MICROFILM DIVIDER

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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 Nething – 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 Nething: 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 Nething: 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 Nething: 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***

OIDR 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 sheet.

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 Shaloob – 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 Shaloob: 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 Shaloob: I guess we'd have to leave you to vote.

S Potter: How does the Interim Committee review OIR.

B Shaloob: ____

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 Heitcamp: 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 Withdrawn

Motion Made By ANDRIST Seconded By HACKER

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:

70743.0101
Title.0200

Prepared by the Legislative Council staff for
Senator Potter
January 24, 2007

2-7-7

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

Date: 2-7-07

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 Move ammendments

Motion Made By Potter Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Art	✓	
Senator Hacker, Nick, VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	NP		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 6 No 0

Absent 1

Floor Assignment

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

Date: 2-7-07

Roll Call Vote : 2

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 DO PASS AS AMM

Motion Made By Heitkamp Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry		✓	Senator Behm, Art	✓	
Senator Hacker, Nick, VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	NP		Senator Potter, Tracy	✓	
Senator Wanzek, Terry		✓			

Total Yes 4 No 2

Absent 1

Floor Assignment Potter

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

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

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2292

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3837

Committee Clerk Signature	Stephanie J Thomas

Minutes:

Chair Keiser opened the hearing on SB 2292.

Sen. Dave Nething, District 12: I sponsored this bill for a couple of reasons. My biggest reason is to basically try to set up a true independent review of Workforce Safety. We previously sent you a bill, and the idea in that bill is to transfer the administrative hearings to the Office of Administrative Hearing, in other words to separate it from the agency itself, and that's what we're trying to do here. Here in this case, we're talking about the basis which ultimately could lead to litigation, which means that due process begins at this level. Right now the situation is we have a review of the claim by the agency employee, and the agency then is ultimately responsible for the payment of the benefits to the payment. So, my thought is it's an issue of due process, and an issue of fairness. After this bill was passed in the Senate, we then amended the appropriations bill, and in my mind it should be an offset, in other words the cost should not be any different then it is to that agency, and the money in the appropriation bill was designed to transfer the funds from the WSI funds over to the Department of Labor.

Rep. Kasper: Currently, the way the system is, is there due process in WSI which would sort of mirror what your bill is proposing to do, by moving it to the Labor Department?

Sen. Nething: That is the process in WSI.

Rep. Kasper: You want to move the entire review, just as it is, out of the oversight of WSI to the Labor Department.

Sen. Nething: That's right. The reason we selected the Labor Department is that seems to be about the best place for it., because they deal with litigation supposedly, as opposed to the Office of Administrative Review, because this really isn't an administrative review, it's a claims review.

Rep. Zaiser: Is one of the reasons you're proposing this is to separate the process from WSI?

Sen. Nething: That's exactly right. We want to have it as an independent review, versus an in house review.

Rep. Zaiser: Is it your opinion then that this would probably foster more objective reviews?

Sen. Nething: I don't want to criticize how the reviews have been done. At least the perception would be there that we are having an open independent review.

Rep. Ruby: Was this change added in the 90's?

Sen. Nething: I think that's when we set it up.

David Kemnitz, AFLCIO: Support SB 2292. See handouts A and B.

Rep. Kasper: The Office of Independent Review you said you work fully for the claimants. If it's to be an impartial office, should it not work for neither, but to look at the evidence, and make determinations?

David: The law says that the OIR is not impartial, that they are to advocate for the claimant. This is the only system that the claimant has within the WSI system to advocate, and to try and change what the bureau decided was moving in the direction that they're unhappy.

Rep. Kasper: The way I read that is that OIR is there to help the worker through the process, so that worker gets a fair and impartial hearing, and a decision based on the facts. I don't read

it that it's there to advocate for that worker, otherwise it's partial, and it losses its effectiveness, and it is the entity that makes the final decision.

David: I beg to differ. What we see in what the claimants have expressed with OIR is what they are there to do. I understand when it was instituted was to advocate for claimants to mitigate, rather then to litigate.

Rep. Kasper: Your contention is that at this current time, the office is not doing what statute says. It is not providing its job functions that it's supposed to, is that what you're saying?

David: No. I would not want to be on record saying, or indicating that OIR is not a viable part of the system, but we're saying that the claimants say, and as a perception that this system is not totally, that it has a certain bias. The system is supposed to be designed to give the claimant the insurance that what it's done in this litigation, and this mediation is to the best post extent possible.

Rep. Kasper: What you're saying is the system right now is working good, but your concern was the claimants are concerned that there might be a bias toward WSI.

David: When I first started out in 1995, I thought that this was a good idea, and that hopefully it does reduce litigation in the courts, and that this is a start, and that's probably the better way is to get away from the direction to the bureau. No one disagreed, but they weren't ready for that yet. It is not a hard fact, and it's not a numbers game, as much as it is a perception, and feeling to the claimants. The legislature body in 1995 and after said was we want to make sure that this claim is adjudicated to the slimmest, most extent at the lowest possible cost, creating sure and certain relief, and that the claimant is felt that they've been served.

Rep. Johnson: In the course within the last couple of years, how many of the claimants that have gone to OIR with opposition to the bureau have come back and said that things got resolved to serve benefits?

David: I don't have that number. I understand at the top of my head that it was 104 reviews, and that was the number that went on to district court beyond the mediation of it.

Rep. Dosch: You keep using the words inherit bias, did not trust, assumptions, perceptions, in the end how many cases that WSI rules on, or ultimately will go to the court system on average, how many are there?

