

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3002

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3002

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7792

Committee Clerk Signature

Ellen Litang

Chairman Keiser: Opened the hearing on HCR 3002 for Legislative Council to study governance structure of WSI & determine the feasibility & desirability of naturalization of WSI.

John Bjornson~Legislative Council staff. I'm neither for nor against the resolution. This resolution was the result of the House Industry, Business and Labor committee. The

committee was assigned the responsibility to over pick a broad overview of WSI. The interim committee invited from two different states of the transition from a monopolistic system to a mutualized system. These states are Nevada & West Virginia. West Virginia has the most recent change to its structure. This resolution would conduct a study for the desirability to be mutualized the worker's compensation program in this state.

Chairman Keiser: What is the definition of mutualized company?

Bjornson: It a company owned by premium holders.

Chairman Keiser: In this specific situation, it would be the employers or would it be the employees or both?

Bjornson: The employers who will be paying the premiums to maintain the company.

Representative Amerman: If it went to mutuals, where will the company be? Would they still be under the directive of state legislation?

Bjornson: The structure would essentially be that way.

Representative Schneider: The two states that moved from monopolistic to mutualization system, wasn't those states in poor financial health? In North Dakota the funds are in good shape, from a business perspective why would we want to change?

Bjornson: You are correct. They have large deficits which spurred that move.

Bill Shalhoob: North Dakota Chamber of Commerce. See testimony attachment.

Representative Thorpe: On number four, personally we are taking steps in convoluting what we are trying to do by putting a resolution out there?

Shalhoob: I do believe we made a decision that we will move forward on that decision and everyone here wants to make that work. I can't answer that question but we would have a study done already when this issue arises in the distant future.

Representative Thorpe: All the business people in North Dakota, they are the premium payers, I'm wondering the chamber's positions are backing this resolution?

Shalhoob: The chamber have taken the position, they are. Are there individual members, who would probably disagree, I'm sure there are. We don't know the answers but the study would help.

Anyone here to testify in opposition HB 3002.

Dave Kemnitz~North Dakota President of the AFL-CIO. See two attachments.

Representative Thorpe: Where the cost of premiums went when they went to mutualization instead assistance somewhere. Do you have any information what the premium payers if their costs went up or down?

Kemnitz: Explains answer.

Representative Nottestad: Wouldn't all the reasons to oppose the resolution be good reason to have the study?

Kemnitz: All studies have value, the worth hasn't changed. The system we have is the best outreach & delivery of benefits.

Representative Ruby: If our system became a mutual company, who do expect would be the customer of that company?

Kemnitz: There would be two, the employer and the employee.

Representative Ruby: Before you mentioned it would be a possibly flawed system, for example Farmer's Union, would you say that have a flawed model as well?

Kemnitz: This system is flawed from our perspective. Every state that I've talked to, have a struggle to get the benefit levels that they need and deserve.

Chairman Keiser: John to come back down, what is the nature of a concurrent resolution?

Bjornson: The resolution is not law. It's a study and if a resolution is passed LC determined what needs to be done.

Chairman Keiser: We do not take concurrent resolutions lightly, vote how you believe.

Anyone here to testify in neutral position on HB 3002.

Sylvan Loegering~North Dakota Injured Workers Support Group. See testimony attachment.

Chairman Keiser: Closes the hearing of HRC 3002. What are the wishes of the committee?

Representative Schneider: If this resolution is going forward, I wonder if it would be beneficial to include privatization?

Chairman Keiser: That's a critical element in the resolution. If you read the where as's it's both and therefore, it talks only about mutualization.

Representative Schneider: Moves to amend HRC 3002.

Representative Sukut: Second.

Chairman Keiser: We have an amendment on line 14 following desirability of mutualization or privatization of work force safety.

Representative Ruby: These are two separate things. Is it conceivable that both areas could be studied in depth?

Vice Chairman Kasper: I think you almost have to study both of them.

Representative Sukut: Looking down the line, you look at what your possibilities are, I think we need to be aware of what's out there and be aware. I think this is a good way to vote.

Representative Thorpe: Sukuts ideas, but we are starting to get a handle on WSI. I think we are heading in the right direction. If we throw up some red flags to make it work, it could make an impact, there I'm going to oppose it.

Chairman Keiser: I'm speaking as myself, I oppose mutualization. My perspective there is too close of a relationship between the premium payer and the employer. The public will crucify the legislature because it's not the right thing to do.

Chairman Keiser: All those in favor of the amendment before us say aye. All aye's, no nay's.

Representative Thorpe: Move a Do Not Pass as Amendment.

Representative Gruchalla: Second.

Voting roll call was taken on HRC 3002 as a Do Not Pass as Amended with 9 aye's, 3 nay's & 1 absent and Representative N Johnson is the carrier.

