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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2292

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2292

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2292**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 22, 2007**

Recorder Job Number: **1600**

Committee Clerk Signature



Minutes:

S Nothing – from Jamestown – Sponsored the bill – In Favor

Covered the bill. If the bill were approved, where would the department be? Why move the Department of Labor, you've got both of them under the governor anyhow. Who would be working for whom? We need an independent office and review.

S Klein: Where does the flow of money come from to staff?

S Nothing: It could be paid from the funds now. We need to do what is within the law.

S Potter: On the fiscal note indicates its coming out of the general fund.

S Nothing: We could do it out of a special fund. It would be a fair conclusion from general fund.

S Andrist: Office of Independent Review, Isn't that off the premises?

S Nothing: Yes it is. The anticipation is that it would move into the Labor department.

Dave Kemnitz – NDAFLCIO – In Favor

TESTIMONY #1 Covered testimony. [7:00m] Covered review of WC Law and Office of Independent Review [4 pages]

S Klein: You know there's a conflict of interest, or you know there's a bias?

D Kemnitz: I don't believe it's a trustworthy as it could be. Clients need to assert themselves. Claimants should be divided.

S Klein: Is that office there now? Where do you go for OIR?

D Kemnitz: In Interiors by France building

S Klein: So it's not co-located with the bureau.

D Kemnitz: It's co-located with some other functioning bureau. [12:00m explains situation] We should go to work for the claimants.

Q?

Sebald Vetter – C.A.R.E. In Favor

OIR office of Independent Review. Gone to the office of independent review He didn't get help, people took notes. [referred to a testifier from earlier bill] They kept asking her, "Why is workman's comp doing this to you?" [example 15:18m] Asked why? This office should be out of the office and not communicate with Workmen's Comp. Office has 4 people getting a good salary for 30 years and we don't get no service out of them. You have to go to the OIF to get paid for your attorney when you go to court. Do we have to have 4 people doing this? If there is a denial, it's always coming back the same way. Percentage is down, we've got one sittin' there with nothin' to do. I suggest the Labor Commissioner look at it.

Daryl _____ - In Favor

Spoke referring to brother's situation. [example 18:13m] Gave example, got a letter from Chuck Hoaker, benefits were denied. He had proved the injury was caused a few years back. Brother was injured on the job, employer, doctor who signed off on medical release lost his license in '99.

Was told they had to be neutral, can help organize the case, but not too much. WSI requires reapplication of benefits, you can challenge in 30 days. The only people who can change things is the legislature. If WSI refuses to look at your case, there is nothing you can do.

S Hacker: In this time frame, '96, when you had the examination, did you know the charges were coming against that doctor?

Daryl: Yes. Had information from medical review and comp filed against him in '94 and another in '99. The doctor didn't contest losing his license and moved to another state. WSI said, "You can't go back on an order"

Leroy Volk – Independent - In Favor

[Gave an example of wife getting hurt. The money came out of the pocket and was supposed to be paid back]

John Smith – Independent - In Favor

Spoke on the word "independent" – you've got Independent medical examiners, you have independent office of independent review. You go through the steps of WSI and then you get denied, you have 30 days to respond, and end up in Independent Review, who pays, who are they? Who pays them, who governs them? Injured claimants that go to the Office of Independent Review, how many have successful overturning of WSI denial of claims. There has to be check & balances. If you find someone to carry the case, the people don't have money to hire. We need to get it under control by someone who is completely unbiased.

Deb Injured RN - In Favor

The evidence submitted by her was accepted by the judge, but not to WSI Workers

Independent Review. The Office Independent Review is an extension of the process WSI provides. Department of Independent Review, just to promote stopping the continuing case

said I am a fraud. When we are low income, we work, that's how we survive. Work is my identity. I want to work If this system were working, I'd be working. I just wanted help ND has eliminated the "fraud surveillance unit" for social services because "there is no fraud in ND." So why is so much pressure put on us about fraud? I never knew there was a fraud unit. I never thought my employer would call the fraud hotline. I am an injured worker who worked in a facility for the disabled that originated in the state of ND and received NO help from the system. DAY NADA I want rehabilitation. And I've not found any help from the state **WHAT EVER!**

