

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1160

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1160

## House Industry, Business and Labor Committee

☐ Check here for Conference Committee

**Hearing Date:** February 2, 2009

**Recorder Job Number:** 8413

Committee Clerk Signature

*Ellen Letang*

**Chairman Keiser:** Opened the hearing on HB 1160 relating to the examination of WSI Commissioner.

Adam Hamm~North Dakota Insurance Commissioner Department. See testimony attachment.

Anyone here to testify in opposition to HB 1160.

Anne Green~Staff Counsel with WSI. See testimony attachment 2.

**Representative N Johnson:** You thought that WSI would anticipate some resources in the fiscal note?

Green: My understanding, the only fiscal note submitted was by the originating agency.

However, our department has calculated the potential for one somewhere in \$180,000.

Additionally, we would look at some training and software in implementing statutory reporting.

Lastly a base line of valuation of the agency of \$100,000.

**Chairman Keiser:** What accounting standard problems has the agency had, what are we solving by adding this financial over site?

Green: I don't know if we have any additional benefits in requiring to adopt a new level.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment.

Dave Kemnitz~President of the AFL-CIO. Two important items, they are to continue under the

Governor and move WSI to the Insurance Commissioner.

Anyone here to testify in the neutral position?

Chairman Keiser: Closes the hearing of HB 1160. What are the wishes of the committee?

**Representative Vigesaa: Moves a Do Not Pass on HB 1160.**

**Representative Clark: Second.**

**Voting roll call take on HB 1160 for a Do Not Pass with 9 yea's, 2 nay's, 2 absent and**

**Representative Boe is the carrier.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/23/2008

Bill/Resolution No.: HB 1160

**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			\$1,138,718	\$23,400	\$1,138,718	\$23,400
Appropriations			\$1,138,718	\$23,400	\$1,138,718	\$23,400

**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).*

This bill provides for the ND Insurance Department to have regulatory oversight and and examination authority of ND Workforce Safety and Insurance.

**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.*

To accomplish the objectives of this bill the Insurance Department estimates that 5 new FTEs will be needed. The additional FTEs will require the Department to relocate the satellite office to a larger facility.

**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.*

This bill will not affect revenues.

**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.*

Salary and fringe for these new positions is estimated at \$720,918. The operating expenses to support, train and house these new positions is estimated at \$441,200. This amount includes the leasing of a larger facility for the Department's satellite office and the relocation of current staff to that facility.

**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.*

See above statement.

<b>Name:</b>	Larry J. Martin	<b>Agency:</b>	Insurance Department
<b>Phone Number:</b>	328-2930	<b>Date Prepared:</b>	01/09/2008

Date: ~~Jan~~ Feb 2 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1160

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 Vigesaa Seconded By Clark

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) 9 No 2

Absent 2

Floor Assignment Boe

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

**REPORT OF STANDING COMMITTEE**

**HB 1160: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).  
HB 1160 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1160

**HOUSE BILL NO. 1160**

**Presented by:** Adam Hamm  
Commissioner  
North Dakota Insurance Department

**Before:** House Industry, Business and Labor Committee  
Representative George Keiser, Chairman

**Date:** February 2, 2009

**TESTIMONY**

Good afternoon, Chairman Keiser and members of the committee. My name is Adam Hamm, and I am the North Dakota Insurance Commissioner. I am here in support of House Bill No. 1160.

As you know, I first introduced this bill draft and proposal in February 2008 before the WSI audit findings were presented and prior to Initiated Measure No. 4 passing. At that time, I indicated that this proposal was about providing additional accountability to WSI and that this approach would work whether or not Initiated Measure No. 4 passed.

The proposal remains unchanged. It allows the Insurance Department to oversee WSI similar to every other insurance company that operates in our state. Specifically, there are three roles the Insurance Department would play in bringing additional accountability to WSI.

The first role is regular financial examinations of the company. We would look at the financial soundness of WSI, whether or not there are sufficient reserves to pay claims, and determine whether standard insurance industry accounting standards are being followed.



Second, my Department would conduct regular financial analysis. At least quarterly, WSI would send financial statements to the Insurance Department. As with other companies, these financials are reviewed to monitor financial performance and to identify red flags or potential problems.

Third, the Department could conduct market conduct examinations as necessary. This bill requires WSI to submit monthly reports to the Insurance Department which may include claims data, complaint data, grievance reports, etc. Should any specific patterns be observed that are concerning, the Department could conduct an examination to identify claims handling issues, claim investigations, or delays in any payments or appeal processes.

The final reports from any investigations or examinations would be reported to the Governor who would then review the report and any recommendations.

The cost of examinations would be paid for by WSI which is also the manner in which examinations are paid for with other types of insurance companies. Because WSI does not pay premium taxes, there would be no off-setting credit as is the case with other insurance companies.

My staff and I have had numerous conversations with the staff and management at WSI regarding the challenges behind this bill, including a proposed shift in the accounting standards used by WSI.

WSI uses Generally Accepted Accounting Principles or GAAP. Insurance companies may use GAAP day-to-day, but across the nation are all required by their regulators to use a standard called Statutory Accounting Principles or SAP for financial reporting. GAAP has a "going-concern" emphasis focusing on profitability and the income statement. SAP emphasizes policyholder protection and insurer solvency focusing on liquidity and the balance sheet.

SAP is a very conservative accounting approach. Assets that are not readily available to satisfy policyholder obligations are not considered admitted assets, such as, premium receivables over 90 days due, prepaid expenses, furniture and equipment.

