

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1111

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1111
January 10, 2011
12725

☐ Conference Committee

Committee Clerk Signature

Ellen Letourneau

Explanation or reason for introduction of bill/resolution:

Monetary threshold for WSI permanent impairment benefits & provide for application

Minutes:

Chairman Keiser: Opens the hearing on HB 1111.

Bryan Klipfel~WSI Director: (See attached testimony).

Representative Amerman: Question between HB 1055 and 1111, there is a piece of 6505 that the organization wanted to delete but I don't see it on here, so we are not going to deal with?

Chairman Keiser: That's the one time lump payment, which is not included in the bill, that's correct.

Representative Representative Ruby: When the review committee requested the bills to be brought to that committee based on the recommendations, you brought in the bill that dealt with the change from the 5th to the 6th as well as the change, which was the recommendation for both of those. Correct?

Bryan Klipfel: Correct.

Representative Ruby: The committee decided that the revenue neutrality, didn't feel comfortable going with that at the time. My concern is, we had no data to support the 10%, if this bill passes, if the last bill is gone because it goes to 14%, not only do you lose the ability the language that Representative Amerman mentioned about the onetime payment, you also lose moving from the 5th to the 6th addition. Will you support this bill by itself without moving to the 6th addition?

Bryan Klipfel: No, the condition of the bill moving from the 16 to 10 percent, would be based on going from the 5th to the 6th addition.

Representative Ruby: Why isn't that on this bill so this would be a standalone bill you would be offering?

Bryan Klipfel: We neglected to put it in.

Chairman Keiser: Why did 1055 come to the WSI interim committee and 1111 comes to Industry, Business and Labor. Why didn't they come together in WSI, who made those decisions? What's happening here that's politically that I don't see?

Bryan Klipfel: Nothing politically, I believe the work comp committee did a great job. Going to the 10%, as an agency through the governor's office was appropriate. We felt it would be revenue neutral and a benefit to injured worker.

Representative Ruby: I understand why it was brought to the interim committee and based on the performance evaluation thought it might be revenue neutral. The numbers can't justify that to be sure, it somewhat subject. I thought WSI pretty much fulfilled the requirements of bring the performance evaluation recommendations to the interim committee that it was required to. I am asking, why are we seeing this issue? What is the use when we see another agency bill?

Bryan Klipfel: There is no intent to circumvent what the interim committee did.

Representative Ruby: We did hear the great job that the evaluator does in determining the percentage of PPI. That wasn't the case in the 90's when the numbers that the evaluators were basing this revenue neutrality, they were on a different addition back then. Even then the percentage of accuracy wasn't there. Can you justify this is revenue neutral?

Bryan Klipfel: I think it would be difficult to say that it is revenue neutral because we don't have the data. The point I bringing across was according to the performance evaluation, we would save 1.1 million dollars from going to the 5th to the 6th addition. Now is that accurate or not, that what the performance evaluators told us. By dropping from 16 to 10 percent, even if it costs us 2 million, in the grand scheme of PPI awards, it's not very much.

Vice Chairman Kasper: Was WSI in attendance on the hearing when the interim committee was working on HB 1055 and did you have testimony?

Bryan Klipfel: Yes, we worked very closely with the work comp committee.

Vice Chairman Kasper: Did you support 1055 in its final form or did you take a neutral position?

Bryan Klipfel: Our position is we would provide information by data and that's what we did.

Vice Chairman Kasper: The hearing you remained neutral, did you discuss with the interim committee your desire to have benefits like HB 1111?

Bryan Klipfel: We did, probably not during the committee time; afterwards I talked to other on it. There was no surprise that this bill was coming forward.

Vice Chairman Kasper: What I understand is that you did not try to modify the bill and decided to introduce your own bill?

Bryan Klipfel: That's correct.

Representative Vigesaa: Any discussion with the upper level payment, we are only addressing lowering the threshold with the evaluator?

Bryan Klipfel: I don't recall any discussion with the high end payments.

Chairman Keiser: Anyone else here to testify in support of HB 1111?