I went to Job Service I talked to Vo Rehab, they told me to go home and practice typing. I have nerve damage in both hands. This will be my last time to speak to them. I hope it goes underneath the Governor, but I have great reservations about that. What we need as injured workers is a group. We don't have time to talk. I wasted 5 years of my life, you have wasted \$1000's of dollars on surveillance and 100's of hours on trying to prove that I'm a malingerer and 3 IME's. There is a point where you have to think if it is not worth it to stay in ND; this is not why I moved home. We are a rural state, have low salaries, but good people. Workers are a commodity. The number one export of this state is workers, and nobody seems to have the ability to help us.

Q?

Dan Finneman – In Favor

[shared an example on experience 39:55]

There needs to be checks and balances. We cannot be a flock of sheep.

PPI – Melissa Rae in Minot. WSI doesn't include this part. Doctors should be able to provide their own review. WSI should be there to protect and hope they have the integrity to prevent the bill too big and do what they have to do. This is no way for an entity to run. I learned to

forgive them for what they did. When money means more than the people of ND, that's pretty sad.

Q? F? OPPOSITION

Ann Green Day – In Opposition

TESTIMONY # 2 [goes over testimony 45:50m]

Responds to Kemnitz reporting in WSI audit, the report is specific to audit committee.

[5136m] pg 5 – first page

S Hacker: The office of OIR, why and when was it created?

S Klein: 1995

S Hacker: The employees of OIR, "performance pay" – how is that performance structured?

How are they paid?

A Jorgenson: The "pay for performance" system that is in place at WSI and OSI are based on merit, annual performance, goal setting and making and achievement.

S Hacker: On the performance side, are they keeping claims down?

S Klein: Part of performance, how much they are cracking down on spending.

A Jorgenson: Cannot speak specifically to OIR.

S Andrist: You give us a lot of technical reasons... but you haven't addressed the role. The '92 and '95 controversy, helped get rid of "bad stuff," then reacted by firing, you're spending so much of our resources on attorney feeds. They say, "We want to keep independent, so you don't have to get in with attorneys." Now we're getting evidence into in our office about not being totally independent. I'd like to hear some reasons why you want it might not be a good idea to make it a little more independent as an alternative. What would be bad about that concept?

A Jorgenson: When someone comes over and reviews a file, it is because of the history.

[examples why claims are viewed 56:00m approx]

S Andrist: [Trying to understand why making it a little more independent would destroy.] Why would the reviewer be jeopardized just because they were more independent and came out of the commissioners office.

A Jorgenson: It is not currently broken, it's working.

S Klein: Scenario – how do I wind up at the OIR?

A Jorgenson: There is a notice of decision, the decision, person is not happy they can go to the office OIR, and the attorney fees will be paid. [explains process]

S Klein: If there are 4 people sitting there, are they busy?

A Jorgenson: There are FTE's that are currently in the office. They get a number of requests.

For fiscal year 2007 [?] – they had 104 requests.

S Klein: ...and these would take a bit of time. There is no charge to that at this point?

A Jorgenson: That's correct. No charge to the injured worker. The OIR enjoys the luxury of being able sift through and analyze files.

S Klein: As we work through the interim that got high grades in being very helpful.

S Hietkamp: The individual that worked on "these folks" case, felt was an advocate for them. Obviously you went through the process of fairness. You're telling me you can't see how an individual that has to go to the OIR knowing that is still under WSI, feel as though they're being looked at independently? [Ann's face turns red]

My question is, put yourself in the shoes of the injured worker who's forced to go into the office of IR that's under the control of WSI. Wouldn't you want them to have someone else review for them.

A Jorgenson: If I were an injured worker, I would be hard-pressed to come up with better help.

S Behm: OIR has to answer to WSI. Boss is over head all the time.

A Jorgenson: Employees answer to the audit committee and the Board of Directors.

S Klein: Was it just a few years ago when we moved you? Weren't they in the same building at one point?

A Jorgenson: Initially we were in Front Street.

