

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1464

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1464

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8412

Committee Clerk Signature *Ellen DeTang*

Chairman Keiser: Opened the hearing on HB 1464 relating to Attorney General representation of WSI, WSI & Insurance Board, WSI & Insurance Administrative hearings, and WSI & Insurance Personnel.

Nancy Johnson~Representative from District 37, Dickinson. Introduces the HB 1464.

Bruce Furness~Interim Director of WSI. See testimony attachment 1.

Chairman Keiser: One, two and three became effective December 4 or is contained and four reflects the will of the people?

Fukkrness: I agree.

Chairman Keiser: Is five part of the vote of the people?

Furness: I don't believe that was in the initiative, it's an indirect inclusion.

Chairman Keiser: Has the board taken a position on number five?

Furness: The board has taken a position on number five and they oppose number five.

Vice Chairman Kasper: If number five were enacted, what would it do with the dynamics of how the attorneys currently work in WSI compared to them being outside WSI?

Furness: There would be some changes the way we would operate.

Representative Amerman: The employees return to the Human Resource but the officers don't?

Furness: I will defer that question.

Representative Ruby: We all expected to see a bill that would get us in line with the vote, but when you take an area that wasn't part of that measure. Why wasn't that brought as a standalone rather than being put into a bill like this?

Furness: I think the Attorney General and Governor feel this is part trying to make WSI a state agency.

Vice Chairman Kasper: All the other state agencies have in house legal counsel who are assistant attorney generals.

Furness: My understanding is most are not. Most report to the Attorney General and there are five or six that are exempted from that requirement. WSI is currently one of those exempted and what this legislation would do is remove that exemption.

Chairman Keiser: On page one, lines 22-24, identify the agencies which are outside.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony 2 and amendment attachment 3 & 4.

Representative Amerman: The board would now be the state advisory board. They couldn't skip and go to the governor?

Shalhoob: Yes, gives the advisory board some real things to do.

Chairman Keiser: Your position on the amendment is to be an advisory board a manner in fashion the governor wishes to use it. What these amendment do is give a very specific function as make formal recommendations to the governor on those three areas.

Shalhoob: That's correct. The governor can use the board in any way he see fit.

Representative Boe: These formal recommendations are up to the governor and he chooses whether to follow them or not?

Shalhoob: That's correct. It's an advisory board but it has no force.

Tom Balzer~North Dakota Motor Carrier's Association, Inc. We choose to support the bill as amended.

Tom Trenbeath~Chief Deputy Attorney General of North Dakota. It may come down to several things with the respect to the Attorney General as the relationship with the attorneys presently employed in WSI. One is the misunderstanding of the function of the attorney general. The second element is the theory of government (?). The government in respect to the interpretation to the constitution was as enabling statutes is the attorney general gives advice to its agencies. We are not recreating the wheel, but we feel at this time to have the attorneys to give legal to an agency to work for the attorney general.

Representative Ruby: This seems to be an indirect belief of what the people wanted with the measure. Why this one?

Trenbeath: I don't know if I can answer that. We didn't initiate it.

Representative Gruchalla: In your review of WSI legal department, how times you hire outside?

Trenbeath: I don't have that number. I do know it's considerable and how this will affect our office.

Vice Chairman Kasper: Could you clarify, the initiated did not require the change at all in the attorneys how they are currently hired. Is that correct?

Trenbeath: If you are looking for the verbiage to tracks your question, you won't find it.

Chairman Keiser: Are the current attorneys are they assistant attorney generals?

Trenbeath: Yes, they are appointed.

Chairman Keiser: Is there any reason those groups were exempted?

Trenbeath: It would be pure speculation on my part.

Allen Hoberg~Director of the Office of Administrative Hearings. See testimony attachment 5.

Chairman Keiser: Why should we put into statutes that we file that report?

Hoberg: I do not have any objection to that, too much of the requirements that recording already agency with WSI, I think it makes a lot of sense.

Chairman Keiser: It would legislate common sense.

Hoberg: Correct.

Ryan Bergstein~Legal Counsel to the Governor. I'm here of support HB 1464. This bill basically reflects the will of the people and the passage of the initiated measure number four. If you turn to page seven, the duties of the board, these duties are inclusive not exclusive.

Representative Amerman: Have you seen the amendment from the chamber?

Bergstein: I have not.

Vice Chairman Kasper: Where did the governor's advisors where they came to the point that we needed to make a change in the attorneys.

Bergstein: There are few exceptions where they are not assistant attorney generals. We wanted this as consistent as possible as with other agencies.

Vice Chairman Kasper: Is it your contention that the department of transportation, tax commissioner, public service commissioner, insurance commissioner, board of higher education and the securities are not public agencies.

Bergstein: Of course they are public agencies.

Chairman Keiser: I'll play the devil's advocate, as I look through the departments that were exempted from this, WSI if funded through premium dollars paid by employers, there are in no way similar to other state agencies.

Bergstein: I think you are right.

Representative Amerman: There were officers that would be exempt; did you have any discussion on that??

Bergstein: We contacted the drafter and he said that it was only employees.

Chairman Keiser: The language was clear to the voter. Since we didn't like what the language said, we then went to the bill drafter, "what you mean", and that's the basis in which we are pull the CEO and one or two other positions out.

Bergstein: We wanted everyone on the same page.

Chuck Peterson~Board Chairman, Jobbers Moving & Storage Company. See testimony attachment 6. I'm confused whether WSI can hire outside attorneys to come in and do the various tasks.

Chairman Keiser: Is there a difference?

Trenbeath: WSI has four attorneys to practice law which is different from the concept we are talking about. They hire outside counsel for many activities. We are not talking about adding any additional state employees. We will retain with the ones in place.

Chairman Keiser: Without the amendment, the attorneys with WSI would not have to coordinate with the attorney general on hiring outside counsel.

Trenbeath: No they would not.

Chairman Keiser: Chuck are you for 1464 with the amendment or without the amendments?

Peterson: I haven't studies the amendments at all; I'm short in that position.

Dick Representative N Johnson~Self. One of the biggest issues that we as employers and member of the board of directors always struggled with is the back log of claims that WSI is facing. Two problems, attorney's not prepared and knowing and understanding the compensation laws as they were at that time. The back log creates problems for employers and employees.

Dave Kemnitz~President of the North Dakota AFL-CIO. See testimony attachment 7.

Representative Amerman: One of your amendments was attorney fees on page six section five.

Kemnitz: That is new language; we ask that the claimant be paid the attorney fees to represent themselves.

Representative Amerman: On page ten that same language comes under number seven, lines 3-26, is that something different?

Kemnitz: To be fair and balanced, that's good.

Ron Ness: North Dakota Petroleum Council. We stand in support of the bill and the amendments. The cost was an issue of billing out to attorneys.

Russ Hanson~Associated General Contractors. We are in support of the bill and the amendments offered by the chamber.

Anyone to testify in opposition to HB 1464?

