NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

COMMERCE COMMITTEE

Thursday, May 20, 2004
Workforce Safety and Insurance Board Room
Bismarck, North Dakota

Representative George Keiser, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representative George Keiser, Mark A. Dosch, Ron Iverson, Kim Koppelman, Mary K. Nester, Jo Ann Rodenbiker, Dan J. Ruby, Arlo E. Schmidt; Senators Tim Flakoll, Karen K. Krebsbach

Members absent: Representatives Donald L. Clark, Mary Ekstrom, Pat Galvin, Eliot Glassheim; Senators Dick Dever, April Fairfield

Others present: See attached appendix

It was moved by Representative Schmidt, seconded by Representative Iverson, and carried on a voice vote that the minutes of the March 9, 2004, meeting be approved as distributed.

WORKFORCE SAFETY AND INSURANCE RATE REPORT

Chairman Keiser said the chairman of the Legislative Council designated this committee to receive a report regarding the proposed rate increase by Workforce Safety and Insurance.

Chairman Keiser called on Mr. Robert M. Indvik, Chairman, Workforce Safety and Insurance Board of Directors. Mr. Indvik thanked the committee for the opportunity to discuss the workers' compensation premium ratesetting process. He said Workforce Safety and Insurance provides a quality workers' compensation program for employees and employers in the state. He said hearings were held to receive comments regarding the proposed rate increase. However, he said, he was surprised by the lack of comments received.

Mr. Indvik said workers' compensation rates are dependent upon experience ratings. Just as a flat rate is not fair with respect to group health insurance, he said, a flat workers' compensation rate is not fair to employers that have a good experience rating. He said employers that participate in safety programs should receive a dividend as a reward for doing a good job in reducing work injuries.

Mr. Indvik said the Workforce Safety and Insurance reserve fund is approximately one to two years away from reaching a level where Workforce Safety and Insurance can return a true dividend, lessen the impact of a catastrophic event, and lessen the need for reinsurance. He said the board looks at rate and revenue issues. With respect to rate issues, he said, premium dollars must match the funds expended. He said revenues are received through premiums and investments. However, he said, the board is also looking at nontraditional revenue sources.

Chairman Keiser called on Mr. Sandy Blunt, Workforce Safety and Insurance. Mr. Blunt submitted written comments and other documents, copies of which are on file in the Legislative Council office. He said the Workforce Safety and Insurance Board of Directors authorized the agency to go forward in March with a proposal for a premium rate increase for workers' compensation coverage to counteract the rapid increase in medical and prescription drug costs. He said the recommendation presented by the board is for a 9 percent average rate increase. He said the proposed rate changes for the 141 individual classifications will range from 4 to 14 percent. However, he said, because of the investment gains of the fund, a performance dividend of $5 million to $6 million will be issued to help mitigate the increase. Therefore, he said, the net effect of the premium rate proposal will be an average of 4 percent.

Mr. Blunt said a public hearing was held on April 30 to discuss the rate proposal and begin the formal comment period. He said four oral comments and five written comments were received and the board will consider those comments at a meeting on May 26. Even with the proposed premium increase, he said, a national study indicates that North Dakota employers will continue to be paying the lowest premiums in the country while ranking in the top 20 states in benefits paid to injured workers.

Mr. Blunt said the average cost of a wage-loss claim has risen 33 percent since 1989. Nationally, he said, the wage-loss claim costs have risen nearly 40 percent. He said overall medical inflation in the state is up 7 percent from 2002 to 2003 while the national average has risen 9 percent. He said prescription drug costs have more than doubled in the last four years, including a 22 percent increase last year. He said prescription drug costs are expected to increase from $5.4 million to $6.6 million in the next year.

Mr. Blunt said the agency is determined to work to control or reduce costs through medical cost-containment programs, such as a pharmacy benefit manager, utilization reviews, appropriate fee schedules, and direct and routine input from the medical community. In addition, he said, the agency is revamping its operations in an effort to control administrative costs. He said safety programs will continue to be a top priority and the agency will be proposing loss prevention services to employers with the highest rate increases. He said successful program participants are awarded premium discounts of an additional 8 to 10 percent. He said the agency is also continuing to address workers' compensation fraud.

Chairman Keiser called on Mr. Glenn Evans, Pacific Actuarial Consultants, for comments regarding the workers' compensation premium rate increase. Mr. Evans presented written information, a copy of which is on file in the Legislative Council office.

