

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1037

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 7, 2009

Recorder Job Number: 6664

Committee Clerk Signature

Ellen LeTang

Minutes:

Chairman Keiser: Opened the hearing on HB 1037 relating to the independent performance evaluation of workforce safety & insurance.

Representative Berg: We have spent 95% of our time on management issues. We haven't been debating premiums.

Jodi Bjornson~General Counsel of Workforce Safety & Insurance. In support. See attachment 1.

Representative Amerman: Can you explain to the committee on page 1, lines 7-17, why was this struck out?

Jodi Bjornson: This is not needed because the new language supersedes the over struck language.

Representative Amerman: Your right, the new language is more comprehensive.

Jodi Bjornson: My reason for the new language doesn't limit the auditor in these particular areas.

Representative Thorpe: Eliminating 7-17, it eliminated the state auditor going to do the auditing of WSI.

Jodi Bjornson: I see it as them being able to choose their auditor, but you are right.

Representative Thorpe: Looks like the language make it "in-house audit".

Jodi Bjornson: I see this differently, it's a third party.

Representative Thorpe: Who would ask the auditor?

Jodi Bjornson: The state auditor's office.

Representative Berg: On lines 7 & 8, Workmen's Compensation would request the state auditors to select the firm. Continues to explain.

Representative Schneider: Do you feel WSI is a better place?

Jodi Bjornson: Absolutely.

Representative Nottestad: Do you see any danger sticking with these; I won't have to go any further, although going further will make the organization better.

Jodi Bjornson: With me adding an additional element of review, is that your question?

Representative Nottestad: Yes

Jodi Bjornson: I don't see that as a big threat.

Representative Amerman: Political influence.

Jodi Bjornson: Yes there is going to be political influence.

Chairman Keiser: Look at the language, I'm confused on what's it's doing. In the first part it continues to talk about the auditor and will do a performance audit. Even though we added the new language, we don't need to audit those.

Jodi Bjornson: If you read on page 2, 7 & 8, it does say it's computed out later.

Chairman Keiser: It not the sole.

Jodi Bjornson: Right

Chairman Keiser: Maybe it's ok.

Jason ? State Auditor. Explains clarification.

Chairman Keiser: This actually extends the requirement on WSI.

Opposition:

Dave Kimnitz~President of ND AFLCIO

Dave Kimnitz: See attachment 2

We saw no problems with the auditor's office doing an independent evaluation.

Conclusion, decision is premature.

Vice Chairman Kasper: I see some contradiction on page 1 line 11. Every other biennium the biannual audit is done, is it two or is it four? This is my first observation on the contradiction. The secondly, this language does clarify that it will now be a biannual audit if you look at line seven. Explains his clarification on the language.

Dave Kimnitz: It's premature until we know more what you are going to do in answer to measure four.

Chairman Keiser : Closes the session.

Representative Nottestad: Motioned to adopt this amendment as proposed and

Representative Vigesaa: seconded.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6778 starting at 40:50 minutes on digital recorder.

Committee Clerk Signature

Ellen Litany

Chairman Keiser: Opened work session.

Representative Nottestad: The amount taken out has more to do than the change under measure 4. The organizations maintain performance measurements and the laundry list is a big thing on page two.

Chairman Keiser: I apologize to Representative Nottestad and committee members. I raised a question here that I didn't make sense and walking out of the meeting and Jodi Bjornson said "I reread it and I think it's right". Would you contact them and see what if anything we have going.

Working session closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6932 starting at 36:40 minutes

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opens the working committee on HB 1037.

Jodi Bjornson~General Counsel of Workforce Safety & Insurance. See attachment of proposed amendments to HB 1037. I attempted to standardize that evaluation and put in some performance indicators.

Vice Chairman Kasper: Currently if we did not add the amendment we just discussed, who would determine the scope of that independent audit?

Bjornson: I don't think it's clear right now, even without these amendments. As a matter of practice, the state auditor's office has assumed that fall. Now only pick the vender but also define the scope and work with the outside vendor.

Vice Chairman Kasper: Now, what we are saying is "we are not going to have some legislative oversight on this scope and depth of this audit", so it meeting the desires & needs of the legislature, not the independent agency of the executive branch?

Bjornson: Yes.

Chairman Keiser: The language may select additional elements. I did have a concern in the original proposed bill because it went through a list things to be looked at. As Representative Amerman & Representative N Johnson can attest to serving on the interim committee work

safety committee, we had a lot of issues come that we would like answered but they were never in the scope of things.

Representative Thorpe: On proposed amendment on starting on line 3, legislative counsel workers' compensation review committee. Why are we calling it workers' comp instead of workers' insurance?

Bjornson: I will put that into the first amendment. What we added on page one. Explains page one.

Representative Amerman: I have a problem with the second amendment, page two, line eight, "shall set the final scope of the independent performance evaluation".

Chairman Keiser: Jodi, what does that mean sets the final scope?

Bjornson: To set the final scope would mean I would have this laundry list I would be looking at and if there is anything added to that, they would add to the list, and that would be the scope of that review. So basically, the four corners. From an agency perspective, we are just looking for clarification.