David: I was asked that question earlier, and I said I don't know. My answer to all of this is I hope when I'm done, everybody here that makes a decision at this table says we should think about the claimants perception, assumption, and understanding of the system, and do they feel good at the end of their day that we've done everything possible to save dollars, that they have been served.

Rep. Zaiser: How many injured workers that have been turned down through independent review do you feel are able to afford to go onto district court if they're not satisfied?

David: I can't speak for claimants, or how many that would feel that they must go onto district court, or have weighed the difference between can I afford an attorney if I lose, and what part of this claim is going to be great enough to trigger the payment of attorney fees. They won't get any attorney fees if they don't go to OIR.

Rep. Keiser: I was here in 1995, and I remember when we talked about this, and I have a different perspective on it. In 1993-94, prior to litigation was the only solution. We attempted to address the litigations, and created the OIR, and I think there's a misperception on what OIR is. Number 1, I think it's misnamed, because it is really not the Office of Independent Review, and it was not established to be that. It was established as a preliminary step for claimants. It was not meant to be a court of jurisdiction, it was meant to provide an administrative overview, and an administrative review of the case, and say that I'm independent enough to look at this and say that WSI may have missed something, or misinterpreted it, and that I disagree on

behalf of the claimant. In some cases, it was a shortcut for the claimant to avoid, but never prevented the claimant from going to court. It was not a binding arbitration, and never intended to be that in 1995. Do you agree with that? Has it evolved into a perception of something else that it isn't? If we move it, and bring back in more of a court issue, all we're going to do is end up in the higher court. Do you agree or disagree with those statements?

David: Unless it's independent, funded through the WSI, independent of the bureau, it doesn't have the same effect, and that we'd work towards that, but starting somewhere, and glad that the bureau also wanted to experiment with this. If I recall in 1995, attorney fees were reduced for the claimant. It went from attorney fees for both sides, the employers still got attorney fees paid if the bureau is the investor, or limited liability, because they're always taking their staff and attorney that goes to court. The claimant went from the same system, to only if they win, and there were restrictions with that. In recognition of that reduction, the legislature said that we should do something that helps mitigate that, mediate these problems, and avoid litigation. The law says that OIR is a place that a claimant must go prior to a trial.

Rep. Keiser: It was similar in the sense that resigned their grievance committee in a large cooperation. Rep. Amerman works for Bobcat, do they have to have a grievance committee that is totally independent where he takes his grievances for review?

David: A grievance is separate, and they take it outside to their union.

Rep. Keiser: Shouldn't it be an independent group?

David: The union is an independent group.

Rep. Thorpe: I believe in 1995 workers comp was still under the Governor, but I think right now with WSI independent agency, I think that this bill has some merit. I think we are in a different position now then we were, is that not right?

David: Worse I think is when the legislature moved the workers at WSI out of central personal. In WSI, the final arbiter is the executive director in the end. We say that should affect employees, and how they look at things. In this case, we want somebody to be for the claimant that is recognizable, definable, and assureable.

Ed Christensen, Injured Worker: Support SB 2292. OIR is a place where you go, and you tell them this is how you feel. There is absolutely no independence at all with it right now. What we're trying to do is make this really independent. It probably isn't going to change a lot, because they are going to get all their information from the claimant's records, but at least it's going to be independent. A good number of injured workers feel if you moved it, it would be easier for us to accept an opinion from someplace that isn't coming right off the shoulders of WSI.

Vern Hoechst, United Steel Workers: Support SB 2292. You talked about the preferred provider that by law you have to go and use that. There is an opt out on the preferred provider for the majority of us to opt out, because we don't want the same thing here going to something that's picked by the company. We prefer to pick our own doctors, and the same thing with the independent review. You mentioned a little bit about the grievances and the procedures like that, all of our officers are elected by the body of the people in the union, and so if we don't like the way they're handling things, we can elect new people.

Rep. Keiser: If you're going to elect them, and you don't like their ruling, won't you elect people that will rule the way you want them?

Vern: I'd have to rule by the contract.

Sebald Vetter, CARE: Support SB 2292. Right now the independent review is there for nothing. I got their percentage, and it's 18% of the people that they help, and it's very low. I

was over there so many times, and it does not help. Right now it is a waste of money. It's not fair what this organization is, we don't get any help out of it.

David: We talked about attorney fees and when they are paid, and I looked in two statutes 65-02.08, and it said only when an additional benefit previously denied this change are attorney fees paid for claimants. Under appeals, 65-10.03, attorney fees are paid when the employee has prevailed with any part of the decision of the organization is reversed, and the employer receives an additional benefit as a result. So, in many cases it's just to stay where they're at, or to prove a point.

Rep. Keiser: So, I'm an injured worker and I go to OIR with a claim for a simple review of my case, and I can take an attorney with me at that point. That attorney won't be paid for unless OIR suggests that WSI was wrong, and that there is an additional benefit payable, then my attorneys fees would be covered at the OIR level, or do they only get paid if the action of OIR is that I go to court?

David: My understanding is that no attorney fees are paid in the OIR process. If you're in court and win, and these conditions are prevailed, but I've never heard of any attorney being paid at an OIR level.

Anne Jorgenson Green, WSI: Opposed to SB 2292. See written testimony #1.

Rep. Thorpe: In your testimony, on the 3rd paragraph it says these options have resulted in many disputes being settled prior to expensive lengthy litigation. Do you have an approximate percentage of those cases?

Anne: Mr. Vetter was correct in his number of 18%.

Rep. Thorpe: Does WSI consider that a good and reasonable percentage?

