2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1064

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1064

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7693

Committee Clerk Signature Ellen Lt Tang

Chairman Keiser: Opened the hearing on HB relating to the cost of living adjustments for disability benefits, provide effective date and declare an emergency.

Jennifer Clark~Legislative Council of North Dakota. In drafting the application clause on page 3 lines 21 & 22, I made a mistake. It should temporary total disability benefits. HB 1064 makes two main changes. The first one shortens the time period for a worker returns to work before their wages are recalculates. The second is provides the cost of living adjustments for temporary (?) disability.

Chairman Keiser: Under current law, a person gets compensation from WSI, as it set at the rate they were earning prior, if they go back to work, they have to work 12 months to get the rate reset. This bill changes that 12 months to 3 months. We are reinforcing the wrong thing? The only way they can benefit is if they stay there for 12 months. The committee felt that we should start reinforcing the effort to go back to work.

JClark: On page two, lines 6-12, the old system, we are creating a cost of living adjustments for temporary disability. We've put everyone at three years.

Chairman Keiser: The laws keep changing, but effects prospectively. We have a small population of people who are trapped in temporary disability land, they never got moved to permanent, under the new system they would have been likely moved. This is an attempt to

go back and recover those people in this bill. The interim committee felt it was the right thing to do even though it will cost.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment. We are in support.

Sebald Vetter~C.A.R.E. We support this bill. From seven down to three makes a big difference. It's a start.

Chairman Keiser: The current group is on a three year program; were are going back and picking up the old group from a seven to a three.

Renee Pfenning~North Dakota Building & Construction Trades Council and Electrical Worker's Council. We are in support. With this economy, it makes sense.

Anyone to testify in opposition, neutral on HB 1064.

Tim Wahlin~Chief of Injury Services of WSI. See attachment testimony and the amendment.

Representative Ruby: I have a question on the fiscal note. Where is says the reserved level impact of the proposed legislation it served to increase discounted increased reserve levels by as much as four million, however if favorable claim emergence continues, the cost will be offset accordingly. What do you mean by favorable claim emergence? Is that more people are attempting to try get into the workforce so they can get the recalculation sooner?

Wahlin: That is correct. We are seeing shifts in those trends.

Representative Ruby: Basically, you are basing that on trends already now.

Wahlin: That's correct.

Chairman Keiser: The comment was made during break that it's about time the legislature starting giving benefits back to the injured workers. Relative to the period of time for COLA, we were at one point, at 10 years, moved it to 7, and then we moved it to three, effective

January 1, 2006. That was a tremendous adjustment in benefits that people are not recognizing for some reason.

Wahlin: That's absolutely correct. Historically, if you look at the fiscal notes, none of them were cheap; they were very expensive benefit increases.

Representative N Johnson: Would you walk through the amendments.

Wahlin: Explains amendment attachment.

Closes the hearing HB 1064.

Representative Nottestad: Moves to adopt the amendment.

Representative N Johnson: Seconded.

Amendment is technical in nature, no effect on the fiscal note.

All in favor by a voice vote. What are the wishes of the committee?

Representative Thorpe: Move a Do Pass as Amended.

Vice Chairman Kasper: Seconded.

Voting roll call was taken on HB 1064 on a Do Pass as Amended with 12 ayes, 0 nay's, 1 absent and Representative Nottestad is the carrier.

FISCAL NOTE

Requested by Legislative Council
01/28/2009

Amendment to: HB 1064

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 proposal shortens the supplementary benefit eligibility waiting period for pre-1/1/06 claims from 7 years to 3 years and expands supplementary benefit eligibility for pre-1/1/06 claims to include both permanent total and temporary total benefit recipients.

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 1064

BILL DESCRIPTION: Long-term TTD COLA

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 shortens the waiting period for eligibility of supplementary benefits (COLAs) for pre-1/1/06 total disability claims from 7 years to 3 years and expands supplementary benefit eligibility for pre-1/1/06 claims to include both permanent total and temporary total benefit recipients.

Rate Level Impact: Anticipate no premium rate level impact as the proposal does not apply to future injuries.

Reserve Level Impact: The proposed legislation will serve to increase discounted reserve levels by as much as $4 million, however, if favorable claim emergence continues costs will be offset accordingly.

DATE: January 28, 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:**	01/28/2009

FISCAL NOTE

Requested by Legislative Council
12/08/2008

Bill/Resolution No.: HB 1064

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.*

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Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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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 1064

BILL DESCRIPTION: Long-term TTD COLA

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 shortens the waiting period for eligibility of supplementary benefits (COLAs) for pre-1/1/06 total disability claims from 7 years to 3 years and expands supplementary benefit eligibility for pre-1/1/06 claims to include both permanent total and temporary total benefit recipients.

Rate Level Impact: Anticipate no premium rate level impact as the proposal does not apply to future injuries.

Reserve Level Impact: The proposed legislation will serve to increase discounted reserve levels by as much as $4 million, however, if favorable claim emergence continues costs will be offset accordingly.

