

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday, October 22, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Rick Berg, Bill Amerman, Donald L. Clark, Mark A. Dosch, Glen Froseth, Darrell D. Nottestad, Don Vigesaa; Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein, Terry M. Wanzek

Members absent: Representatives Tracy Boe, Jim Kasper, Gary Sukut, Elwood Thorpe, Steve Zaiser

Others present: See [Appendix A](#)

It was moved by Representative Nottestad, seconded by Senator Behm, and carried on a voice vote that the minutes of the previous meetings be approved as distributed.

PHARMACY AND PHARMACISTS REGULATION STUDY

Chairman Berg called on Mr. Gordy Smith, State Auditor's office, for comments regarding the amount of unrestricted equity held by occupational and professional licensing boards. He submitted written information ([Appendix B](#)).

Representative Berg said a licensing board serves two roles--to regulate the occupation or profession and to maintain the ongoing operations of the entity. He said occupational and professional licensing boards face the risk of the high cost of litigation or disciplinary proceedings and the Legislative Assembly may need to consider establishing a separate pool of funds accessible by occupational and professional licensing boards to be used for litigation and disciplinary expenses. Under such an arrangement, he said, each board would collect only the amount of fees needed to cover the expenses of the ongoing operations of the board.

In response to a question from Representative Dosch, Mr. Smith said no board has a financial deficit.

Representative Berg said the information provided by Mr. Smith indicates that the amount of equity held by the State Board of Pharmacy is large, but the number of years of operating expenses in unrestricted net equity held by that board is not significantly different than most of the other boards.

WIRELESS INDUSTRY STUDY

At the request of Chairman Berg, committee counsel reviewed a bill draft [\[90348.0100\]](#) relating to providing a sales and use tax exemption for

equipment used in telecommunications infrastructure development.

In response to a question from Senator Hacker, committee counsel said a fiscal note has not been prepared for the bill draft.

Representative Berg said the intent of the bill draft is to encourage development of wireless towers and investment in the wireless industry in the state. Although the bill draft may be somewhat symbolic, he said, adoption of the sales and use tax exemption would let the wireless industry know that the state is seeking and encouraging investment in the state.

In response to a question from Senator Horne, Representative Berg said the bill draft does not contain an expiration date. He said the proposal would expand the economic development umbrella to exempt sales and use taxes on infrastructure development in the telecommunications area. He said investment in the state by wireless providers will ultimately generate revenue for the state.

Senator Wanzek said there likely would be no loss of current revenue to the state. He said the future impact of the proposal would be to encourage investment in the state.

It was moved by Senator Behm, seconded by Representative Froseth, and carried on a roll call vote that the bill draft relating to establishing a sales and use tax exemption for equipment used in telecommunications infrastructure development be approved and recommended to the Legislative Council. Representatives Berg, Amerman, Clark, Dosch, Froseth, Nottestad, and Vigesaa and Senators Behm, Hacker, Horne, Klein, and Wanzek voted "aye." No negative votes were cast.

PHARMACY AND PHARMACISTS REGULATION STUDY

At the request of Chairman Berg, committee counsel reviewed a bill draft [\[90299.0200\]](#) that reduces the license fee for pharmacists to \$100 and eliminates the statutory connection between the State Board of Pharmacy and the North Dakota Pharmaceutical Association. Committee counsel said the bill draft was revised after the last meeting of the committee to add two members to the State Board of Pharmacy--a pharmacy technician and a public member.

In response to a question from Representative Froseth, committee counsel said the provision in

North Dakota Century Code (NDCC) Section 43-15-12 relating to the submission of a report to the Governor is likely similar to other boards and commissions in that the board has a discretion whether to submit the report.

In response to a question from Representative Amerman, committee counsel said including a member of the public on a regulatory board is not uncommon.

Senator Hacker noted that the word "professional" on line 14 of page 1 of the bill draft should be "profession".

In response to a question from Senator Behm, Representative Berg said the idea of adding a member of the public to the State Board of Pharmacy originated with the board. He said that individual would represent consumers and would not be affiliated with any medical group.

