1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2342

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2342

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
2	x	x	4800-end, 0-2900
Committee Clerk Signature			

Minutes:

Senator Mutch opened the hearing on SB2342. All senators were present.

Senator Thompson introduced SB2342. His testimony is included.

Terry Curl testified in support of SB2342. His testimony is included.

Dick Bergstead testified in support of SB2342.

Serlad Vedder, CARE, testified in support of SB2342.

Reagan Puffal testified in support of SB2342. His testimony is included. Senator Heitkamp asked him what type of an injury, aside from backs, workers need to be subjected to in order to qualify as 16% disability. Reagan Puffal said that he would get together with his internal PPI auditor.

Senator Mutch concluded the hearing on SB2342.

Committee discussion took place on February 3, 1999.

Senator Heitkamp motioned for a do pass on the amendments to SB2342, Senator Thompson seconded his motion. The motion was successful with a 6-1-0 vote.

Senator Sand motioned for a do not pass with amendments committee recommendation. Senator Klein seconded his motion. The motion was successful with a 4-2-1 vote.

Senator Krebsbach will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: ____________ Amendment to: SB 2342

Requested by Legislative Council Date of Request: 2-5-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:						
Expenditures:						

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

a. For rest of 1997-99 biennium: ____________

b. For the 1999-2001 biennium: ____________

c. For the 2001-03 biennium: ____________

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: 02-08-99

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
<u>SUMMARY OF ACTUARIAL INFORMATION</u>

***BILL DESCRIPTION*:** **Permanent Partial Impairment**

***BILL NO*: SB 2342 w/ Amendment**

***SUMMARY OF ACTUARIAL INFORMATION*:** The Workers Compensation Bureau, with the assistance of 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.

AMENDMENT: The proposed amendment changes the impairment threshold required for permanent partial impairment award eligibility from 6% to 11% and changes the number of weeks awarded for impairments falling between 10% and 30%. The remainder of the schedule stays intact.

Rate Level Impact: The bill with the proposed amendment will generate an increase in the rate level of approximately **2.0%** from the level that would otherwise be required.

Reserve Level Impact: Should the proposed law be intended to apply to impairment evaluations determined after the effective date of legislation, this benefit change will increase required reserve levels for injuries occurring prior to the effective date of the law. The actuary's calculations suggest that the increase in discounted reserves could fall in a range between **$8 and $10 million** dollars.

***DATE*: 2-3-99**

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2342 Amendment to: ______

Requested by Legislative Council Date of Request: 1-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

   Narrative:

   See attached.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:						
Expenditures:						

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

   a. For rest of 1997-99 biennium: ______

   b. For the 1999-2001 biennium: ______

   c. For the 2001-03 biennium: ______

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: 01-22-99

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: **Permanent Partial Impairment**

BILL NO: **SB 2342**

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of 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 would reduce the impairment threshold required for permanent partial impairment award eligibility from 16% to 6%. It is believed the proposed schedule is intended to increase the number of weeks awarded for impairments falling on or between the 6% and 33% impairment levels. The remainder of the schedule would stay intact.

FISCAL IMPACT:

The proposed legislation is unclear in two areas. First, the proposed bill does not specify whether the proposed schedule would apply to new injuries occurring after the effective date of legislation or to all impairment evaluations conducted after the effective date of legislation. Second, the proposed bill does not specify the number of weeks to be awarded between the 6% and 10%, 10% and 15%, 15% and 20%, 20% and 25%, and the 25% and 30% impairment levels. Due to the confusion, we identified three different interpretations with the hope that one of the interpretations would be in agreement with the intent of the proposed legislation. Each of these interpretations was then priced two different ways: 1) assuming the proposed legislation would apply only to new injuries occurring after the effective date of legislation, and 2) assuming the proposed bill would apply to all impairment evaluations conducted after the effective date of legislation. Although the rate level impact would remain the same under the two assumptions, the difference exists in the reserve level impact. If the bill is intended to apply only to new injuries, there is no reserve impact. If the intent of the proposed bill is to apply to future evaluations in existing claims there is a significant reserve impact. The interpretations are as follows:

Interpretation 1: The categories of impairment that are not specified within the proposed schedule would be pro-rated within each interval. The impact of this interpretation is as follows:

Rate Level Impact: The proposed legislation will generate an increase in the rate level of approximately **5.8%** from the level that would otherwise be required.

Reserve Level Impact: Assuming the proposed bill would apply only to future claims there would be no reserve level impact.

Should the proposed law be intended to apply to impairment evaluations determined after the effective date of legislation, this benefit change will increase required reserve levels for injuries occurring prior to the effective date of the law. The actuary's calculations suggest that the increase in discounted reserves could fall in a range between **$31 and $32 million** dollars. These reserve estimates may be somewhat low due to the difficulty associated with quantifying the number of claims that may emerge from prior coverage periods. However, the actuary believes that such costs could exceed **$5.0 million** for each year since SB 2202 (1995 legislation) became effective. This could increase the reserve estimates provided above by another **$15.0 million**.

SB 2342 (continued)

Interpretation 2: The categories of impairment that are not specified within the proposed schedule would be awarded equally within each interval (i.e. 6% to 9% impairments awarded 20 weeks, 10% to 14% impairments awarded 30 weeks,...). The impact of this interpretation is as follows:

Rate Level Impact: The proposed legislation will generate an increase in the rate level of approximately **5.5%** from the level that would otherwise be required.

Reserve Level Impact: Assuming the proposed bill would apply only to future claims there would be no reserve level impact.

Should the proposed law be intended to apply to impairment evaluations determined after the effective date of legislation, this benefit change will increase required reserve levels for injuries occurring prior to the effective date of the law. The actuary's calculations suggest that the increase in discounted reserves could fall in a range between **$29 and $30 million** dollars. These reserve estimates may be somewhat low due to the difficulty associated with quantifying the number of claims that may emerge from prior coverage periods. However, the actuary believes that such costs could exceed **$5.0 million** for each year since SB 2202 (1995 legislation) became effective. This could increase the reserve estimates provided above by another **$15.0 million**.

Interpretation 3: The categories of impairment that are not specified within the proposed schedule would go without an award. Although this doesn't seem logical the impact of this interpretation is as follows:

Rate Level Impact: The proposed legislation will generate an increase in the rate level of approximately **3.1%** from the level that would otherwise be required.