Mr. Evans said the proposed base rate change is 9 percent. In addition, he said, there will be a 1.8 percent premium increase due to changes in the payroll cap. He said three factors contribute significantly to the 9 percent adjustment. The most significant factor, he said, is the 2003-04 rate level shortfall of 4.7 percent. As a result of that shortfall, he said, over 50 percent of this year's adjustment is making up for last year. A second factor, he said, is attributable to payroll trends. Because of higher wages, he said, the 2.8 percent increase in the cap does not generate 2.8 percent more income. A third factor, he said, is a change in actuarial estimates. He said 87.5 percent of total claims generate 10 to 12 percent of total claim dollars. He said time-loss claims are dropping but claims severity is increasing. He said medical inflation is a big factor in that increase.

In response to a question from Representative Keiser, Mr. Evans said legislation from 2003 which increased some benefits may account for approximately 1 percent of the premium increase.

In response to a question from Senator Krebsbach, Mr. Evans said administrative costs have been stable. He said 5 percent of the administrative costs are tied to claims management. He said that 5 percent was shown separately in the past and was not attributed to administration.

Mr. Evans said the 5 percent dividend will be paid for by excess investment income because investment income has generally been better than expected. Even with the 9 percent increase, he said, next year's level will still be less than 50 percent of the rate from 10 years ago. He said the improvement in rates is attributable to many factors, including administration, safety, cost control, and legislation. However, he said, the point has been reached where improvement has stopped and there is a need to respond to inflation.

In response to a question from Senator Krebsbach, Mr. Evans said discounted liability is fully funded but the agency is changing to an undiscounted basis. Therefore, he said, the agency will not reach its liability goals for a year or two.

In response to a question from Representative Koppelman, Mr. Evans said base rates were decreased last year and no class rate increased.

In response to a question from Representative Keiser, Mr. Evans said the reserve account asset balance is approximately $1 billion. He said the target selected by the board is reasonable and similar to private insurance carriers.

In response to a question from Representative Ruby, Mr. Blunt said the fund balance is a moving target based on claims assumptions. He said $1.1 billion is the current goal.

Chairman Keiser called on Mr. Dave Dvorak, Workforce Safety and Insurance, for comments regarding workers' compensation rates. Mr. Dvorak distributed a rate sheet, a copy of which is on file in the Legislative Council office.

Mr. Dvorak said there are 141 rate classifications. He said with the class swings, the rate increases will be between 4 and 14 percent. He said the 5 percent dividend is not included in the rate sheet. He said the new rates are scheduled to go into effect on July 1, 2004.

In response to a question from Representative Koppelman, Mr. Blunt said he is in the process of examining all administrative expenses. He said some administrative expenses may reduce costs in other areas. He said administrative costs cannot be cut to the point that the cuts affect response time.

Mr. Indvik said part of the increase in administration costs is due to the fact that a contracted service was brought in-house. He said bringing that service in-house saved the agency a significant amount of money.

In response to a question from Senator Krebsbach, Mr. Indvik said the agency updated much of its equipment and technology when the agency moved into its new facility.

Chairman Keiser opened the meeting for public comment regarding the Workforce Safety and Insurance proposed rate increase.

Mr. Chuck Peterson, Jobbers Moving and Storage, said Workforce Safety and Insurance losses and expenses have gone up in recent years and the agency is projecting a $20 million shortfall for 2004 without considering investment income. Although the reserve fund goal of $1.1 billion represents the full undiscounted amount needed to pay all future claims and liabilities, he said, many other jurisdictions allow workers' compensation carriers to discount the value of future claims liabilities. He said it may be unnecessary to set undiscounted reserve targets for a state-run monopoly where future revenue streams may not be diminished through competition. Because employers have already been charged for the money in the reserve fund, he said, the investment income should be used to offset any proposed rate increase rather than be allocated to achieve a $1.1 billion fund balance too quickly. He said it is imperative to perform a thorough analysis on all administrative claims-loss expenses. While the number of injuries has decreased in recent years, he said, the agency's administrative and claims-loss expenses has grown disproportionately. He said he has seen no business plan to address medical and wage-loss costs. He said it is important to allow the new chief executive officer of the agency proper time to evaluate the operations of the agency before implementing a premium increase.

Mr. Marv Skar, E. W. Wylie, said the dividend distribution formula has been different in each of the last three years. He said the reward system should be easily explained and employers should know what the dividend will be before it is received. Because the minimum premium is too low, he said, 3,500 employers are getting a free ride. He said the employer safety program is too easy. He said the $250 deductible should be eliminated. In spite of these problems, he said, the workers' compensation system is the easiest and most economical system with which to work.

Mr. David L. Kemnitz, North Dakota AFL-CIO, said the major reforms during the 1990s addressed cost drivers. However, he said, employees are also stakeholders in the system and the workers' compensation premium is earned by the productivity of the worker. He said the cuts in benefits made during the 1990s have never been restored while there have been 10 years of premium reductions. Rather than continue to keep premiums low, he said, Workforce Safety and Insurance should address the needs of the workers and their families.