Anne: Absolutely. Once a decision is made within WSI, the notice of the decision or informal decision is made. That decision is made, and an injured worker has an opportunity to appeal

that decision. Once that administrative order is issued, an injured worker can then take that administrative order to OIR, have that particular reviewed, and then that decision may, or may not be altered based on the decision making at OIR.

Rep. Thorpe: Then in the 4th paragraph describing how the Office of Independent Review functions under the WSI board, I think I agree with some of the previous testifiers about how that doesn't sound like an independent review to me.

Anne: For day to day operations, Mr. Blunt approves things like time off, and I need more pencils, items that have to be handled to do administrative functions, day to day operations. Things like performance, and goal setting, and salary changes, those powers are vested with the audit committee, which is a subdivision of the WSI board of directors. So, while Mr. Blunt has the ability and the authority to handle the everyday operations of the OIR employees, those abilities to supervise are limited by the ultimate authority of the audit committee of the board of directors.

Rep. Keiser: Just because you do separate those functions, you still have a portion of the board overseeing the review, and the board, executive director, and the administrative staff does have a relationship, so it isn't completely independent of the board, and the administrative staff.

Anne: That's correct. It's not completely independent, and I think it's that inner dependence , that relationship between the advocates at OIR, and the in house folks at WSI, the attorneys, supervisors, and the claims adjusters that ultimately continue to make it successful. If there is a dispute, and if a file comes from OIR, and there is a request for staff, and with myself or one of the other staff attorneys or claims adjuster, it means that the individuals at OIR have had an opportunity to pick through that file, to look at it backwards and forwards, and they've come to the determination that WSI has made a mistake, and there is another way to look at this, and

consider A, B, and C. Those are lively and heated discussions that result in taking another look at that particular rejudication, sometimes reversing, or modifying almost 20% of the time.

Rep. Keiser: Why don't we call it the administrative review then, because it is misleading? The function is different, and when it was designed the function was different.

Anne: The organization is prepared to take a look at the name, and certainly entertain a potential amendment, or a possibility to the change.

Rep. Zaiser: If a person handling the independent review, if they were repeatedly coming back with appealing basically ruling in opposition to what WSI said, would that person be in jeopardy of maintaining his job? Would there be a potential of running into the ox of a director, and maybe taken to the woodshed, so to speak?

Anne: Absolutely not. As I indicated, the OIR reports to the audit committee of the board of directors, so the administrative hierarchy within WSI has no affect over discipline, over pay raises, over performance reviews, or over goal setting process. All of those functions rest within the audit committee.

Rep. Zaiser: Why then is there so much intimidation felt on behalf of the injured workers, and why is there so much dissatisfaction?

Anne: Often the agency makes decisions that are difficult, and that are contrary to the path that an injured worker might want the rejudication of the claims to go. That's why its very nature creates dissatisfaction, and creates difficulty.

Rep. Zaiser: There was talk about the cost of this if the Labor Department were to handle this. Couldn't the Labor Department handle this just as you contract the attorneys, contract with the Labor Department to do the independent review?

Anne: My understanding of the way that the fiscal note is currently structured is that as a practical matter, there would be a transfer of funds from special funds at WSI to the Labor

Department, so your position that it would be kind of a contract agreement or arrangement is accurate. My understanding of the fiscal note from the Department of Labor is that they have incorporated approximately an additional $237,000.

Rep. Amerman: In your testimony, you said the OIR was created by the WSI. Why do you feel that, because it really wasn't created by WSI, was it?

Anne: Certainly, the Office of Independent Review was created by the legislature.

Rep. Johnson: Would you explain to me a little bit more about how we have to transfer funds from the special fund into the general fund?

Anne: WSI's fund dollars are created from the employers of the state who pay premiums. They pay premium into a fund which is the Workforce Safety Insurance fund, and those dollars are to be appropriated by statute, by WSI for specified purpose, and our specified purpose is to pay claims, and to maintain the most possible premiums that we can, and to preserve the quality in the fund. To take those funds in a long item appropriation, and to transfer them to another state agency, a state agency that is a general fund agency according to a lot of Attorney General's opinions, in an unconstitutional transfer of case law out there, and there's constitutional language out there that says that special funds, premium dollars have to be used for their specified purpose.

Rep. Ruby: This number 18% is this 18 % of the claimants that are approved under the OIR, or percent of all claims, and if not all claims then what percent of all claims are going through the OIR?

Anne: The 18% represents the number of administrative orders that are appealed, or adjudicated through the OIR.

Rep. Johnson: Would it be correct to say that 18% represents the number of cases that go to the OIR, 18% of those have changes written?

Anne: That's correct.

Rep. Amerman: You mentioned there might be a contradiction in the Attorney General's opinion as we talk about moving funds from one agency to the other. So, let's just say we got spend happy here in the legislature, and we're going to fund a move, the bureau doesn't have to pay $800 and some thousand, it's going to come out of the general fund, so on and so forth. Would the bureau have any regards, or heartburn about moving it then?

Anne: If the dollars were appropriated out of the general fund rather than Workforce Safety & Insurance special fund dollars that would remove that particular concern from the agencies testimony.

Rep. Amerman: Can you give me a better understanding about the board audit committee; I know its part of the overall board. How many is that, and who is on that board?

Anne: The board committee is made up of a chairman, 3-5 members. The audit committee is comprised of those 5 individuals, and they are responsible for the Office of Independent Review, WSI's internal audit division, they handle and look at audits that we have conducted both internally, or those that we might ask for simply to review a function internally.

Rep. Amerman: I'll just use the 4 FTE's, say one of them did something wrong, and was to get fired, who makes the call on that, the budget audit committee, or the director, or who has the final say on that?

Anne: The audit committee of the board of directors.