Reserve Level Impact: Assuming the proposed bill would apply only to future claims there would be no reserve level impact.

Should the proposed law be intended to apply to impairment evaluations determined after the effective date of legislation, this benefit change will increase required reserve levels for injuries occurring prior to the effective date of the law. The actuary's calculations suggest that the increase in discounted reserves could fall in a range between **$16 and $17 million** dollars. These reserve estimates may be somewhat low due to the difficulty associated with quantifying the number of claims that may emerge from prior coverage periods. However, the actuary believes that such costs could exceed **$3.5 million** for each year since SB 2202 (1995 legislation) became effective. This could increase the reserve estimates provided above by another **$10.5 million**.

***DATE*: 1-21-99**

Date: 2/3/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2342

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

☐ Subcommittee on ______
or
☐ Conference Committee

Legislative Council Amendment Number ______

Action Taken AMEND 0101

Motion Made By HEITKAMP. Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch		X			
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment ______

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

Date: 2/3/99

Roll Call Vote #: 2

SR231897

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2342

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

☐ Subcommittee on ______

or

☐ Conference Committee

Legislative Council Amendment Number ______

Action Taken DO NOT PASS AS AMENDED

Motion Made By SAND Seconded By KLEIN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp		X			
Senator Mathern					
Senator Thompson		X			

Total (Yes) 4 No 2

Absent 1

Floor Assignment ~~[illegible]~~ KREBSBACH

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

REPORT OF STANDING COMMITTEE

SB 2342: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2342 was placed on the Sixth order on the calendar.

Page 1, line 6, after the second "the" insert "award must be determined based on the", overstrike the third "the" and insert immediately thereafter "of whole body", and overstrike "bears to"

Page 1, line 7, overstrike "total impairment must be determined" and overstrike "the first applicable whole"

Page 1, line 8, overstrike "body impairment" and insert immediately thereafter "the following"

Page 1, line 9, replace "five" with "ten"

Page 1, after line 9, insert:

"For eleven to fourteen percent impairment 10 weeks"

Page 1, line 10, remove the overstrike over "~~For~~" and insert immediately thereafter "fifteen to", remove the overstrike over "~~sixteen percent impairment~~", after "~~5~~" insert "15", and remove the overstrike over "~~weeks~~"

Page 1, line 11, remove the overstrike over "~~For seventeen~~" and insert immediately thereafter "to eighteen", remove the overstrike over "~~percent impairment~~", after "~~5~~" insert "20", and remove the overstrike over "~~weeks~~"

Page 1, line 13, remove the overstrike over "~~For nineteen~~" and insert immediately thereafter "to twenty", remove the overstrike over "~~percent impairment~~", after "~~10~~" insert "25", and remove the overstrike over "~~weeks~~"

Page 1, line 15, remove the overstrike over "~~For twenty one~~" and insert immediately thereafter "to twenty-two", remove the overstrike over "~~percent impairment~~", after "~~15~~" insert "30", and remove the overstrike over "~~weeks~~"

Page 1, line 17, remove the overstrike over "~~twenty three~~", replace "six" with "to twenty-four", and overstrike "20" and insert immediately thereafter "35"

Page 1, line 19, remove the overstrike over "~~For twenty five~~" and insert immediately thereafter "to twenty-six", remove the overstrike over "~~percent impairment~~", after "~~25~~" insert "40", and remove the overstrike over "~~weeks~~"

Page 1, line 20, overstrike "For", remove "ten", overstrike "percent impairment", and overstrike "30 weeks"

Page 1, line 21, remove the overstrike over "~~For twenty seven~~" and insert immediately thereafter "to twenty-eight", remove the overstrike over "~~percent impairment~~", after "~~35~~" insert "45", and remove the overstrike over "~~weeks~~"

Page 1, line 22, overstrike "For", remove "fifteen", overstrike "percent impairment", and overstrike "40 weeks"

Page 1, line 24, after "For" insert "twenty-nine to", remove the overstrike over "~~thirty~~", and remove "twenty"

Page 2, line 1, remove the overstrike over "~~thirty-one~~" and remove "twenty-five"

Page 2, line 2, remove the overstrike over "~~thirty-two~~" and remove "thirty"

Page 2, remove line 3

Page 2, line 4, remove the overstrike over "~~thirty-three~~" and remove "thirty-two"

Page 2, remove line 5

Renumber accordingly

1999 TESTIMONY

SB 2342

Senator Vern Thompson
District 12
111 East B Street
Minnewaukan, ND 58351-0025

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Minority Caucus
Chairman
COMMITTEES:
Industry, Business
and Labor
Transportation

SB 2342

Mr. Chairman and members of the Committee:

I've introduced SB 2342 on behalf on workers in North Dakota. The bill deals with the Permanent Partial Impairment awards. Present law sets forth a schedule of % of impairment, number of weeks, and average weekly wage in the state in determining wage loss benefits.

This bill will change a minor changes on the lower percent categories while keeping the top constant. With the workers compensation fund is now solvent, I feel it would be a good time to make these small changes. 1998 ended with $27 million in surplus and a contingency reserve of $115 million.

Mr. Chairman and members of the Committee, there are other people hear to testify who are very familiar with this subject and ask that you allow them to testify and they would be happy to answer any of your questions.

Terry Curl will testify next, he has a chart and more information to give you on this bill.
I respectfully ask your favorable consideration on SB 2342.

Thank you.
Sen. Vern Thompson

Senate Bill No. 2342

Fifty-sixth Legislative Assembly
Before the Senate Industry, Business, and Labor Committee
January 27, 1999
Testimony of Reagan Pufall
Regarding Permanent Impairment Awards

Mr. Chairman, Members of the Committee:

My name is Reagan Pufall. I am the Chief Operating Officer and General Counsel for the Workers Compensation Bureau and I am here to testify in opposition to 1999 Senate Bill No. 2342.

1. BACKGROUND

A. Other Benefits

The workers compensation system provides a number of benefits in addition to permanent partial impairment (PPI) awards. These include:

1. Medical benefits – Payment for medical treatment of work injuries with no deductible, no co-pays, and no maximum cap on total costs.
2. Wage-loss (disability) benefits – Tax free benefits equal to two thirds of the injured worker's gross wage before the injury, which is generally about 90% of the pre-injury take home pay. Supplemental benefits are provided to injured workers with dependent children.
3. Death benefits – Provides a monthly benefit to the surviving spouse and dependent children, as well as benefits for funeral costs and initial incidental expenses. Also makes scholarships available to the surviving spouse and dependent children.
4. Vocational Rehabilitation – A vocational rehabilitation specialist works with the injured worker to identify the best option for a quick, safe return to employment. When necessary, full payment for tuition is provided for up to two years of retraining, along with a living allowance.