S Potter: You said in 2007 there were 104 cases.

A Jorgenson: July 1, 2005 – June 30 '06

S Potter: The phrase "independent" loses some merit if NOT independent. S Andrist, asked a question, if there are technical problems. You said "it's not broken."

A Jorgenson: There is no data to suggest that the OIR would achieve any greater level if they went off-site.

S Potter: Saying we were able to solve problems through litigation, we've read that the way you're doing that is communicating with the injured worker. What are the numbers?

S Klein: Ann can provide a written information.

A Jorgenson: I'd be happy to provide that.

S Hacker: Looking for information on performance measures of all employees. Director of OIR, I would like a report on what their performance measures are and who they report to.

A Jorgenson: OIR, report to direct to audit committee.

S Hacker: Members of the audit committee too.

Bill Shalob – ND Chamber of Commerce - In Opposition

TESTIMONY #3 Covered the testimony

S Heitkamp: I'm trying to figure out is why the NDCC would be afraid to allow Labor Dept. to review this. Question, is there some fear that they would advocate more strongly for these workers, why would you be afraid?

B Shalob: I don't think they're afraid of anything. We thought/feel, that if you want an Ind. Review, but it should be solved internally if you can.

S Heitkamp: If workers don't believe in OIR, shouldn't we just get rid of it?

B Shalob: I guess we'd have to leave you to vote.

S Potter: How does the Interim Committee review OIR.

B Shalob: _____

S Klein: This committee will only hear claimants who have appealed, gone through the entire process, exhausted cases.

S Heitkamp: There's nothing you can do with any case that came before us

Q? Opposition?

Lisa McEvers – Labor Commissioner - Neutral

Here as a resource. The fiscal note is speculative. If we look at the pace, we have none, if you look at facilities management, there is no room in the capitol. If you review the note, it is the note to see what the cost to house it is and cost to move. If we find space with independent company, may be \$13.00 sq. foot and we need 240 sq ft for each staff person, that's \$74,880 year. We subtracted out of that the amount that we currently pay for rent, \$67,254.

S Klein: So to co-locate we'd have to move you all off of here because we couldn't get them up there. [1:17:46m] You would have to go with them.

L McEvers: OIR gets legal advice from WSI. Attorney salaries are \$68,000-\$90,000 with 27% benefits making it \$75,000 -\$190,000 with salary and benefits.

Department's position is neutral having confidence to put in with the Labor Dept. What happens to the employee staff, how would I look after them? If I have staff that I'm supposed to supervise, how do I provide for them?

S Heitkamp: When you put the fiscal note together to review the bill, "13-14" on the bill, you're getting money, it's going to you. If you're getting the employees, you're getting money as well. [review bill for examples]

L McEvers: On line 12, says the must be co-located w/Labor Commission, so that is where the money is going, to be housed together in the same building.

S Heitkamp: Co-located can mean a lot of things. You can have a desk there. Co-located, just means you are in charge.

S Klein: It has come to the legislature to get appropriations to shuffle money.

L McEvers: The Attorney General, suggested it is not a good thing. I don't really know what this means. I don't know how it works for me to share someone else's resources and someone else's staff.

S Klein: You're not eyeing that billion dollars as trying to expand your office.

L McEvers: We're a very small department we have to rely on IT every time our computer goes haywire. WIT has an IT staff, but are they going to help my staff?

S Hacker: You don't have the capability to performance pay.

L McEvers: All of the employees right now are classified employees.

Q? Opposition?

Cabe Jorgenson, OIR – In Opposition

S Klein: We hear that your group becomes biased because of your relationship with WSI. Do you feel there is bias?

C Jorgenson: There was a work advisory program to provide additional review of service. No requirement to go to OIR, believe it is a fulfilling requirement.

S Heitkamp: Noted that the comments from the people were 100% positive about the office.

Q?

ADJOURNED

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2292 B**

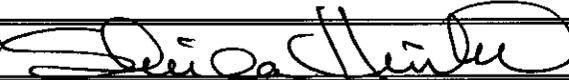
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1750**

Committee Clerk Signature



Minutes:

S Andrist: Seems like 50-50 to me, like the commissioner of labor wants to make it quite complicated. We had testimony that the office is working quite independently anyway.