Rep. Amerman: So, do they hire the individuals?

Anne: I suspect that they would be responsible for hiring them.

Rep. Amerman: The budget audit committee can fire this person, did they hire them?

Anne: They would have the ultimate authority to hire those individuals. Currently, I don't believe that those individuals hardly were hired by the boards audit committee, I believe that

those individuals have had 10 year with the organization that creates the board. OIR was created in 1995, and the board wasn't created until 1997.

Rep. Amerman: The board audit committee that's part of the whole 11 man board, part of their function is to hire every FTE in the system, but yet they would have the ability to fire them, instead of the director who might hire these people.

Anne: The board audit committee, that subcommittee of the board of directors has the ultimate responsibility to hire, and fire employees of OIR.

Rep. Zaiser: If a new FTE were hired tomorrow, would it require calling together a conference call of the committee, or would the executive director or somebody else within the organization make the decision on hiring that person?

Anne: That would be a function of the boards audit committee. The subcommittee of the board would get together and hire those individuals, or would fill that vacancy.

Rep. Zaiser: The firing of an employee, could you walk through the steps of how that works? Does it require a recommendation from the executive director?

Anne: Typically, if someone is not performing to capacity at WSI, they would likely receive some sort of a warning through our human resources department. There is protocol in our employee manual that outlines the protocol by which the immediate supervisor must document, ultimately if there is a decision to fire someone, that would go through our human resources division, and then they would be informed that there employment was being terminated with WSI. There is a provision that permits that individual fired to write a written appeal to the CEO, and his final decision is not appealing.

Rep. Zaiser: Prior to the appeal process, who makes the decision that this individual should be fired?

Anne: Decisions about hiring and firing are done as a collaborative effort between the person who is the immediate supervisor, the decision of human resources, the chief in charge of that decision, and Mr. Blunt.

Rep. Zaiser: Generally, somebody has to make the ultimate call, so is that call made by the executive director?

Anne: For employees in general at WSI, with the exception of the Office of Independent Review, and to the division of internal audit, yes the decisions to fire are ultimately made by Mr. Blunt.

Rep. Keiser: One other issue raised was the confidentiality of information that was transferred out by the department. Can't we handle that legislatively? Are they in the bill, or do we have to strengthen the bill for the confidentiality provision?

Anne: Confidentiality issue was one that was raised of the bill in its current form. Yes, those could be handled legislatively, although the concern on the part of the agency is that currently OIR is confined to OIR employees. If OIR is moved to the Division of Labor, it's unclear what access other department employees would have, access to a claims system that is currently and exclusively WSI's.

Rep. Amerman: If the board audit committee hires and fires the people at OIR, and OIR is supposed to advocate for claimants before they have to go on into the attorney process. If they can hire and fire people, is the Office of Independent Review truly independent?

Anne: I can only speak from my personal experience, and my personal experience as claims attorney working with claims adjusters, claims supervisors and members of OIR, my experience is that those individuals do not fear repercussions for having made a decision, or having taken a position that might be adverse to the world of claims at large.

Rep. Zaiser: We talked about how there would be a conflict if the union were the independent arbiter of an injury. How different would your situation be then with the situation of the union being non independent and objective?

Anne: The Office of Independent Review is statutorily mandated to advocate for the injured worker.

Rep. Zaiser: In terms of interviewing and hiring a person for OIR, who does that?

Anne: Those functions are ultimately carried out by the board committee of the WSI board of directors, the audit committee.

Rep. Thorpe: Who signs the paychecks at WSI?

Anne: I don't know.

Sandy Blunt, WSI: I do.

Bill Shalhoob, ND Chamber of Commerce: Opposed to SB 2292. See written testimony #2.

Rep. Amerman: You say more properly named Office of Internal Review, so you are basically saying you don't believe it's the independent review?

Bill: Obviously, between the claimants and the bureau there is a perception problem as to what this agency is supposed to do. They are looking for something that is completely independent from that from the bureau process, and to say that it's completely independent, I think might not be accurate. I think it's important within an organization to have an internal review process, someone who will look at this in a fresh manner.

Rep. Zaiser: If you were to make every decision that you made, and then if there was some process that needed questioning, do you think it would be appropriate to have another internal committee set up to question your decision if it's a legal issue, versus somebody outside of your company?

Bill: I think in this specific instance you're not necessarily asking me to appeal my decision to me. If you're asking to appeal one of my employees decisions, and the way that we get that is by looking at their decision, and they're going to bring both of these to me, and then I'm going to make a decision.

Rep. Zaiser: Your employees work for you, and basically they're not going to make a decision without your approval.

Bill: That's correct, but in my experience, and the way things work administratively, you don't deal with this until it comes to you to make a decision. It's only when it becomes a dispute that the administrator himself is going to become involved in it.

Rep. Zaiser: Do you think that they're less apt to agree with a decision that appeals the initial decision made by that organization, or more apt to agree with the appeal? Do you think they'll be totally objective there?

Bill: I would hope so, because they're coming from two elements, and a disagreement among two elements within an organization, an administrator is going to weigh the arguments of those two elements and say I think in this case, you're right, and you're wrong.

Rep. Zaiser: Even if one decision was made, and the other one is an appeal of that decision.

Bill: That's why you're there as the administrator.

Rep. Thorpe: Did I understand you right that you say that this committee right now you look at it as an internal review committee, instead of an independent?

Bill: I think I agreed 100% with the chairman in his analysis of what this committee does. If you're asking me did I say that I believe it's completely independent, the answer is no.

Rep. Thorpe: If I recall, I thought at that time the legislature had put in that we'd have an Office of Independent Review within the organization.