In response to a question from Representative Koppelman, Mr. Kemnitz said administration of claims has improved during the last 10 years. However, he said, the process could be improved, particularly with respect to payment of attorneys' fees and access to counsel. In addition, he said, benefit levels and vocational and technical education could be improved.

Chairman Keiser requested Mr. Blunt to update the committee regarding the proposed rate increase at the next committee meeting.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Chairman Keiser called on Mr. John Graham, Job Service North Dakota, for comments regarding a bill draft [50010.0200] which establishes a Job Service North Dakota Advisory Council. Mr. Graham said the appointment of good members to ensure an active and involved council is vital to the success of the council. He said a seven-member council appointed by the Governor to advise Job Service regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program would provide valuable assistance to Job Service.

Representative Iverson said he has requested the Legislative Council staff to prepare a bill draft similar to the bill draft under consideration, except the council would be required to hold quarterly meetings and meetings at the call of the chairman.

Chairman Keiser called on Mr. Dale A. Preszler, ServiceMaster, for comments regarding the bill draft. Mr. Preszler said an advisory council may be able to address some of the problems that have frustrated a number of employers. He said the sudden increase in premiums has been very difficult for businesses. He said his business received a 260 percent increase in premiums last year. As a result of the large increase in premiums, he said, he has had to cut payroll and positions to make up for the premium increase. Because positive balance employers subsidize negative balance employers, he said, the unemployment insurance system is flawed and unfair. He said it is not fair to subsidize employers that have seasonally attached employees who are not looking for work.

Mr. Kemnitz said current law provides for a Job Service advisory council. However, he said, for the last several years, the Governor has designated the Workforce Development Council to act as the advisory council. He said that council has never discussed unemployment insurance issues and has shown no desire to address those issues. He said the advisory council in law can work if used and past advisory councils have addressed unemployment insurance issues and developed compromises.

Mr. Chuck Peterson submitted written comments, a copy of which is on file in the Legislative Council office. He said he is concerned with the composition of the proposed advisory council. He proposed that the council consist of 11 members nominated by a variety of organizations. He said negative balance employers are not paying the amount necessary to cover the cost of the risk and positive balance employers are paying the cost of their risk plus the balance left to be paid by the negative balance employers. Because the state's workforce is diminishing, he said, the state cannot afford to allow job-attached workers to be furloughed from the workforce for five months each year. He said there is opportunity for seasonal workers to find work in their off season.

Mr. Skar said he also has concerns with the composition of the proposed advisory council. He suggested an 11-member council consisting of representatives of various groups and two members of the Legislative Assembly. He said the proposed council is not a reflection of who pays the bills. He said positive balance employers should not be required to subsidize seasonal employers. He said Job Service will receive positive input when the business community is involved.

Mr. Curt Peterson, Associated General Contractors of North Dakota, said many members of his association employ seasonal workers. He said it is very difficult to find alternative work for the employees in the winter and is difficult to make an ironworker work as a maid at a nursing home. He said if jobs were available, the employees would fill those jobs.

In response to a question from Representative Koppelman, Mr. Curt Peterson said the seasonally attached employees allow construction companies to be efficient and productive. He said allowing the employees to be seasonally attached keeps the employees from leaving the state and provides employers with good employees during the construction season.

Mr. Graham said his experience with regional advisory councils for the Department of Human Services was that it was difficult getting members to attend because of fixed meeting requirements. He said a requirement that the advisory council meet annually makes sense if the council has the discretion to meet more often if there are agenda items.

Senator Krebsbach said an annual meeting requirement is necessary and the chairman and executive director should be allowed to call meetings if necessary.

UNEMPLOYMENT INSURANCE PREMIUM BILL DRAFT

Committee counsel distributed copies of a bill draft [50040.0200] that establishes an unemployment insurance tax rate that includes a multiplicative portion for amounts necessary to reach a reserve fund solvency target.

Mr. Graham submitted written testimony, a copy of which is on file in the Legislative Council office. He said the bill draft would create a proportionately greater responsibility on the part of negative balance employers for that portion of the unemployment insurance tax burden which represents the amount of revenue necessary to make due progress toward the solvency target established by statute. He said the current tax structure is calculated by determining the amount necessary to reach a calculated solvency target taking into account the amount necessary to pay estimated benefits and an added percentage necessary to progress toward the required solvency target. He said the impact of the move toward solvency falls equally on all unemployment insurance taxpayers. He said the bill draft would require the calculation of the amount necessary to pay estimated benefits but would not add the same rate to each calculated rate to reach the solvency amount. Instead, he said, the bill draft would create a ratio between the income estimated as needed to pay benefits and the solvency amount, and then multiply that ratio against each rate in the rate array. As a result, he said, the positive balance tax rates would decrease and the negative balance rates would increase. He said when the unemployment insurance trust fund solvency target is reached, the calculation of the solvency target must be continued on an annual basis and tax rates must be adjusted to bring the reserve up to the targeted amount within a five-year period if the trust fund reserve is below the target.