DATE: December 30, 2008

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:**	12/26/2008

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Adopted by the Industry, Business and Labor Committee
January 26, 2009

VR
1/26/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1064

Page 3, line 21, after "temporary" insert "total"

Page 3, line 22, after "recipients" insert "or permanent total disability recipients"

Renumber accordingly

Date: Jan 26 · 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1064

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 Thorpe Seconded By Kasper

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE

HB 1064: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1064 was placed on the Sixth order on the calendar.

Page 3, line 21, after "temporary" insert "total"

Page 3, line 22, after "recipients" insert "or permanent total disability recipients"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1064

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1064

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10094

Committee Clerk Signature

Minutes: Troy Schuchard

Chairman Klein: Opened the hearing on HB 1064, Senator Wanzek absent.

Jennifer Clark: Legislative Counsel introduced HB 1064. This bill does two things, 1) it shortens the amount of time that an injured worker who is permanently totally disabled or temporarily totally disabled that they would have to have as an attempt to return to work by which they would get their benefits recalculated. Once you apply for benefits and you are permanently totally disabled or temporarily totally disabled you are locked in at what your earnings were at the time you filed. There are some ways to modify that calculation. One of the ways is: if you have an attempt to return to work. Under existing law you have to have a 12 month attempt to return to work and then if you end up going back on WSI because the original injury continues to prevent you from working, they will recalculate benefits and give you the higher of the two. 2) Create Cost of living adjustment (COLA) because it does not currently exist for temporarily totally disabled and decrease the benefits from 7 years to 3 years.

Senator Horne: Aren't those dates conflicting? One date is July 1 and the other an emergency clause, how does that relate.

Jennifer Clark: The emergency clause is anytime we have a bill effective before August 1, 2009 unless it is an appropriations bill. That is why we have the emergency clause, to cover the individuals in the gap.

Senator Potter: Just so I understand this, we are allowing someone to back to work for a period that may be seasonal, as opposed to an entire year and still retain the higher of the wages they were receiving prior to the injury.

Jennifer Clark: It doesn't need to be a seasonal job and it is not intended to be seasonal.

Senator Potter: But a temporary job or position

Jennifer Clark: It could be temporary, it could have been intended to be a fulltime position but unsuccessful. You may go back to work and find your disability prevents you from doing it successfully. By shortening that amount of time, they are not going to get fewer benefits. It going to allow them to have an opportunity to increase their benefits if their new wages exceed their injury wages, it will allow for recalculations of their benefits. So it is possible to increase their wages. They won't go backwards; it just allows them a shorter attempt to return to work.

Tim Wahlin: Chief of Injury Services with WSI testifying on behalf of WSI and we support HB1064. (See attachment #1)

Chairman Klein: We are looking back at pre-2006 that brings in a lot of people. Is that why I am hearing a $4 million price-tag?

Tim Wahlin That is correct. This is going to target those pre-06 claims which are going to be the majority of the claims in the system.

Senator Potter: I am curious about the neutral position that the board took. What was the discussion about?

Tim Wahlin In discussing this particular area, the board came down in all sorts of areas, "Is this too much, is this too little, are we retroactively increasing" and after that debate and

discussion went forward, they agreed as a group that this is purely policy. It will work financially or can be made to work financially. We will go in with a neutral position because not everybody can agree on any of our positions and we will let the Legislature decide policy.

Jeb Oehlke: Representing North Dakota Chamber of Commerce testified in support of HB1064. (See attachment #2)

Sylvan Loergreng: North Dakota Aging Support Group testified in support. "Amen"

Seibold Vetter: Testified in support of HB 1064. I want to ask how far back do you go on this bill.

Tim Wahlin The other parts of the codes are still going to be applied with respect to presumed retirement age at which time you would be fully vested to receive Social Security retirement benefits. That is still going to be effective and on all claims post 1995.

Chairman Klein: Closed the hearing on HB 1064

Senator Potter: Motion for a Do Pass.

Senator Behm: Seconded

Chairman Klein: Motion for Do Pass 6-0 and Senator Potter to carry.

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

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1064

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Senator Potter Seconded By Senator Behm

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Potter

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

Bill is rereferred

REPORT OF STANDING COMMITTEE

HB 1064, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1064 was rereferred to the **Appropriations Committee**.

HB 1064
Legislative Council
Relating to cost-of-living adjustments for workers' compensation total disability benefits; to provide for application; to provide an effective date; declare an emergency.