Mark Jackson~Acting Board Chairman. See testimony attachment 8.

Representative Boe: You feel you would have authority over the Governor if we did it that way?

Jackson: Absolutely not.

Representative Boe: When I read that you have the authority to approve, to me that seem you would have the authority to question whether or not the Governor acted correctly.

Jackson: Only with regard those well defined duties.

Chairman Keiser: Do you believe this is what the people voted to put it under the Governor?

Jackson: We believe that the people specifically said that the Governor should hire the CEO. We don't believe that the people said that the Governor needs to set the premiums for the premium payers for WSI.

Chairman Keiser: You may be right, but the question is that's what the vote did? Have you had a chance to look at the chamber's amendment relative to the board?

Jackson: We have not.

Vice Chairman Kasper: Was the board consulted or asked to give your advice to the Governors on HB 1464.

Jackson: The board was not directly asked to give our opinion.

Anyone here to testify in neutral position on HB 1464?

Chairman Keiser: Closes the hearing on HB 1464.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1464

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8646

Committee Clerk Signature

Ellen Litang

Chairman Keiser: Opened the committee work session on HB 1464.

Tom Trenbeth ~ North Dakota Deputy Attorney General. Talks about a Supreme Court case about the WR Grace Company. General rule the Attorney General is the law of the state. The alternative is to have attorneys appointed by and working for the Governor. The Governor would not want it so he asked us.

Vice Chairman Kasper: What is wrong in keeping it the way it is currently?

Trenbeth: Would it work? I suppose it would. The fact is that you have two constitutional officers, each with the ability to appoint and terminate law trained persons representing the interest of the state of North Dakota. The duality is not something that either of those constitutional officers wants.

Chairman Keiser: Under current law, we have all those agencies that the Governor appoints, they all have as WSI currently does the attorneys in the present configuration, the attorney general designates whether or not there are going to be assistant attorney generals. So, it's not right for WSI, should we take all of them out?

Trenbeth: I can't be speculative about what the Attorney General would say; I think his answer would in the affirmative that would be the best idea. In the alternative, the committee could look at line 22; page one, where it deletes WSI, if you left that in there which relates to

only WSI. In the stead, on page two, line three, deleted the language to line seven and thus leaving the language to allow the Attorney General to make the appointments like he does with all other attorneys in the system.

Vice Chairman Kasper: If we did that, who hires the attorneys?

Trenbeth: What is usually the case in those instances is that the entity would be instrumental in the selection process. However, the Attorney General insists on having the last interview.

Vice Chairman Kasper: Who fires?

Trenbeth: The way the law is now indicated that the Attorney General does now.

Vice Chairman Kasper: What policy would be followed as employee rules?

Trenbeth: That is beyond my realm of knowledge, but analogy, at present, they operate under the rules of the organization that houses them and there are some unique sub policies.

Representative Vigesaa: Currently the attorneys at WSI are special assistants to the Attorney General.

Trenbeth: They are.

Representative Schneider: Historically on a WSI appeal, would it be a conflict of interest if litigated in-house because WSI has final decision maker. Now that measure four is passed that the office of administrative hearing decisions are final, in theory, could your office litigate those appeals like in other agencies?

Trenbeth: The important part of your question is in theory, yes, in theory but it's not our intention.

Chairman Keiser: The amendments that are just handed out, number one takes the attorneys back at WSI.

Representative Ruby: I move adopt amendment one, which to correct the bill and return the attorneys back to WSI as before, which removes the lines.

Representative Vigesaa: Seconded.

Representative Boe: If we adopt this amendment, these attorneys at WSI would be under the Governor's office?

Chairman Keiser: They will be employees of WSI and those employees will be under the Governor.

Representative Schneider: The Governor's office will ask the Attorney General's office, they would be comfortable having this language in there?

Chairman Keiser: I will tell you that the personal communications I have had with representatives of the Governor's office, they won't have major heartburn if we adopt this amendment. The messenger was sent to tell me this.

Representative Gruchalla: If we adopt this amendment, then these attorneys are going to be under the state's central personnel system?

Chairman Keiser: The measure that was passed said that all employees on WSI. This bill because of the way the measure was worded, they have taken licensed and said except for the CEO and one or two other offices.

Representative Schneider: Do we need to define the officers?

Chairman Keiser: It is defined in the bill.

Roll call was taken on amendment one with 10 aye's, 3 nay's, 0 absent.

Chairman Keiser: Amendment two.

Representative N Johnson: Did you take a look at the Office of Administrative Hearing testimony of Allen Hoberg? In his second page, says strike unnecessary language on page six, the last sentence.

Chairman Keiser: That's what the second amendment does, it's just technical, page 2, remove lines 1 through 20.

Vice Chairman Kasper: Moves to adopt the second amendment.

Representative Schneider: Second.

Voice vote with all aye's and no nay's.

Chairman Keiser: On amendment four, the chamber's amendments. Doesn't limit them, but does say may be given additional responsibilities but must make these recommendations to the governor on annual or semiannual bases.

Vice Chairman Kasper: Motions to accept amendment three.

Representative Ruby: Second.

Roll call was taken with 9 aye's, 4 nay's, 0 absent.

Chairman Keiser: What is labeled amendment number three, this came from the board of directors of WSI. It's more comprehensive. Seeing no motion, it is gone.

Representative N Johnson: Moves to adopt the amendment to place an emergency clause.

Representative Boe: Second.

Voice roll call all aye's, no nay's.

Representative N Johnson: Move to adopt on page four, line 1 striking and page 2 inserting.

Representative Ruby: Seconded.

All ayes, no nay's.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Moves Do Pass as Amended.

Representative Nottestad: Second.

Voting roll call was taken on HB 1464 for a Do Pass as Amended with 13 ayes, 0 nay's, 0 absent and Representative Vigesaa as the carrier.

FISCAL NOTE
Requested by Legislative Council
02/09/2009

Amendment to: HB 1464

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 relates to WSI hearings, personnel, and duties of the Board.

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 1464

BILL DESCRIPTION: WSI Hearings, Personnel, and Board Duties

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 relates to WSI hearings, personnel, and duties of the Board.

FISCAL IMPACT: The proposed legislation should not have a direct affect on statewide reserve and premium rate levels.

DATE: February 7, 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: | 02/09/2009 |

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: HB 1464

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 relates to WSI hearings, personnel, and duties of the Board.

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 1464

BILL DESCRIPTION: WSI Hearings, Personnel, and Board Duties

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 relates to WSI hearings, personnel, and duties of the Board.

FISCAL IMPACT: The proposed legislation should not have a direct affect on statewide reserve and premium rate levels.