B. North Dakota's Unusual System

North Dakota is unusual, in that a PPI award in this state does not have any connection to lost wages, and has become a separate, additional award that is paid in addition to wage-loss benefits. Most states have what is called a PPD award, meaning permanent partial disability. A PPD award is generally just one component of wage loss benefits, rather than being a separate, additional award.

Benefit systems vary from state, but the general approach is as follows: Temporary total or partial disability benefits are paid until the injured worker reaches "maximum medical improvement," which means the worker has received medical treatment and recovered as much as possible from the injury. If the worker is left with a permanent physical impairment, at that point the PPD award is calculated, generally by using a formula that includes the worker's physical disability and the wages the worker was earning before the injury. Once the PPD award is made, disability benefits end. In other words, the PPD award is used to close out the monthly temporary disability benefit. The PPD award is supposed to compensate for all future wage loss after maximum medical improvement.

However, in North Dakota, since the 1974 decision of the North Dakota Supreme Court in the Buechler case, claimants can receive a PPI award and continue to receive monthly disability benefits. In Buechler, the court held that a claimant who was receiving permanent total disability benefits could also receive an award for permanent partial disability. As a result, **North Dakota is one of only seven states that continue to pay disability benefits after the claimant has received a PPI award.**

It is important to remember that PPI awards and wage-loss benefits are two completely different things. **Any worker who is disabled from work for more than five days because of a work injury is eligible for monthly wage-loss benefits regardless of whether the worker receives a PPI award.** The PPI award is an additional benefit, paid in a single lump-sum, that is paid in addition to any wage loss benefits. Furthermore, **claimants can receive PPI awards even if they never miss more than five days of work, and therefore are ineligible to ever receive wage-loss benefits.**

C. 1989 Legislation

Another turning point for PPI awards in North Dakota came in 1989. **In 1989, legislation was enacted almost doubling the dollar value of PPI awards.** This substantial increase, coming in the same year that the Bureau's massive unfunded liability was discovered, proved to have disastrous consequences for years to come. The impact of the 1989 increase can be seen in the following table:

Fiscal Year	# of PPI Awards	$ Awarded
87-88	294	876,568.50
88-89	415	1,232,444.10
89-90	487	2,656,242.30
90-91	789	4,779,835.52
91-92	807	6,213,863.01
92-93	1,038	7,872,455.64
93-94	1,360	9,084,313.90
94-95	1,391	7,746,750.24
95-96	1,436	8,558,917.07
96-97	764	3,977,235.54
97-98	292	816,435.50

The dramatic growth in PPI awards following the 1989 legislation was one of the main causes of the financial crisis facing the workers compensation fund in the early 1990's. As the charts attached to this testimony reflect, the discovery and growth of a massive unfunded liability led to years of double digit premium rate increases. These premium rate increases, totalled more than 300% over a five year period. The unfunded liability also made it necessary for restrictions to be placed on certain workers compensation benefits in the 1993 and 1995 legislative sessions. No one wants to repeat that experience

D. 1995 Legislation

One of the bills enacted 1995 completely overhauled the system for awarding PPI benefits. The 1995 law increased PPI awards for the more severe impairments of greater than a 50% whole body impairment, reduced awards for impairments under 50%, and provided that no award would be paid for an impairment of 15% or lower. The table above reflects the impact of the 1995 law, in reducing the number and the dollar value of PPI awards.

The 1995 law was referred to the voters of North Dakota, who affirmed the new law by a vote of 72,207 to 37,346 on June 11, 1996. Under Article III, section 8 of the North Dakota Constitution, a law approved upon referral cannot be repealed or amended for 7 years except by two-thirds votes in both the House and the Senate. Therefore, **SB 2342 will require a two-thirds vote in both legislative chambers in order to be enacted.**

E. PPI Benefits Must Be Increased in a Careful, Prudent Manner

The workers compensation fund is now in much better financial health than was true several years ago. After years of operating with an unfunded liability, the fund is now solvent, ending fiscal year 1998 with a $27 million surplus and a contingency reserve of $115 million. That is a $382 million improvement since fiscal year 1993, when the fund was burdened with a $240 million unfunded liability and had no contingency reserve.

However, while these hard-won achievements represent a dramatic improvement in the fund's financial condition, further improvement is vital to the long-term health of the fund. Currently, the Bureau discounts its future liabilities by 6% when calculating its reserves. In other words, it is assumed that the Bureau's financial assets will earn 6% each year into the future. In the insurance industry, future liabilities typically cannot be discounted, and in addition, insurers carry a capital and surplus account based on a percentage of their annual premium income. The Bureau believes it should meet private industry standards. As an example, for the Bureau to achieve fund solvency without discounting, plus establish a reserve equal to 100% of its annual premium income, the Bureau would have to further improve its current financial position by approximately $376 million.

Therefore, now that the fund is no longer in a state of financial crisis, the Bureau will pursue a strategy in which future improvements in its financial condition will be allocated to three areas:

1. Continue to build up the fund's financial reserves;
2. Propose legislation containing targeted increases in benefits for injured workers.
3. Grant further premium rate decreases to employers;

Any decreases in premium rates, and any increases in benefits, must be done prudently and carefully, to avoid re-creating the financial crisis of the early 1990's. **In particular, any increase in PPI awards must be done with particular caution, to avoid repeating the mistake made in 1989, when:**

1. **An unwise benefit increase led to;**
2. **unexpected skyrocketing PPI costs that;**
3. **contributed to a financial crisis which;**
4. **led to a number of benefits being restricted in 1993 and 1995.**

2. SB 2342

There are two major problems with SB 2342: it costs too much and it accomplishes too little.