January 26, 2009

YR
1/27/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3002

Page 1, line 2, after "mutualization" insert "or privatization"

Page 1, line 14, after "mutualization" insert "or privatization"

Renumber accordingly

Date: Jan 26
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3002

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Thorpe Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla		7
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby		7			
Representative Sukut		7			
Representative Vigesaa	7				

Total (Yes) 9 No 3

Absent 1

Floor Assignment N. Johnson

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

REPORT OF STANDING COMMITTEE

HCR 3002: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HCR 3002 was
placed on the Sixth order on the calendar.

Page 1, line 2, after "mutualization" insert "or privatization"

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Renumber accordingly

2009 TESTIMONY

HCR 3002



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HCR 3002
January 26, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical 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 representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in support of HCR 3002 and urge a do pass from the committee on this bill.

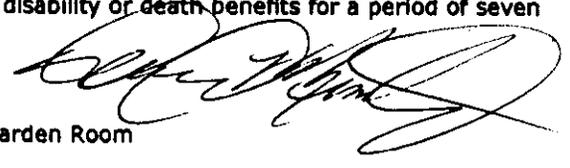
During the past interim we had a decision moving WSI back to the Governor's control. That issue has been decided. During the process there were many calls for both the mutualization and privatization of WSI as the best long term alternative for both employers and employees. Unfortunately we do not think any of the parties has the information to make an informed and intelligent decision on what is the best long term structure for the organization. By studying the positives and negatives of one aspect, the mutualization, we can at least begin to discuss the possibility with some degree of certainty the outcomes the change would cause.

Thank you for the opportunity to appear before you today in support of HCR 3002. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

ND AFL-CIO Notes

disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven three consecutive years is eligible for supplementary benefits.



MON 01/26 08:00 AM Peace Garden Room
HB 1101 H-IBL **Chairman:** Rep. G. Keiser

Comments: ND AFL-CIO supports. ^{Sponsors} (At the request of Workforce Safety and Insurance) Weekly and aggregate benefit subject to a minimum of sixty percent and a maximum of one hundred ten twenty-five percent of the average weekly wage in the state. dependency allowance for each child of the employee at the rate of ten fifteen dollars per week per child. organization shall still pay costs of vocational rehabilitation, burial expenses, travel, other personal reimbursement for seeking and obtaining medical care, and

MON 01/26 08:00 AM Peace Garden Room
HB 1151 H-IBL **Chairman:** Rep. G. Keiser

Comments: No ND AFL-CIO position taken as of 1-23-09. ^{Sponsors} (At the request of Workforce Safety and Insurance) A "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay. Employer \$350.00 deductible is eliminated.

MON 01/26 02:00 PM Peace Garden Room
HB 1201 H-IBL **Chairman:** Rep. G. Keiser

Comments: ^{Sponsor} Representative Keiser, This bill changes the name of Office of Independent Review (OIR) to "Decision Review Office". The ND AFL-CIO is neutral on this bill but would like to see the Office of Independent Review be separated from Worker's Comp. and then actually advocate for claimants. This change in name only is an attempt to change the subject on what OIR should be.

MON 01/26 02:00 PM Peace Garden Room
HB 1247 H-IBL **Chairman:** Rep. G. Keiser

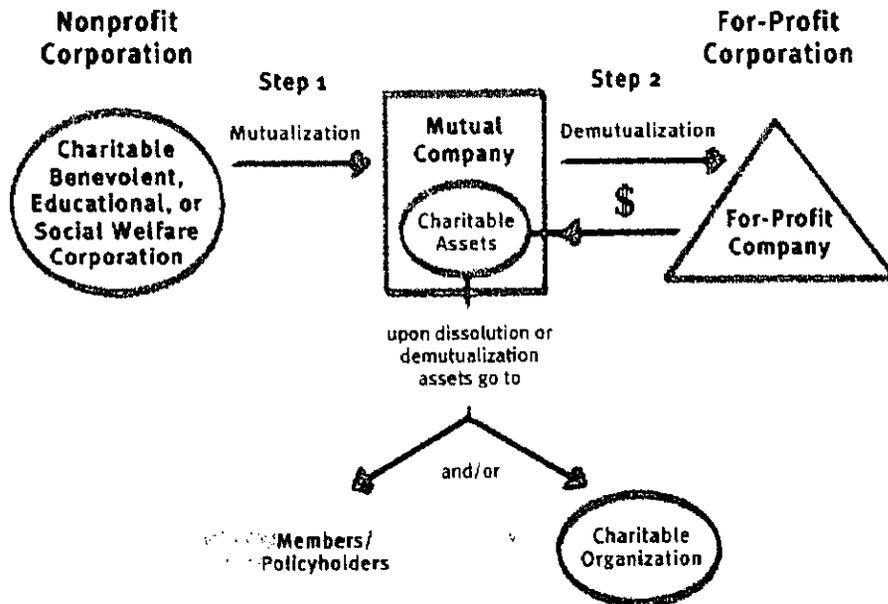
Comments: ^{Sponsors} Representatives Amerman, J. Kelsh, Potter Senators Dotzenrod, Potter ND AFL-CIO supports this bill as written. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of thirty dollars per week per child. Effective August 1, 2009, this rate must be paid to each eligible employee regardless of the date of injury.