DATE: January 29, 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: | 01/29/2009 |

1

PROPOSED AMENDMENTS TO HB 1464
(Removes attorney provisions)

Page 1, line 1, remove "section 54-12-08,"

Page 1, line 3, remove "65-02-06,"

Page 1, line 5, remove "attorney general representation of
workforce safety and insurance,"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 20

Page 8, remove lines 7 through 17

Renumber accordingly

Date: Feb 4 - 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1464

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended no. 1

Motion Made By Ruby Seconded By Vigesaa

| 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 | ✓ | | | | |
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Total (Yes) 10 No 3

Absent 0

Floor Assignment _____

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

correct bill & return ~~it to~~ the
attorney's back to WSI

2 amendment #4

PROPOSED AMENDMENTS TO HB 1464 (Apparent Oversight within OAH section)

Page 6, line 13, overstrike "The organization may"

Page 6, overstrike lines 14 through 17

Renumber accordingly

Date: Feb 4 - 2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1464

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended no. 2

Motion Made By Kasper Seconded By Vigesaa

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser | S | | Representative Amerman | S | |
| Vice Chairman Kasper | | | Representative Boe | | |
| Representative Clark | | | Representative Gruchalla | | |
| Representative N Johnson | | | Representative Schneider | | |
| Representative Nottestad | | | Representative Thorpe | | |
| Representative Ruby | | | | | |
| Representative Sukut | | | | | |
| Representative Vigesaa | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

all ays, 0 nays - strike out pg. 6
line 13 & line 14-17.

labeled #3 amendment gone

PROPOSED AMENDMENTS TO HB 1464
(Board Powers and Duties)

Page 8, line 6, after the period insert:

4. Approve employer premium rate levels on an annual basis.
5. Approve employer premium dividend distributions.
6. Approve the fund's asset allocation and investment policies.
7. Adopt a formal position on legislation affecting the organization.
8. Assist the organization in hiring an internal audit department manager and provide direct functional oversight to the internal audit manager and the internal audit department.
9. Assist the organization in hiring an office of independent review department manager and provide direct functional oversight to the office of independent review manager and the office of independent review.

Date: Feb 4 - 2009
Roll Call Vote # 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1464

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended # 4

Motion Made By _____ Seconded By _____

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser | 7 | | Representative Amerman | | 7 |
| Vice Chairman Kasper | 7 | | Representative Boe | | 7 |
| Representative Clark | 7 | | Representative Gruchalla | | 7 |
| Representative N Johnson | 7 | | Representative Schneider | 7 | |
| Representative Nottestad | 7 | | Representative Thorpe | | 7 |
| Representative Ruby | 7 | | | | |
| Representative Sukut | 7 | | | | |
| Representative Vigesaa | 7 | | | | |
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Total (Yes) 9 No 4

Absent 0

Floor Assignment _____

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

Chamber's

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1464

Page 1, line 7, remove the second "and"

Page 1, line 9, after "authority" insert "; and to declare an emergency"

Page 11, after line 22, insert:

"SECTION 16. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: Feb 4 - 2009Roll Call Vote # 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1464House 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 | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

all ayes, no nays
to make 1464 an emergency

February 4, 2009

VR
2/5/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1464

Page 1, line 1, remove "section 54-12-08,"

Page 1, line 3, remove "65-02-06,"

Page 1, line 5, remove "attorney general representation of workforce safety and insurance,"

Page 1, line 7, remove the second "and"

Page 1, line 9, after "authority" insert "; and to declare an emergency"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 20

Page 4, line 1, replace "Before July first of the first year of each biennium, the" with "The"

Page 4, line 2, after "hearings" insert "not later than the first day of December of each odd-numbered year"

Page 6, line 13, overstrike "The organization may"

Page 6, overstrike lines 14 through 17

Page 8, replace lines 7 through 17 with:

- "4. Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.
5. Provide formal recommendations to the governor regarding legislation that affect the organization.
6. Provide formal recommendations to the governor regarding the fund's investment allocation."

Page 11, after line 22, insert:

"SECTION 14. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: Feb 4 - 2009Roll Call Vote # 5**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. _____

House House, Business & Labor Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By _____ 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 | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

p. 4 lines 1 & 2
all ayes

Date: Feb 4 - 2009
Roll Call Vote # 6

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1464

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 Kasper Seconded By Nottestad

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser | 7 | | Representative Amerman | 7 | |
| Vice Chairman Kasper | 7 | | Representative Boe | 7 | |
| Representative Clark | 7 | | Representative Gruchalla | 7 | |
| Representative N Johnson | 7 | | Representative Schneider | 7 | |
| Representative Nottestad | 7 | | Representative Thorpe | 7 | |
| Representative Ruby | 7 | | | | |
| Representative Sukut | 7 | | | | |
| Representative Vigesaa | 7 | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Vigesaa

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

REPORT OF STANDING COMMITTEE

HB 1464: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1464 was placed
on the Sixth order on the calendar.

Page 1, line 1, remove "section 54-12-08,"

Page 1, line 3, remove "65-02-06,"

Page 1, line 5, remove "attorney general representation of workforce safety and insurance,"

Page 1, line 7, remove the second "and"

Page 1, line 9, after "authority" insert "; and to declare an emergency"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 20

Page 4, line 1, replace "Before July first of the first year of each biennium, the" with "The"

Page 4, line 2, after "hearings" insert "not later than the first day of December of each
odd-numbered year"

Page 6, line 13, overstrike "The organization may"

Page 6, overstrike lines 14 through 17

Page 8, replace lines 7 through 17 with:

- "4. Provide annual, formal recommendations to the governor regarding setting
premium levels and providing premium dividend distributions.
5. Provide formal recommendations to the governor regarding legislation that
affect the organization.
6. Provide formal recommendations to the governor regarding the fund's
investment allocation.

Page 11, after line 22, insert:

"SECTION 14. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1464

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1464

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10136

Committee Clerk Signature

Troy Schuchard

Minutes:

Chairman Klein: Opened the hearing on HB 1464, all members present.

Nancy Johnson: Representative District 37 introduced HB1464 and it changes the organizations leadership from being Board selected to be under the direction of the Gubernatorial Appointed Director, a change that reflects the November 2008 election.

Bruce Furness: Interim Director of WSI testified in support of HB 1464. (See attachment #1)

Senator Potter: With regards to point #3, and employees returning to the control of the Human Resources Management System. Does this mean that employees would largely be classified employees?

Bruce Furness: They will, yes.

Senator Potter: How many will remain unclassified? And will anybody have to accept downward pay adjustments?

Bruce Furness: Officers will remain unclassified, and the initial revealed this indicated none will receive a decrease in pay and when they have done this before that is what has happened in our agency. But they may be locked in at the top of their pay scale.

Senator Potter: How will the determinations be made on those that are officers? Are there negotiations in the picture on that is that something the agency will just determine?

Bruce Furness: I think the agency will determine that. We have indicated that there might be 2 or 3, for example, the Director, Deputy Director, and possibly others that you determine such as other professionals including attorneys. These are opened to negotiations.

Senator Horne: In the instance of rates, if there was to be a premium adjustment, the Board would recommend something to the Governor and then the Governor would have the final decision on said premium adjustments? Am I on the right track?