I would move a "do not pass" because seems like it creates too many logistical problems.

S Klein: is there a 2nd?

S Hacker: Second

S Potter: Wondering if the senator has a problem with the "co-located" language

I thought that was unnecessary language. It is actually independent of WSI, it can stay right where it is today, at no expense to the state as long as it is under the purview under the department of Labor and not under WSI. I'd like to play with language with an amendment to try to save the bill.

S Klein: Senator would you withdraw?

S Andrist: I would, yes. I think it needs quite a bit of work. It should specify, have language in there that nothing needs to change at all, except who's the boss.

S Klein: We need to work on the amendments.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2292 C**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 7, 2007**

Recorder Job Number: **3027**

Committee Clerk Signature



Referring to co-location:

S Potter: [presented amendments to senate bill no. 2292] 70743.0101

S Heitkamp: it is taking care of the problem whether they need to be co-located.

Motion to move the amendment: S Potter

Second by Heitkamp

S Heitkamp: The co-location, is it necessary that Labor Commission took, view is fair, she said "Gotta move em over, where are we going to put 'em?" was not a legitimate concern.

This addresses that concern.

S Potter: [expressed his tourism experience with co location]

Vote for Amendment: 6-0-1 passed

S Klein: Don't see how it will make a difference if same staff is connected to the main office.

Understand the claimant's case.

S Heitkamp: I think you're wrong. Who will they answer to? Right now Chuck Hoker who's a good man and does a good job answers to Sandy Blunt in the end, the director of the very agency that he's trying to go out and advocate for a whole nother group against. The deck is stacked perception wise and if we can fix that, to take away to know that they are independent it is a good bill.

S Potter: This is strictly a matter of what's appropriate. The bill says "all employees" go into the Dept. of Labor. It can't possibly be independent if it's actually within the agency. It seems it is inappropriate it was ever there, appropriate to move it out and have the Labor Commissioner seems like the right spot to me.

S Klein: We made some strides to create the office of Independent Review, used to be in the same building, our attempt was to have the perception was not in the same "den of thieves" and have more confidence. To have more of a comfort level when going through the process. Some would say we have too many workers in the office of independent review. I do respect Chuck Hoker and he has a lot of respect among the workers.

S Heitkamp: Somewhere along the line, this legislative session, we need to walk away sending a message of change, whether it be small or incremental has not faired well. I'm sorry for bringing up the audit, but if I came with an audit like that to the board of directors I used to work for, and say, we need to shoot down anyone who wants to change anything. I would expect to get fired the next day. We've got to come out of this Legislative session with some changes, to say there clearly was a recognition that we're TRYING something, I'd like to be moving rather than locked in cement.

Motion to DO PASS by S Heitkamp

Second by S Behm

Vote for DO PASS AS AMMENDED 4-2-1 [neg. Klein, Wanzek]

Carrier: S Potter

FISCAL NOTE
Requested by Legislative Council
02/12/2007

Amendment to: SB 2292

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	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$231,480	\$840,839	\$241,059	\$874,473
Appropriations	\$0	\$0	\$0		\$0	

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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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).*

SB 2292 would transfer OIR from WSI to the Dept of Labor (DOL). The legislative intent is to grant the labor commissioner supervisory and fiscal authority over OIR, with WSI to provide the funding. It is presumed employees of OIR would become classified employees.

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.*

It is presumed that Section 2 necessitates adding an attorney to OIR's staff and providing on-going desktop support to replace that advice and support which would no longer be provided by WSI.

Detailed expenditure estimates are provided below in Question 3B.

Assumptions include:

- * OIR staff would continue to be located in their present leased space. Funding for the lease costs is currently included in the OIR budget from WSI and would continue in the future.
- * An attorney would need to be added to the OIR staff.
- * WSI would continue to provide OIR staff with any needed support for and access to their claims system at no cost, but would discontinue the "regular" (non-claims system) IT desktop support services it currently provides through its internal IT personnel.