Bill: In 1997, we started this branch of WSI, and we did call it the Office of Independent Review. I believe it was designed to function exactly how it's functioning today, and I don't believe any of these sections have been changed since 1997.

Rep. Thorpe: Personally, I do feel there is a huge difference between an internal review, and an independent review.

Bill: I agree completely, and I said I think the idea is to complete another structure, another layer of appeal process, and that' a legislative issue certainly. I believe that the Office of Independent Review within WSI right now must stay there.

Rep. Thorpe: So, I gather in your opinion it's working to perfection right now. Do you agree that 18% is a good figure? To me it doesn't seem very big.

Bill: The only argument that I can make is that generally the claims analysis are doing a good job if 18%, if 20%-78% are upheld.

Rep. Zaiser: Section 65-02.27, as you talk about the way you see it, does that fit into section 2?

Bill: In theory, I believe it can. You can create an independent arm, or committee, or group of people within an organization who I hope are following this law, and this is what they're doing. That's their job.

Cade Jorgenson, Office of Independent Review: Opposed to SB 2292. The bill poses a transfer of the Office of Independent Review to the Department of Labor, and is opposed by the WSI board of directors. The Office of Independent Review actually started as the Worker Deism Program, and had a 4 year sunset clause. In 1999, we made a change in the name of the office as approved by the ND legislature. The name was causing us problems, and I think I'm probably the originator of Office of Independent Review as one of the options. OIR was established in 1995, and had at least 17 different workers compensation jurisdictions in our

mediations programs that were studied. Under the current structure that OIR is operating under, positive lines of communication exist between OIR, and WSI claims staff, and WSI legal staff. My fear is that this is going to be compromised by the proposed SB 2292. I can attest that the program is successful. The decision modification rate for the office for FY 2006 was 21%. That 18% figure is where it was in November or December of 2006. Modification rate is the percentage of decisions that comes to the office, and the office is able to successfully get a reversal of decision, a whole or in part where injured workers are afforded additional benefits. Over the 4 year period, from FY 2003 to FY 2006, fewer than half of those requests in the assistance of the office, 47% went on to request an administrative hearing. WSI gets approximately 20,000 claims filed per year. Awarding benefits is about 1200 to 1400 administrative orders per year. OIR sees about 400 of those in request for assistance. Of those, roughly half of those go on to request a hearing, and this is the first step of litigation. Only about 1/10th of 1% get to district court, or Supreme Court, or both. Under current law, OIR is already independent of the claims department, and that's what's key, and by statute under law. In addition, OIR is housed in a separate location. OIR reports directly to the WSI board of directors, specifically the audit committee. The audit committee chair conducts my annual performance evaluation, and I can attest that WSI has not, and does not interfere with, or control the independent reviews performed by our office for the benefit of injured workers. OIR also does not prevent injured workers from perusing their claims in any manner. It's my opinion that SB 2292 would not enhance the service provided to injured workers, both in terms of outcomes, and in terms of timeliness of those outcomes.

Rep. Thorpe: We had a former bill in here that was asking to put in the verbiage liberal construction in determining claims. In you opinion, had that bill passed and went into affect, would that change the outcome on some of those cases?

Cade: I don't know how much that would change. When you talk about statute, and how it's going to affect, the claims department of WSI is going to look towards its legal council to the interpretation.

Rep. Keiser: If any of the criteria used to make the decision changes, it changes all the way back at the case manager's level, up to and including your level of the review.

Cade: That's correct.

Rep. Keiser: So, you would still be overseeing whether or not they did it appropriately, whatever standards they established.

Cade: That's correct.

Rep. Thorpe: Could you describe the review process now, how it works presently if this bill weren't put into place?

Cade: Currently, when our office receives a request for assistance on a disputed order, that request is assigned to an individual advocate, and that advocate has access to all the claim file information, and the claim information used by WSI, by the claims adjuster to make a claims decision. Our office's specific advocate actually goes through that claim file information pertinent to the claims decision, and comes up with an outcome. At the conclusion of an advocates review, a number of things can happen. The advocate can go back to the injured worker and do the education piece, or an advocate can go back and say I looked at your concerns, and I think that some of those questions need further review, and come up with a plan of action as far as our office and the advocate will be addressing that. If there is a disagreement with WSI, the advocate is going to review that claims determination with the claims department, or the legal department. It is the claims departments' final decision as to whether a decision will stand, or not stand.

Rep. Amerman: If I file a claim and it goes through the process, and if I want to use the office of OIR, how long would it be before it gets there?

Cade: It can take anywhere from 30 days to several years.

Rep. Amerman: Your statement that there are 20,000 claims a year and only 400 go there, how does that work? Is there a big backlog there?

Cade: The 20,000 claims a year is used as a standard baseline. So, 400 claims a year, 200 get to administrative hearing or litigation post OIR, and you're looking at a 1% litigation rate. So, in theory the litigation rate is actually lower, but you have to use some baseline.

Rep. Kasper: On the liberal construction, if I recall liberal construction is directed by the legislature on how course will interpret claims, and what we say in current statute is that claims will be decided based on the merits of the case, not liberal construction. So, from your perspective you really have the opportunity to be as liberal as you so desire.

Cade: I would say that's probably accurate.

Rep. Kasper: From your perspective, what are some of the cases that you're denying, in general where the injured worker is saying I should get some benefits, and you're saying no, we're not able to?

Cade: A typical denial of benefits would be filing for a claim, and the advocated Office of Independent Review does and audit or review of the claim file information, and the treating doctor for the work injury would say here is the origin of the condition, and if it's not work related, of course benefits aren't awarded. A second would be an injured worker goes to an independent physician for a rate, and the independent physician gives them a rating, and that rating translates to a dollar amount. An injured worker may disagree with that rating, or that monetary amount of the award.