It was moved by Representative Froseth and seconded by Representative Nottestad that the Legislative Council staff be requested to revise the bill draft to make the submission of a biennial report by the State Board of Pharmacy mandatory.

Mr. Howard C. Anderson, Jr., Executive Director, State Board of Pharmacy, said although the submission of a biennial report to the Governor is discretionary, the board always submits a biennial report to the Governor and the Secretary of State. Regardless of whether the statutory change is made to make the report mandatory, he said, the board will continue to submit the biennial report. **With the consent of the second, Representative Froseth withdrew his motion.**

Mr. Anderson said the reference to a licensed pharmacy technician should be changed to a registered pharmacy technician.

In response to a question from Senator Horne, Mr. Anderson said he believes Utah is the only state that allows a pharmacy technician to be a voting member of the pharmacist licensing board. He said the idea of including a member of the public was brought forward so that the board could have an outside perspective and consumers would be represented on the board. He said the State Board of Medical Examiners has two members of the public on its board. He said the provision that the public member may not be affiliated with any group or profession that regulates or provides health care would prevent spouses of pharmacists from serving on the board as a public member.

It was moved by Representative Nottestad, seconded by Senator Klein, and carried on a roll call vote that the bill draft relating to the membership of the State Board of Pharmacy and the separation of the board and the North Dakota Pharmaceutical Association, as revised to reflect the changes proposed by Senator Hacker and Mr. Anderson, be approved and recommended to the Legislative Council. Representatives Berg, Amerman, Clark, Dosch, Froseth, Nottestad, and Vigesaa and Senators Behm, Hacker, Horne, Klein,

and Wanzek voted "aye." No negative votes were cast.

WORKFORCE SAFETY AND INSURANCE REVIEW

At the request of Chairman Berg, committee counsel distributed a copy of the [Audit Follow-Up Report of the Status of Recommendations from Workforce Safety & Insurance](#) and a copy of the [Executive Summary of the 2008 Performance Evaluation Report of Workforce Safety and Insurance](#).

Chairman Berg called on Ms. Becky Keller, Fiscal Analyst, Legislative Council, for a summary of the two reports. She said the audit followup report reviewed the status of the 60 recommendations contained in the October 26, 2006, performance audit of Workforce Safety and Insurance (WSI). Of the 60 recommendations, she said, the followup report indicates that 19 recommendations have been fully implemented, 36 recommendations have been partially recommended, 3 recommendations have not been implemented, and 2 recommendations were no longer applicable. She said the report indicated that WSI agreed with the status of all the recommendations in the followup report, except seven. With respect to the report of the performance evaluation, which was issued October 8, 2008, she said, WSI concurred with all but one recommendation. She said the performance evaluation considered 9 elements of WSI's operations and identified 46 recommendations for improvement.

Representative Berg said WSI has been the subject of at least 14 audits, reviews, and evaluations over the last few years. He said the biennial performance evaluation provides an outside look at how the agency is doing its job. He said information he obtained from WSI indicates that employees of WSI have spent approximately 9,000 hours during the last year in responding to audits, reviews, and evaluations. He said the amount of time spent is nearly equal to five full-time employees working for an entire year. He said he would like to see the performance audit focus on a handful of key indicators and measurements.

At the request of Chairman Berg, committee counsel distributed a bill draft [\[90359.0100\]](#) that lists several key performance measurements to be included in the biennial performance evaluation of WSI. Committee counsel said the bill draft requires the performance evaluation to include consideration of whether claims are being handled fairly and efficiently; whether safety and loss prevention programs are effective in reducing claims and the severity of claims; whether injured workers, employers, and service providers are satisfied with the services of the organization; whether litigation rates and the number of contested claims are appropriate as compared to other workers' compensation programs or systems; and whether premiums are appropriate and reserve levels are adequate.

Chairman Berg said the items included in the bill draft would be regular issues considered in the performance evaluation and would set benchmarks and regular measurements to determine whether WSI is operating efficiently and as intended.

Senator Klein said the items included in the bill draft appear to address many of the elements highlighted in the recent performance evaluation. In addition, he said, the bill draft adds the component of examining the number of contested claims.

