

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1140

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1140

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1140

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2113

|                           |
|---------------------------|
| Committee Clerk Signature |
|---------------------------|

Minutes:

**Vice Chairman Johnson** opened the hearing on HB 1140. HB 1140 relates to a worker's compensation inflationary adjustment for injured employees with long-term temporary partial disabilities.

**Tim Wahlin, WSI**, introduced the bill. *See written testimony.*

**Rep. Kasper:** On line one where the benefit paid was ten thousand for the first year, what would the employee's salary have been to receive the ten thousand benefits?

**Wahlin:** That is almost impossible for me to tell you because if you are working thirty-eight hours and your prior was a forty hours, it depends on the wage you brought into the system. The higher the wage, obviously that two hour gap is going to be much larger than a low wage person with a two hour gap. Because there are so many different things coming in the front and the difference in payment there is impossible for me to give.

**Rep. Kasper:** Based upon this example, with the total partial disability benefit paid, what percentage of that, or the pre-disability salary is the worker earning with the benefit paid plus what he or she is earning at another job or the same job?

**Wahlin:** We represent sixty-six and two thirds of the difference, so we are two thirds of the difference. Generally those two thirds of the difference are represented by the fact that our

benefits are non-taxable income vs. taxable earnings. It may not be exact for every person, but that is the number that we pay out.

**Rep. Zaiser:** If you could clarify the last two sentences in page one of your testimony where it says "over the long term wages generally increase as a result of..." Is that employee's wages increased?

**Wahlin:** I think the best explanation is an example that was given to us at the legislative review committee. The individual presenting there had back problems but was able to return to work. She was able to return to work at a significantly lower ability with lower pay and lower hours than she was prior to her injury. Her testimony was that while we made up the difference between what she could earn and what she was earning, every year she would do a good job and get a raise. Even though her hours didn't increase, her earnings did. So the gap between what we are paying to make up the difference shrunk. She didn't see any tangible difference from year to year. Once we go out long term, she has to get all the way up to what she was earning prior to the injury before she sees any difference in what she takes home.

**Rep. Zaiser:** There is no formula as to how that process works in terms of lowering your percentage but yet hers increasing?

**Wahlin:** The formula is that we simply will makeup the gap, the difference between the earnings. We will take what the earnings are, subtract out and pay the difference in there.

**There were no further questions from the committee.**

**Dave Kemnitz, AFL-CIO,** spoke in support of the bill. *See written testimony*

**Rep. Kasper:** WSI needs to answer this because I think your calculation is wrong and I might be wrong. If you go to the bill, lines twelve and thirteen, it says "the organization shall calculate the lump sum by multiplying the previous years percent increase in the state's average weekly wage, which is your three percent." By the total amount of partial disability benefits paid, not

the difference in the amount paid, the TOTAL amount paid and in your example, this individual is certainly receiving more than fifty-six dollars per week in benefits. I think your numbers are wrong and maybe WSI could clarify that.

**Kemnitz:** We'd be gleeful if my numbers are wrong and there was a higher benefit than that. If I read it right, the benefit amount they were receiving which was sixty-six and two thirds of the difference of pre-injury wage and the post injury wage, which is lower in this case, the benefit is two dollars an hour, times twenty eight weeks, if the extension applies and the extension must apply if they are working twenty eight or fewer hours per week on section two, so it's two dollars times twenty-eight is fifty six dollars times fifty two and three percent of that.

**Rep. Keiser:** You are on record supporting the bill, right?

**Kemnitz:** Supporting the concept. It seems like such a slim measure, that perhaps we could expand it.

**Bill Shalhoob**, Chamber of Commerce, spoke in support of the bill. See *written testimony*.

**Seabalt Vetter**, CARE, spoke in support of the bill.

**Vetter:** I represent over four hundred injured workers plus another eleven thousand and two hundred supporters. This bill here is less, I'm for it but I got a hard time understanding this. I think I got to ask Tim to come up and explain it to me. This three ninety and four eighty three, well that's higher than the average weekly wage. The average weekly wage isn't up that high, how can you give him a raise. The average weekly raise is what?