Rep. Kasper: What is the mindset of you and your staff when an injured worker comes before you, because from what I've heard you're there to advocate for the worker.

Cade: I would echo that our office does do what we can to provide ways to pay benefits if we can evidence it, and if we can prove it. We're an advocate for the correct decision.

Rep. Keiser: You said you want to get to the right decision. How does your office take the workers perspective, versus the agencies perspective?

Cade: The advocate does an independent review, and if there's anything to be done for the injured worker, as far as pursuing or demonstrating entitlement, or eligibility for benefits, we'll do that. If the decision is well founded, and there isn't any additional investigation to be done, that may include going back to WSI and arguing for a change in decision, if that decision is founded.

Rep. Johnson: Of the 200 claims, 1/10th of 1% go to district, or Supreme Court. Is that 1/10th of the 200,000 claims, or the 200 claims?

Cade: That is 1/10th of the 1% of the 20,000 claims.

Rep. Zaiser: Who did you submit your application to, and who interviewed you?

Cade: I was interviewed, and hired by the program manager back in 1997.

Rep. Vigesaa: The 20% that the appeals were upheld in fiscal 2006, generally speaking at a district court level, do you know what percentage of appeals are usually upheld?

Cade: I'm not certain. I can tell you at the administrative hearing level, of the number of cases to actually get to administrative hearing, WSI prevails on about 2 out of 3 cases historical over the last several years. Only about 20 a year go on from that.

Rep. Zaiser: One of the other testifiers said that essentially this is an internal review process, do you agree with that inquisition?

Cade: I don't get hung up in semantics of the name of the program.

Rep. Zaiser: Is this really an internal review of WSI, or are you an office that must assist the injured worker?

Cade: That is correct. Our office must assist the injured worker, and I believe it's accurate to say we perform an administrative review.

Lisa Fair McEvers, Commissioner of Labor: Overview of the fiscal note.

Rep. Keiser: What is the current status of the additional dollars over what currently would have been spent on OIR? What number is appropriating, or putting in?

Lisa: The amount over what is currently in OIR would be the $231,480. That was for the attorney, so that is reflected on the fiscal note of the general funds area. Also, I would like to bring to the committee's attention that it's my understanding, and I wasn't aware of this at the time that in addition to the 4 FTE's that OIR has, they also have 1 ½ temporary employees working there. That is not reflected in this, and if that is a temporary situation right now, and is not needed, but if they are needed for the long-term operation of the office, that is something also to consider that I would also receive funding for those temporary employees if they're indeed necessary for running the office.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2292

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4037

Committee Clerk Signature	Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on SB 2292. This bill does have a fiscal note on it of $231,480. We have 3 sources where the money could go, human services, higher education, and K/12.

Rep. Johnson: The way this bill currently stands is it would require the transfer of money from WSI from the Governor to the Department of Labor, and I think we've heard something that you can't take those dollars that are sent to WSI, and are very limited to places where they can go.

Rep. Ruby: I thought it was an interesting discussion that we had. I thought there was a great case made to keep some kind of connection as far as information, records, things that you keep in house. I was impressed to hear how eminently the manager, and the staff advocates for the cases that come before them. I'm not in favor of moving this to another department, and with that I'd move a do not pass.

Rep. Vigesaa: Second.

Rep. Zaiser: I understand Rep. Ruby heard a good case for keeping it in house, but I heard from my perspective a very good case for making it more independent. The fact that it's called Workers Compensation or WSI Department of Internal Review is still part of the organization.

To me checks and balance is critical, and moving it into the Labor Department is going to cost the same amount of money, with the possible exception that maybe WSI pays more, it would probably cost less in the Labor Department. I think an excellent case was made for moving it to the Labor Department.

Rep. Ruby: I understand that they want complete independence, this group is independent from the claims group, and that's who it's going to be independent from. They look at it, and make sure that they did their job, and make sure that all their information is gathered right. It just seems like if we're going to do it for this agency, then why don't we have another agency review that they made the right decision. We could take this to a different level, and have different agencies doing checks and balances on different agencies all over the place. They aren't making as many mistakes as some people believe they are.

Rep. Vigesaa: In fiscal 06 it was 21%. I actually think that was quite high. That means that only 1 out of every 5 cases the Office of Independent Review rules in favor of the worker that they found cause for more medicals to be paid. Personally, I think that's pretty high, because 21% is overturned at that level. I asked as you went up the chain district courts, Supreme Court, and that's a much higher overturn rate then this levy at the higher court levels.

Rep. Thorpe: I wanted to remind the committee that I thought it was brought out really clear that the department people, and the independent review admitted that it was an internal review committee. They didn't call it an independent, and there's a world of difference between an independent review, and an internal review.

Rep. Keiser: When we instituted this it was not designed to be an office of independent review. It was originally called the workers advocacy program. So, how did it get named OIR? He arbitrarily one day decided to name it that. That may be his perception, but our biggest problem with claimants is functionally, this never has been an office of independent review.

Functionally, an IME has never been an independent medical exam; it wasn't designed to be that. It was designed to be a review of the medical case, but not an exam.

Rep. Zaiser: We're talking about the office of what they call internal review now, which really has to advocate for the worker. They can't be objective.

Rep. Keiser: The name is misleading.

Rep. Johnson: Individuals who came to that group had all been through the Office of Independent Review. What struck me about these cases was that for the most part workforce safety was abiding by the law that we put into place, and it says in the law that you can not give dollars for this, or above this, and we came back and said lets make these exceptions, and lets try to work that out. What workforce safety did was what we say the law permitted them to do.

