

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1201

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1201

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7793

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the hearing on HB 1201 relating to the changing the name of the WSI office of independent review.

Chairman Keiser: In the four years of the interim worker's comp committee, one of the recurring things that come up is that the office of independent review is not independent. It is a part of WSI. It's employees are paid through WSI. There is a feeling of the injured employees a frustration because this is not independent group. In the last interim there were two areas where we have tried to address this frustration. This bill addresses one and simply changes the name office of independent review to the decision review office. It is what they do. All this is, is an attempt to correct that employees have when they go there. If they are truly independent they can reverse their decisions. We did attempt to create that independent review opportunity, if desired. They can go to an attorney of their choice. Part of this bill is simply a name change.

Representative Schneider: Instead of bringing the name in line with the duties, why not give the office of independent review the teeth to be more truly independent?

Chairman Keiser: I thought about it a long time, there is real merit in having a different set of eyes that are experts in arena to review it. It does give satisfactory relief in a significant

number of cases. The other option is to create a judicial independent channel that would have the power of decisions. I chose not to do that.

Representative Amerman: Throughout the bill the change is worker to employee.

Chairman Keiser: I didn't ask for that. The Legislative Council brought it into compliance.

Representative Thorpe: Will it still be the same people there in the decision review office?

Chairman Keiser: Yes, they will. Puts in a plug for Chuck who has comes in objectively.

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

Cade Jorgenson~Office of Independent Review Manager. See testimony attachment.

Representative Schneider: What percentage of cases comes through your office that has a complete reversal?

Jorgenson: Complete reversal is hard to track but an amended decision that is 13% and 7% is a stipulated settlement where two side can come to an agreement.

Representative Schneider: Is there ever been a complete reversal?

Jorgenson: Yes, it has.

Representative Schneider: Has you office ever done a self assessment?

Jorgenson: Yes, it does. We have a tracking program.

Chairman Keiser: Have you identified any patterns or problem areas?

Jorgenson: I haven't found any patterns but often times there will be new information.

Representative N Johnson: What is the percentage of WSI claims that come to OIR?

Jorgenson: The past fiscal year saw a drop in cases. Historically they will see about 400 cases and you can compare that to 20,000 claims received per year.

Representative Amerman: Do you recollect the vote by the directors?

Jorgenson: Unanimous.

Dave Kemnitz~President of AFL-CIO. See testimony attachment.

Vice Chairman Kasper: Back in 1995, did everyone back then agree with this change to go from arbitration to the OIR system.

Kemnitz: I'm not sure.

Vice Chairman Kasper: Between the majority and minority leaders, were they in agreement?

Kemnitz: I'm not sure.

Chairman Keiser: We can get a point of clarification from Cade Jorgenson how OIR was inserted.

Jorgenson: The change in the program title was reflective of the (inaudible). Is it accomplishing what is supposing to? Concern back then was the title. Is the program operating in an advisory capacity for injured workers?

Chairman Keiser: It was some arbitrary title that was created to replace worker's advisor.

Jorgenson: I was probably my idea.

Kemnitz: I'm in support with heavy heart.

Sebald Vetter~C.A.R.E. I'm a little shy with this bill, but I'll go along with it. The name change can't do anything unless we give them enough power to do something.

Sylvan Loegering~North Dakota Injured Workers Support Group. I support as it is written. It does one thing which is it take the confusion out of the word independent. If you go back to page one, line 21 or so, talks about the purpose of OIR is to provide assistance to employer or worker. That the purpose. The 20% change rate is something but in many ways we are losing the point of what the name was intended to represent.

Chairman Keiser: The point we are trying to make is that name was an arbitrary name created just a few years ago by one individual who said "advisory doesn't seem to work" and do we have another name. They came up with it.

Loegering: The better solution would be to come up with an office that is a truly independent office for injured workers to go to.

Anyone here in opposition, neutral. Closes the hearing of HB 1201. What are the wishes of the committee?

Representative Ruby: Moves a Do Pass.

Representative Sukut: Second.

Representative Amerman: With heavy heart I have no problem supporting this resolution.

Voting roll call was taken with a Do Pass on HB1201 with 12 yea's, 0 nay's, 1 absent and Representative Sukut is the carrier.

Date: Jan 26, 2009
Roll Call Vote # _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1201

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 Ruby Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman	1	
Vice Chairman Kasper	1		Representative Boe		
Representative Clark	1		Representative Gruchalla	1	
Representative N Johnson	1		Representative Schneider	1	
Representative Nottestad	1		Representative Thorpe	1	
Representative Ruby	1				
Representative Sukut	1				
Representative Vigasaa	1				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Sukut

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

REPORT OF STANDING COMMITTEE (410)
January 26, 2009 6:02 p.m.