A. SB 2342 Costs Too Much

It is difficult to estimate the cost of this bill, because the way it is drafted creates substantial uncertainty about how it would be applied if enacted into law. For example, the bill provides that a 6% impairment equates to 20 "weeks" and that a 10% impairment is equates to 30 "weeks" (Recall that PPI awards are actually paid in a single lump sum, not over a period of weeks. The use of the term "weeks" is just a holdover from the early history of the PPI law.) However, the bill does not specify how many "weeks" are awarded for 7, 8, or 9 percent impairments. There are two likely interpretations:

1. That all impairments from 6% through 9% equate to 20 weeks, all impairments from 10% through 14% equate to 30 weeks, etc.
2. That values are to be interpolated between the specified percentages, so that 7% would equate to 22.5 weeks, 85 to 25 weeks, 9% to 27.5 weeks, etc.

The fiscal note provides costs for both of these interpretations, as well as for the unlikely interpretation that impairments of 7, 8, and 9 percent receive no award at all.

This bill also does not contain an effective date. It is not clear whether the law is meant to apply only to injuries that occur after the effective date of the law or to all impairment evaluations performed after the effective date of the law, even for injuries that occurred before that date. In the past the North Dakota Supreme Court has ruled that the law in effect at the date of the evaluation governs, but this is currently being challenged.

Using the range of costs for the two most likely interpretations of the benefit schedule, and assuming the Supreme Court will stand by its previous rulings on the application of PPI laws, **this bill would increase rates by between 5.5% and 5.8%, and would have a negative impact on fund reserves of between $34 million and $47 million.**

To put this cost into perspective, consider the cost of the package of benefit increases prepared by the Bureau. The Bureau is supporting a number of other bills in this legislative session to provide increased benefits and services to injured workers. These bills include:

> SB 2214 – Increases the maximum wage-loss benefit rate from 100% to 110% of the state's average weekly wage, making it one of the highest maximum rates in the country. Also shortens the waiting period for supplemental benefits from 10 years to 7 years.
>
> HB 1283 – Doubles the lump-sum benefit and the maximum scholarship award for the spouses and dependent children of workers who die as a result of work injuries. Increases the benefit paid to cover funeral costs. Makes the higher survivors benefit that was enacted in 1997 available to the spouses and dependent children of workers who died before 1997. Makes scholarships available to injured workers in exceptional circumstances.
>
> HB 1296 – Roughly doubles the Bureau's spending and staffing in Safety and Loss Prevention to protect the health of North Dakota's workers.
>
> HB 1325 – Doubles the size of the Workers Adviser Program, to provide information and assistance to injured workers.
>
> HB 1332 – Increases the wage-loss benefit rate for seasonal workers during the first four weeks of disability.
>
> HB 1422 – Increases awards for all injured workers with qualifying permanent impairments.

The total fiscal impact of all these benefit and service increases together is increased premium rates of 3.5% to 4% and a negative impact on reserves of $14 million to $16 million.

Therefore, **the cost of SB 2342, which is targeted only at providing increased lump-sum awards to those workers with less severe permanent impairments, would outweigh the cost of all the Bureau's benefit bills put together, which provide substantial increases in vital benefits to a wide variety of injured workers.** This is not an effective use of the available financial resources, particularly when you consider the unusual role of PPI awards in the North Dakota workers compensation system. Put frankly, PPI awards are simply not the highest priority area for benefit increases. Consider that wage-loss benefits are crucially important to provide needed financial support to the injured worker's family while the worker is unable to earn income due to physical disability. Medical benefits are absolutely necessary to allow the injured worker to promptly receive vital medical care for the work injury without having to fear being financially buried by medical bills. Death benefits provide assistance when it is needed the most: when a family is going through the financial and emotional hardship of losing a breadwinner and a loved one. Vocational rehabilitation helps the worker accomplish what the majority of workers want most of all: to get past the injury and return to productive employment.

These are the core benefits embodied in the original intent of the workers compensation system. Historically, it was never intended that the workers compensation system provide benefits for non-financial losses, as PPI awards now do in North Dakota. PPI awards provide important and useful additional assistance to workers with serious injuries, particularly for those workers with severe impairments of over 50%. However, it would not make sense to divert all available financial resources into increasing PPI awards for the less severe impairments as this bill does. Favorable consideration of this bill would endanger the viability of the package of benefit increase bills the Bureau has carefully drafted during the past six months. It would not be financially responsible to enact those bills in addition to this one.

B. SB 2342 Accomplishes Too Little

It would be irresponsible to simply increase the value of PPI awards without also addressing the other serious issues that exist in the current PPI statute. These issues are addressed in HB 1422, but not in SB 2342. The best example is the issue regarding the use of outdated methods to evaluate impairments.