In response to a question from Representative Amerman, committee counsel said the amendment to NDCC Section 65-02-30 on lines 8 and 9 of page 1 of the bill draft, which changes "workforce safety and insurance" to "workers' compensation" is to correct a reference that was mistakenly changed when the name of the agency was changed to Workforce Safety and Insurance. He said the reference is to clarify that the firm conducting the evaluation must have expertise in workers' compensation practices. He said it would be inappropriate to say that the firm must have expertise in Workforce Safety and Insurance practices.

Senator Horne said the examination of the number of contested claims does not appear to include a consideration of the nature of the claims.

Representative Berg said the performance evaluation can be more expansive than the issues included in the bill draft. He said these items are listed so that the performance evaluations will regularly examine those issues. He said the bill draft does not limit the scope of the performance evaluation, and other areas not identified in statute may be included within a performance evaluation.

Committee counsel said the use of the term "including" indicates that the list of items to be considered is not exclusive to those items within the list.

Senator Behm said he has concerns with the reference in the bill draft relating to addressing the number of contested claims and litigation rates.

Senator Klein said auditors suggest looking at measurements from other states for comparison purposes. He said obtaining benchmark measurements is important in comparing with other states and looking at progress from year to year.

Senator Wanzek said he is unaware of any other state agency that has been scrutinized more thoroughly than WSI. He questioned what part of the agency has not been audited or reviewed. Even without the language in the bill draft, he said, WSI has been subject to comprehensive reviews.

Representative Berg said the bill draft is an attempt to examine what type of information is important for legislators so that legislators are able to determine if the agency is performing well. He said he would like to see trends in workplace injuries added to the list of measurements to be considered in performance evaluations.

In response to a question from Senator Horne, Senator Klein said the issue in the State Auditor's

office audit followup which is related to the payment of a severance for the former executive director of WSI was addressed at the Legislative Audit and Fiscal Review Committee meeting.

Mr. Smith said if it is determined that the severance payment was inappropriate, he believes the state may be able to collect the inappropriate payment from the former executive director. He said the State Auditor requested an Attorney General's opinion to determine if the payment was appropriate. If the payment is determined by the Attorney General to be not legal, he said, the individuals who signed the agreement may have been acting outside the scope of their duties.

At the request of Chairman Berg, committee counsel reviewed a bill draft [\[90184.0300\]](#) to provide that the level of financial reserves plus available surplus of WSI may not exceed 150 percent of the actuarially established discounted reserve, and exclude from the calculation of available surplus funds obligated to specific programs or projects pursuant to a directive or specific approval by the Legislative Assembly.

Representative Berg said the objective of the bill draft is to simplify the process of determining the appropriate reserve level of WSI. He said the first version of the bill draft did not include unrealized gains in the calculation of available surplus. However, he said, the bill draft was revised to keep unrealized gains within the calculation of available surplus.

At the request of Chairman Berg, committee counsel reviewed a bill draft [\[90241.0400\]](#) to require WSI to establish premium rates annually on an actuarial basis. He said the bill draft provides that the statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.

Representative Berg said many of the problems experienced by the state workers' compensation program before 1995 were due to the fact that premium rates were set based upon political concerns rather than actuarial recommendations. If initiated measure No. 4 passes and the Governor appoints the executive director of WSI, he said, there could be more political pressure exerted in the premium setting process. He said the bill draft would address that issue and require that the premium rates be within five percentage points of the recommendation from the actuary.

In response to a question from Representative Amerman, Representative Berg said if the initiated measure is adopted, the WSI Board of Directors remains in place. He said legislative action may be necessary to address issues that were not addressed by the initiated measure. He said he is concerned with political influence resulting in inconsistency in the treatment of injured workers. He said there are numerous anecdotes and stories regarding the impact of political influence on the claims process from the 1980s and early 1990s. He said that type of influence

provides inconsistency and affects the morale of claims handlers.