0106	H	Introduced, first reading, (emergency), referred Industry, Busine	HJ004C
0126	H	Committee Hearing 08:00	
0127	H	Reported back amended, do pass, amendment poc y 012 n 000	HJ0245
0128	H	Amendment adopted, placed on calendar	HJ0251
0211	H	Second reading passed, y 094 n 000 Emergency clause carried	HJ0474
0212	S	Received from House	SJ0386
0225	S	Introduced, first reading, (emergency), referred Industry, Busine	SJ0571
0303	S	Committee Hearing 02:30	
0305	S	Rereferred to Appropriations	SJ0661
0305	S	Request return from committee	SJ0661
0309	S	Second reading passed, y 047 n 000 Emergency clause carried	SJ0683
0310	H	Returned to House	HJ0875
0320	S	Signed by President	SJ0894
0407	H	Signed by Speaker	HJ1189

No Senate Approp. minutes

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ENTER JOURNAL PAGE NO. TO DISPLAY THE JOURNAL INFO

2009 TESTIMONY

HB 1064

NORTH DAKOTA
CHAMBER of COMMERCE

Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1064
January 26, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in support of HB 1064 and urge a do pass from the committee on this bill.

We are all aware of the rate living costs are escalating. Shortening the time line for eligibility for supplemental benefits from seven to three years will help claimants meet those rising expenses. The expansion to include both permanent total and temporary total benefit recipients will also help.

Thank you for the opportunity to appear before you today in support of HB 1064. I would be happy to answer any questions.

PO Box 2639 Bismarck, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
www.ndchamber.com ndchamber@ndchamber.com

2009 House Bill No. 1064
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 26, 2009

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to testify on this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors has taken a neutral position on this bill and I am appearing in my capacity to offer information.

It appears that there exists a technical oversight in the bill draft you have before you. The bill as it currently exists contains an error in the application section. WSI would offer an amendment to clarify this oversight.

This bill affects indemnity or disability benefits in three different ways.

Section one will shorten the time an injured employee must remain at work following a time-loss injury in order to receive a recalculation of their average weekly wage. This recalculation will only have affect should that original injury recur, thereby causing further disability. Originally, the time period required to receive a recalculation was twelve consecutive months. This bill shortens that period to three consecutive months. Under either scenario, the recalculation will only occur should the "new" wages be higher. This allows an injured employee, who has returned to work at a higher pay level, to realize that increase should the underlying injury recur.

The second portion of this bill will grant automatic supplementary benefits to injured employees with claims filed prior to January 1, 2006. Supplementary benefits are cost of living adjustments (COLAs) that were previously only available to an injured

employee who was deemed permanently and totally disabled and was on benefits for the proscribed period of time. This bill further expands this benefit to not only include permanently and totally disabled, but the long term temporarily totally disabled.

Finally, the bill shortens the injured employee's waiting period to three consecutive years of disability benefits. This adjustment is similar to changes made in 2007 House Bill No. 1038. That bill shortened the waiting period for supplementary benefits to three years for claims filed on or after January 1, 2006. This bill equalizes that waiting period for both the pre and post 2006 claims.

If approved, HB 1064 would result in an anticipated discounted reserve level increase of up to $4 million. There would be no anticipated premium rate level impact because it will not apply to future injuries.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1064

Page 3, line 21, after "temporary" insert "total"

Page 3, line 22, after "recipients" insert "or permanent total disability recipients"

Renumber accordingly

#1

Engrossed 2009 House Bill No. 1064
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
March 3, 2009

Mr. Chairman, Members of the Committee:

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This bill affects indemnity or disability benefits in three different ways.

Section one will shorten the time an injured employee must remain at work following a time-loss injury in order to receive a recalculation of their average weekly wage. This recalculation will only have affect should that original injury recur, thereby causing further disability. Originally, the time period required to receive a recalculation was twelve consecutive months. This bill shortens that period to three consecutive months. Under either scenario, the recalculation will only occur should the "new" wages be higher. This allows an injured employee, who has returned to work at a higher pay level, to realize that increase should the underlying injury recur.

The second portion of this bill will grant automatic supplementary benefits to injured employees with claims filed prior to January 1, 2006. Supplementary benefits are cost of living adjustments (COLAs) that were previously only available to an injured employee who was deemed permanently and totally disabled and was on benefits for the proscribed period of time. This bill further expands this benefit to not only include permanently and totally disabled, but the long term temporarily totally disabled.

Finally, the bill shortens the injured employee's waiting period to three consecutive years of disability benefits. This adjustment is similar to changes made in 2007 House Bill No. 1038. That bill shortened the waiting period for supplementary benefits to three years for claims filed on or after January 1, 2006. This bill equalizes that waiting period for both the pre and post 2006 claims.

This benefit increase is substantial. If approved, Engrossed HB 1064 would result in an anticipated discounted reserve level increase of up to $4 million. There would be no anticipated premium rate level impact because it will not apply to future injuries.

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

#2

Testimony of Jeb Oehlke
North Dakota Chamber of Commerce
HB 1064
March 3, 2009

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota business. Our organization is an economic and geographical cross section of the state's private sector and also includes 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 sixteen local chambers with total membership over 7,000 members and ten employer associations. As a group we stand in support of HB 1064 and urge a do pass from the committee.

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THE VOICE of NORTH DAKOTA BUSINESS

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