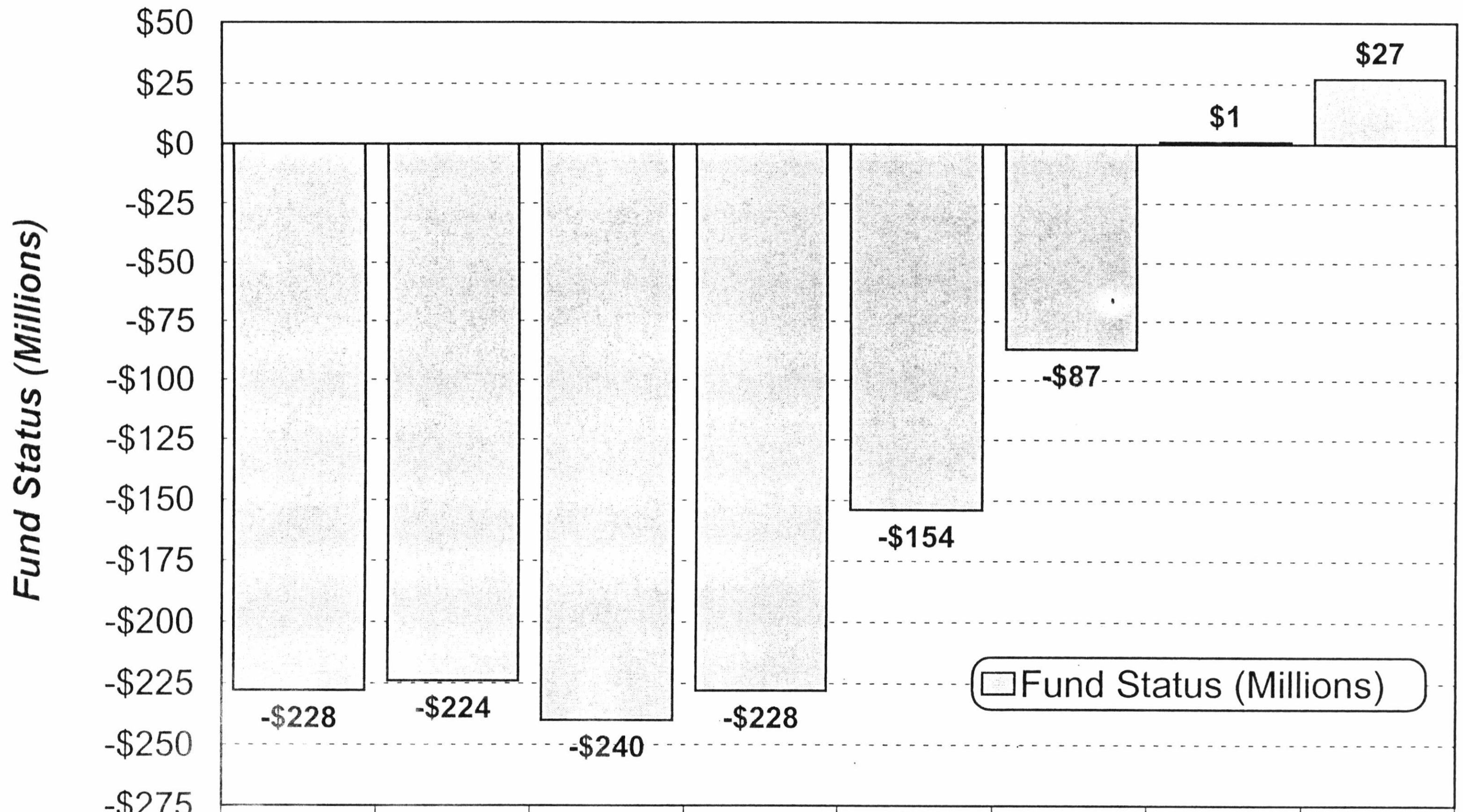
By law, evaluations of permanent impairment are conducted according to the procedures provided in the American Medical Association Guides to the Evaluation of Permanent Impairment ("the Guides"). In 1995, the Legislative Assembly enacted a law requiring that "a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation..." However, the North Dakota Supreme Court subsequently ruled in the McCabe case that it was illegal for the Bureau to obey that statute. As a result, the Bureau cannot use newer, updated versions of the Guides as they are published. The Bureau must continue to use whatever version of the Guides were in place when the PPI law was most recently amended, even if new editions make substantial improvements. HB 1422 solves this problem, but SB 2342 does not address it at all. As a result, injured workers in North Dakota will be stuck with the version of the Guides that existed in 1996 (when the PPI law was affirmed in the referral vote) while the medical community and the rest of the country moves ahead with improved Guides as they are published.

3. CONCLUSION

SB 2342 diverts enormous financial resources away from needed improvements in core benefits, and does not address significant issues regarding PPI awards. The Bureau suggests that HB 1422 presents a better balance of prudent increases in PPI awards and needed reforms to the current PPI law. Therefore, we respectfully request that this committee recommend a "do not pass" on SB 2342.

NDWCB Fund Status

by Fiscal Year

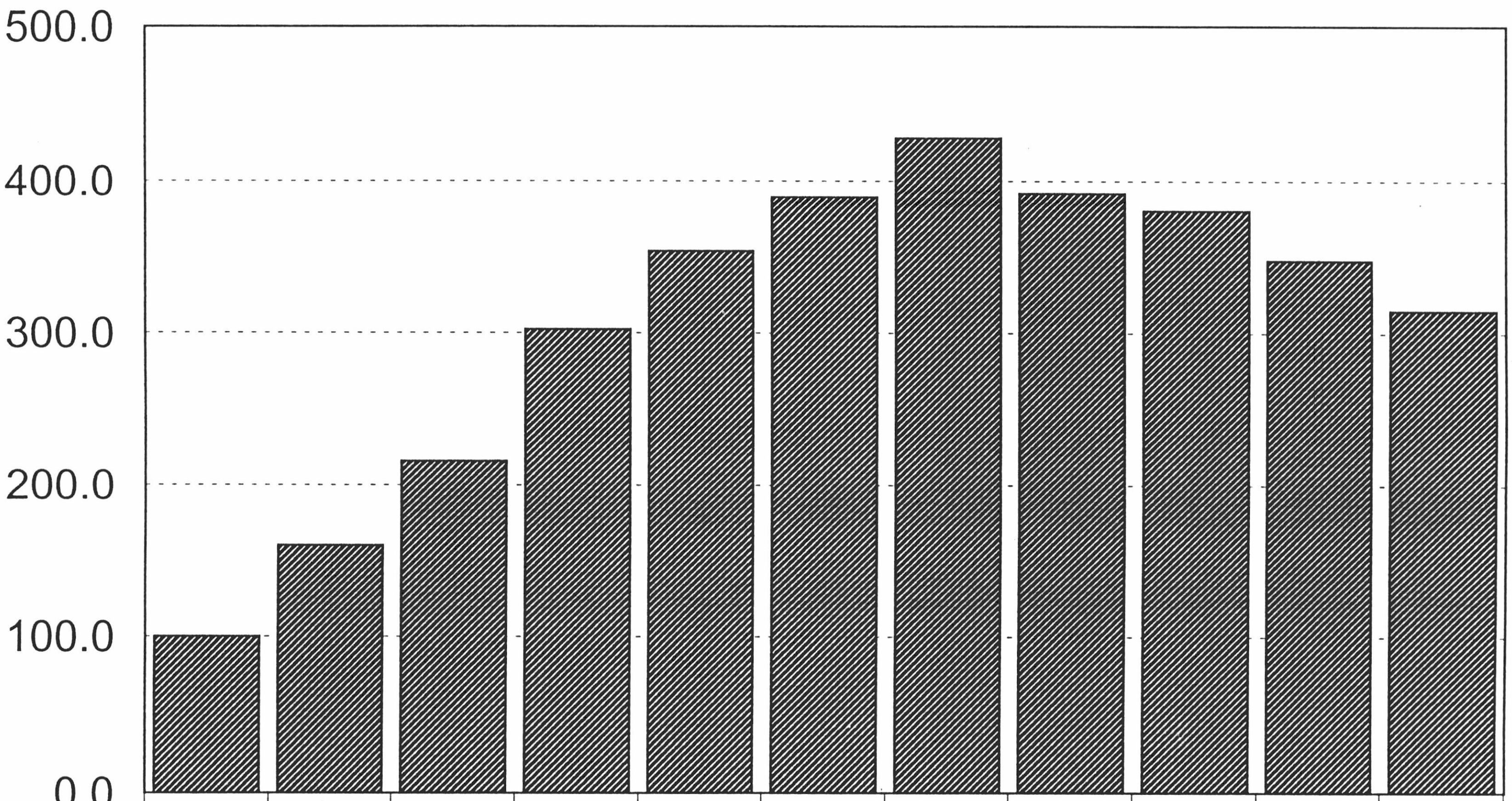


	FYE 1991	FYE 1992	FYE 1993	FYE 1994	FYE 1995	FYE 1996	FYE 1997	FYE 1998*
Fund Status (Millions)	-$228	-$224	-$240	-$228	-$154	-$87	$1	$27

