FISCAL NOTE

Requested by Legislative Council
01/13/2009

Bill/Resolution No.: HB 1408

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 would allow employers to self-insure for workers' compensation coverage in North Dakota.

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 1408

BILL DESCRIPTION: Self Insurance

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 would allow employers to self-insure for workers' compensation coverage in North Dakota.

Actuarial Analysis:
We are pleased to offer our preliminary thoughts regarding the potential rate and reserve level impact of House Bill 1408. As we understand the proposed legislation, it will permit self-insurance in North Dakota.

- North Dakota is one of four states that do not permit commercial insurance carriers to provide workers' compensation coverage. The other three are Ohio, Washington and Wyoming.

- North Dakota does not presently permit self-insurance. Wyoming does so in very limited circumstances. Both Ohio and Washington make the self-insurance option more generally available. However, Ohio and Washington have economies that are significantly larger than those of either North Dakota or Wyoming.

It is not our goal to discourage self-insurance in North Dakota. That said, we believe that there are several issues that deserve consideration by the legislature.

The introduction of Self-Insurance will likely generate a need for higher manual premium rates for the employers that continue to purchase insurance coverage through WSI. The increased costs can be attributed to several factors, including:

- WSI's fixed expenses are not likely to decrease to the same extent that premium income declines. Thus expenses as a percentage of premiums are likely to increase, thereby generating the need for higher rates.

- Accounts with the best underwriting results will be the ones most likely to self-insure. As carrier of last resort, WSI will likely experience an overall decrease in underwriting results for its remaining book of business. Though WSI attempts to reflect such differences among employers through application of its experience rating plan, such formula driven approaches cannot reflect the more subtle differences in exposure to loss that a well trained risk manager would be able to identify.

The legislation does not clarify how self-insured claims will be handled. We would recommend that issues surrounding the possible introduction of Third Party Administrators (TPA's) be resolved prior to the start-up of self-insurance.

We understand the legislation will require WSI to provide oversight of the self-insurance program, including:

- Determination of a potential self-insured's financial ability to meet its workers' compensation obligations. In addition, it will likely fall to WSI to determine the level of security funding, be it in the form of a bond, letter of credit or escrow account that could be required.

- Thus, administrative expenses for WSI are likely to increase further as individual account oversight expands (including the likely need for individual account actuarial evaluations).

- Possibly more problematic, such a role could produce liability issues for WSI if a self-insured employer defaults.

The legislation will require that WSI serve as the program's ultimate guarantor if loss reserves and any additional escrow account, letters of credit or bonds prove to be insufficient to cover the defaulting employer's WC liabilities. The result is that employer's that purchase insurance from WSI, most of which would not be qualified to self-insure, would be ultimately responsible for the short-fall in funding.

The potential for default on the part of self-insured's is very real. Even States that have significant oversight of self-insurance programs and the associated requirements for additional security funds often find that the retained funds from a defaulting employer are not sufficient to cover WC claims liabilities. Some states handle this situation by having self-insured's effectively reinsure each other. One example can be found in California. Participation in the Self Insurer's Security Fund (SISF) is mandatory for all non-governmental self insured's. In the event of default on the part of one member, other members are required to pick up the shortfall. Private insurance carriers cannot be assessed for any funding shortfall incurred by SISF. At the same time, insurers are required to participate in the California Insurance Guarantee Association (CIGA) which is similarly responsible for default by other traditional insurance carriers. We note that even with program oversight and collateral requirements, both SISF and CIGA have experienced significant defaults that have resulted in assessments to member entities.

The proposed legislation will permit self-insured's to purchase reinsurance coverage for as much as 80% of the self-insurer's WC liabilities. We see three issues here.

- With the ability to reinsure 80% of a self-insurer's liabilities, North Dakota will be coming very close to permitting competition from commercial insurance companies for large accounts.

- The legislation is not clear about which agency would be responsible for overseeing the reinsurers. The provision that coverage may be placed with "any reinsurer authorized to transact reinsurance in the State" could be interpreted to formally shift that responsibility to the State's Department of Insurance (DoI). Additional clarification may be in order.

- The proposed legislation is clear that WSI will act as the program's ultimate guarantor. It is not clear as to what will happen if a reinsurer defaults – many have in other states. Will WSI and its policyholders be left in a position of covering shortfalls for coverage placed with a commercial insurer?

Finally, we note that the existence of self-insurance will make the type of legislative reform related to past WC injures much more difficult. We note that the legislature is presently considering several bills that increase benefits for past claims – among them:

HB-1101 – Which included an increase in dependency benefits
HB-1247 – COLA's for prior TTD's
HB-1285 – Continuation of PTD for surviving spouses
HB-1410 – Modification of the Social Security Retirement (SSR) offset calculation

Employers that make the decision to self-insure based on cost estimates derived from the WC benefit structure in place at the time that decision is made will likely object. We can envision a few possible responses:

- Simple acceptance of the increases as a cost of doing business in the state

- More problematic – additional opposition to legislative benefit refinements

- Legal action that could possibly send any unanticipated retroactive cost increases to the State.

- A shift of the costs associated with any retroactive increases to WSI and as a result - to the employers that continue to purchase insurance through the WSI.

We hope our comments prove helpful.

DATE: January 27, 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.*

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