Dave Kemnitz: We support the concept of going to the 10%, 5% would be better. If the 6th addition is in there, I don't think that would alter our position now, anything higher than 10%, we would oppose.

Representative Ruby: You would support if it passed by itself without moving to the 6th addition?

Dave Kemnitz: The 6th addition does has some severe in some areas have some impact on claimants, we don't necessarily like that in the 6th addition but like everyone else has said. 10% was an attempt that but your committee moves it to 14%.

Representative Ruby: If that bill failed you would still support moving to the 10%, you are opposite, correct?

Dave Kemnitz: It wouldn't change our support for the bill.

Chairman Keiser: Anyone else here to testify in support of HB 1111?

Seabaul Vetter~CARE: I support only on the 5th addition. If it goes to 6th addition I don't.

Chairman Keiser: Anyone else here to testify in support, in opposition to HB 1111?

Bill Shalhoob~North Dakota Chamber: We support the move from the 5th to the 6th addition because we are supporting work force safety. We are supporting a revenue neutral position. We aren't interested in saving money; we want the benefits to be the same under the 6th addition as they are current values. However, some phrases sent up a red flag; not good data, auditors felt and the auditors are estimating. All you do is do what the 1055 suggest and take it to 14%, you accumulate data over two years and during those two years you base it on a 10% in estimates and over a two year period and we will see real data and not be guessing.

Vice Chairman Kasper: The 5th addition and 6th addition where are the substantive differences between those two additions? . . What is the difference?

Bill Shalhoob: No idea. It would take a doctor or expertise way beyond the business level; basically you are taking down 6 points on 16. Here we have a chance to apply it and make meaningful decisions.

Chairman Keiser: There are two different numbers that come into play on revenue neutral; I have full confidence on actuarial analysis on 1.1 million savings. That is taking actual cases and look at the current group of people who are receiving benefits regardless of the level and extend or apply 6 versus 5. What is unpredictable, is adding the lower categories, we didn't track them.

Bill Shalhoob: I do concede that because I understand that. We don't what the extra 2% or 6% brings into the system.

Chairman Keiser: Anyone else here to testify in opposition, anyone neutral? Closes the hearing on HB 111.

Chairman Keiser: I do want to point out, if you look on pages 2 & 3 of his handout, reads the testimony from HB 1055. My preference is send it out with a Do Not Pass and if we want to move to 10%, we can do so on HB 1055. I will also request WSI gets a hold of consultants and demand on how we are scoring in the upper end and work with HB 1055 and makes this bill revenue neutral.

Chairman Keiser: What are the wishes of the committee?

Representative Vigesaa: I agree, all the elements are there in HB 1055 that can handle this discussion.

Representative Vigesaa: Move for a **Do No Pass on HB 1111**

Representative Nathe: Second.

Chairman Keiser: Further discussion?

Representative Ruby: From the interim committee we didn't have the date to prove that 14 was necessarily the revenue neutral numbers. More information will be helpful. This is so stand alone. I'm open to hear more discussion. Do it incrementally, seeing where the numbers are and getting the data in the two years and go back and re-award to get to the right amount.

Roll call vote was taken for a **Do Not Pass** with 12 yeas, 1 no's, 1 absent and **Representative Vigesaa is the carrier.**

FISCAL NOTE

Requested by Legislative Council
12/21/2010

Bill/Resolution No.: HB 1111

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 reduces the PPI threshold to qualify for an award from 16% to 10% and increases PPI awards (multipliers) within the 10% through 25% impairment levels.

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 2011 LEGISLATION SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1111

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Threshold

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation reduces the PPI threshold to qualify for an award from 16% to 10% and increases PPI awards (multipliers) within the 10% through 25% impairment levels.

FISCAL IMPACT:

The proposed reduction in the PPI impairment threshold from 16% to 10% and the proposed increase in benefit levels for the 10% through 25% impairment levels will serve to increase PPI benefit awards, however, we cannot state with any high degree of certainty to what extent as we do not have access to an appropriate base of historical experience to use in deriving the estimates. Based on the very limited and dated information we were able to review to analyze this change, indications were that the proposed legislation would serve to increase PPI costs by 46%, or approximately \$1.1 million per year. This would translate to an approximately 0.5% to 1.0% increase to statewide premium rate levels.