Bruce Furness: Yes that is correct.

Senator Andrist: You have had the experience now, and were chosen by the Governor and work with the Board, my question is, are you satisfied that this can work without conflict? Is the Board going to become more advisory or is it still going to actually be able to make major decisions? Is there potential for conflict if there is disagreement between the Management and the Board?

Bruce Furness: I don't believe so. The Board has accepted the fact that they are going to be advisory in nature. They are going to do basically the same things except they will not be *final* decisions, they will be recommendations. This agency now reports to the Governor, like many across the state, and those final decisions will be determined by that office. I don't view it as a conflict so far and I don't think it will be in the future.

Senator Andrist: Do you think that the retention of this Board is a good management practice?

Bruce Furness: I do. They have an interest. They represent the people paying the premiums.

Ryan Bernstein: Governor's Legal Counsel, testified in support of HB 1464. I want to make sure it's clear; none of those salaries at WSI will have a decrease because of this. They are fitting nicely into the HRA System and we have made sure that they understand nobody will have a salary decrease because of this. We will work with the Director, the new Director, and

determining officers because of the intent to be non-classified. I want to make some clarifications as to rate determinations, premiums, things like that; I don't see and foresee the Governor coming in and making decisions exactly on premium rates, that is a determinization within the organization.

Allen Holberg: Director of the Office of Administrative Hearings testified in support of HB 1464
(See attachment #2)

Senator Potter: Does this mean the Office of Independent Review goes away?

Allen Holberg: We have nothing to do with that office. That is entirely separate from our review. Our review is based on appeal. Our office will make a decision based upon the recommendations set forth at the hearing and that decision will be final.

Bill Shalhoob: Representing North Dakota Chamber of Commerce testified in support of HB 1464. (See attachment #3)

Senator Horne: You want to keep all of the attorneys at WSI in the Office of WSI and not have them transferred to the Office of the Attorney General, Is that correct?

Bill Shalhoob: Yes.

Senator Horne: How many attorneys are there at WSI?

Bill Shalhoob: 4

Tom Balzer: Representing the North Dakota Motor Carriers Association testified in support of HB 1464.

Chuck Peterson: Board Chairman of Job Movers testified in support of HB 1464. (See attachment #4)

Senator Wanzek: Before measure 4, the Board made those decisions on who to hire and who to contract with?

Chuck Peterson: That is correct.

Senator Wanzek: That would now be the in the hands of the Governor?

Chuck Peterson: Yes

Dick Johnson: Representing Johnson Trailer Sales in Bismarck and Fargo testified in support of HB 1464.

Dave Kemnitz: President of the North Dakota AFL-CIO testified in opposition to HB 1464. I have worked with the gentlemen who have just shared their support for ten + years, and I think there is a fundamental difference in the point of view and how the law is and how it is applied to administrative functions. This new language allows the Bureau to appeal its' decision to District Court. Through the process, they won so their attorney fees are paid, and now the Bureau using its attorneys and its process appeals to the district court. The employer and/or the employee appeals to district court on a matter the have already won, they don't have any attorney fees provision. This puts them at a disadvantage from the onset. At one time across the state of North Dakota, there are hundreds of employers that are in the same situation as some employees in this situation. I asked then and I ask now that attorney fees are provided when the system challenges the citizen on what the citizen has already won in a hearing process.

SP: page 6 line 26, I don't understand your objection, do you feel it somehow limits the mission of WSI if you limit it to just rehabilitation services?

DK: I read it literally as the provision stops at rehabilitation services. It doesn't encompass all services. We then hear..."that is as far as the law allows us to go".

SP: These are the things that the Board is assisting the organization in so it still wouldn't limit WSI in any way as an agency. Even if your right and it limits the board, its only limiting the board to discussing this matters, not limiting the agency from providing these services that are legislatively directed.

DK: I agree that the agency is not limited to what it will do, but the board under this amended language is limited to the provision of rehabilitation services and no others.

Chairman Klein: Closed the hearing on HB 1464:

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1464

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10727

| | |
|---------------------------|---------------------|
| Committee Clerk Signature | <i>Eric Liebelt</i> |
|---------------------------|---------------------|

Minutes:

Chairman Klein: I would take action on 1464. This is the bill about the way the Governor is going to regulate WSI. We had a variety of information.

Senator Andrist: Moved a do pass.

Senator Behm: Seconded.

Row Call Vote: 7-0

Floor Assignment: Senator Wanzek.

Date: 3/11/09
Roll Call Vote #: 1

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1464

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 Andrist Seconded By Senator Behm

[illegible]

Total (Yes) 7 No 0

Absent ☐

Floor Assignment Senator Wanzek

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2009 3:02 p.m.

Module No: SR-44-4621
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1464, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1464 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1464

2009 House Bill No. 1464
Testimony before the House Industry, Business and Labor Committee
Presented by Bruce Furness, Interim Director of WSI
February 2, 2009

Mr. Chairman and Members of the Committee:

My name is Bruce Furness and I serve as the Interim Director of WSI. I am here this afternoon to support this bill and to provide information to assist the Committee in making its decision.

This bill reconciles the outcome of Initiated Measure #4 passed in the November 2008 general election with currently existing state law. HB 1464 harmonizes conflicting statutes and brings the North Dakota Century Code into compliance with Initiated Measure #4 requirements.

This bill accomplishes five purposes:

1. It removes the powers of the board to appoint a director of WSI and to establish the compensation for that position. These duties would now be performed by the Governor.
2. WSI will utilize Office of Administrative Hearing (OAH) for administrative hearings and the results of those hearings will be final.
3. WSI employees will return to the control of the Human Resources Management System.
4. It limits the authority of the board to make final decisions regarding WSI. Instead it provides that the board will "assist" the organization in making such decisions. This makes the Board advisory in nature and removes any potential for conflict.
5. Legal Counsel and other attorneys of WSI may no longer be employed directly by WSI but report to the Attorney General.

The first three purposes of the bill were effective on December 4, 2008 and served to reconcile existing statutes with the initiated measure. WSI has utilized the services of OAH through contract since August 1, 2008 but the without final decision component. The bill also implements the HRMS transition, which is currently in the process of implementation.

I believe all of these changes accomplish the intent of the initiated measure and would urge your support of HB 1464.



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1464
February 2, 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. We will be offering two amendments for this bill. As a group we stand in support of HB 1464 with the proposed amendments and urge a do pass from the committee on this bill.