**Rep. Keiser:** That's for the year; you are going to get that raise. Total.

**Kevin Paulson**, Injured worker, spoke in support of the bill.

**Paulson:** I see the calculations in your bill and I can appreciate the position from which they come. However, even though I do support this bill, I think it is somewhat inadequate. My reasons for this are personal experience. Increases in personal living costs, we all know what

they are. You all have kids, you know what it is. What I see here is an attempt to minimize the increase to those injured workers who are unable to work. When I was ordered to no longer work, worker's comp figured my wages on the last six months that I was able to work. I was scheduled for fifty five hours a week. My employer signed an affidavit to that effect. My employer wrote a letter in support of me receiving according to that fifty five hour schedule. But because of the injury that I received, worker's comp was liable, they still figured it on the thirty-two hours I was able to work. Most times that I left work, I was sent home by my employer because he could see what was going on. I see a difference in these hours and what they are getting in this one lump sum in the middle of the year, I'm sorry, it's going to drive people into bankruptcy. It drove me into bankruptcy with absolutely ridiculously low payments and my wife has had to work extra hours because of it. There have been many attempts to stop my income and it is going to continue with these people even worse, because they are working part time. They will be harassed by investigators they will be harassed by workers comp. And it will continue until they get rid of them because if they are able to work at all, this is not an adequate bill at all. It doesn't protect the workers that are injured. I am in support of it because I do believe it is a step in the right direction. I would ask the members to consider stronger bill and removing some of the power that they have over us.

**Rep. Kasper:** If you could change this bill, how would you change it?

**Paulson:** First of all, I would, as far as the increase after the five years of regulations they have already proven that they have had an injury. If they are getting those promotions and raises, workers' comp liability reduces. If you are a good enough employees to make raises and promotions, your increase in weekly benefits should to up with that increase. It should be figured on your current wages.

**Rep. Thorpe:** I understand what you are saying, however, unfortunately, with the way the workers' insurance has been set up; it is based on sixty-six and two-thirds percent.

**Paulson:** I understand, however, what I propose it that you change it to do the right thing.

**Rep. Thorpe:** Any testimony other than what you just told us on doing the right thing?

**Paulson:** I think you should do everything you can to get some accountability back into the system because right now workers comp is totally unaccountable to anyone but themselves. Claims analyst has more power than you do, when it comes to my life and that is wrong.

**Chairman Keiser asked Tim Wahlin to come back up and answer some questions.**

**Wahlin:** (referring to Kemnitz testimony): I do not have a response to the numbers that Kemnitz proposed. I think one of the things that we have to remember is that this represents and inflationary adjustment on the yearly amount paid. Is it going to be a lot? Well, three or four percent of any number is not going to be a lot. We also have to remember that those payments are factored into next year and again that number is increased over time. The individual who testified in front of the legislative review committee was on thirteen or fourteen years. I believe that these adjustments would substantially effect her position with respect over time, the three percent per year increase as offset.

**Rep. Keiser:** Do you know how many people this bill would impact positively?

**Wahlin:** Looking back, I believe the number that was batted around was about forty five right now. Currently on the system that looks like they would be entitled to adjustments the first year, if nobody else rolls in, which is not going to be the case.

**Rep. Keiser:** The final issue raised was, why wait five years?

**Wahlin:** The bill is targeted at that long term recipient to partial disability. Pulling those out of the systems, issuing checks and running the calculations on those amounts is administratively significant task. We have a very large number of injured workers who are on partial disability

benefits at some point in time. Most of those roll off within a year or two years. That is not the population represented by the individual who testified in front of the committee. We looked at some sort of dividing point in there, there is a dividing point already set forth in sixty five zero five ten.

**Rep. Johnson moved to adopt the amendment. Rep. Nottestad seconded.**

**Voice Vote: Unanimous. Amendment was adopted.**

**Rep. Nottestad moved a DO PASS AS AMENDED. Rep. Vigesaa.**

**Rep. Zaiser:** I was holding this bill. I was really hoping to look at it some more.

**Chairman Keiser closed the hearing with no roll call vote.**

**No action was taken at this time.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1140

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2487

Committee Clerk Signature

*Stephanie N Thomas*

Minutes:

**Chair Keiser** opened the hearing on HB 1140. This is a long term temporary partial disability case from the 1<sup>st</sup> of July following the 5<sup>th</sup> year of partial disability to the injured employee who has received a waiver of the 5 year cap on the partial disability that's eligible for a lump sum inflationary adjustment. Currently, if you are in the long term temporary partial disability and you are able to work part-time, then you get WSI income, in addition to that every time you get a raise at your place of employment, there's an offset of how much WSI's payment is. This bill attempts to correct that after the 5 year, which is the national time period in which somebody goes to the condition of being a permanent and partial disability.