**the fund status as of June 30, 1998 includes a $115 million contingency reserve*

NDWCB

Rate Change History



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Base	100.0	160.0	216.0	302.4	353.8	389.2	428.1	391.7	380.0	347.7	315.0
Rate Change		60.0	35.0	40.0	17.0	10.0	10.0	-8.5	-3.0	-8.5	-9.4

Base Year 1988 = 100

TIME LOSS PAYMENT CALCULATOR 218 - PRESS ENTER OR PF1 TO CONTINUE
WKEP 00000000 S5 01/21/99

CLAIM NUMBER	NAME
00 000000 - *	***

WEEKLY WAGE	NUMBER DEPS	EFFECTIVE/ LOSSEARN	MARITAL	PYMT TYPE	COMP RATE
800	0	07 01 97	m	tpd	402.00

FROM DATE	TO DATE	DAYS	WEEKS	PERCENT DIS	AGGRAVATION
01 01 99	01 07 99	7			

NOTIFY DATE	DEATH DATE	PRB START DATE	POST INJ/RHB WAGE	TPD START
01 01 97			100	07 01 97

WKLY SS OFFSET	WKLY SUPPLEMENTAL	WKLY RHB ALLOW	ABP PAY AMOUNT

TOTAL AMOUNT
402.00
NET WAGE
575.34
* * * * THIS IS FOR INFORMATION ONLY * * * *

BUREAU BACKGROUND INFORMATION

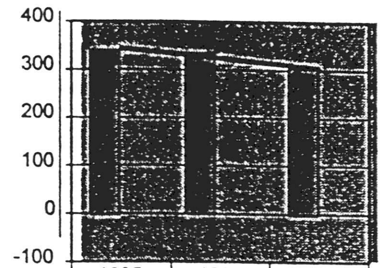
The North Dakota Workers Compensation Act was passed in 1919 to provide sure and certain relief to workers injured on the job and protect employers from lawsuits stemming from such injuries. The Bureau is funded exclusively through employer premiums receiving no general tax dollars and is the only provider of benefits to injured workers in North Dakota.

The Bureau suffered significant losses for many years and had a deficit in its equity of $240 million in 1993. The Bureau sponsored over 28 reform bills in 1995 to overhaul the system. The changes dealt with fraud, dispute resolution, timely injury reporting, agency separation from the state's central personnel system, retrospective rating (similar to self insurance), laws limiting potential for abuse, designated medical providers, increased benefits to severely injured workers, and vocational rehabilitation laws.

In June 1996, referendum and initiative challenges to this legislation were defeated with 74% of the voters supporting the new laws.

The changes brought about by this legislation, along with changes in management of the Bureau have eliminated the deficit and generated a $1 million surplus at the end of fiscal year 1997. This included a $62 million contingency reserve. During this time, rates were reduced in fiscal year 1995 by 8.5%. Premium rates were reduced an additional 3% in 1996 and that year the fund deficit dropped to $87 million.

PREMIUM REDUCTIONS COMPARED TO THE BASE OF 1980 @ 100



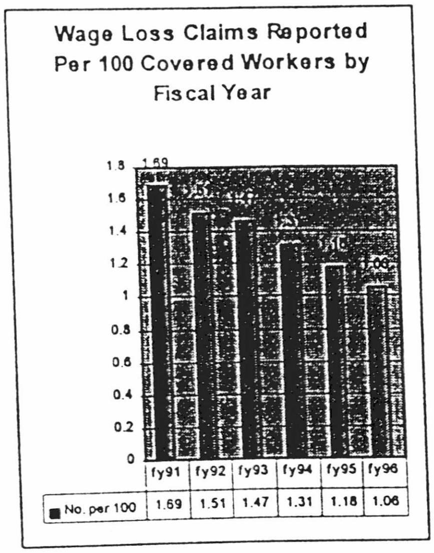
	1995	1996	1997
BASE	340.5	330.3	302.2
RATE CHANGE	-8.50%	-3.00%	-8.500%

Source NDWCB

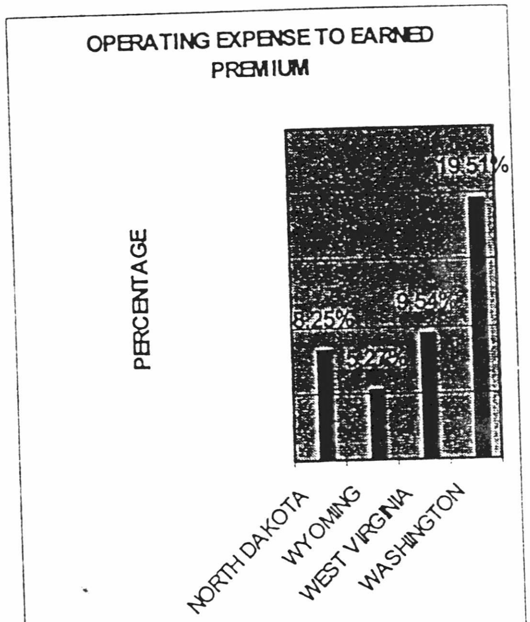
The 1995 legislature authorized the Bureau to set up its own personnel system separate from the state's central personnel system. The Bureau also developed and implemented a comprehensive goals and achievement program in 1997. This included setting up performance measurements to track accountability of employee performance. The Bureau currently tracks monthly performance measurements in all major departments. Employees are aware of what their goals and performance benchmarks are and the incentives available for achieving them. They are motivated to do their best to earn "pay-for-performance" increases at annual evaluations. The Bureau guidelines for pay increases range from 0 to 9% depending upon performance.