The first amendment is passed out and refers to Section 1 and the attorneys being moved to the Attorney Generals office. We are absolutely certain that was not part of the initiated measure last fall. I am reminded of the George Santayana quote "Those who cannot learn from history are doomed to repeat it (the mistakes)." We have a history of this organizational structure as proposed. It did not work then and it will not work now. Currently we have low litigation rates that have appropriate levels of cost controls, bench marks and are audited internally and externally. Most importantly, the speed at which decisions are reviewed and orders given has been improved, allowing claimants to complete the process on a timelier basis and make a decision on what further steps to pursue. Attorneys employed at WSI become specialists in WSI statutes and litigation, decreasing the need for extended file review and thus lowering costs. We also noted the bill goes exclusively to WSI attorneys and keeps the independent status of lawyers in place at DOT, the PSC, the insurance commission, the board of higher education and the securities commission. Why? If this is such a good idea for WSI it should be just as good an idea for these other agencies also. I am reminded of the anonymous quote which says "Every time history repeats itself the price goes up." The price will go up for every employer in North Dakota in premium payments and for employers and employees with increased delays in the system. We are wholeheartedly and completely opposed to the change in this section.

The second amendment deals with the duties of the advisory board. We use that term because the vote did clearly move the agency back to the governor's office and although it did not specifically address a change in the role of the board, an organizational structure with dual reporting is seldom successful. We understand the implicit need to make the board advisory as it is in many other state agencies. As employers we feel the advisory board should be required to look at least these specific items, which are very

THE VOICE OF NORTH DAKOTA BUSINESS

important to the agency and us, and make a formal, specific recommendation to the governor about them.

Thank you for the opportunity to appear before you today in support of HB 1464 as amended. I would be happy to answer any questions.



THE VOICE of NORTH DAKOTA BUSINESS

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PROPOSED AMENDMENTS TO HB. 1464

Page 1, line 1, remove "section 54-12-08,"

Page 1, line 3, remove "section 65-02-06"

Page 1, line 5, remove "attorney general representation of workforce safety and insurance"

Page 1, remove lines 11 through 24

Page 2, remove line 1 through 20

Page 8, remove lines 7 through 17

Renumber accordingly

PROPOSED AMENDMENTS TO HB NO. 1464

Page 8, after the period insert:

4. Provide annual, formal recommendations to the Governor regarding setting premium rate levels and providing premium dividend distributions.
5. Provide formal recommendations to the Governor regarding legislation affecting the organization.
6. Provide formal recommendations to the Governor regarding the fund's investment allocation."

Renumber accordingly



Allen C. Hoberg
DIRECTOR


OFFICE OF ADMINISTRATIVE HEARINGS

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MEMORANDUM

TO: House Industry, Business, and Labor Committee


FROM: Allen C. Hoberg, Director 

RE: House Bill No. 1464


DATE: February 2, 2009

 I testify today in support of House Bill No. 1464. Much of the bill is intended to make current law consistent with the requirements of Initiated Measure No. 4, which passed in the November 2008 election. However, the main concern of the Office of Administrative Hearings with its provisions are found in sections 3 and 4 of the bill.

OAH supports the section 3 amendment that requires in new subsection 6 of section 54-57-01 that OAH file a biennial report, but we recommend an amendment to the bill that would change the new subsection 6 language. We propose to amend new subsection 6 on page 4 as in the attached "Proposed Amendments to House Bill No. 1464." The amendment would not change the requirement of OAH to file a biennial report or the contents of that report but only the timing of the filing. With the bill as it exists, we were somewhat confused about the timing of the report and about which



biennium we would initially report. The amendment we propose requires OAH to initially file a report concerning the 2007-2009 biennium no later than December 1, 2009, and then to file a report in succeeding biennia on December 1 after each legislative session. This change would not only make more sense for OAH but would require OAH to file its report in concert with other agencies filing their biennial reports on or before December 1 after each legislative session.



We also propose one other amendment to the bill. That amendment is also found in the attached "Proposed Amendments to House Bill No. 1464." The amendment strikes unnecessary language on page 6. The last sentence in subsection 8 on that page should be stricken. This is the same change that is already made in the bill to subsection 5 on page 10, but the change needed in subsection 8 was missed and now an amendment is required. This amendment will make the language of subsection 8 on page 6 consistent with the language of subsection 5 on page 10 and will make that language consistent with the requirements of Initiated Measure No. 4.

Thank you!



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1464

Page 4, line 1, replace "Before July first of the first year of each biennium, the" with "The"

Page 4, line 2, after "hearings" insert "not later than the first day of December each year after the regular session of the legislative assembly"

Page 6, line 13, overstrike "The organization may"

Page 6, overstrike lines 14 through 17

Renumber accordingly

February 2, 2009

House Industry, Business, and Labor Committee

Re: HB: 1464

Chuck Peterson: Board Chairman, Jobbers Moving & Storage Company

Mr. Chairman and Members of the Committee:

I wish to express my concern regarding changes that are being considered in HB 1464. Relating to the ability of WSI to hire its own legal services. My experience with WSI goes back- to being a member of the first Advisory Committee in 1992 as well as paying a premium since 1960. My concern spans several areas as follows:

1. Quality of service by AG staff attorneys.
2. Philosophical differences between the Attorney General and Governor
3. Cost of services by the Attorney General
4. Management philosophy

Quality of Service: We had over 1400 requests for litigation awaiting resolution in 1994. The system was broken. This was just one of the obvious symptoms of that condition. Part of the problem can be attributed staff attorneys and service provided by the Attorney General.

The staff attorneys were not bringing the cases to trial. Frequently they were settling rather than litigating. It was obvious that this was not in the best interest of the injured worker. The great number of open cases caused the entire system to bog down. The problem gradually became worse. There were obvious signs of inexperience when Worker Compensation attorneys came up against more experienced counsel. Our staff attorneys were responding to problems rather than resolving them. Employers found it necessary to retain their own attorney to work along side the WSI attorney to be assured that their position would be properly represented in the courts.

It must be remembered that during this time, injured workers were waiting for a resolution of matters that had a great influence on their lives. Employers expressed concern. The level of satisfaction with WSI's service was at an all time low. And of course the check book was open to pay for all sorts of related services while attempting to manage these cases. There is little doubt that the injured worker is entitled to the best service, and was certainly not receiving it.

We begin contracting with local law firms. I saw the number of open claims rapidly reduced to below 500. I understand that today the number is below 200. The large number of unresolved issues had an impact on the health of the system. The improvement became obvious.

*Same given
to Senate.*

I do not mean to speak poorly of the state workers, they have my respect. There is however, an obvious difference between an in house attorney hired by the state, paid win or lose, and a private contractor. The great difference is, the hired contractor can be fired or his firm's contract will not be renewed. His/her removal will not involve the infinite number of appeals and possible political responses that occur when a state employee is terminated. There is great motivation on the part of the hired contractor to perform the work promptly and efficiently.

Cost of Service: There was an additional charge for the service of the Attorney General's Office. These funds went back to the general fund. This caused the cost of service by Ag to be nearer the cost of an attorney from local law firms. It also represented a double payment by policy holders for the services of WSI and to the AG.

Philosophical Differences: The Governor and the Attorney General are both elected officials. They will not always be from the same political party or have similar philosophies. They may not agree when resolving conflicts. We, the employer will pay none the less. Politics should not come into issues, but it will inevitably occur, all in good time.