At the request of Chairman Berg, committee counsel reviewed a bill draft [\[90306.0200\]](#) to provide a procedure under which an employee of WSI may file a statement with the director of WSI if that employee believes that a decision regarding a claim for benefits has been inappropriately made due to political influence. He said the bill draft requires the director of WSI to investigate the statement and submit a report regarding the investigation to the WSI Board of Directors and to the Legislative Council's Workers' Compensation Review Committee.

In response to a question from Representative Amerman, committee counsel said the decision by an employee to file a report of inappropriate influence would be a subjective decision made by the employee.

Representative Berg said the intent of the bill draft is not to discourage legislators from becoming involved in a constituent's claim, but an attempt to provide a mechanism if an employee of WSI believes that inappropriate pressure has been placed on someone at WSI to treat a claim differently. He said it is wrong to attempt to exert pressure on employees of WSI to deviate from claims handling procedures and legal requirements.

Senator Wanzek said it appears the bill draft would apply only to a decision to deny or extend benefits.

Representative Berg said the biggest danger he sees in placing the agency under the control of the Governor is having the Governor able to hire and fire the director and use that authority to influence claims decisions. He said a director who is subject to political influence can pass that type of influence down through the claims process to protect the director's position. He said the idea of the bill draft is to keep elected officials from crossing a line that involves claims decisions.

At the request of Chairman Berg, committee counsel presented a document entitled [Summary of Injured Employee Contacts - Industry, Business, and Labor Committee](#). Committee counsel said in addition to visiting with the 57 individuals who contacted the Legislative Council office regarding concerns with WSI, he met with Mr. Sebald Vetter at the request of Chairman Berg. He said Mr. Vetter had indicated at a meeting of this committee that he had boxes of files of hundreds of injured workers who were dissatisfied with the handling of their claims by WSI. He said he met with Mr. Vetter at Mr. Vetter's office and requested Mr. Vetter to attempt to identify three to five individuals who would sign releases so that the committee could obtain additional information regarding their concerns. He said Mr. Vetter indicated that he would be willing to do that, but did not provide any additional information.

Representative Berg said he gets very upset when people tear down an agency or a process with false information or false accusations. He said the Legislative Assembly sets policy and establishes the

benefit levels for workers' compensation claimants. He said the Legislative Assembly is the entity that holds the ultimate responsibility if people were not receiving benefits when they should have been receiving benefits. He said there is a need to restore public confidence in the workers' compensation system in the state and to sort the facts from fiction so that solutions can be developed for problems that have been identified. One of the major concerns he has experienced, he said, is the lack of signed releases from individuals who have expressed concerns with the agency. He said the media and others need to understand the importance of getting both sides of the story. Because representatives of WSI are not permitted to comment regarding a claim without a signed release, he said, people were able to make statements regarding the handling of claims which were not always accurate.

Chairman Berg said he asked people with concerns with WSI to contact him and the Legislative Council office to discuss those claims. He said he spent a tremendous amount of time visiting with injured workers. Of the 57 individuals who contacted the Legislative Council office, he said, only 17 signed releases. He said the claims of those 57 individuals often go back a number of years. He said he is unaware of any other effort to reach out for public comment that has been as extensive as this effort. He said this committee has spent a significant amount of time discussing the claims of the 17 individuals who signed releases and the clear result is that there are a significant number of difficult cases. However, he said, he did not see any case in which the injured worker was ignored by WSI. He said the news story from a television station in Fargo portrayed three injured workers who claimed to have been mistreated by WSI. He said he and the Legislative Council staff attempted to contact those three individuals and Senator Klein was able to visit with the spouse of one of them. He said the story that was presented to the public was inaccurate. He said it was important to move forward and sort through the clutter to get to the key issues so that the state can remain the best place for businesses and employees.

Chairman Berg said the committee granted full access to Mr. Vetter and asked Mr. Vetter to identify the cases that he believed were mishandled. He said the offer of the committee to address some of those claims has gone unanswered for six months. He said the individuals who signed releases showed significant courage in allowing the committee to examine their claims. He said he believed the committee handled the process in a dignified manner. He said the committee has done an excellent job of focusing energies on the issues that need to be addressed and attempting to restore public trust.

Representative Froseth said the individuals who signed releases should be commended and the committee owes them a reply that summarizes the committee's actions so that they do not feel they have been left hanging.

