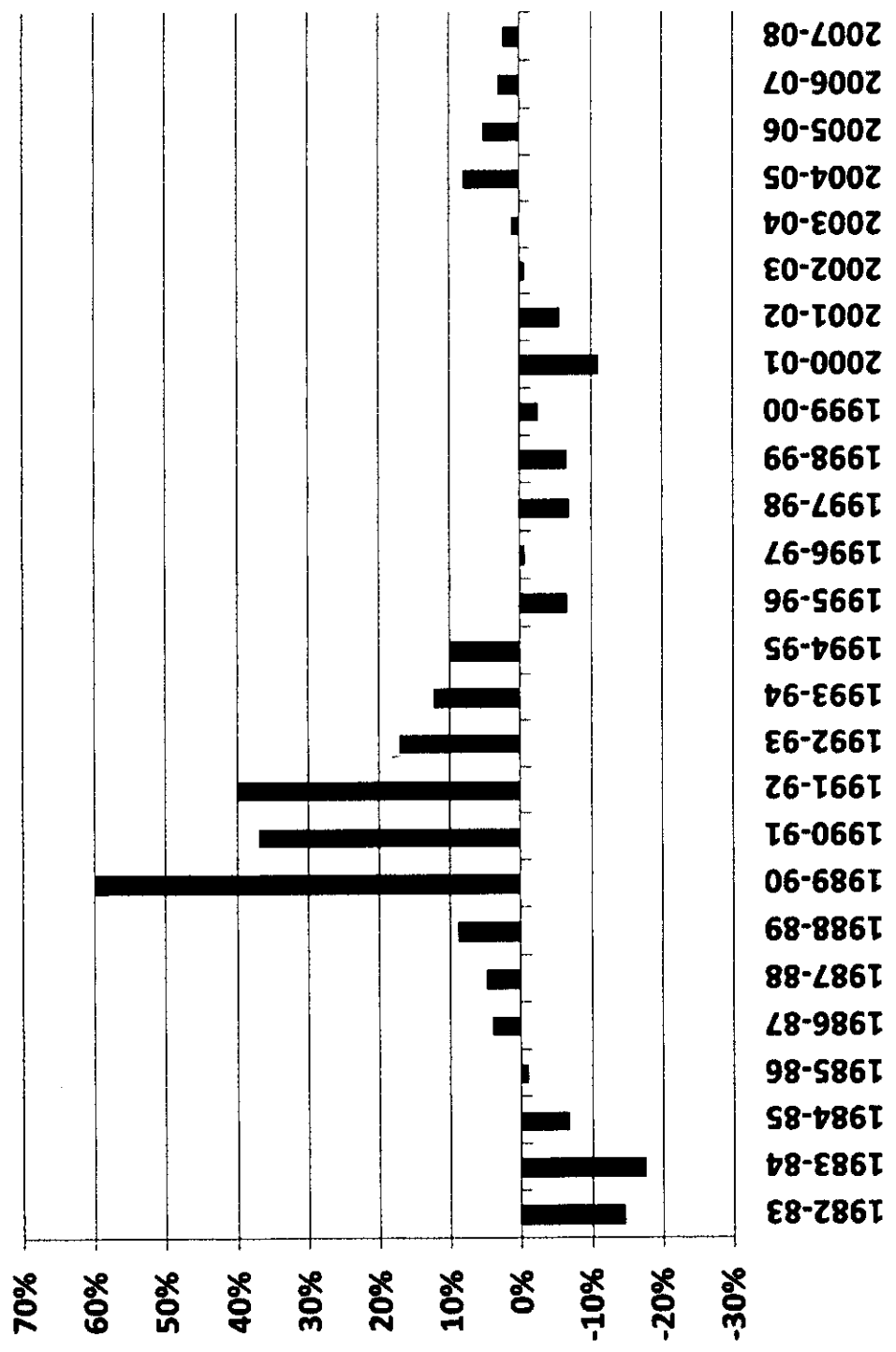
**HB 1036: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1036 was placed on the Fourteenth order on the calendar.**



2009 TESTIMONY

HB 1036

# Historical Premium Level Changes



WSI

1036

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.