Good Management Practices: Finally, I would like to leave with one more thought that is the need for good management practices. Throughout the years of business I have found the single best approach to good management is assigning responsibility. This of course relates to explaining the job, defining parameters, and awaiting the result. Unfortunately is the manager who is told that he/she will have control over the entire process with exception of certain key elements that may influence the outcome. It leaves him/her with uncertainties as well as an excuse for failure. That is exactly where we are headed with this legislation.

I have appreciated the opportunity to discuss this with you and I will stand for questions.

H/B 1464

House IB&L Feb. 2, 2009

~~7~~ 7

ND Aft-CIO

David L. Kennedy,
President

Support with some concerns

section 1 OK

section 2 OK but name the officers exception

section 3 OK

section 4 OK

section 5 P. 6 lines 23, 24 & 25 ^{pay client}
^{Att. fees}
^{when was}
^{APR 2/13}

section 6 OK

section 7 OK P. 7 line 28 Replace 'Rehabilitation'
with 'all'

section 8 OK

section 9 OK

section 10 OK

section 11 OK

section 12 No comment

section 13 OK

section 14 OK

section 15 OK

[Signature]

#4

2009 House Bill No. 1464
Testimony before the House, Industry, Business and Labor Committee
Presented by: Mark Jackson, WSI Acting Board Chairman
Workforce Safety and Insurance Board of Directors
February 2, 2009

Mr. Chairman and Members of the Committee:

My name is Mark Jackson and I am the Acting Chairman of the Workforce Safety and Insurance (WSI) Board of Directors. This bill proposes to reconcile Initiated Measure No. 4 with the statutory provisions impacted by the passage of this Measure in the November, 2008 General Election. There were a number of conflicts and questions created by the passage of the Measure that required remedying, and this bill proposes to provide the requisite remedies.

Although the Board supports a majority of HB 1464, it asserts some of the provisions went far beyond what Measure 4 required and the passage of certain provisions would have an adverse impact on WSI. On behalf of the Board, I am here to testify in support of this bill with the exception of section 1, part of section 7, and section 8. Sections 1 and 8 remove WSI's legal counsel as employees of WSI and transfers these positions to the Office of the Attorney General. Part of Section 7 significantly alters the powers and duties of WSI's Board and effectively transforms it into an advisory board. It is the Board's position these changes are not in the best interest of WSI.

By way of background, Initiated Measure No. 4 provided as follows:

65-02-01.3. Workforce safety and insurance - Executive director - Governor to appoint - Personnel.

Notwithstanding any other provisions of law, the governor shall appoint a director of workforce safety and insurance who shall serve at the pleasure of the governor. The governor shall set the compensation and prescribe the duties of the director. Each employee of workforce safety and insurance must occupy a position in the classified service and must be subject to the provisions of the state personnel system provided in chapter 54-44.3.

65-02-22.1. Appointment of administrative law judges - Hearings.

Notwithstanding any other provisions of law, workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law, and orders. Rehearings must be conducted as hearings under chapter 28-32.

I have categorized the sections of this bill into the key areas addressed in the Initiated Measure and will review them in the following sections.

Section 1 and Section 8- Removing Legal Counsel as Employees of WSI

Sections 1 and 8 will accomplish as follows:

Section 1: Removes WSI's authority to select and employ attorneys to represent the agency.

Section 8: Removes WSI's authority to employ special assistant attorneys general but requires WSI to pay the salaries from the fund for attorneys assigned to WSI by the Attorney General.

Section 1 and Section 8 of this bill are an attempt to remove WSI legal counsel as employees of WSI and transfer these positions to the Attorney General. The attorneys would be employees of the Attorney General's office, but WSI would pay the salaries of the attorneys assigned to WSI by the Attorney General. These provisions give the North Dakota Attorney General control of the legal representation of the agency. Sections 1 and 8 are not required by the Initiated Measure and WSI's Board unanimously voted to oppose these sections of the bill.

The arrangement for legal services that the agency now has in place works very well. Four internal attorneys who are WSI employees, internal legal staff, and the external law firms working together have established one of the most efficient legal systems in the nation. This is a drastic change from the pre-1995 days, when WSI attorneys were not employed by the agency and where there was a backlog of approximately 1,400 cases waiting for an administrative hearing. Considering the past situation, common

sense should cause anyone who looks at this proposal to doubt whether it would lead to improved government.


In addition, the Board is not convinced that losing control of legal decisions is in the agency's best interest. This is at the heart of what made the unworkable arrangement come to a head in 1995. The attorneys that serviced WSI at that time reported to the Attorney General, not WSI, and became unresponsive and ineffective. Injured workers had to wait too long for administrative hearings, staff could not obtain early and effective legal advice, and WSI supported the legislation in 1995 to help fix an obviously broken system. The system was fixed and operates as well, and probably better, than any in the nation. Any reasons for returning the system back to the pre-1995 ways, are obviously outweighed by the positives that the current arrangement possesses.

From a stability standpoint, WSI's Board and CEO Bruce Furness have worked hard to return needed stability to the internal workings of the agency. This proposal would disrupt a portion of that new-found stability because three of the internal attorneys have management-level positions, two of which are at the executive level. If sections 1 and 8 of this bill become law, these attorneys would no longer be able to supervise WSI employees and new managers would have to be hired, or an organizational restructuring would have to take place, or both. WSI could certainly do without this type of disruption when so much progress has been made. The Board supports the attached amendments which would eliminate sections 1 and 8 from the bill.

**Sections 3, 4, 5, 9, and 12 –Final Decisions Issued by the Office of
Administrative Hearings**

The Board supports these sections of the bill that propose to accomplish the following:

Section 3: Requires the Director of the Office of Administrative Hearings (OAH) to file a report with the Governor and the State Advisory Council for OAH biennially. The report




will include information on hearings conducted, case processing, hearing costs, decision results, and survey results.

Section 4: Reconciles WSI's law with the Initiated Measure language requiring WSI to utilize OAH to conduct its administrative hearings. It also removes WSI from the list of agencies currently not required to utilize OAH hearing officer services.

Section 5: Reconciles WSI's law with the Initiated Measure requiring finality of OAH decisions. There appears to be an oversight with the current bill draft. The last two sentences of subsection 8 of Section 5 should be over stricken to be consistent with the Initiated Measure. An attached amendment is provided to accomplish this.

Section 9: Reconciles WSI's statute with the Initiated Measure requiring hearings to be conducted by OAH designated hearing officers.




Section 12: Reconciles WSI's law with Initiated Measure requiring finality of OAH decisions.


WSI asserts these provisions are necessary changes as a result of the Initiated Measure, with the exception of Section 3. Section 3 was not required by the Initiated Measure; however, it creates an accountability mechanism for OAH which is beneficial to the parties in the administrative hearing process.