**Rep. Gruchalla:** I move a do pass, as amended.

**Rep. Dietrich:** Second.

**Roll call vote was taken. 11 Yeas, 0 Nays, 3 Absent, Carrier: Rep. Kasper**

Hearing closed.

# FISCAL NOTE

Requested by Legislative Council

02/09/2007

Amendment to:            HB 1140

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.*

|                       | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    |             |                    |             |
| <b>Expenditures</b>   |                    |             |                    |             |                    |             |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 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 engrossed bill provides an annual inflationary adjustment payment for long-term temporary partial disability cases.

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  
2007 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1140

BILL DESCRIPTION: Long-term Temporary Partial Disability (TPD) Inflation Adjustment

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 engrossed bill provides an annual inflationary adjustment payment for long-term temporary partial disability cases.

Fiscal Impact: The engrossed bill will increase benefit costs in the State, but the potential increase is not likely to be material in relation to current rate and reserve levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: February 9, 2007

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.

|                      |                |                       |            |
|----------------------|----------------|-----------------------|------------|
| <b>Name:</b>         | John Halvorson | <b>Agency:</b>        | WSI        |
| <b>Phone Number:</b> | 328-3760       | <b>Date Prepared:</b> | 02/09/2007 |

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/05/2007

Bill/Resolution No.: HB 1140

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.*

|                | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 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.*

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 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 provides an annual inflationary adjustment payment for long-term temporary partial disability cases.

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  
2007 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1140

BILL DESCRIPTION: Long-term Temporary Partial Disability (TPD) Inflation Adjustment

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 provides an annual inflationary adjustment payment for long-term temporary partial disability cases.

Fiscal Impact: The proposed legislation will increase benefit costs in the State, but the potential increase is not likely to be material in relation to current rate and reserve levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: January 26, 2007

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.

|                      |                |                       |            |
|----------------------|----------------|-----------------------|------------|
| <b>Name:</b>         | John Halvorson | <b>Agency:</b>        | WSI        |
| <b>Phone Number:</b> | 328-3760       | <b>Date Prepared:</b> | 01/26/2007 |

70447.0101  
Title.0200

Adopted by the Industry, Business and Labor  
Committee

January 31, 2007

**House Amendments to HB 1140 (70447.0101) - Industry, Business and Labor  
Committee 02/01/2007**

Page 1, line 7, replace "Beginning" with "This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning"

Renumber accordingly

Date: 1-31-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1140

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS, AS Amended

Motion Made By Rep Gruchalla Seconded By Rep Dietrich

| Representatives       | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman Keiser       | X   |    | Rep. Amerman    | X   |    |
| Vice Chairman Johnson |     |    | Rep. Boe        |     |    |
| Rep. Clark            | X   |    | Rep. Gruchalla  | X   |    |
| Rep. Dietrich         | X   |    | Rep. Thorpe     | X   |    |
| Rep. Dosch            |     |    | Rep. Zaiser     | X   |    |
| Rep. Kasper           | X   |    |                 |     |    |
| Rep. Nottestad        | X   |    |                 |     |    |
| Rep. Ruby             | X   |    |                 |     |    |
| Rep. Vigesaa          | X   |    |                 |     |    |
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|                       |     |    |                 |     |    |

Total Yes 11 No 0

Absent 3

Floor Assignment Rep Kasper

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

REPORT OF STANDING COMMITTEE

HB 1140: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1140 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "Beginning" with "This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1140

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1140 Engrossed**

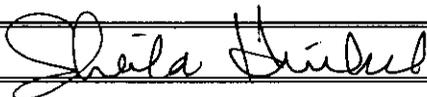
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 7, 2007**

Recorder Job Number: **4566**

Committee Clerk Signature



*WSI inflationary adjustment for injured employees w/long term temp partial disabilities:*

**Tim Wahlin – Staff Council for WFS - In Favor**

**TESTIMONY # 1** *Read testimony.*

Bill is engrossed, so no amendment.