Module No: HR-15-0983
Carrier: Sukut
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1201: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1201 was placed on the Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1201

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1201

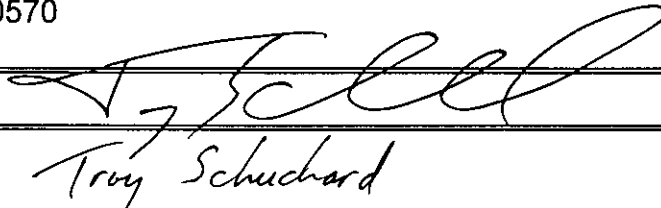
Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10570

Committee Clerk Signature



Troy Schuchard

Chairman Klein: Opened the hearing on HB 1201, all members present.

George Keiser: Representative District 47 introduced HB 1201. The bill relates to changing the name of the Workforce Safety & Insurance Office of Independent Review because it is not an office of independent review, and during the interim committee we suggested Office of Decision Review because that is what they do. A claimant that is injured has the opportunity to go to this department within (Workforce Safety & Insurance Office of Independent Review), and say "would you review my case and just tell me whether you feel the decision was proper".

Senator Horne: So you are trying to get a better description of what the Office really does and change the perception. Your goal is to change the perception to fit the situation?

George Keiser: Absolutely! When people go to this office, based on the name to this office, people need to have a more clear understanding of what this office does and doesn't do, based upon its name.

Jeb Oehlke: Representing North Dakota Chamber of Commerce testified in support of HB 1201. (See attachment #1)

Leroy Volk: Testified in support of HB 1201. I ain't got no problem with changen the name, those people are good down there.

Sylvan Loergering: Representing North Dakotas Injured Workers Support Group testified in support of HB 1201. I deal with perception a lot with my dealings with injured workers and WSI. These injured workers would prefer an office that is truly independent.

Cade Jorgenson: Manager for WSI Office of Independent Review testified in support of HB 1201. (See attachment #2)

Chairman Klein: Can you give us any numbers as to how many people come through your office?

Cade Jorgenson: I would say about yearly 400. That number has dipped slightly over the last fiscal year.

Senator Potter: How many cases do you amend or make a recommendation that they change that?

Cade Jorgenson: Previous testimony offered was correct, about 20% in a 12 calendar month.

Seibold Vetter: I support HB 1201.

Chairman Klein: How do you feel you're treated there?

Seibold Vetter: Oh da treatment is good, I got no complaints wat da boys' are doin. But they go no authority over there. It seems like it's a waste of money, we could just as well send it back to Arn Englist and have her review on it.

Chairman Klein: But 20% is a good percentage, that's 1 in 5. Isn't that to their advantage?

Seibold Vetter: How do you know when you send the claim back to the analysis and the lawyers look at it, how do you know you don't get that same report back? It is just a shall. They treat me good, but you knows...

Dave Kemnitz: President of the North Dakota AFL-CIO testified in support of HB 1201.

Chairman Klein: Closed the hearing on HB 1201.

Senator Wanzek: Motion for a Do Pass

Senator Andrist: Seconded

Chairman Klein: Motion for a Do Pass passes 4-3, Senator Andrist to carry.

Date: 3/10/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1201

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 Wanzek Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm		✓
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne		✓
Senator John M. Andrist	✓		Senator Tracy Potter		✓
Senator George Nodland	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE (410)
March 10, 2009 1:17 p.m.

Module No: SR-43-4457
Carrier: Andrist
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1201: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1201



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1201
January 26, 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 support of HB 1201 and urge a do pass from the committee on this bill.

We called for this change last session and commend Chairman Keiser for bringing this bill forward. Our expectations are set by our perceptions. In this case the name, Office of Independent Review, would be perceived as a completely independent agency and raise the expectation of a review wholly outside of the agency. We all know that is not how the office operates nor was it ever intended to operate in that way. The name change to "decision review office" will more accurately reflect the mission of the office. We do believe the appeals process is served by the role the DRO plays. I liken it to the role of an internal auditor in a bank. That department is charged with making sure loan officers are complying with bank loan policies and federal or state requirements in banking rule or law. When a question occurs auditors meet with the loan committee to resolve it to the extent that the organization is in agreement on the correct course. In WSI's case a claimant believes his case was not decided properly. Having an internal review process forces WSI to be completely sure denial is the proper decision before costly litigation proceeds.

Thank you for the opportunity to appear before you today in support of HB 1201. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

2009 House Bill No. 1201
Testimony before the House Industry, Business, and Labor Committee
Presented by: Cade Jorgenson, Office of Independent Review Manager
January 26, 2009

Mr. Chairman, Members of the Committee:

Good afternoon. My name is Cade Jorgenson, manager of the Workforce Safety & Insurance Office of Independent Review. I am testifying in support of HB 1201. The bill proposes changing the name of the program from Office of Independent Review (OIR) to Decision Review Office (DRO). The WSI Board of Directors has voted in support of HB 1201.