Chairman Keiser: WSI have several audits going on at the same time. What would be the different kinds of audit were going on?

Bjornson: In the last year, we've had; management & HR review, marsh review of the claims process, independent performance evaluation & performance audit follow up.

Chairman Keiser: In this amendment you brought us is adopted, it would only influence the performance audit. Those other audits would still be under the jurisdiction of auditor's department?

Bjornson: Right, this only affects the performance audit.

Chairman Keiser: By your definition performance audit is the delivery of services of injured workers.

Bjornson: I believe that was the original intent. Yes.

Representative Nottestad: Out of that committee that would have final scope they would be mandated to keep the so called laundry list as well as anything you might add?

Bjornson: Yes.

Chairman Keiser: What are the thoughts of the committee?

Representative Amerman: Line two, page 2, with the inappropriate political influence, I don't understand why it needs to be in there. Do another amendment to take that out of there.

Chairman Keiser: You are talking about the original bill?

Representative Amerman: Yes. On line one, page two, period after efficiently and take out whether claims or premium decisions have been subject to inappropriate political influence.

Representative Thorpe: On page two, line three of the amendment where it says the evaluation shall set, personally I would offer to amend to shall set. Shall is pretty inclusive.

Chairman Keiser: Representative Amerman & Representative Thorpe and any other committee members that wish, why don't you prepare some amendments. We will hold the bill.

Representative Ruby: Representative Amerman's suggestion to remove line two, is that recorded or is that evaluated by the department or by legislative committee. Wouldn't you want the legislative committee to make sure there a full committee so there isn't any inappropriate political influence being done?

Representative Amerman: Certainly you would want transparency.

Representative Schneider: There is appropriate political influence too. I do have a question for Jodi, do you have any examples of inappropriate influence that has happened in the past that would warrant this language in the bill.

Bjornson: No, I am not aware of any.

Chairman Keiser: Oh, there are. Investigations are on going all the time. In the last interim, I was investigated for inappropriate political influence. They choose not to proceed with the case. We are going to hold this bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number:

Committee Clerk Signature

Ellen Letam

Chairman Keiser: Opened the committee work session on HB 1037.

Representative Nottestad: Updated the committee on HB 1037.

Jodi Bjornson: Walked through the attached amendment.

Chairman Keiser: Current law has the independent performance evaluation of the organization must evaluate based upon component. So we what you are saying that you are taking it out of this section and moving?

Bjornson: Correct. Continues going over the amendments.

Representative Amerman: The last amendment, do you see that working? Would the review committee vote on it?

Chairman Keiser: Of all the committees in the interim, that committee is on point what the trends and issues we should be looking at. Gordie, when's the last time the performance audit looked at the IME's?

Gordie Smith: It didn't.

Chairman Keiser: I support what being suggested from a policy standpoint.

Representative Amerman: On the bottom of page one, line 23, can you explain what that means?

Bjornson: We are going to be keeping track of these areas, compile information to come in and review.

Chairman Keiser: These are areas that have surfaced.

Gordy Smith~North Dakota State Auditor Office, CPA Audit Manager. See testimony attachment.

Representative Amerman: The seven things unlined on the back page, how do they set up a performance measure inappropriate political influence?

Smith: WSI has a wealth of performance measures that they look at. We track number of call from legislators, congressional people or Governor.

Bjornson: We need to be on the same page.

Chairman Keiser: Closes the work session on 1037.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

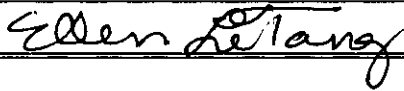
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 7504

Committee Clerk Signature



Chairman Keiser: Opened the committee work session on HB 1037.

Representative Nottestad: Updated the committee on HB 1037.

Jodi Bjornson: Walked through the attached amendment.

Chairman Keiser: Current law has the independent performance evaluation of the organization must evaluate based upon component. So we what you are saying that you are taking it out of this section and moving?

Bjornson: Correct. Continues going over the amendments.

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Bjornson: We need to be on the same page.

Chairman Keiser: Closes the work session on 1037.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8414

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the committee work session on HB 1037.

Chairman Keiser: We have to start numbering the amendments. We have placed an amendment number one on the bill and that was an amendment that added after the director or director's designee or the chairman's designee. Gordie submitted another amendment and that will be amendment number two. Amendment number three will be the one I'm just distributing and it's a two page amendment. Goes over amendment number three on what authority the state auditor has. If we have this is statue in courts we have to do it. If we need to do it, then the auditor should have the authority to do it. What these amendment are trying to do from my perspective and that is to maintain the auditor's authority on performing audits, to make sure we don't take away the independence. On the other hand, my personal frustration, sitting through two different interim of the Worker's Compensation committee was that so often we had issues arise that we would have liked have studied that would have benefited us in making decisions. We had no inputting what we wanted to have looked at. So what we have crafted on the second page (reads) may select. I give an exception, in exceptional circumstances; the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor report... Don't require them to approve it just report it, that all that has to happen. WSI could pick one, two, three or

any additional items up to eight. The reason I put eight on it, it overwhelms the agency and get very expensive. I think it's very important for the auditor to have at their disposal. I was trying to find to get answers of importance and there is no hidden agenda.