**S Klein:** Can you walk through an example?

**Tim W:** Using the graph, after the 5<sup>th</sup> year, the temp-partial will depend on what the injured worker can work. *Goes over graph on page 2 of testimony and explains bonuses.*

**S Klein:** So what we would be doing then is making a lump sum payment to these workers?

**Tim W:** That's correct.

**Wade Mann – VP of Governmental Affairs of the ND Chamber of Commerce - In Favor**

*Made a comment that they are in favor.*

**Ed Christenson – In Favor**

Bill was brought forward because the lady that brought it in was every time that she would get a raise, her adjustment for WSI would be adjusted, so she would get no raise.

**S Klein:** So they wouldn't be lumped together. *Referring to earlier bill with "6" issues.*

**Ed C:** They deserve their raise.

**David Kemnitz – President ND AFLCIO – *In Favor***

Pleased to get on support on the bill. Done appropriately.

**Motion for a Do Pass from S Andrist**

**Second by S Wanzek**

**Roll vote for a DO PASS ON ENGROSSED HB 1140 – 7-0-0 Passed**

**Carrier: S Andrist**

Q

Date: 3-7-07.

Roll Call Vote: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1140

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Andrist Seconded By Wanzek

| Senators                               | Yes | No | Senators               | Yes | No |
|--|-----|----|------------------------|-----|----|
| Chairman Klein, Jerry                  | ✓   |    | Senator Behm, Art      | ✓   |    |
| Senator Hacker, Nick, VC <del>VC</del> | ✓   |    | Senator Heitkamp, Joel | ✓   |    |
| Senator Andrist, John                  | ✓   |    | Senator Potter, Tracy  | ✓   |    |
| Senator Wanzek, Terry                  | ✓   |    |                        |     |    |
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|  |     |    |                        |     |    |

Total Yes 5 No 0

Absent 0

Floor Assignment Andrist

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

**REPORT OF STANDING COMMITTEE**

**HB 1140, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1140 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1140

**2007 House Bill No. 1140  
Testimony before the House Industry, Business and Labor Committee  
Presented by: Tim Wahlin, Staff Counsel  
Workforce Safety and Insurance  
January 29, 2007**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors I am here to testify on HB 1140 which expands partial disability benefits by creating an inflationary adjustment to long-term temporary partial disability benefit recipients. WSI's Board of Directors has taken a neutral stance on this bill.

This bill originated from testimony provided to the interim Legislative Workers' Compensation Review Committee (LRC). While this is not an LRC bill, it arose out of a set of circumstances presented during an LRC hearing. The sponsors later contacted WSI and requested WSI propose a solution to address the inequities that may occur with the payment of long-term partial disability benefits. HB 1140 is a result of that request.

By way of background, partial disability benefits are designed to compensate an injured employee who is unable to earn the full wages received prior to the work injury. In the event an injured employee is unable to return to full employment, but is able to return to transitional employment, the law requires the employee to return to the employment of which they are capable. WSI is then responsible for paying partial disability benefits based on the difference between what they can earn post-injury and what they were earning prior to the injury.

When temporary partial disability becomes a long-term or permanent benefit, inequities may occur. For example, an injured employee who worked 40 hours per week prior to their work injury can only return to work for a maximum of 30 hours per week post-injury. WSI compensates for a percentage of the lost wages. Over the long term, wages generally increase as a result of cost-of-living adjustments, bonuses, and promotions. As that employee's wages increase, WSI's responsibility for partial disability benefits decreases.

HB 1140 is designed to create an inflationary adjustment following the fifth, full-year of partial disability. As written, this bill contemplates a lump sum payment each year following the fifth, full-year of partial disability reflecting the percent increase in the state's average weekly wage as compared to the total partial disability payments of the preceding year. To further demonstrate the impact of HB 1140, an example using a fictional employee is presented below.