Sections 6, 7, 10, 11, 13, and 14 –Governor Appoints Director-WSI Board Powers & Duties

These sections relate to the powers and duties of the Board and accomplish as follows:




Section 6: Reconciles existing statutes with the Initiated Measure by removing the Board's authority to appoint a director and supervise the director.




Section 7: Removes the WSI Board's authority to authorize WSI to transfer money between line items within the organization's budget, appoint a Director, set the compensation of the Director, ensure proper response to audit recommendations, present an annual report to the legislative branch, prepare an organizational budget, and require the incorporate principles of continuous improvement goal setting.

The amendments limit the Board's role to recommending principles of continuous improvement goal setting; and assisting the organization in developing a budget, responding to audit recommendations, formulating policies, and discussing issues relating to the administration of the organization. These issues include the determination of premium rates, maintaining the solvency of the fund, and provision for rehabilitation services.




The changes proposed in Section 6 and parts of Section 7 relating to the Board's authority to appoint, supervise, direct, and set the compensation of the director effectively reconcile existing statutes with the Initiated Measure and are supported by the Board.

However, the provisions that transform the Board into a body that is merely advisory in nature are not supported by the Board nor required by the Initiated Measure. The current Board, made up of employee, employer, and the North Dakota medical community representatives unanimously opposes this type of a role for the Board. Historically, the Board has played an integral role in important decisions that has served the agency well. Board expertise and involvement in premium rate setting, dividend declarations, and investment allocation has benefited the organization and helped to insulate the agency from improper political influence by having these decisions made in a public forum.




The current Board strongly believes retaining a decision making role in key areas provides a necessary check and balance function to WSI's governance model. The obvious concern is that the board will not relinquish its "power" and will challenge the



CEO's authority. Under the newly revised model of policy governance under which current board members have undergone extensive training during the last two years, the board understands and respects it is not to inject itself into the daily operations of the organization and become an obstacle for the new CEO. Rather, the Board views its role as one that is complimentary to the CEO. It can provide sound decisions and oversight in areas that are vital to the stability of the agency that cannot afford to be compromised by political influence.

As a result, the attached amendments propose to allow the Board to retain its decision-making authority to set premium rate levels, issue employer dividends, approve investment criteria for the WSI fund, and retain its current role of providing functional supervision over WSI's Internal Audit Department and the Office of Independent Review. In addition, the proposed amendments will allow the Board to retain the ability to take formal positions on legislation initiatives affecting the agency.



In turn, the Governor, through the CEO, would have final authority over WSI's budget and organizational policy. The Board submits this proposed division of authority is a workable solution that will serve North Dakota's workforce well.

The remaining sections that affect Board powers and duties are the following:

Section 10: Eliminates Board approval requirement for the organization to establish and implement programs to advance occupational health and preventive medicine in the state and transfers that authority to the organization.

Section 11: Eliminates the requirement of Board approval for the organization to create and establish premium calculation programs including dividends, premium deductibles, and reimbursement for medical assessment expenses, and transfers this authority to the organization.



Section 13: Eliminates an obsolete statutory reference to the Board.

Section 14: Eliminates Board approval requirement for the organization to establish and maintain an educational revolving loan fund and the authority to transfer those moneys and transfers this authority to the organization.

The Board does not have issues with the amendments in these provisions. Although Section 11 proposes that the organization will establish premium calculation programs including dividends, premium deductibles, reimbursement for medical assessment expenses, the Board's proposed amendments provide for Board approval of an employer premium dividend.

Sections 2 and 15- WSI Personnel System/Classified Employees

The Board supports these sections of the bill that do the following:

Section 2: Removes WSI employees from the list of agencies and employees that are exempt from the state's classified system.

Section 15: Repeals two WSI statutes that allows WSI to establish its own personnel system (NDCC 65-02-01.2) and outlines spending authority for the organization relating to training and education of public officials, employee awards, service awards and other awards and incentives (NDCC 65-02-34).

The Initiated Measure requires WSI employees to occupy a position in the classified service and be subject to the provisions of the state personnel system as provided in chapter 54-44.3. The Board maintains the changes in these sections are necessary as a result of the Initiated Measure, and effectively reconciles existing statutes with the Initiated Measure.

This concludes my testimony. I would stand for any questions at this time.

#7

2009 Engrossed House Bill No. 1464
Testimony before the Senate Industry, Business and Labor Committee
Presented by Bruce Furness, Interim Director WSI
March 4, 2009

Mr. Chairman and Members of the Committee:

My name is Bruce Furness and I serve as the Interim Director of WSI. I am here this morning to support this bill and to provide information to assist the Committee in making its decision.

This bill reconciles the outcome of Initiated Measure #4 passed in the November 2008 general election with existing state law. HB 1464 harmonizes conflicting statutes and brings the North Dakota Century Code into compliance with Initiated Measure #4 requirements.

This bill, as engrossed, accomplishes four purposes:

1. It removes the powers of the board to appoint a director of WSI and to establish the compensation for that position. These duties would now be performed by the Governor.
2. WSI will utilize Office of Administrative Hearing (OAH) for administrative hearings and the results of those hearings will be final.
3. WSI employees will return to the control of the Human Resources Management System.
4. It limits the authority of the board to make final decisions regarding WSI. Instead it provides that the board will provide formal recommendations to the Governor. This makes the Board more advisory in nature and removes any potential for conflict.

The first three purposes of the bill became effective on December 4, 2008 and served to reconcile existing statutes with the initiated measure. WSI has utilized the services of OAH through contract since August 1, 2008 but without the final decision component. The bill also implements the HRMS transition, which is currently in the process of implementation.

The WSI Board of Directors supports this bill in its present form.

I believe all of these changes accomplish the intent of the initiated measure and would urge your support of this bill.

#2



Allen C. Hoberg
DIRECTOR


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MEMORANDUM

TO: Senate Industry, Business, and Labor Committee

FROM: Allen C. Hoberg, Director 

RE: House Bill No. 1464

DATE: March 4, 2009

I testify today in support of House Bill No. 1464. Much of the bill is intended to make current law consistent with the requirements of Initiated Measure No. 4, which passed in the November 2008 election. However, the main concern of the Office of Administrative Hearings with this bill's provisions are found in sections 2 and 3 of the engrossed bill.

OAH supports the Section 2 amendment that requires in new subsection 6 to section 54-57-01 that OAH file a biennial report and we support the amendment to that section that was made in the House. We also support the change in Section 3 of the bill, striking WSI as an exception to the requirement of using OAH. This change is consistent with the requirements of Initiated Measure No. 4.

In short, the engrossed bill appears to meet the needs of OAH and WSI in regard to administrative hearings and is consistent with the requirements of Initiated Measure No. 4. Thank you!

fz

#3



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1464
March 4, 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 engrossed HB 1464 and urge a do pass from the committee on this bill.