The proposed change would also serve to increase WSI's administrative costs. To the extent the legislative proposal is adopted, WSI would request the appropriation of one additional FTE with an anticipated cost of approximately \$151,000 for the biennium.

DATE: December 17, 2010

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	12/23/2010

Date: Jan 10-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 111

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Vigesaa Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	Ab		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 12 No 1

Absent 1

Floor Assignment Rep Vigesaa

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

REPORT OF STANDING COMMITTEE

HB 1111: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
HB 1111 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1111

2011 House Bill No. 1111
Testimony before the House Industry, Business, and Labor Committee
Presented by: Bryan Klipfel, WSI Director
Workforce Safety & Insurance
January 10, 2011

Mr. Chairman, Members of the Committee:

My name is Bryan Klipfel, WSI Director. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination.

This bill simply alters the threshold for Permanent Partial Impairment (PPI) awards without further alterations. It is the intent that this alteration be accompanied by moving the measurement system from the fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment to the sixth edition. With this understanding, WSI supports alteration of the threshold.

This bill modifies the section of workers' compensation law that provides for PPI awards and lowers the threshold to qualify for an award from the current 16% whole body impairment to 10% whole body impairment. It also increases awards contained within the 10% - 25% impairment levels.

North Dakota's system for PPI awards contemplates awards stemming from work related injuries to the extent the impairment can be evaluated under the American Medical Association Guides to the Evaluation of Permanent Impairment. This publication is compiled in order to provide a standardized method to assess permanent impairments and the relative impacts those impairments comprise on an individual's ability to perform activities of daily living.

The Guides use objective and scientifically based data when available and reference these sources. When objective data is not available, estimates of impairment are based upon clinical experience and consensus of a wide variety of medical specialists.

PPI awards are a one-time payment based upon the measurable impairment using the techniques established in the Guides. These are converted to whole body impairments that directly correspond with the appropriate impairment multiplier, taken against one third of the states average weekly wage to produce an award. Currently, a whole body impairment of 22% yields an award of \$5,700, or \$228 multiplied by a permanent impairment multiplier of 25. This award is not directly coupled to other indemnity payments.

The 2010 Performance Review recommended the threshold be adjusted to 10%; as a result, initial awards begin at the 10% whole person impairment level. WSI would qualify the actuarial support for this target is inconclusive because adequate supporting data doesn't exist.

Currently, initial awards begin with whole person impairments beginning at 16%. As a result, WSI has no reliable data on the frequency of impairments at levels lower than this level, because most are not rated. Therefore, accurately projecting the frequency of impairments under the 16% level is impossible. In addition, award frequency will increase exponentially as the threshold is decreased. We expect this movement of the threshold to 10% in an attempt to remain revenue neutral will affect the administrative burden of adjudicating this benefit. As a result, WSI is requesting one additional FTE with this proposal.

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

PPI (Permanent Partial Impairment) INFORMATIONAL SHEET

➤ What is PPI:

- A PPI award is a one-time lump sum payment to an injured worker sustaining a permanent impairment based on a compensable injury.