| Eligibility Year  | Annual TPD Payments | Previous Year Inflation Adjustment | Total TPD Payments | SAWW Increase* | Lump Sum Annual TPD Inflation Adjustment |
|---|---------------------|------------------------------------|--------------------|----------------|--|
| <b>Eligibility starts the first July 1st following waiver of 5 year cap</b> |                     |                                    |                    |                |  |
| 1   | 10,000              | 0                                  | 10,000             | 3.9%           | 390                                      |
| 2   | 12,000              | 390                                | 12,390             | 3.9%           | 483                                      |
| 3   | 8,000               | 483                                | 8,483              | 3.9%           | 331                                      |
| 4   | 7,000               | 331                                | 7,331              | 3.9%           | 286                                      |
| 5   | 10,000              | 286                                | 10,286             | 3.9%           | 401                                      |
| 6   | 11,000              | 401                                | 11,401             | 3.9%           | 445                                      |

**\* SAWW Increase based on recent 10 year average**

Finally, included with my testimony is an amendment to fully clarify the applicable class of injured employees encompassed within this bill. The amendment makes clear this benefit excludes injured employees with an uninterrupted benefit stream prior to June 30, 1991. Injured employees in this group are eligible for lifetime benefits and are not subject to the five-year cap on partial disability. Application to this group would further dislocate otherwise comparable classes of injured employees. Consequently, WSI is requesting that this amendment be accepted along with this bill.

Although the number of partial disability cases contemplated by this proposal that extend beyond five years is small, this bill will increase benefits for this class of benefit recipients and serve to correct the inequity that exists today. This legislation is not likely to have a material impact on statewide premium rate and reserve levels.

This concludes my testimony. I would be glad to answer any questions that you might have.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1140**

Page 1, line 7, replace "Beginning" with "This benefit applies only to claims with a date of first disability or date of successful reapplication occurring after June, 30, 1991. For these claims, beginning"

North Dakota AFL-CIO testimony at House I,B&L hearings for January 29 and 31, 2007 on Worker's Compensation legislation.

HB 1140 sponsors—Representative Keiser, Senator Klein  
ND AFL-CIO supports this legislation. It will help a small population of claimants.

Ie: to be eligible for the waiver in 65-05-10 a claimant must –

1. Produce clear and convincing objective medical and vocational evidence of continued need;
2. Continued limits of 28 or fewer hours of work per week, because of their compensable injury;

The cost as stated in WSI's fiscal note is negligible. For instance the existing benefit in 65-05-10 is 66% of the difference between the pre-injury and post-injury wages. An example could be a pre-injury wage of \$12.00 per hour and a post injury wage of \$9.00 per hour. A difference of \$3.00 times .66 equals a benefit of \$2.00 per hour times 28 maximum hours which equals \$56.00 a week. HB 1140 would award a lump-sum per year benefit of the % of the State Average Weekly Wage (SAWW) increase times \$56 times the number of weeks worked, for a maximum in this instance of 56 X say .03% X 52 weeks = \$87.36 lump-sum bonus.



**Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1140  
January 29, 2007**

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic 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 specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. Lists of the specific members and associations are attached to my testimony. As a group we stand in support of HB 1140 and urge a do pass vote from the committee on this bill.

The lump sum inflation adjustment allowed by this legislation is appropriate given the way time and inflation erodes present day dollars. We are pleased that the increased benefit will be extended to workers injured in the past.

Thank you for the opportunity to appear before you today in support of HB 1140. I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007  
Legislative Policy Statements:**

**Beulah Chamber of Commerce - 107**

**Bismarck - Mandan Chamber of Commerce - 1080**

**Cando Area Chamber of Commerce - 51**

**Chamber of Commerce Fargo Moorhead - 1800**

**Crosby Area Chamber of Commerce - 50**

**Devils Lake Area Chamber of Commerce - 276**

**Dickinson Chamber of Commerce - 527**

**Greater Bottineau Area Chamber of Commerce - 153**

**Hettinger Area Chamber of Commerce - 144**

**Langdon Chamber of Commerce - 112**

**Minot Chamber of Commerce - 700**

**North Dakota Chamber of Commerce - 1058**

**Wahpeton Breckenridge Area Chamber of Commerce - 293**

**Watford City Area Chamber of Commerce - 84**

**Williston Chamber of Commerce - 401**

**West Fargo Chamber of Commerce - 400**

**Total Businesses Represented = 7236 members**

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association

**2007 Engrossed House Bill No. 1140**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by: Tim Wahlin, Staff Counsel**  
**Workforce Safety and Insurance**  
**March 7, 2007**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors I am here to testify on Engrossed HB 1140 which expands partial disability benefits by creating an inflationary adjustment to long-term temporary partial disability benefit recipients. WSI's Board of Directors has taken a neutral stance on this bill.