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.*

N/A - This bill would have no effect on revenues.

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.*

Attorney salary and benefits – \$228,600 (per biennium).

Additional IT desktop support costs to replace those that WSI currently provides to OIR through their own IT personnel – \$2,880 (per biennium).

Transfer of OIR 4 FTE from WSI to the DOL at current salary & benefits plus 4% increase for each year of the biennium for classified employees. \$737,799 in salaries and benefits for 2007-09 and \$767,311 for 2009-11. Current operational budget for OIR for two years: \$103,040. Anticipated operational budget for 2009-11: \$107,162. These

costs are not currently in DOL's appropriation.

Costs for 2009-11 biennium include the addition of \$235 for 4% annual inflationary increases on IT costs + \$7,344 for 4% annual pay increases for attorney position + \$2,000 in associated fringe.

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.*

SB 2292 indicates WSI shall fund OIR in accordance with legislative appropriation. This fiscal note identifies those items not included in current funding of the OIR and estimates the projected salaries, benefits and operational expenses that would be transferred from WSI to DOL to fund the operations of OIR.

The DOL's appropriation in the Executive Budget does not include funding for the costs associated with SB 2292.

Name:	Lisa K. Fair McEvers	Agency:	ND Department of Labor
Phone Number:	(701)328-2660	Date Prepared:	02/12/2007

FISCAL NOTE
 Requested by Legislative Council
 01/18/2007

Bill/Resolution No.: SB 2292

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	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$321,859	\$0	\$311,147	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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).*

SB 2292 would move the Office of Independent Review from WSI to the Department of Labor. The fiscal impact is associated with collocating OIR and the Department of Labor, the addition of an attorney to OIR's staff, and on-going IT desktop support.

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.*

Section 1 of this bill requires the collocation the Department of Labor and the OIR. We believe that Section 2 necessitates adding an attorney to OIR's staff and providing on-going desktop support to replace that which would no longer be provided by WSI.

Detailed expenditure estimates are provided below in Question 3B.

Assumptions include:

- * Sufficient office space for collocation is not available at either the State Capitol or OIR's current leased space, therefore, alternative office space would need to be obtained.
- * An attorney would need to be added to the OIR staff.
- * WSI would continue to provide OIR staff with any needed support for and access to their claims system at no cost, but would discontinue the "regular" (non-claims system) IT desktop support services it currently provides through its internal IT personnel.

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.*

N/A - This bill would have no effect on revenues.

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.*

Lease of office space for Dept of Labor staff - \$67,454 (per biennium)

Attorney salary and benefits - \$228,600 (per biennium)

Moving costs - \$8,300 (one time)

IT costs associated with move - \$14,625 (one time)

Additional IT desktop support costs to replace those that WSI currently provides to OIR through their own IT personnel – \$2,880 (per biennium)

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.*

The bill indicates the WSI "shall fund the office of independent review in accordance with legislative appropriation." This fiscal note identifies those items we understand are not included in current funding of the OIR.

The Department of Labor's appropriation in the Executive Budget Recommendation does not include funding for the costs associated with SB 2292. Therefore, additional funding as detailed above would be necessary.

Name:	Lisa K. Fair McEvers	Agency:	ND Department of Labor
Phone Number:	(701)328-2660	Date Prepared:	01/19/2007

Date: 1-24-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2292

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By ANDRIST Seconded By HACKER

Withdrawn

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein			Senator Arthur Behm		
Vice Chair Nicholas Hacker			Senator Joel Heitkamp		
Senator John Andrist			Senator Tracy Potter		
Senator Terry Wanzek					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

J.P.
2-2-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2292

Page 1, line 10, overstrike "The office of independent review"

Page 1, line 12, remove "must be collocated with the office of"

Page 1, line 13, remove "the labor commissioner."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2292: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2292 was placed on the Sixth order on the calendar.

Page 1, line 10, overstrike "The office of independent review"

Page 1, line 12, remove "must be collocated with the office of"

Page 1, line 13, remove "the labor commissioner."

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2292