➤ Legislative History of PPIs

- 1995: SB 2202 repealed sections 65-05-12, 65-05-12.1, 65-05-13 and 65-05-14 all of which related to permanent impairments and impairment awards and created a consolidated section 65-05-12.2 which established a 16% threshold using the current edition of AMA Guides in effect on the date of the employee's evaluation
 - This section was the subject of Referred Measure No 9 and was approved in the June 11, 1996 primary election
- 1999: HB 1422 amended section 65-05-12.2 by updating and clarifying section 65-05.12.2 relating to awards for permanent impairment and to provide for a study of permanent impairment awards. The amendment also provided that the "...bureau shall adopt administrative rules governing the evaluation of permanent impairment...Until rules adopted under this subsection become effective, impairments must be evaluated under the fourth edition, third printing, of the guides.
- 2001: HB 1161 amended section 65-05-12.2 to update the schedule of injuries and adopt the Fifth Edition of AMA Guides to the Evaluation of Permanent Impairment.
- 2007: SB 2389 amended section 65-05-12.2 to reflect the method of calculating the amount of the award from the number of weeks to a permanent impairment multiplier times thirty-three and one-third percent of the state's average weekly wage. The Fifth Edition of the AMA Guides remains in effect.
- 2009: SB 2057 amended subsection 11 of section 65-05-12.2 relating to permanent impairment for loss of vision of an eye. The Fifth Edition of the AMA Guides remains in effect.

➤ History of American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides)

- 1995 – Current edition of the Guides
- 1999 – Fourth edition, third printing of the Guides
- 2001 – Fifth edition of the Guides
- 2007 – Fifth edition of the Guides remains in effect
- 2009 – Fifth edition of the Guides remains in effect

➤ PPI Award Schedule

PPI Award Table
(effective July 1, 2010)

<u>Percentage Impairment</u>	<u>Multiplier</u>	<u>PPI Rate (7/1/10)</u>	<u>PPI Award</u>
0	0	228	-
1	0	228	-
2	0	228	-
3	0	228	-
4	0	228	-
5	0	228	-
6	0	228	-
7	0	228	-
8	0	228	-
9	0	228	-
10	0	228	-
11	0	228	-
12	0	228	-
13	0	228	-
14	0	228	-
15	0	228	-
16	10	228	2,280
17	10	228	2,280
18	15	228	3,420
19	15	228	3,420
20	20	228	4,560
21	20	228	4,560
22	25	228	5,700
23	25	228	5,700

24	30	228	6,840
25	30	228	6,840
26	35	228	7,980
27	35	228	7,980
28	40	228	9,120
29	45	228	10,260
30	50	228	11,400
31	60	228	13,680
32	70	228	15,960
33	80	228	18,240
34	90	228	20,520
35	100	228	22,800
36	110	228	25,080
37	120	228	27,360
38	130	228	29,640
39	140	228	31,920
40	150	228	34,200
41	160	228	36,480
42	170	228	38,760
43	180	228	41,040
44	190	228	43,320
45	200	228	45,600
46	210	228	47,880
47	220	228	50,160
48	230	228	52,440
49	240	228	54,720
50	260	228	59,280
51	280	228	63,840

52	300	228	68,400
53	320	228	72,960
54	340	228	77,520
55	360	228	82,080
56	380	228	86,640
57	400	228	91,200
58	420	228	95,760
59	440	228	100,320
60	465	228	106,020
61	490	228	111,720
62	515	228	117,420
63	540	228	123,120
64	565	228	128,820
65	590	228	134,520
66	615	228	140,220
67	640	228	145,920
68	665	228	151,620
69	690	228	157,320
70	715	228	163,020
71	740	228	168,720
72	765	228	174,420
73	790	228	180,120
74	815	228	185,820
75	840	228	191,520
76	865	228	197,220
77	890	228	202,920
78	915	228	208,620
79	940	228	214,320

80	965	228	220,020
81	990	228	225,720
82	1015	228	231,420
83	1040	228	237,120
84	1065	228	242,820
85	1090	228	248,520
86	1115	228	254,220
87	1140	228	259,920
88	1165	228	265,620
89	1190	228	271,320
90	1215	228	277,020
91	1240	228	282,720
92	1265	228	288,420
93	1290	228	294,120
94	1320	228	300,960
95	1350	228	307,800
96	1380	228	314,640
97	1410	228	321,480
98	1440	228	328,320
99	1470	228	335,160
100	1500	228	342,000

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➤ PPI Award History

PPI Payments

Fiscal Years 2006 - 2010

FY 2006	\$2,250,915
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FY 2007	\$1,006,637
FY 2008	\$1,310,870
FY 2009	\$2,397,000
FY 2010	\$1,978,157
○	