This bill originated from testimony provided to the interim Legislative Workers' Compensation Review Committee (LRC). While this is not an LRC bill, it arose out of a set of circumstances presented during an LRC hearing. The sponsors later contacted WSI and requested WSI propose a solution to address the inequities that may occur with the payment of long-term partial disability benefits. Engrossed HB 1140 is a result of that request.

By way of background, partial disability benefits are designed to compensate an injured employee who is unable to earn the full wages received prior to the work injury. In the event an injured employee is unable to return to full employment, but is able to return to transitional employment, the law requires the employee to return to the employment of which they are capable. WSI is then responsible for paying partial disability benefits based on the difference between what they can earn post-injury and what they were earning prior to the injury.

When temporary partial disability becomes a long-term or permanent benefit, inequities may occur. For example, an injured employee who worked 40 hours per week prior to their work injury can only return to work for a maximum of 30 hours per week post-injury. WSI compensates for a percentage of the lost wages. Over the long term, wages generally increase as a result of cost-of-living adjustments, bonuses, and promotions. As that employee's wages increase, WSI's responsibility for partial disability benefits decreases.

Engrossed HB 1140 is designed to create an inflationary adjustment following the fifth, full-year of partial disability. As written, this bill contemplates a lump sum payment each year following the fifth, full-year of partial disability reflecting the percent increase in the state's average weekly wage as compared to the total partial disability payments of the preceding year. To further demonstrate the impact of Engrossed HB 1140, an example using a fictional employee is presented below.

| Eligibility Year  | Annual TPD Payments | Previous Year Inflation Adjustment | Total TPD Payments | SAWW Increase* | Lump Sum Annual TPD Inflation Adjustment |
|---|---------------------|------------------------------------|--------------------|----------------|--|
| <b>Eligibility starts the first July 1st following waiver of 5 year cap</b> |                     |                                    |                    |                |  |
| 1   | 10,000              | 0                                  | 10,000             | 3.9%           | 390                                      |
| 2   | 12,000              | 390                                | 12,390             | 3.9%           | 483                                      |
| 3   | 8,000               | 483                                | 8,483              | 3.9%           | 331                                      |
| 4   | 7,000               | 331                                | 7,331              | 3.9%           | 286                                      |
| 5   | 10,000              | 286                                | 10,286             | 3.9%           | 401                                      |
| 6   | 11,000              | 401                                | 11,401             | 3.9%           | 445                                      |

\* SAWW Increase based on recent 10 year average

Finally, included with my testimony is an amendment to fully clarify the applicable class of injured employees encompassed within this bill. The amendment makes clear this benefit excludes injured employees with an uninterrupted benefit stream prior to June 30, 1991. Injured employees in this group are eligible for lifetime benefits and are not subject to the five-year cap on partial disability. Application to this group would further dislocate otherwise comparable classes of injured employees. Consequently, WSI is requesting that this amendment be accepted along with this bill.

Although the number of partial disability cases contemplated by this proposal that extend beyond five years is small, this bill will increase benefits for this class of benefit recipients and serve to correct the inequity that exists today. This legislation is not likely to have a material impact on statewide premium rate and reserve levels.

This concludes my testimony. I would be glad to answer any questions that you might have.

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**TESTIMONY OF WADE MANN**  
**North Dakota Chamber of Commerce**  
**HB 1140**  
**March 7, 2007**

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am Wade Mann, V.P. of Governmental Affairs of the North Dakota Chamber of Commerce.

During this legislative session, 16 local chambers of commerce in North Dakota are part of a coalition representing 7,236 business members that support the Legislative Policy Statements of the North Dakota Chamber. As a group we support HB 1140 and request a do pass vote from the committee.

The North Dakota Chamber supports the inflation adjustment created by this bill as an appropriate benefit that should be provided to long-term disabled workers. The consideration of inflation in this type of an award is important to injured employees and is essential to maintaining an equitable yet stable and predictable system.

Thank you for the opportunity to appear before you. I would be happy to answer any questions.

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