There are also various differences in the way SAP classifies and presents the financial statement items which provides consistency in comparing the financial condition and operations from insurer to insurer.

While I recognize that shifting to statutory accounting for financial statements would require WSI to make a change and an upfront investment in terms of staff skills, the pay-off in presenting uniform financial statements as an insurer to their policyholders is immeasurable in building a solid and trusting relationship. It would also accomplish an audit recommendation made in the FY 2007 CPA audit that WSI provide continuing education to the accounting department specifically geared towards insurance industry practice and procedures.

As a regulator, there would be no other way to truly ensure claims payment from an insurance company if it were not for the very conservative methods of statutory accounting. I will also note that the conservative nature of statutory accounting has had a lot to do with why insurance companies are not failing at the same rates as banks and other financial sector companies.

The fiscal note on the bill notes that the Department would add five staff to regulate WSI as well as need additional operating money for these staff. The staff would be made up of an attorney, a financial analyst, a financial examiner and hotline/complaint staff. The operating dollars include money to train these staff, house these staff and pay for supplies.

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of House Bill No. 1160. I would be happy to answer any questions you have. Thank you.

**2009 House Bill No. 1160**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety and Insurance**  
**February 2, 2009**

Mr. Chairman, Members of the Committee:

My name is Anne Green. I am staff counsel for Workforce Safety and Insurance (WSI). I am here to testify in opposition to House Bill 1160 which provides for oversight of WSI by the Department of Insurance. The WSI Board of Directors unanimously opposes this bill.

This proposal was originally presented by the Insurance Commissioner to the Interim Industry, Business and Labor Committee in February 2008 as a possibility for additional oversight for WSI. Effective December 2008, with the passage of the initiated measure, the Governor now appoints and provides oversight responsibilities for the WSI CEO.

As you may be aware, WSI is periodically subject to a number of audits, reviews, and evaluations. Ongoing reviews include:

- 1) Independent Biennial Performance Evaluations performed by a firm selected by the State Auditor's Office that has workers compensation industry expertise. The most recent evaluation was conducted by BDMP.
- 2) Annual Financial Audits, which includes an actuarial peer review, performed by a firm selected by the State Auditor's Office. The current financial audit firm is Brady Martz.
- 3) An annual reserve review conducted by a consulting actuary.
- 4) An annual premium rate review conducted by a consulting actuary.
- 5) WSI also maintains an internal audit function that routinely reviews various functions and processes of the organization.

Other reviews conducted during the past year, at the request of the Governor and Board, include a Human Resources and Management Review conducted by Conolly & Associates and a claim review conducted by Marsh.

WSI is experiencing audit and review fatigue.

That said, we have no objection to continued transparency. We've recently worked with the Insurance Department staff to find some ground where meaningful review exists without taxing the resources of both agencies in an exercise which is repetitive and provides neither insight nor oversight. We have encountered a number of stumbling blocks in our attempt at a successful middle ground.

First, the financial reporting system mandated by the Insurance Department is founded on a statutory reporting basis. Statutory reporting provides financial depth necessary to drill down into data held in the private insurance market. WSI, as a governmental agency, is required to report its financials based on generally accepted accounting principles (GAAP). There are experts in the room from both WSI and the Insurance Department who, if asked, will explain that the two are not compatible.

Next, WSI is concerned with the reporting frequency proposed by the Insurance Department. The department is responsible for the protection of the policyholders of the state. Necessarily, they have broad authority to request information, conduct an inquiry and require reporting. In WSI's review of Title 26.1, we find the required reporting detail and frequency requested by the department in HB 1160 comparable only to insurance carriers who are in danger of insolvency in North Dakota.

WSI is familiar with and accustomed to a heightened level of review and scrutiny. We are not rattled at the prospect of being reviewed and questioned; indeed we

welcome continued reviews of the organization. We proposed a series of amendments which, in our view, mirrored the reporting requirements of other insurance carriers in the state. For example, we produce an operating report which contains much of the information proposed by the Insurance Department's bill. Our goal is continued review in an efficient manner permitting WSI to comply with requests for review, but which does not overly burden the organization.

The fiscal note on HB 1160 submitted by the Insurance Department requests funding in the amount of \$1,162,118 to fund five additional FTEs and provide additional office space and contemplates only the needs of their office. In its current form, WSI anticipates the need for staff and other resources as well to fully respond to HB1160 in its current form.

WSI requests a "do not pass" on HB1160 in its current form. That concludes my testimony. I am happy to answer any questions that you might have.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1160  
February 3, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to HB 1160 and urge a do not pass from the committee on this bill.

We understand what the bill does. The fact remains that WSI is not an insurance company. If it was it would have to compete in a free and open market for premium dollars. It has a captive market, the employers and employees of North Dakota. It will move under the Governor's direction. It is subject to audits at any time from the state auditor's office, performance and other audits on a regular basis from outside firms that, despite my familiarity with the agency, I cannot keep track of or enumerate. Benefits, reserve levels, appeals and procedures are decided in statute and rules. As far as I can tell both the WSI Review Committee and interim IBL committee will continue to be free to look at interim issues. According to the estimate from WSI it will cost the employers of North Dakota an additional 1.7 million in premiums to comply with the requirements of the bill. All of this begs the question, with the return of the agency to the governor, who needs the additional oversight, the governor or the legislature?

Thank you for the opportunity to appear before you today in opposition to HB 1160. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*