Gordie Smith: I find your amendments a good compromise from our earlier objection. The only thing I would want to say, we would want the timing is early September. We would like the opportunity to sit down with the Worker's Compensation review committee and brain storm because for me to write that scope, I want to make sure I address the committee's concern. It's hard to write that scope because I get dozens of calls from vendors. Other than that, I would throw in since the Governor is over it, that we make sure he gets a copy of the report. We are comfortable with that.

Chairman Keiser: That a good suggestion to include that report to the Governor. What I'm trying to eliminate here is the need to pay for consultants to fly in and we have spent a lot of money on it.

Smith: I'm comfortable; in my RFP I'm going to put in there, other mandate, what is the price? The average is eight elements.

Representative Vigesaa: Who would pick the elements first?

Chairman Keiser: Let me answer that, our first meeting is an organizational meeting in which we sit down and go through our structure, what changes need to be made, the process, and other issues like that. I foresee that committee coming up with their recommendations at that point and submitting them in advance so that the auditor can pick on. My position I see the auditor having the last say, that way they are independent.

Smith: I confer 100%.

Chairman Keiser: In that one area, we are going to add Worker's Compensation committee and Governor and that is on page one, line 20. Go to page two, I remove the dollar amount.

Representative Vigesaa: One of the key elements of the original bill was the inappropriate political influence. Will that be something that could come out of this?

Chairman Keiser: The review or the auditor is concerned with that. If it's a real issue, it does surface.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Moves the adoption of the amendment with that addition of the Governor.

Representative Nottestad: Second.

Chairman Keiser: Voice vote with all ayes.

Chairman Keiser: Further discussion? What are the wishes of the committee?

Representative Nottestad: Motion as a Do Pass as Amended.

Representative Ruby: Second.

Vote roll call was taken for a Do Pass as Amended on HB 1037 with 10 ayes, 2 nay's, 1 absent and Representative Nottestad is the carrier.

FISCAL NOTE
Requested by Legislative Council
02/06/2009

Amendment to: HB 1037

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 legislation outlines the element selection process for the independent biennial performance evaluation and requires the report be provided to the Legislative Council's Workers' Compensation Review Committee and the Governor.

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 1037

BILL DESCRIPTION: Independent Biennial Performance Evaluation

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 legislation outlines the element selection process for the independent biennial performance evaluation and requires the report be provided to the Legislative Council's Workers' Compensation Review Committee and the Governor.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: February 6, 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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/06/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: HB 1037

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 specifies the type of measurements the organization is to maintain and the items that will be evaluated as part of the independent performance evaluation.

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 1037

BILL DESCRIPTION: Independent Biennial Performance Evaluation

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 specifies the type of measurements the organization is to maintain and the items that will be evaluated as part of the independent performance evaluation.

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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	12/26/2008



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 20, after the first "to" insert "any of the following committees the legislative council deems appropriate: The legislative council's workers' compensation review committee," and after "committee" insert a comma, overstrike "and to" and insert immediately thereafter "or"

Page 2, line 8, after the period insert "The workers' compensation review committee may select addition elements for evaluation and shall set the final scope of the independent performance evaluation. The committee shall inform the state auditor of the elements to be evaluated and the scope of the evaluation."

Renumber accordingly

PROPOSED AMENDMENTS TO HB 1037

Page 1, line 1, replace "section" with "sections 65-02-23 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class."

Page 1, line 20, overstrike "legislative audit and fiscal" and insert immediately thereafter workers' compensation" and overstrike "and to"

Page 1, overstrike line 21

Page 1, line 22, overstrike "session of the legislative session following the performance evaluation"

Page 1, line 23, overstrike "The organization shall"

page 1, line 24 overstrike "develop and maintain comprehensive objective performance measurements" and remove including a"

Page 2, remove lines 1 through 6

Page 2, line 7 remove "premiums are appropriate and reserve levels are adequate." and overstrike "These measurements must be"

Page 2, line 8, overstrike "evaluated as part of the independent performance evaluation performed under this section" and insert immediately thereafter "Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor must include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the legislative review committee, may not exceed eight.

In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements"

Page 2, line 10, after the period insert:

"The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section."

PROPOSED AMENDMENTS TO HB 1037

Page 1, line 1, replace "section" with "sections 65-02-23 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

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Page 1, line 20, overstrike "legislative audit and fiscal" and insert immediately thereafter workers' compensation and *committee & governor* overstrike "and to"

Page 1, overstrike line 21

Page 1, line 22, overstrike "session of the legislative session following the performance evaluation"

Page 1, line 23, overstrike "The organization shall"

page 1, line 24 overstrike "develop and maintain comprehensive objective performance measurements" and remove ",including a"

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In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements"

Page 2, line 10, after the period insert:

"The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section."