The Workers' Adviser Program was originally established by the 1995 Legislature. In 1999 the Legislature renamed the program to Office of Independent Review. The program is an optional alternative to litigation for injured workers seeking to dispute a WSI claim decision. OIR is a part of the Workforce Safety & Insurance organization, but is independent of the claims department of the organization. The office has been housed in a separate location from WSI since 2000 and its manager reports directly to the WSI Board of Directors.

Although the office currently functions independently from the WSI claims department and has separate oversight from that of WSI management through its reporting directly to the WSI Board of Directors, concerns have been expressed that the word "independent" in the program title may incorrectly signify that the program is more than an administrative review of the decision of Workforce Safety & Insurance. The Interim Workers' Compensation Review Committee addressed the question of the program name during the 2007-2008 legislative interim. It has been expressed that the title 'Decision Review Office' better reflects the true nature of WSI's alternative dispute resolution program currently known as the Office of Independent Review.

This concludes my testimony. I would be pleased to answer any questions regarding the Office of Independent Review.

ND AFL-CIO Notes

disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven three consecutive years is eligible for supplementary benefits.

MON 01/26 08:00 AM Peace Garden Room
HB 1101 H-IBL **Chairman:** Rep. G. Keiser

Comments: ND AFL-CIO supports. ^{Sponsors} (At the request of Workforce Safety and Insurance) Weekly and aggregate benefit subject to a minimum of sixty percent and a maximum of one hundred ten twenty-five percent of the average weekly wage in the state. dependency allowance for each child of the employee at the rate of ten fifteen dollars per week per child. organization shall still pay costs of vocational rehabilitation, burial expenses, travel, other personal reimbursement for seeking and obtaining medical care, and

MON 01/26 08:00 AM Peace Garden Room
HB 1151 H-IBL **Chairman:** Rep. G. Keiser

Comments: No ND AFL-CIO position taken as of 1-23-09. ^{Sponsors} (At the request of Workforce Safety and Insurance) A "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay. Employer \$350.00 deductible is eliminated.

MON 01/26 02:00 PM Peace Garden Room
HB 1201 H-IBL **Chairman:** Rep. G. Keiser

Comments: ^{Sponsor} Representative Keiser, This bill changes the name of Office of Independent Review (OIR) to "Decision Review Office". The ND AFL-CIO is neutral on this bill but would like to see the Office of Independent Review be separated from Worker's Comp. and then actually advocate for claimants. This change in name only is an attempt to change the subject on what OIR should be.

MON 01/26 02:00 PM Peace Garden Room
HB 1247 H-IBL **Chairman:** Rep. G. Keiser

Comments: ^{Sponsors} Representatives Amerman, J. Kelsh, Potter Senators Dotzenrod, Potter ND AFL-CIO supports this bill as written. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of thirty dollars per week per child. Effective August 1, 2009, this rate must be paid to each eligible employee regardless of the date of injury.

MON 01/26 02:00 PM Peace Garden Room
HCR3002 H-IBL **Chairman:** Rep. G. Keiser

Comments: ND AFL-CIO opposes the "mutualization of Workers Comp. in ND. ^{Sponsor} (Interim Industry, Business, and Labor Committee CHAIRED BY REP> BERG) WSI Governance legislative study of the governance structure of Workforce Safety and Insurance and determine the feasibility and desirability of mutualization of Workforce Safety and Insurance.

MON 01/26 02:00 PM Peace Garden Room
HCR3008 H-IBL **Chairman:** Rep. G. Keiser

#1



Testimony of Jeb Oehlke
North Dakota Chamber of Commerce
HB 1201
March 10, 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 statewide associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing sixteen local chambers with total membership over 7,200 members, and ten employer associations. As a group we stand in support of HB 1201 and urge a do pass from the committee.

We called for this change two years ago and we are very pleased the issue was brought forward this session. Our expectations are set by our perceptions. In this case the name, "Office of Independent Review" would be perceived as a completely independent agency and raise the expectation of a review wholly outside of Workforce Safety and Insurance. We all know that is not how the office operates nor was it ever intended to operate in that way. The name change to "decision review office" will more accurately reflect the mission of the office. We do believe the appeals process is served by the role the DRO plays. I liken it to the role of an internal auditor in a bank. That department is charged with making sure loan officers are complying with bank loan policies and federal and state requirements in banking rule or law. When a question occurs auditors meet with the loan committee to resolve it to ensure the organization is in agreement on the correct course. In WSI's case a claimant believes his case was not decided properly. Having an internal review process forces WSI to be completely sure denial is the proper decision before costly litigation proceeds.

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Presented by: Cade Jorgenson, Office of Independent Review Manager
March 10, 2009

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