MON 01/26 02:00 PM Peace Garden Room
HCR3002 H-IBL **Chairman:** Rep. G. Keiser

Comments: ND AFL-CIO opposes the "mutualization of Workers Comp. in ND. ^{Sponsor} (Interim Industry, Business, and Labor Committee CHAIRED BY REP> BERG) WSI Governance legislative study of the governance structure of Workforce Safety and Insurance and determine the feasibility and desirability of mutualization of Workforce Safety and Insurance.

MON 01/26 02:00 PM Peace Garden Room
HCR3008 H-IBL **Chairman:** Rep. G. Keiser

Mutualization to Demutualization



Conversions 101

NONPROFIT HEALTH SECTOR:
HISTORY AND TRENDS

LEGAL CONTEXT

RECOGNIZING A CONVERSION

Easily Identifiable Conversions

Other Conversions

Joint Ventures

Mutualization to Demutualization

CAUSES (PDF)

PUBLIC IMPACTS (PDF)

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Nonprofit HMOs and insurance companies sometimes engage in two-step conversions. The two steps are known as "mutualization" and "demutualization." In mutualization, a nonprofit changes its status to a corporation organized to benefit its policyholders (i.e. a mutual insurance company) before making the move to a for-profit stock company. When faced with the mutualization of a nonprofit public benefit organization, advocates should argue that the nonprofit's charitable obligations are transferred to the new mutual company. In other words, the mutual insurer receives the nonprofit's assets subject to the nonprofit's charitable obligations. Therefore a snapshot valuation of the fair market value of the charitable assets should be done at the time the nonprofit becomes a mutual insurer and set aside, because this change in corporate form may make it more difficult to determine a corporation's charitable assets at a later date. It is much preferable to have the charitable assets be set aside at the time of mutualization rather than to wait for the mutual to become a for profit corporation.

Demutualization occurs when the mutual insurer decides to convert itself to a for-profit publicly-traded or privately-held company. When an insurance company or HMO demutualizes, it sells stock or a substantial portion of its assets to a for-profit company. The resulting company is then owned by and incorporated for the benefit of its investors or stockholders. If the full fair market value of the nonprofit's charitable assets were not set aside at the time of mutualization, the dissolution or demutualization of a mutual company usually generates sufficient funds to fulfill the charitable obligations that were owed by the original nonprofit and passed to the mutual company. Thus, the revenue generated by a demutualization must be divided in two ways. A portion of the company's assets equal to the outstanding charitable obligations should go to the public, usually through the creation of a nonprofit charitable foundation. The remainder of the mutual company's assets must be distributed to its policyholders or members. Without diligence by the public this may not occur. For example, Blue Cross and Blue Shield of Virginia (Trigon) changed from a nonprofit to a mutual company in 1991. Five years later, the company changed to a publicly-traded stock company. The full value of the original nonprofit was never preserved for nonprofit purposes. Trigon only transferred \$175 million to satisfy its charitable obligations, and this money went to the state treasury rather than a nonprofit charitable foundation.

Remarks from Sylvan Loegering, regarding HCR 3002 January 26, 2008
Volunteer coordinator, ND Injured Workers Support Group.

I can summarize my reaction in 4 words. THIS RESOLUTION SCARES ME. The bill cites testimony from two states that moved from monopolistic workers' compensation to a mutual insurance company and moved to a competitive market. It also indicates, "changing the governance structure of Workforce Safety and Insurance could lead to a more efficient and responsive workers' compensation system".

I have a series of questions which I feel should be answered before we get serious about mutualizing WSI. Recognizing that a mutual company is owned by its customers, (in this case premium payers ie employers), I wonder to whom will it be more responsive? Employers? Injured employees? The legislature? The public welfare? Do we want the employers of North Dakota to own and operate workers' compensation? Is North Dakota large enough to attract the kind of competition that will produce a level playing field? What if there is no effective competition? If the employer is part owner of one of the choices for workers' compensation coverage, what incentive would he/she have to choose a different company? Would the employees have any say in which company would provide workers' compensation? How do we back away from this arrangement if we make this change and decide it's not working? What will happen to all the funds currently in WSI? What about ongoing benefits for prior injuries? Who will draft the coverage provided by this newly formed company?

With these and many other questions, I recommend a "go slow" approach if we ever get serious about making this change.