February 2, 2009

VR
2/4/09
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, replace "section" with "sections 65-02-23 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class."

Page 1, line 18, after "director" insert "or the director's designee"

Page 1, line 19, after "board" insert "or the chairman's designee"

Page 1, line 20, overstrike "legislative audit and fiscal" and insert immediately thereafter "workers' compensation"

Page 1, overstrike line 21

Page 1, line 22, overstrike "session of the legislative session following the performance evaluation" and insert immediately thereafter "the governor"

Page 1, line 23, overstrike "The organization shall"

Page 1, line 24, overstrike "develop and maintain comprehensive, objective performance measurements" and remove ", including a"

Page 2, remove lines 1 through 6

Page 2, line 7, remove "premiums are appropriate and reserve levels are adequate" and overstrike ". These measurements must be"

Page 2, line 8, overstrike "evaluated as part of the independent performance evaluation performed under this section" and insert immediately thereafter "Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include"

the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements"

Page 2, line 10, after the period insert "The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section."

Renumber accordingly

Date: Feb 2 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1037

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 _____ Seconded By _____

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 Vigesaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

all aye's, no nays

Date: Feb 2 - 2009
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1037

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 Nottestad 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 Vigesaa	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE

HB 1037: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1037 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 65-02-23 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class."

Page 1, line 18, after "director" insert "or the director's designee"

Page 1, line 19, after "board" insert "or the chairman's designee"

Page 1, line 20, overstrike "legislative audit and fiscal" and insert immediately thereafter "workers' compensation"

Page 1, overstrike line 21

Page 1, line 22, overstrike "session of the legislative session following the performance evaluation" and insert immediately thereafter "the governor"

Page 1, line 23, overstrike "The organization shall"

Page 1, line 24, overstrike "develop and maintain comprehensive, objective performance measurements" and remove ", including a"

Page 2, remove lines 1 through 6

Page 2, line 7, remove "premiums are appropriate and reserve levels are adequate" and overstrike ". These measurements must be"

Page 2, line 8, overstrike "evaluated as part of the independent performance evaluation performed under this section" and insert immediately thereafter "Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the"

state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements"

Page 2, line 10, after the period insert "The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1037

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

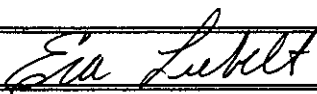
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10568

Committee Clerk Signature



Minutes:

John Bjornson, Legislative Counsel: During the interim the IBL committee had a look at WSI and its functions and governing structure and anything to do with the functions of the agency. One area the committee took a look at was the biannual independent performance evaluation required of the agency. During the interim there was discussion regarding what the proposed evaluation should address. What type of issues or results would be of value to the policy makers? As the bill left the committee it had a list of areas that the performance evaluation would cover. Those areas would focus on work force injuries and if the claims are being handled effectively and fairly. Whether there is any political influence, whether the stake holders, employees, employers and service providers are satisfied with services of the agency. The bill was amended in the house to change some of the language around.

Sylvan Loergering, North Dakota Injured Workers Support Group: Written testimony and a proposed amendment.

Chairman Klein: You like the bill but want to add a new section under the bill that deals with fraud?

Sylvan: That's correct.

Chairman Klein: This is not already on a bill?

Sylvan: The bill it was going to go on did not pass the house.

Senator Andrist: This will not allow testimony from anyone who might want to support the amendment.

Sylvan: Individuals can make comments at the amended portion of the bill.

Chairman Klein: Don't we already do that, fraud is fraud?

Sylvan: I know that WSI does go to bat for the employee now.

Sylvan: Goes back to his written testimony.

Senator Potter: The point of attaching this to the bill is you think this bill will pass?

Sylvan: I chose this bill because there it addressed a part of fraud.

Chairman Klein: I don't know if enough people have read this. Not having a true hearing on all the issues.

Senator Wanzek: It's your contention under current law this isn't addressed? Reading the current bill I think it does address fraud.

Sylvan: If you read it as it exists. Not all is covered under the current law.

Senator Wanzek: I am thinking it is covered under the next section.

Sylvan: I don't think it is addressed.

Jody Bjornson, General Counsel WSI: Written testimony in support of the bill.

Senator Andrist: I am interested on your take on Sylvan's amendment.

Jody: I had a few minutes to review it. My read on the bill now is it doesn't include where the employer or medical official might of lied that is not included in our current law. I do see some value to covering that situation.

Chairman Klein: Where going to need everyone to take a look at this. We will do that before we take up action on this.

Gordy Smith, State Auditor's Office: This is an independent party taking a look at this. Are goal is that the auditor's office would have the final say on this. Overall we have no objections.

Senator Horne: What do you mean by final say?

Gordy: We have the ability to add at least four more plus what we also wanted was the final decision on which firm is going to be chosen to conduct the actual performance evaluation.

Chairman Klein: Putting those four things from WSI, what I heard you say, you're asking the agency what they would like to look at anyway this is just getting aid.

Gordy: Yes we have and the latest one WSI gave us three suggestions we put two of those in the reform and obviously the more work you have the more expensive it is going to be.