Chairman Berg said he hopes the members of the committee can remain in contact with those individuals to keep them updated with respect to the actions of the committee and the Legislative Assembly.

Senator Wanzek said some of the individuals who contacted the Legislative Council office have appeared before the Workers' Compensation Review Committee and have had the opportunity to have a more detailed review of their concerns. He said it is important to remind the individuals that the committee cannot change the decision of WSI but may be able to address broader concerns with state laws.

Chairman Berg said his concern was to examine whether the cases were handled consistent with state law. He said it has become clear that WSI has not totally ignored the law in addressing claims. Of all the claims reviewed by the committee, he said, not one was found to have been handled in a manner inconsistent with state law.

Representative Nottestad said he has had concerns with respect to this process giving injured workers false hope regarding their claims. He said he has visited with employees of WSI regarding the need to have WSI recognize that many injured workers are not able to fully understand the process and procedures when filing a claim. He said it is important for the injured workers to know what is expected of them and to fully understand their rights and obligations.

In response to a question from Representative Clark, committee counsel said he visited with Mr. Vetter at Mr. Vetter's office, but had no way to verify that Mr. Vetter had files containing the records of hundreds of workers who have had problems with WSI. He said Mr. Vetter showed him several boxes and file cabinets, but would not reveal the contents of those boxes and cabinets due to confidentiality issues. He said he requested Mr. Vetter to obtain releases from a few of the individuals who have had problems with WSI so that the committee could take a closer look at those claims. However, he said, Mr. Vetter has not responded to that invitation.

In response to a question from Representative Berg, Mr. Bruce Furness, Interim Executive Director and CEO, Workforce Safety and Insurance, said if the bill draft relating to the reserve level of WSI were approved, WSI would be within the allowed limits as of June 30, 2008. On that date, he said, the reserve level of the agency would have been at approximately 146 percent of the actuarially established discounted reserve if the money allocated for scholarships, the safety program, and the computer conversion project were excluded. He said the 146 percent level would include unrealized capital gains and the assets associated with the WSI building. He said the level would be significantly lower now due to the decrease in the market over the last few months.

Representative Dosch said he is concerned with not excluding unrealized gains from the calculation in

part because of the significant fluctuations in the market.

Mr. Furness said the unrealized gains of WSI decreased by approximately \$50 million in one year. He distributed a document ([Appendix C](#)) that details the net assets of WSI as of June 2008.

In response to a question from Senator Hacker, Mr. Furness said approximately \$46 million of WSI assets are committed pursuant to legislatively authorized or mandated programs. He said the bill draft would clarify the questions raised by the State Auditor with respect to the appropriate level of reserve and the calculation of the available surplus.

Representative Berg said WSI paid dividends to premium payers to attempt to move the surplus level below the 140 percent statutory cap. He said the bill draft should clarify and simplify the process and increase the long-term security of the reserves.

In response to a question from Representative Berg, Mr. Furness said WSI recently received a response to a request for proposals for reinsurance which suggested that the reserve cap be placed at 150 percent.

In response to a question from Senator Wanzek, Mr. Furness said the amount of unrealized gains fluctuates greatly. He said the agency has been using year-end estimates in determining the reserve amount.

It was moved by Representative Dosch, seconded by Representative Vigesaa, and carried on a roll call vote that the bill draft relating to the allowable amount of financial reserves of WSI be approved and recommended to the Legislative Council. Representatives Berg, Clark, Dosch, Froseth, Nottestad, and Vigesaa and Senators Behm, Hacker, Horne, Klein, and Wanzek voted "aye." Representative Amerman voted "nay."

In response to a question from Representative Berg, Mr. John Halvorson, Workforce Safety and Insurance, said actuarial services for WSI are contracted pursuant to a bidding process. He said the agency has used the same actuary since the early 1990s. He said most actuaries belong to a national association and an actuarial society. He said actuaries are required to follow certain standards to assure appropriate actuarial decisions.