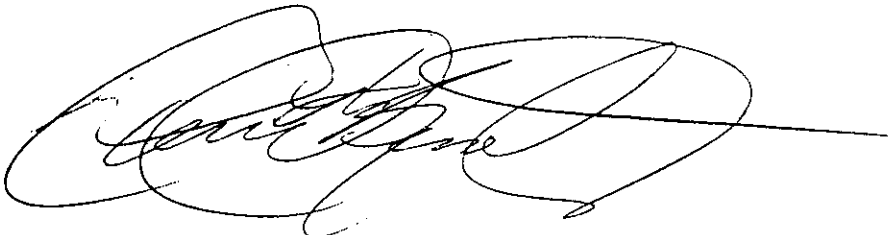
Additionally in our estimation the 1995 changes in NDCC Chapter 65-01-01 systemically altered the primary mission of the North Dakota's Workers' Compensation Bureau from assuring sure and certain relief to job injured workers, their families and dependents to one of primarily limiting the liability of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



**54-03-25. Bills and amendments affecting workforce safety and insurance fund — Actuarial impact statement.**

Workforce safety and insurance shall review any legislative measure affecting workforce safety and insurance benefits or premium rates to determine whether the measure will have an actuarial impact on the workforce safety and insurance fund. If the organization determines that the measure will have an actuarial impact on the fund, the organization shall submit, before the measure is acted upon, an actuarial impact statement prepared, at the expense of the organization, by the actuary employed by the organization. The organization shall review any amendment affecting workforce safety and insurance benefits or premium rates and shall submit, before the amendment is acted upon, either a statement prepared by the organization, stating that the amendment is not expected to have any actuarial impact on the workforce safety and insurance fund, or an actuarial impact statement prepared, at the expense of the organization, by the actuary employed by the organization.

**Source.** S.L. 1991, ch. 714, § 17; 1993, ch. 45, § 19; 1995, ch. 54, § 39; 1995, ch. 628, § 1; 2003, ch. 561, § 3.

**2009 House Bill No. 1036**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by: Anne Green, Staff Counsel**  
**Workforce Safety and Insurance**  
**March 3, 2009**

Mr. Chairman and Members of the Committee:

My name is Anne Green, Staff Counsel, with Workforce Safety and Insurance (WSI). On behalf of WSI, I am here to testify in support of HB 1036, a proposal submitted at the request of the Interim Legislative Industry, Business, and Labor Committee. WSI's Board of Directors unanimously supports this bill.

Effectively, this bill codifies current practice. Premium rates are currently determined actuarially and on an annual basis. With few exceptions in recent history, the organization generally has adopted the actuary's statewide premium rate recommendation. The proposal does not impact rate levels at the industry classification level, nor does it impact employer experience rating calculations.

The Interim Legislative Industry, Business, and Labor Committee proponents of this bill contended a statutory mandate was necessary to avoid problems similar to those experienced in the 1980s and early 1990s when political considerations, rather than actuarial determinations, guided premium setting. (see p. 174 of 2008 Legislative Council Industry, Business, and Labor Committee Report)

WSI requests your favorable consideration of House Bill 1036. I would be happy to answer any questions you may have at this time.



Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
HB 1036  
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 the state's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For the 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 1036 and urge a do pass from the committee.

We believe WSI is and should be a pay as you go system. This bill protects the solvency of the reserve fund by making sure the future cost of today's claims are accounted for in the calculation and setting of premiums. No one wants to return to the late 1980's and early 1990's when the agency was almost bankrupt because the premiums were set too low to maintain any, not to mention a healthy reserve fund. It makes sense to set the premiums for workers compensation insurance in the same manner as would a private insurance company.

Thank you for the opportunity to appear before you today in support of HB 1036. I am happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*