Rep. Amerman: When the gentleman from OIR testified he supported WSI, opposed the bill, but supported WSI. In his testimony to me if it was truly independent, he never once brought that out, he just supported the best thing would be to be under WSI. To me when he was opposing the bill, and supporting being under WSI it was almost a flip flop, because it pointed out that they're not truly that independent.

Rep. Gruchalla: Clearly, there's a problem with perception on the independent review, and this bill would fix that, and I'm going to support it just for that reason.

Roll call vote was taken. 8 Yeas, 5 Nays, 1 Absent, Carrier: Rep. Johnson

Hearing closed.

Date: 2-27-07
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB [redacted] 2292

House **Industry Business & Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep Ruby Seconded By Rep. Vigesaa

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

Total Yes 8 No 5

Absent 1

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

SB 2292, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2292 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2292

Compliments of
North Dakota AFL-CIO

65-02-27. Office of independent review. The organization's office of independent review is established. The office of independent review is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The office of independent review must provide assistance to a worker who has filed a claim, which may include acting on behalf of a worker who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing a worker of the effect of decisions made by the organization, the worker, or an employer under this title. The office of independent review shall provide assistance to workers, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The organization shall employ a director of the office of independent review and other personnel determined to be necessary for the administration of the office. A person employed to administer the office of independent review may not act as an attorney for a worker. The organization may not pay attorney's fees to an attorney who represents a worker in a disputed claim before the organization unless the worker has first attempted to resolve the dispute through the office of independent review. A written request for assistance by a worker who contacts the office of independent review within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the worker, sent by regular mail, that the office of independent review's assistance to the worker is completed. The information contained in a file established by the office of independent review on a worker's disputed claim, including communications from a worker, is privileged and may not be released without the worker's permission. Information in the file containing the notes or mental impressions of office of independent review staff is confidential and may not be released by the office of independent review.

Source: S.L. 1995, ch. 612, § 1; 1997, ch. 532, § 4; 1999, ch. 553, §§ 5, 9; 2003, ch. 561, § 3.

Effective Date.
The 2003 amendment of this section by section 3 of chapter 561, S.L. 2003 became effective August 1, 2003.

#1
2292

2007 Senate Bill No. 2292
Testimony before the Senate Industry, Business, and Labor Committee
Anne Jorgenson Green, Staff Attorney
Workforce Safety and Insurance
January 22, 2007

Mr. Chairman, Members of the Committee:

Same given to House

Good Morning. My name is Anne Jorgenson Green and I am staff counsel for Workforce Safety and Insurance (WSI). I am here to testify in opposition to Senate Bill 2292. The bill proposes the transfer of the Office of Independent Review to the Department of Labor. The WSI Board of Directors opposes this bill.

The Office of Independent Review (OIR), was created by WSI to provide a dispute resolution forum for injured workers who have appealed an administrative order from WSI. OIR provides these injured workers an additional review of their claim by an independent advocate who can assess the decision of WSI and explain the sometimes difficult provisions of workers' compensation law.

OIR has a number of options in handling each file: they may seek out information from the claims adjuster to better understand WSI's decision making process; they may communicate to the injured worker why WSI has taken a certain position; they are empowered to gather additional evidence, present it to WSI staff and advocate the injured worker's position. These options have resulted in resolving many disputes prior to expensive and lengthy litigation.

Currently, OIR is housed outside of WSI's Century Avenue offices. The Office of Independent Review manager reports functionally to the Board Audit Committee of the WSI Board of Directors, and administratively to the WSI Executive Director.

Section 1 of SB 2292 proposes to move OIR and its employees to the Department of Labor while still requiring WSI to fund OIR through the legislative appropriation process. Consequently, the legislation requires a special fund agency to finance a general fund agency. This appears to contradict a 2003 Attorney General's opinion (2003-L-54) which indicates that it may be unconstitutional to transfer special fund resources in this manner.

#2
2292

Section 2 of the bill amends WSI's confidentiality statute and permits the labor commissioner and employees of OIR access to otherwise confidential injured worker files. While OIR advocates currently have this capability, they do so within the confines of a secure offsite location. If WSI's entire claims system is opened to an outside party, it is not known whether or not there are adequate resources to ensure that confidential claims and medical information in an environment where some employees are granted access and others are not.

Section 3 of the bill requires the transfer of all employees, equipment, records and materials to the Department of Labor. Additionally, OIR's four FTE's, currently compensated on a pay for performance system under Title 65, would transfer to the department of labor and the state classified personnel system. The repercussions of this transfer are not known.

The Office of Independent Review is currently successful in advocating on behalf of injured workers. There is no indication that a change in location and reporting hierarchy would increase the efficiency or advocacy of the employees at OIR. On the contrary, removing them from interconnection with the agency will likely compromise their current effectiveness.

For the above reasons, WSI requests a "do not pass" recommendation for SB 2292. I would be happy to answer any questions at this time.

Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2292
January 22, 2007

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. A list of the specific members was attached top my testimony on SB 2294. As a group we stand in opposition to SB 2292 and urge a do not pass vote from the committee on this bill.

This bill changes adds department oversight for claims dispute in the office of the labor commissioner and needlessly adds premium dollar expense to fund the oversight. There are already several layers of appeal built into the WSI claims dispute process. We believe final oversight by the interim legislative review committee along with the other appeal processes currently in place provide proper and meaningful opportunity for relief. Final appeal properly should be with that committee and we do not need another level injected into the process.