In response to a question from Representative Amerman, Mr. Halvorson said WSI has approximately 140 rate classes. He said the bill draft relating to the setting of premiums would require an examination of a statewide rate indication rather than individual rate levels. Under the current process, he said, the actuary makes a recommendation and the board of directors sets rates based upon the recommendation of the actuary. In the late 1980s and early 1990s, he said, the premium structure was inadequate. He said the process used now is much more sophisticated.

Representative Berg said in the years 1985-86 and 1986-87, there was approximately an \$80 million to \$90 million gap between claims and premiums each year. Because of that gap, he said, significant rate

increases were needed in the early 1990s. Those rate increases, he said, contributed to the closing of some businesses and hurt injured workers because there was no guarantee that the fund would be solvent to cover future costs and there was no money available to increase benefits. He said the bill draft will prevent going back to having political decisions guide ratemaking. He said the bill draft ensures solvency of the fund and prevents insolvency problems like those experienced in West Virginia and Nevada.

Representative Froseth said the Legislative Assembly is still working to address the problems experienced during the 1980s and early 1990s.

Representative Berg said one of the problems with keeping premiums artificially low is that later employers are paying for the savings that benefited earlier employers.

It was moved by Senator Klein, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft relating to the calculation of WSI premiums be approved and recommended to the Legislative Council. Representatives Berg, Clark, Dosch, Froseth, Nottestad, and Vigessaa and Senators Behm, Hacker, Horne, Klein, and Wanzek voted "aye." Representative Amerman voted "nay."

Mr. Rob Forward, Workforce Safety and Insurance, said the intent of the bill draft that provides a reporting mechanism for inappropriate influence over claims decisions is commendable. However, he said, the process, which places the onus on an employee to report what the employee believes is inappropriate influence, may not work well in practice. He said the agency has a tracking system for constituent requests that could be the basis for an effective process to monitor outside influence. He said this committee witnessed the reluctance of WSI employees to appear in front of legislative committees when the employees of WSI were invited to provide input at an earlier meeting. He said the reporting of inappropriate influence probably should be removed from the political arena and possibly could be tied to the performance evaluation of WSI. He said a record of outside contacts could be kept and reviewed during the performance evaluation to determine if the claims were handled consistently and according to law.

Representative Berg said the objective of the bill draft is to provide a simple process that would encourage employees to report inappropriate influence and to protect the employees.

In response to a question from Representative Berg, Mr. Forward said when someone contacts the agency with respect to the handling of a claim, that individual is directed through the constituency services process, which provides a buffer for the claims staff. He said he does not believe that an employee would feel comfortable reporting undue influence to the director and have that report go to the board of directors and the Workers' Compensation Review Committee.

In response to a question from Representative Amerman, Representative Berg said the bill draft does not define which officials could be putting undue influence on an employee. He said the idea is to address anybody that has the ability to influence decisions.

Representative Clark said he is concerned with unintended consequences and allowing individuals to make complaints and cause trouble where no issues are present. He said there has been a pattern of employees at WSI doing things to cause trouble, such as going through other employees' desks.

Senator Wanzek said the intent of the bill draft is to ensure that decisions are made in accordance with the law.

Representative Berg said the purpose of the bill draft is to provide a mechanism for employees to report what they believe is inappropriate influence from politicians in the event the agency director is placed under the supervision of the Governor.

Representative Nottestad said he sees a need for the bill draft, but is not sure if the bill draft is the correct approach.

Senator Behm said he is uncomfortable with the bill draft.

Senator Horne said he has concerns with respect to employees being reluctant to report and whether an employee would be protected for making reports.

Representative Vigessaa said the bill draft provides a mechanism for employees to bring forward issues and concerns.

In response to a question from Senator Wanzek, committee counsel said the basic premise of the bill draft is based upon the assumption that an individual would have some degree of influence over a decision of an employee at WSI. He said it is unlikely that a school board member or a city council member would have any degree of influence over the decisions of WSI employees.

It was moved by Senator Klein and seconded by Senator Wanzek that the bill relating to the reporting of inappropriate influence be approved and recommended to the Legislative Council.