In the House we proposed two amendments which were both incorporated into the bill. The first amendment dealt with the WSI attorneys being moved to the Attorney Generals office. We are absolutely certain that was not part of the initiated measure last fall. I am reminded of the George Santayana quote "Those who cannot learn from history are doomed to repeat it." We have a history of this organizational structure as proposed. It did not work then and it will not work now. Currently we have low litigation rates that have appropriate levels of cost controls, bench marks and are audited internally and externally. Most importantly, the speed at which decisions are reviewed and orders given has been improved, allowing claimants to complete the process on a timelier basis and make a decision on what further steps to pursue. Attorneys employed at WSI become specialists in WSI statutes and litigation, decreasing the need for extended file review and thus lowering costs. We also noted the original bill went exclusively to WSI attorneys and kept the independent status of lawyers in place at DOT, the PSC, the insurance commission, the board of higher education and the securities commission. Why? If this is such a good idea for WSI it should be just as good an idea for these other agencies also. I am reminded of the anonymous quote which says "Every time history repeats itself the price goes up." The price would go up for every employer in North Dakota in premium payments and for employers and employees with increased delays in the system. We are wholeheartedly and completely opposed this proposed change.

The second amendment dealt with the duties of the advisory board. We use that term because the vote did clearly move the agency back to the governor's office and although it did not specifically address a change in the role of the board, an organizational structure with dual reporting is seldom successful. We understand the implicit need to make the board advisory as it is in many other state agencies. As employers we feel the duties of the advisory board should at least include the requirement to review and make a recommendation on the specific items detailed in Amendment 6 on page 6, which are

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very important to the agency and us, and make a formal, specific recommendations to the governor about them.

Thank you for the opportunity to appear before you today in support of engrossed HB 1464. I would be happy to answer any questions.

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Remarks to Senate IB&L, March 4, 2009.

HB 1464

Legislative changes addressing Measure 4 passed by the people in the November 2008 election returning control of WSI, the Workers' Compensation Bureau, from a Board of Directors and returning its jurisdiction to the Governor.

The North Dakota AFL-CIO would like to express concerns it has with both what is contained in HB 1464 and concerns of what is not included in legislation purported to comply with the 2008 General Election passage of Measure 4.

HB 1464 has been acknowledged by the sponsors as the vehicle to address changes needed in NDCC Chapter 65 in light of the passage of Measure 4 in the 2008 general election.

Page 1, lines 10 through 12 address measure 4's directive to move all Workforce Safety and Insurance employees back under the State's Central Personnel Division.

Officers of WSI are excluded from Central Personnel. It is not but should be stated in HB 1464 what an officer is in the WSI bureau. Further how many "officers" are allowed and what departments are considered to have "officer" designations.

Page 1, lines 13 through 23, Page 2, lines 1 through 31 and Page 3, lines 1 through 11 pertain to NDCC 54-57-01, Office of administrative hearings. The amendment to this Section of the Century Code, page 2 lines 29 through 31 and page 3 lines 1 through 5, in our estimation have nothing to do with the directives of Measure 4. It appears that the issue addressed is a legislative idea and not a Measure 4 directive and therefore should be addressed as an issue in a different bill.

Page 5, lines 21,22 & 23, and its companion language on Page 9, lines 19,20 & 21.

The under scored language is new, was not expressed (in our estimation) in measure 4, however is said to be needed. Our concern is that attorney fees should be provided the litigant (employee or employer) who prevailed at the administrative hearing process but when again challenged by WSI must now hire legal support to properly state their position to the District Court. There are thousands of small businesses in North Dakota along with thousands of injured workers who because of this added language in HB 1464 may very well lose what they had won in that they lack the resources to defend themselves at this level. Compare that thought to the unlimited resources WSI has at its disposal and it becomes clear that WSI as a state agency will be enabled to do whatever it pleases when challenging the decisions of the Administrative Hearing. There are alternative dispute mechanisms such as mediation and arbitration that could bring an agreement to both parties. This is not an option in HB 1464 but should have been considered.

Attorneys hired and working for WSI, HB 1464, in its original introduction beginning on page 1, contained reference to NDCC 54-12-08, Assistant and special assistant attorneys general-Appointment-Revocation-Compensation. The language in effect returned the appointment of fulltime WSI attorneys to the Attorney General. This in our estimation was a wise move in that Attorney General appointed attorneys held an additional duty of advising (in this case WSI) an state agency on proper adherence to rules guiding, laws permitting and constitutional requirements of state agencies. We feel that this should not have been amended out of the original bill. It is important that all state agencies have the benefit of sound advice in their operations and it would appear that WSI would have benefited greatly in the past had the fulltime WSI attorneys been appointed by the Attorney General rather than being hired by its director.

Page 6, lines 7 & 8 the over struck language previously allowed the WSI board of directors to authorize the organization (WSI) to transfer moneys between line items within the organization's budget. If this was good practice under the WSI board, what now allows the Governor to do the same?

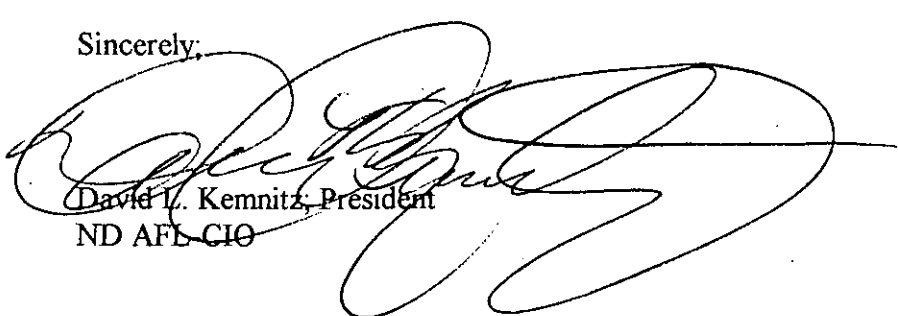
Page 6, line 26, remove the new word "rehabilitation". Why is the WSI board limited in its scope in assisting WSI to just "rehabilitation services"? It would make sense in our estimation to instruct the WSI board to assist WSI in "formulating policies, and discussing issues" relating to all services, not just rehabilitation services.

Page 7, line 6 through 11 is new language addressing duties of the board of directors. The board should also be reorganized and balanced between employer and employee interests. The WSI board is not by any means fairly balanced, in fact there is a built in bias favoring business interests and is reflected in the 6 employer representatives versus the 3 employee representatives (65-02-03.1). Furthermore, given that "recommendations" will now come from the WSI board directly to the Governor it is essential that these "recommendations" result from even handed deliberate discussion between equals. Anything other than a balanced board representing an even number of employer and employee representatives could be viewed as an attempt to inappropriately influence the Governor. It is not certain but most would probably agree that the Measure 4 that passed in November of 2009 did not have this result in mind.

In closing, the ND AFL-CIO cannot support engrossed HB 1464 as presented in the Senate IBL committee.

We appreciate the opportunity to express our concerns and request your consideration of our concerns.

Sincerely,



David L. Kemnitz, President
ND AFL-CIO