Thank you for the opportunity to appear before you today in opposition to SB 2292. I would be happy to answer any questions.

#3

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Web site: www.ndchamber.com E-mail: ndchamber@ndchamber.com

2292

NORTH DAKOTA
CHAMBER of COMMERCE

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

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members

#3 B

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2797

#2

Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2292
February 26, 2007

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. A list of the specific members was attached top my testimony on SB 2294. As a group we stand in opposition to SB 2292 and urge a do not pass vote from the committee on this bill.

This bill changes oversight for initial claims dispute to the office of the labor commissioner and may needlessly add premium dollar expense to fund the oversight. As designed we believe the department would be more properly named the Office of Internal Review since its purpose is to allow a claimant and the agency to have a fresh set of eyes review a disputed finding for possible resolution before entering the appeal process. Beyond this internal check there are already several layers of appeal built into the WSI claims dispute process. We believe these steps and final oversight resting with the interim legislative review committee provide proper and meaningful opportunity for relief.

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Thank you for the opportunity to appear before you today in opposition to SB 2292. I would be happy to answer any questions.

NORTH DAKOTA AFL-CIO

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Sue Carnahan
SMWIA
Dan Calkins
USW
Randall J. Edison
AFSCME
Carol Gierszewski
AFT
Colette Bruggman
UTU
John Risch
MISSOURI SLOPE CLC
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[illegible] Michel
[illegible]HERN VALLEY LC
[illegible] Froemke
GREATER NORTHWEST LC
Mark Hager

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

WHEREAS: The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly

WHEREAS: The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and

WHEREAS: The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it

RESOLVED: That the following ' be provided to the 2007 legislative session.

1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.

2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.

3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.

4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.

5) Office of Independent Review. Place the control of the OIR with the Governor.

6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.

7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.

8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.

9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.

David L. Kemmitz
President/Secretary-Treasurer
ND AFL-CIO 1-8-07

B

Compliments of
North Dakota AFL-CIO

65-02-27. Office of independent review.

The organization's office of independent review is established.

RECEIVED
FEB 26 2007

1. The office of independent review is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title.

2. The office of independent review must provide assistance to a worker who has filed a claim, which may include acting on behalf of a worker who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing a worker of the effect of decisions made by the organization, the worker, or an employer under this title.

3. The office of independent review shall provide assistance to workers, upon request, in cases of constructive denial or after a vocational consultant's report has been issued.

4. The organization shall employ a director of the office of independent review and other personnel determined to be necessary for the administration of the office.

5. A person employed to administer the office of independent review may not act as an attorney for a worker.

6. The organization may not pay attorney's fees to an attorney who represents a worker in a disputed claim before the organization unless the worker has first attempted to resolve the dispute through the office of independent review.

7. A written request for assistance by a worker who contacts the office of independent review within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order.

8. The period begins upon notice to the worker, sent by regular mail, that the office of independent review's assistance to the worker is completed.

9. The information contained in a file established by the office of independent review on a worker's disputed claim, including communications from a worker, is privileged and may not be released without the worker's permission.

10. Information in the file containing the notes or mental impressions of office of independent review staff is confidential and may not be released by the office of independent review.

North Dakota AFL-CIO
1323 E. Front Ave.
Bismarck, ND 58504

Feb. 26, 07
Provided by
David L. Hemnitz
History of SB2292

CHAPTER 612

SENATE BILL NO. 2377

(Senators Nalewaja, Goetz, Krebsbach, Lindaas)
(Representative Byerly)

WORKERS' COMPENSATION ADVISER PROGRAM

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to the establishment of a workers' compensation adviser program; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Workers' adviser program. A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. An injured employee who contacts the program for assistance within the appeal period after an administrative order has been issued is deemed to have satisfied the requirement of requesting an administrative hearing or an arbitration hearing on that order. The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.

SECTION 2. EFFECTIVE DATE. This Act is effective for all disputed claims arising after July 31, 1995.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 1999, and after that date is ineffective.

Approved March 27, 1995
Filed March 28, 1995

H-IBL Submitted by: Dave Kemnitz
SB-2292 2-26-07 NDAFL-CIO

1995 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2377

Senate Industry, Business and Labor Committee

Subcommittee on _____

Identify or check where appropriate

Conference Committee _____

Original Hearing Date: January 31, 1995

Subsequent Hearing Date _____

Tape Number: 1 /Side A ____ Meter # _____
/Side B xx Meter # 13.0-25.8

Committee Clerk Signature _____

Minutes:
SB2377 - relating to the establishment of a workers' compensation adviser program; to provide an effective date; and to provide an expiration date.

Senator Mutch, Chair, opened the hearing on SB2377 with 5 committee members present.

Senator Nalewaja introduced and testified in support of SB2377. (Attached)

David Kemnitz, ND AFL-CIO, testified in support of SB2377. Felt that the director of the program should be truly independent. Should be independent review of reasons for discharge outside of the bureau so that all are assured of adequate advising.

Pat Traynor, Workers Compensation Bureau, testified in support of SB2377. (Attached) Stated that approximately 97% of claims were accepted in 1994. Proactive approach to treat the injured worker.

Jeff Husebye, W.A.I.T., testified in support of SB2377. Feels the time limit for the process should be addressed.

Mr. Traynor noted that there is an incentive to attend to claims quickly in order to keep attorney fees at a minimum.

No opposition was presented on SB2377.

Tape 3, Side A, #22.7:

Senator Krebsbach made a motion for a DO PASS, seconded by Senator Scherber.
Roll call vote: 5 yeas, 0 nays, 2 AB.
Senator Mutch will carry the bill.