Chairman Klein: We will close the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1037

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11215

Committee Clerk Signature

Eva Lihl

Minutes:

Chairman Klein: This is about the auditor and them wanting to have the last say on who will do the performance evaluation.

Senator Andrist moved a do pass.

Senator Behm seconded the motion.

Roll call vote: 6-1

Senator Klein will carry the bill.

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

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1037

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☒ **Pass**

☐ **Do Not Pass**

☐ Amended

Motion Made By Senator Andrisc Seconded By Senator Behm

[illegible]

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE (410)
March 19, 2009 9:10 a.m.

Module No: SR-50-5309
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1037, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed HB 1037 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1037

2009 House Bill No. 1037
Testimony before the House Industry, Business, and Labor Committee
Presented by: Jodi Bjornson
General Counsel
Workforce Safety & Insurance
January 7, 2009

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors unanimously supports this bill.

WSI staff attended the Industry, Business and Labor Interim Committee meetings and provided information to the Committee regarding performance evaluations, audits, and reviews conducted at WSI. We anticipate a standardization of the biennial performance evaluation as proposed in this bill will serve to minimize audit fatigue, yet provide policy makers with consistent, relevant data to evaluate WSI's performance.

WSI offers a minor amendment to the bill. The amendment would allow for a designee of the director or a designee of the board chairman to present the evaluation report to the indicated legislative committees if either the director or board chairman is not able to do so.

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

PROPOSED AMENDMENT TO HOUSE BILL NO. 1037

Page 1, line 18 after "director" insert "or the director's designee"

Page 1, line 19 after "board" insert "or the chairman's designee"

Renumber accordingly

Attachment 2

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.

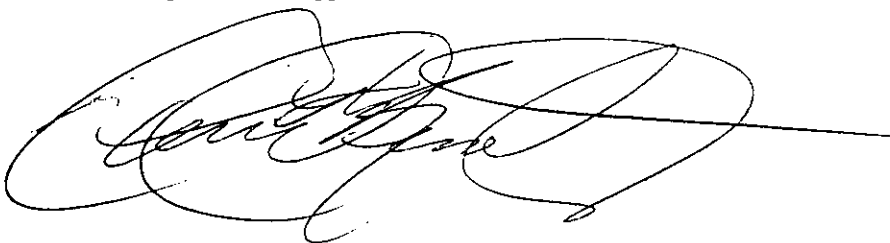
Additionally in our estimation the 1995 changes in NDCC Chapter 65-01-01 systemically altered the primary mission of the North Dakota's Workers' Compensation Bureau from assuring sure and certain relief to job injured workers, their families and dependents to one of primarily limiting the liability of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





STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

**TESTIMONY BEFORE THE
INDUSTRY, BUSINESS, AND LABOR COMMITTEE
January 20, 2009**

House Bill 1037

Testimony-Presented by:
Gordy Smith, CPA
Audit Manager


Mr. Chairman and members of the House Industry, Business, and Labor Committee, I'm here to testify in opposition to the proposed changes to House Bill 1037.

The bill relates to the biennial performance evaluation conducted at WSI. The State Auditor's Office is charged with the responsibility of selecting a consulting firm to conduct the performance evaluation. The original bill essentially requires WSI to develop and maintain comprehensive, objective performance measures that relate to 7 specific areas the interim Industry, Business, and Labor Committee felt were important. It appears this interim Committee did not anticipate restricting the State Auditor's Office authority to determine the scope of the performance evaluation. This is demonstrated by the interim Committee Chair's comments at the October 22, 2008 meeting which are attached to my testimony.

One of the proposed changes to House Bill 1037 would add a requirement regarding the performance evaluation which the State Auditor's Office would strongly oppose. On page 2, at the end of line 8, WSI is proposing to add language which would allow the Worker's Compensation Review Committee to select additional elements for the performance evaluation. The Committee would then be required to inform the State Auditor of the elements to be evaluated. This would significantly change the performance evaluation process and in our professional opinion would adversely impact the independence currently associated with the performance evaluation.


When the independent performance evaluation requirement was placed into state law back in 1997, I worked with then Executive Director Pat Traynor and the Legislature to develop an independent review process to evaluate WSI and provide accountability for the organization. Since the enactment of the law, the State Auditor's Office has used a similar process to select a firm to conduct the performance evaluation which is outlined below.

- 1) Request WSI to provide areas they would like included in the performance evaluation.

- 
- 2) State Auditor's Office drafts a Request for Proposal (RFP) which includes elements to be reviewed. The elements are determined by the State Auditor's Office considering information required in state law, WSI's suggested areas, interviews with CPA firm who conducts the financial audit, and our review of current trends and other data in the workers compensation area.
 - 3) WSI is provided a draft copy of the RFP for review and is asked for their input.
 - 4) RFP is issued by the State Auditor's Office.
 - 5) Proposals from firms are evaluated by the State Auditor's Office. WSI is given an opportunity to review the proposals and provide comments prior to our selection of the firm.
 - 6) State Auditor's Office selects the firm to conduct the performance evaluation.