The Bureau has worked to reduce the number of time loss claims and has worked with employers to improve safety conditions in the workplace. The Risk Management Program provides a 5% discount for all employers who participate in this program. Bureau statistics indicate that these employers experience fewer time loss claims than those not participating in the program.

Source 1997 AASCIF FACT BOOK



The Bureau has installed a high-tech imaging system to speed up claims processing and the flow of information by computerizing paper claim files. The imaging system allows multiple users to simultaneously access a file. This is more time efficient than searching for and copying paper files.



Source 1997 AASCIF FACT BOOK

The Bureau has worked to gain efficiency and has reduced costs to decrease overhead. Accordingly, the Bureau enjoys some of the lowest costs in the nation's workers compensation programs. The standard of operating expense or overhead to earned premium is a standard measurement within the insurance industry.

The private sector of the insurance industry generally maintains a range of 20 to 30% for this factor.

\# # # # #

DETERMINING AWARDS FOR PERMANENT PARTIAL IMPAIRMENT

- Awards for permanent partial impairment are based on the percent of impairment.
- The awards are made in terms of weeks. The employee is paid 1/3 of the state average weekly wage for each week awarded.

Average Weekly Wage

1993 = $365.24 x 1/3 = $121.75 or $122.00
1997 = $416.99 x 1/3 = $139.00

				Permanent Partial Impairment Award					
Percent of	Number of People			1993 Law		1997 Law		SB2342	
Impairment	Number	Cumulative	Cumulative %	Weeks	Amount /1/	Weeks	Amount /2/	Weeks	Amount /2
Total Number				xxx	xxx	xxx	xxx	xxx	xxx
1-5 Percent				5	$610	0	0	0	0
6-9 Percent				5	$610	0	0	20	$2780
10-14 Percent				50	$6100	0	0	30	$4170
15 Percent				50	$6100	0	0	40	$5560
16-17 Percent				50	$6100	5	$695	40	$5560
18-19 Percent				50	$6100	10	$1390	40	$5560
20-21 Percent				100	$12,200	15	$2085	50	$6950
22-24 Percent				100	$12,200	20	$2780	50	$6950
25 Percent				100	$12,200	25	$3475	60	$8340
26 Percent				100	$12,200	30	$4170	60	$8340
27 Percent				100	$12,200	35	$4865	60	$8340
28 Percent				100	$12,200	40	$5560	60	$8340
29 Percent				100	$12,200	45	$6255	60	$8340
30 Percent				200	$24,400	50	$6950	70	$9730
31 Percent				200	$24,400	60	$8340	75	$10,425
32 Percent				200	$24,400	70	$9730	80	$11,120
33 Percent				200	$24,400	80	$11,120	85	$11,185
34 Percent				200	$24,400	90	$12,510	90	$12,510
35 Percent and Over				xxx	xxx	xxx	xxx	xxx	xxx

Based on 1993 average wage /1/
Based on 1997 average wage /2/

Table 72. DRE Lumbosacral Spine Impairment Categories.

DRE impairment category	Description	% Impairment of the whole person
I	Complaints or symptoms	0
II	Minor impairment: clinical signs of lumbar injury are present without radiculopathy or loss of motion segment integrity	5
III	Radiculopathy: evidence of radiculopathy is present	10
IV	Loss of motion segment integrity: criteria for this condition are described in Section 3.3b, p. 95	20
V	Radiculopathy and loss of motion segment integrity	25
VI	Cauda equina-like syndrome *without* bowel or bladder impairment	40
VII	Cauda equina syndrome *with* bowel or bladder impairment	60
VIII	Paraplegia	75

Table 73. DRE Cervicothoracic Spine Impairment Categories.*

DRE impairment category	Description	% Impairment of the whole person	Impairment (%) with long-tract signs* combined		
			VI (40)	VII (60)	VIII (75)
I	Complaints or symptoms	0			
II	Minor impairment: clinical signs of neck injury are present without radiculopathy or loss of motion segment integrity	5	43	62	76
III	Radiculopathy: evidence of radiculopathy is present	15	49	66	79
IV	Loss of motion segment integrity or multilevel neurologic compromise	25	55	70	81
V	Severe upper extremity neurologic compromise: single-level or multilevel loss of function	35	61	74	84
VI	Cauda equina syndrome *without* bowel or bladder impairment	40	The 40% impairment for category VI must be combined with the impairment percent from the most appropriate cervicothoracic impairment category, II, III, IV, or V.		
VII	Cauda equina syndrome *with* bowel or bladder impairment	60	The 60% impairment for category VII must be combined with the impairment percent from the most appropriate cervicothoracic impairment category, II, III, IV, or V.		
VIII	Paraplegia	75	The 75% impairment for category VIII must be combined with the impairment percent from the most appropriate cervicothoracic impairment category, II, III, IV, or V.		

*If a patient has an impairment in cervicothoracic spine impairment category VI, VII, or VIII, the appropriate impairment percent should be *combined* (Combined Values Chart, p. 322) with the percent in cervicothoracic impairment category II, III, IV, or V that best reflects the patient's condition.

If the patient's bowel or bladder function is impaired and there is no cervicothoracic or lower-limb impairment that meets the criteria of categories VI, VII, or VIII, the impairment should be evaluated according to criteria in the *Guides* chapters on the digestive or urinary and reproductive systems.

Table 74. DRE Thoracolumbar Spine Impairments.

DRE impairment category	Description	% Impairment of the whole person	Impairment (%) with long-tract signs* combined		
			VI (35)	VII (55)	VIII (70)
I	Complaints or symptoms	0			
II	Minor impairment				
	A. Clinical signs of thoracolumbar injury are present without radiculopathy or loss of motion segment integrity	5			
	B. Structural inclusions are present, ie, less than 25% compression of vertebral body or posterior element fracture without dislocation	5	38	57	72
III	Radiculopathy				
	A. Neurologic evidence of limb impairment is present	15			
	B. Structural inclusions are present, ie, 25% to 50% compression fracture of 1 vertebral body or posterior element fracture disrupting spinal canal	15	45	62	75
IV	Loss of motion segment integrity or multilevel neurologic compromise	20	48	64	76
V	Radiculopathy and loss of motion segment integrity	25	Impairment percents in thoracolumbar category V are *not* combined with impairment percents representing long-tract signs for the thoracolumbar spine.		
VI	Cauda equina syndrome *without* bowel or bladder impairment	35	The 35% thoracolumbar category VI impairment must be combined with the impairment percent from the most appropriate thoracolumbar impairment category, II, III, or IV.		
VII	Cauda equina syndrome *with* bowel or bladder impairment	55	The 55% thoracolumbar category VII impairment must be combined with the impairment percent from the most appropriate thoracolumbar impairment category, II, III, or IV.		
VIII	Paraplegia	70	The 70% thoracolumbar category VIII impairment must be combined with the impairment percent from the most appropriate thoracolumbar impairment category, II, III, or IV.		