Representative Dosch said the bill draft should move forward, but it needs some work. He questioned whether it would be more appropriate to require an employee to report any incident of undue influence. He said that may take some pressure off an employee.

With the consent of the second, Senator Klein withdrew his motion.

In response to a question from Representative Berg, committee counsel said the bill draft relating to the WSI performance evaluation could be amended to include within the areas of the performance evaluation an examination of political influence on premium and claims decisions.

Representative Berg said including an examination of political influence in the performance audit would allow WSI to set up a structure similar to its constituency request reporting process which could be

the basis for a review during the performance evaluation. He said the ultimate goal is to avoid a trend of having the Governor or some other official contacting WSI to impact decisions of claims handlers.

Senator Behm said including political influence within the performance evaluation would seem to work better and provide more flexibility for WSI.

In response to a question from Representative Amerman, Representative Berg said he does not want to discourage legislators or other officials from becoming involved in helping an injured worker work with WSI. However, he said, if a pattern of inappropriate influence is detected through the performance evaluation, the issue can be addressed. He said there was a significant amount of anecdotal evidence of political influence being exercised during the 1980s and early 1990s over individual cases. He said morale at the agency was low and he does not want to see that problem develop again.

It was moved by Senator Wanzek, seconded by Senator Hacker, and carried on a roll call vote that the bill draft relating to the WSI performance evaluation be revised to include within the issues examined in a performance evaluation trends in workplace injuries and inappropriate political influence being exerted over premium and claims decisions, and that the amended bill draft be approved and recommended to the Legislative Council. Representatives Berg, Clark, Dosch, Froseth, Nottestad, and Vigesaa and Senators Behm, Hacker, Klein, and Wanzek voted "aye." Representative Amerman and Senator Horne voted "nay."

At the request of Chairman Berg, committee counsel distributed a concurrent resolution draft [\[93016.0100\]](#) to provide for a Legislative Council study of the governance structure of WSI and a determination of the feasibility and desirability of mutualization of WSI.

In response to a question from Representative Amerman, Representative Berg said the concurrent resolution is not intended to lead toward mutualization of WSI. However, he said, he is concerned with the level of services provided by WSI to injured workers and businesses. He said the experience in Nevada showed that labor unions favored mutualization, and satisfaction of services increased after mutualization. He said Representative Nottestad has highlighted one of the gaps in the current system--an injured worker is required to contact and deal with a state agency but may not be able to fully understand and follow the process. He said the employees at WSI are required to follow procedures that are common practice for

insurance companies, but the injured worker sometimes does not follow the process and does not have somebody like an insurance agent who is helping overcome the communication barrier. Under a mutualized system, he said, a business will have an insurance agent to work on its behalf and help a claimant with a claim. He said it always is important to continue reviewing: the governance structure of WSI to look for areas upon which to improve.

Senator Wanzek said he has viewed WSI as an insurance company. He said the state is best served if the agency is governed like a business with politics removed from the process. He said the stakeholders should be involved in decisionmaking.

In response to a question from Senator Horne, Representative Berg said WSI has been told to act like a private company, but has been criticized in many respects for doing that. He said a significant amount of time has been spent discussing the management of the agency and very little discussion has been devoted to examining the benefits paid. If the agency were mutualized, he said, the Legislative Assembly could direct its focus toward benefits.

It was moved by Senator Wanzek, seconded by Representative Vigesaa, and carried on a roll call vote that the concurrent resolution draft to provide for a study of the governance of WSI be approved and recommended to the Legislative Council. Representatives Berg, Amerman, Clark, Dosch, Froseth, Nottestad, and Vigesaa and Senators Behm, Hacker, Horne, Klein, and Wanzek voted "aye." No negative votes were cast.

It was moved by Senator Klein, seconded by Senator Wanzek, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts and concurrent resolution draft recommended by the committee and to present the report and the recommended bill drafts and concurrent resolution draft to the Legislative Council.

It was moved by Representative Nottestad, seconded by Senator Klein, and carried on a voice vote that the committee be adjourned sine die. No further business appearing, Chairman Berg adjourned the meeting at 1:30 p.m.

John Bjornson
Committee Counsel

ATTACH:3