The proposed changes would appear to remove the authority of the State Auditor's Office to determine the elements to be reviewed as part of the performance evaluation. Again, the State Auditor's Office is opposed to such a change. The State Auditor's Office would welcome input from any legislative committee regarding the scope of the performance evaluation. The independent aspect in the process would be removed by the proposed language. The State Auditor's Office feels that would be against what was originally intended by the legislation passed in 1997.


Rather than including such restrictive language, the State Auditor's Office would suggest the following language to House Bill 1037 and our amendment is attached. At Page 2, line 10, after the period, the following language is proposed:



"Nothing in this section shall otherwise restrict or preclude the state auditor from determining the areas to be reviewed and evaluated as part of the independent performance evaluation performed under this section."

Another proposed change to House Bill 1037 would allow the Legislative Council to determine the committees that would be presented the performance evaluation report. As part of the proposal process, the State Auditor's Office identifies in the RFP the requirement of the selected firm to present their report to two legislative committees. The firms are to include costs of such report presentations within their submitted bids. The State Auditor's Office is unsure how firms would be able to submit bids and include costs for presentations when it appears no decision as to the number of presentations would have been made.

This would conclude my testimony and I would gladly respond to any questions the committee may have. Thank you for your time.



Chairman Berg said the items included in the bill draft would be regular issues considered in the performance evaluation and would set benchmarks and regular measurements to determine whether WSI is operating efficiently and as intended.

Senator Klein said the items included in the bill draft appear to address many of the elements highlighted in the recent performance evaluation. In addition, he said, the bill draft adds the component of examining the number of contested claims.

In response to a question from Representative Amerman, committee counsel said the amendment to NDCC Section 65-02-30 on lines 8 and 9 of page 1 of the bill draft, which changes "workforce safety and insurance" to "workers' compensation" is to correct a reference that was mistakenly changed when the name of the agency was changed to Workforce Safety and Insurance. He said the reference is to clarify that the firm conducting the evaluation must have expertise in workers' compensation practices. He said it would be inappropriate to say that the firm must have expertise in Workforce Safety and Insurance practices.

Senator Horne said the examination of the number of contested claims does not appear to include a consideration of the nature of the claims.

Representative Berg said the performance evaluation can be more expansive than the issues included in the bill draft. He said these items are listed so that the performance evaluations will regularly examine those issues. He said the bill draft does not limit the scope of the performance evaluation, and other areas not identified in statute may be included within a performance evaluation.

Committee counsel said the use of the term "including" indicates that the list of items to be considered is not exclusive to those items within the list.

Senator Behm said he has concerns with the reference in the bill draft relating to addressing the number of contested claims and litigation rates.

Senator Klein said auditors suggest looking at measurements from other states for comparison purposes. He said obtaining benchmark measurements is important in comparing with other states and looking at progress from year to year.

Senator Wanzek said he is unaware of any other state agency that has been scrutinized more thoroughly than WSI. He questioned what part of the agency has not been audited or reviewed. Even without the language in the bill draft, he said, WSI has been subject to comprehensive reviews.

Representative Berg said the bill draft is an attempt to examine what type of information is important for legislators so that legislators are able to determine if the agency is performing well. He said he would like to see trends in workplace injuries added to the list of measurements to be considered in performance evaluations.

In response to a question from Senator Horne, Senator Klein said the issue in the State Auditor's

office audit followup which is related to the payment of a severance for the former executive director of WSI was addressed at the Legislative Audit and Fiscal Review Committee meeting.

Mr. Smith said if it is determined that the severance payment was inappropriate, he believes the state may be able to collect the inappropriate payment from the former executive director. He said the State Auditor requested an Attorney General's opinion to determine if the payment was appropriate. If the payment is determined by the Attorney General to be not legal, he said, the individuals who signed the agreement may have been acting outside the scope of their duties.

At the request of Chairman Berg, committee counsel reviewed a bill draft [90184.0300] to provide that the level of financial reserves plus available surplus of WSI may not exceed 150 percent of the actuarially established discounted reserve, and exclude from the calculation of available surplus funds obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly.

Representative Berg said the objective of the bill draft is to simplify the process of determining the appropriate reserve level of WSI. He said the first version of the bill draft did not include unrealized gains in the calculation of available surplus. However, he said, the bill draft was revised to keep unrealized gains within the calculation of available surplus.

At the request of Chairman Berg, committee counsel reviewed a bill draft [90241.0400] to require WSI to establish premium rates annually on an actuarial basis. He said the bill draft provides that the statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.

Representative Berg said many of the problems experienced by the state workers' compensation program before 1995 were due to the fact that premium rates were set based upon political concerns rather than actuarial recommendations. If initiated measure No. 4 passes and the Governor appoints the executive director of WSI, he said, there could be more political pressure exerted in the premium setting process. He said the bill draft would address that issue and require that the premium rates be within five percentage points of the recommendation from the actuary.