**Note:* If a patient has an impairment in thoracolumbar spine impairment category VI, VII, or VIII, the impairment percent for that category should be *combined* (Combined Values Chart, p. 322) with the percent in thoracolumbar category II, III, or IV (*not* V) that bests reflects the patient's condition.

Combining a thoracolumbar category II or category III impairment percent with an impairment percent representing long-tract signs (thoracolumbar categories VI, VII, VIII) is appropriate only if the patient qualifies for category IIB or category IIIB because of the presence of structural inclusions.

A thoracolumbar category V impairment should *not* be combined with a category VI, VII, or VIII impairment representing presence of long-tract signs.

If the patient's bowel or bladder function is impaired but the patient does not have thoracolumbar or lower extremity impairment that meets the criteria of categories VI, VII, or VIII, the bowel or bladder impairment should be evaluated according to criteria in the *Guides* chapters on the digestive or urinary and reproductive systems.

5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.
7. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
8. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

Source: S.L. 1919, ch. 162, § 3, subs. D; 1921, ch. 141, § 1, subs. D; 1925, ch. 223, § 1, subs. D; 1925 Supp., § 396a3, subs. D; S.L. 1927, ch. 286, § 1, subs. D; 1929, ch. 260, § 1, subs. D; R.C. 1943, § 65-0510; S.L. 1945, ch. 337, § 3; 1957 Supp., § 65-0510; S.L. 1967, ch. 484, § 4; 1989, ch. 770, § 3; 1991, ch. 714, § 47.

Effective Date.

The 1991 amendment of this section by section 47 of chapter 714, S.L. 1991, became effective July 1, 1991, pursuant to N.D. Const., Art. IV, § 13. Section 77 of chapter 714, S.L. 1991, provides that this amendment is retroactive to July 1, 1991.

Note.

Section 65-05.1-06, referred to in subsection 7 of this section, has been repealed.

Total Disability.

Total disability exists when workman is unable, solely because of his job-related injury, to perform or obtain any substantial amount of labor in his particular line of work, or in any other for which he would be fitted. Jimison v. North Dakota Workmen's Compensation Bureau (1983) 331 NW 2d 822.

65-05-11. Maximum and minimum compensation allowances — Total and partial disability. Repealed by S.L. 1969, ch. 558, § 6.

65-05-12. Permanent impairment — Compensation — Time paid. The injured employee's doctor shall report to the bureau any rating of any impairment of function as the result of the injury on the date of maximum medical improvement, except for total losses claimed under section 65-05-13. Any rating of the percentage of functional impairment should be in accordance with the standards for the evaluation of permanent impairment as published in the most recent edition of the American medical

association's "Guides to the Evaluation of Permanent Impairment" unless proven otherwise by clear and convincing medical evidence. The doctor's report must include a clinical report in sufficient detail to support the percentage ratings assigned. Any subsequent award for impairment must be made minus any previous award given on any earlier claim or the same claim for that same member or body part. If the injury causes permanent impairment, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such impairment bears to total impairment must be determined, and the fund shall pay to the impaired employee a lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

For a one percent impairment	5 weeks.
For a ten percent impairment	50 weeks.
For a twenty percent impairment	100 weeks.
For a thirty percent impairment	150 weeks.
For a forty percent impairment	200 weeks.
For a fifty percent impairment	250 weeks.
For a sixty percent impairment	300 weeks.
For a seventy percent impairment	350 weeks.
For an eighty percent impairment	400 weeks.
For a ninety percent impairment	450 weeks.

Source: S.L. 1919, ch. 162, § 3, subs. E; 1921, ch. 141, § 1, subs. E; 1925, ch. 223, § 1, subs. E; 1925 Supp., § 396a3, subs. E; S.L. 1927, ch. 286, § 1, subs. E; 1929, ch. 260, § 1, subs. E; 1943, ch. 274, § 4; R.C. 1943, § 65-0512; S.L. 1949, ch. 354, § 7; 1955, ch. 354, § 12; 1957 Supp., § 65-0512; S.L. 1969, ch. 562, § 1; 1973, ch. 506, § 1; 1975, ch. 581, § 10; 1977, ch. 579, § 11; 1983, ch. 700, § 1; 1989, ch. 765, § 4.

Benefits Not Exclusive.

Since disability awards under this section are based on the medical condition of the claimant, such awards do not exclude an additional award of permanent total disability under section 65-05-09. Buechler v. North Dakota Workmen's Compensation Bureau (1974) 222 NW 2d 858.

Benefit Rates.

Permanent impairment awards are to be based on the rate in effect at the time the impairment is determined, rather than the rate in effect on the date of injury. Gregory v. North Dakota Workmen's Comp. Bureau (1985) 369 NW 2d 119.

Factors Affecting Recovery.

Claimant who suffered five percent permanent partial disability due to partial loss of use of ankle was limited to recovery under schedule contained in section 65-05-13 and was not entitled to have her earning capacity, age, or training considered in determining the amount of the award. Ambrosen v. North Dakota Workmen's Compensation Bureau (1973) 210 NW 2d 85.

Loss of Vision.

Bureau correctly applied section 65-05-13, rather than this section, in determining and issuing a permanent partial impairment award to accident victim for injury to left eye resulting in partial loss of vision in such eye where the victim had an amblyopic defect in his right eye, which defect existed prior to the compensable injury to the left eye and which was not involved in the accident. Kavonius v. North Dakota Workmen's Compensation Bureau (1981) 306 NW 2d 209.

Medical Opinion.

Where there was undisputed medical opinion of permanent partial impairment, and the workers compensation bureau failed to adequately explain its reasons for disregarding that evidence, the bureau erred in not finding that the claimant was entitled to benefits for