Mr. Skar said even with the shift of some of the burden to negative balance employers, the unemployment insurance system still favors negative balance employers.

Mr. Preszler said the top tax rate would be over 43 percent if negative balance employers paid their actual costs. He said the expense side of unemployment insurance should also be addressed.

In response to a question from Representative Dosch, Mr. Graham said he will provide the committee with information regarding comparison of benefits with other states.

Ms. Maren Daley, Job Service North Dakota, said unemployment insurance rates were cut drastically in the 1990s. She said benefits have not increased substantially and are formula-driven. She said the reduction in rates during the 1990s caused the problems with the reserve fund.

CONTRACTOR COMPETENCY STUDY

Chairman Keiser called on Mr. Alvin A. Jaeger, Secretary of State, for comments regarding the committee's study of contractor competency. Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office. He said he has worked with representatives of the Consumer Fraud Division of the Attorney General's office to review the contractor licensing laws to attempt to address concerns that were expressed at the last meeting. He said the discussions resulted in the development of six recommendations for consideration by the committee.

Mr. Jaeger said removing the provision in North Dakota Century Code Section 43-07-02 which authorizes the Secretary of State to request the Attorney General to bring an action to enjoin a person from engaging in the business of a contractor if the person is not properly licensed would remove a restriction on the legal options available to state and local prosecutors. He said that provision also overlaps other applicable laws.

Mr. Jaeger said North Dakota Century Code Section 43-07-04 could be amended to provide the Secretary of State the discretion to require applicants for a contractor's license to disclose the name of all officers, directors, partners, and majority shareholders and disclose if the business or any of the principals of the business have been convicted of any violations of law or been involved in any investigation or regulatory or enforcement proceeding in this state or any other state. In addition, he said, providing statutory provisions for license denial or revocation if an applicant provides false information or if the applicant has been convicted of a felony that would have a direct bearing on the contractor's character to enter into contracts or perform work would provide the Secretary of State with additional authority. He said many contractors regularly apply for a license under another name or a family member's name. He said requiring information about partners or other persons involved with the business would assist in identifying individuals who have caused problems.

Mr. Jaeger recommended that North Dakota Century Code Section 43-07-14 be amended with respect to the rebuttable presumption of abandonment of a contract. He suggested that a rebuttable presumption should arise if a contractor fails to substantially commence any work agreed upon in writing within 60 days of a starting date agreed upon in writing. He said if no starting date is agreed upon in writing, the presumed substantial commencement of work must occur within 90 days of the contract date. He suggested amending Section 43-07-14 to provide that notwithstanding failure to provide a written commencement date, the commencement date is presumed to be within 90 days of the contract date.

Mr. Jaeger said North Dakota Century Code Section 44-07-14.1 could be amended to provide the Attorney General with ability to use consumer protection laws to address the conduct of contractors under Section 43-07-14. He also suggested that the penalty provided for in Section 43-07-18 be changed from a Class B misdemeanor to a Class A misdemeanor.

In response to a question from Representative Koppelman, Mr. Jaeger said requiring additional information from applicants could provide law enforcement more opportunity to pursue remedies and could prevent the licensing of individuals who have caused problems in the past.

Representative Keiser said the Secretary of State should have some discretion to request additional information but should not have the authority to require that information in each application.

Mr. Jaeger said he is concerned with treating all applicants fairly.

In response to a question from Representative Keiser, Mr. Jaeger said consumers bear some responsibility in selecting contractors. He said the number of complaints filed against a contractor does not always provide a real indication of the competency of a contractor.

Mr. Parrell D. Grossman, Attorney General's office, said he and the Secretary of State recognize that some of the concepts presented by Mr. Jaeger need further refinement. He said there has been a problem with small contractors that regularly change their names. He said information regarding complaints filed is often helpful because companies or individuals will often pay a substantial amount of money to avoid admissions of guilt and avoid a conviction. He said it is often easier to address concerns through assurance of quality compliance. He said the substantial or visible commencement of work standard is often used in other states with respect to abandonment of contracts. He said it is difficult to draft legislation that will not affect all contractors rather than only the bad actors.

Chairman Keiser requested Mr. Jaeger and Mr. Grossman to work with contractor industry representatives to develop a bill draft for consideration by the committee.

There being no further business, Chairman Keiser adjourned the meeting at 3:40 p.m.

John Bjornson
Counsel

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