In response to a question from Representative Amerman, Representative Berg said if the initiated measure is adopted, the WSI Board of Directors remains in place. He said legislative action may be necessary to address issues that were not addressed by the initiated measure. He said he is concerned with political influence resulting in inconsistency in the treatment of injured workers. He said there are numerous anecdotes and stories regarding the impact of political influence on the claims process from the 1980s and early 1990s. He said that type of influence



COMPENSATION

Sedgwick CMS proposes a fixed fee of \$384,270. This fee contemplates 1,861 hours of professional time at an average hourly rate of \$188.75. It also includes a travel budget of \$33,000. Hours by element and by consultant are provided in the compensation schedule that follows.

Note that we have allotted \$30,000 in additional fees to acquire information to support comparisons against monopolies and large insurance companies. This allotment may also include the cost of professional time for individuals not assigned directly to this project. For example, it may be necessary to pay fees to WSI's actuary to support our research on Element 8. No portion of this contingent budget line item will be used without the prior approval of the State Auditor.

Compensation Schedule

		Element #1— Evaluation of Safety Grants	Element #2— Evaluation of Board of Directors	Element #3— Evaluation of Performance Measures	Element #4— Evaluation of Fraud Expenditures	Element #5— Evaluation of Prior Recommendations	Element #6 —Evaluation of Claims
Assigned Professional	Rate	# of Hours	# of Hours	# of Hours	# of Hours	# of Hours	# of Hours
Dodge	\$200	8	100	50	60	50	250
Belmore	\$170			40			270
er	\$170			24		30	100
Orr	\$170	120		40		20	
Bennett	\$220	40	40				
Jackson	\$170			16		64	
Charlton	\$170					5	
Marta	\$220			24		40	
Priven	\$250						
Elledge	\$220						
Analyst	\$170						
Total Hours		168	140	194	60	209	620
Labor Cost Sub-Totals		\$30,800	\$28,800	\$35,680	\$12,000	\$39,030	\$112,900



		Element #7— Evaluation of WSI's Financial	Element #8— Evaluation of Policyholder Services	Element #9— Evaluation of Legal	Totals	Contingent Budget Placeholder (not part of Total Budget)
Assigned Professional	Rate	# of Hours	# of Hours	# of Hours	# of Hours	Discretionary Research Expense
Dodge	\$200	12	5	80	615	
Pelmore	\$170				310	
Miller	\$170				154	
Orr	\$170				180	
Bennett	\$220				80	
Jackson	\$170				80	
Charlton	\$170				5	
Marta	\$220	20			84	
Priven	\$250	30	45		75	
Elledge	\$220	40	5		45	
Analyst	\$170	150	83		233	
Total Hours		252	138	80	1,861	
Labor Cost Sub-Totals	\$351,270	\$48,600	\$27,460	\$16,000		
Travel Costs	\$33,000					
Total All Labor and Costs	\$384,270					\$30,000

PROPOSED AMENDMENT TO HOUSE BILL 1037

Page 2, line 10, after the period insert "Nothing in this section shall otherwise restrict or preclude the state auditor from determining the areas to be reviewed and evaluated as part of the independent performance evaluation performed under this section."

Number accordingly

March 3, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

Page 1, line 1, replace the second "and" with a comma and after "65-02-30" insert ", and 65-05-33"

Page 1, line 3, after "insurance" insert "and workers' compensation fraud; and to provide a penalty"

Page 3, after line 2 insert:

"SECTION 3. AMENDMENT. Section 65-05-33 of the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statement - Penalty.

1. A person ~~who~~ that claims benefits or payment for services under this title or the employer of ~~a person~~ an employee who claims benefits or payments for services is guilty of a class A misdemeanor if the person or employer does any one or more of the following:
 - a. Willfully files a false claim or makes a false statement in an attempt to ~~secure~~;
 - (1) Secure payment of benefits or payment for services; or
 - (2) Affect a decision regarding payment of benefits or payment for services.
 - b. Willfully misrepresents ~~that person's~~ the employee's physical condition, including deceptive conduct which misrepresents that person's physical ability.
 - c. Has a claim for disability benefits that has been accepted by the organization and willfully fails to notify the organization of:
 - (1) Work or other activities as required under subsection 3 of section 65-05-08;
 - (2) The receipt of income from work; or
 - (3) An increase in income from work.
2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits, in other financial gain, or in payment for services, the offense is a class C felony. The cost of an investigation under this section which results in a criminal conviction against the employer may be charged to the employer's account and collected by civil action.
3. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall reimburse the organization for any benefits paid or payment for services based upon

the false claim or false statement and, if applicable, under section 65-05-29 and shall forfeit any additional benefits relative to that injury.

4. For purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense."

Renumber accordingly

REMARKS FOR IBL COMMITTEE re HB1037

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group

March 10, 2009

I suspect that your position on fraud is the same as mine. If an employee lies to get undeserved benefits, he or she can lose benefits and be punished. That is the way it should be. However, if an employer, a doctor or anyone else lies to prevent or reduce an employee's benefits the penalty should be equally swift and severe.

In engrossed bill 1037, lines 8 - 12, current law calls for establishment of a fraud unit to investigate and report cases of fraud by employers, injured workers or providers of services and refers to 65-04-33 and 65-05-33. 65-04-33 covers employers' failure to secure workers' compensation or misrepresenting amount of payroll and provides penalties. 65-05-33 is in the amendment you have in front of you. That section of the code covers fraudulent attempts by employees to get benefits, by employers who help employees get benefits and by providers who are claiming payment for services. This section has laws to protect the fund, but there are no laws to protect the injured worker from fraud.

Injured workers are not the only ones who stand to gain or lose when WSI makes a decision on benefits. If an incident wasn't reported timely, an employer can immediately gain \$250 by not having to pay deductibles. An employer can also gain if denial allows premium rebates, reduction of premiums or safety grants. Obviously, providers can gain by fraudulently claiming payment for services. This amendment expands the definition of offenses against the fund to include fraudulent attempts to affect a decision either way.

You might be wondering if any one actually tries to fraudulently deny benefits. I can tell you that injured workers have told me numerous anecdotal stories of employers who lied about the circumstances of an accident to prevent payment of workers' compensation benefits. I can't confirm or deny them on an individual bases but the quantity of stories from separate sources indicates there might be a problem. I have positive personal knowledge of an employer lying about circumstances of an accident and a doctor lying to deny benefits in the same claim with which I am very familiar, so I do know it happens.

I am a little concerned about lines 16 and 17 of bill 1037 which removes the biennial requirement to evaluate and report on the effectiveness of fraud expenditures. The bill does call for the Workers' compensation Review Committee and the State Auditor to specify elements they want in the biennial performance review. I hope effectiveness of fraud expenditures stays on their list. I believe it will because of previous performance reviews. The 2008 Performance Review by BDMP states on page 67:

"The 2004 performance review included a recommendation that an increased emphasis should be made to develop a proactive provider fraud and employer fraud program. The 2006 performance evaluation included a recommendation that WSI investigate medical provider fraud more thoroughly. Based on our analysis of prior recommendations in connection with Element 5, these two recommendations have not been implemented by WSI."

"Element 5" referred to in the quote is a review of implementation of recommendations made in the 2006 performance evaluation. I believe the above comments originated from the realization there was a huge imbalance between the fact that investigators regularly follow injured workers around filming their lives and the observation from BDMP, "WSI does not have a comprehensive employer and provider fraud program in place...". To be fair, WSI concurs with the need to increase focus on conducting provider and employer fraud investigations and has begun to develop such programs.

Before I conclude, I'd like to call your attention to page one of the amendment, subsection 2. The seriousness of an act depends on the potential gain for the perpetrator. This section brings to mind the discussion this committee had last week regarding confidentiality of employer files. In order to determine potential gain for an employer, prosecutors would have to know what the employer is paying in premiums and what effect payment of additional benefits would have on his premium, his rebates or his safety grants. Likewise, how do you evaluate the potential gain for a provider who seeks to fraudulently deny benefits? We could imply the desire to get more business by finding in WSI's favor but that would be nebulous. My personal feelings are that denying over \$500 worth of benefits to a needy, deserving injured worker is just as serious a crime against society as trying to obtain \$500 in financial gain.

If you, as a committee, agree with that opinion, you could include it in the amendment by adding a new subsection almost identical to the current subsection 2 that would say something like, "If any of the acts in subsection 1 are committed to affect decisions regarding more than \$500 in benefits the offense is a Class C felony." If that seems harsh, you could change the \$500 to some other figure. Regardless, an amendment of this sort would lower prosecution costs by simplifying the discovery process and it would make the law more understandable and enforceable.

I hope you will agree with me that fraud should be detected and corrected, no matter who commits it, that you will adopt this amendment and vote "do pass" on the bill..

2009 Engrossed House Bill No. 1037
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Jodi Bjornson
General Counsel
Workforce Safety & Insurance
March 10, 2009

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with WSI. I am here on behalf of WSI and its Board of Directors to convey support for this version of the bill and to provide information to the Committee to assist in making its determination.

WSI staff attended the Industry, Business and Labor Interim Committee meetings and provided information to the Committee regarding performance evaluations, audits, and reviews conducted at WSI.

Through the collaborative efforts of the State Auditor's Office, the House Industry Business and Labor Committee, and WSI several amendments were made to the original version of the bill, resulting in the most recent version before you today. We submit the changes made result in improved legislation relating to WSI's performance evaluation.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, replace "section" with "sections 65-02-23 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class."

Page 1, line 20, after the first "to" insert "any of the following committees the legislative council deems appropriate; the legislative council's workers' compensation review committee," and overstrike "and to" and insert immediately thereafter ", or"

Page 2, line 6, after the underscored semicolon insert "whether the workforce safety and insurance fraud unit has been operating in an efficient and cost-effective manner;"

Page 2, line 8, after the period insert "The workers' compensation review committee may select additional elements for evaluation and shall inform the state auditor of the elements to be evaluated."

Renumber accordingly