

2009 Workforce Safety & Insurance (WSI) Legislative Quick Guide (Final 5/4/2009)

HB 1021: Engrossed WSI Appropriation Bill (Board supports)

House Appropriations Vote: Do Pass 23-0, House Vote: 92-1

Senate Appropriations Vote: Do Pass 13-0, Senate vote: 46-0

Signed by the Governor 4/24/2009

- Total budget appropriation of \$55,522,605, includes \$50,000 for consultant fees to conduct a post-retirement benefit study per HB 1525 and a continuing appropriation authority for litigation costs stemming from employer and medical provider issues.
- The budget appropriation maintains the same number of FTE's at 237.14.
- Includes 10 discretionary FTE's and funding for WSI's Vocational Rehabilitation Program.

HB 1101: WSI Injury Services Bill (Board supports)

House IBL Vote: Do Pass 12-0, House Vote: 94-0

Senate IBL Vote: Do Pass 6-0, Senate vote: 47-0

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- Increases the dependency allowance from \$10 to \$15 per week per child.
- Increases pre-acceptance disability benefits from the minimum benefit rate to the standard rate.
- Increases the maximum disability benefit from 110% to 125% of the state's average weekly wage (SAWW).
- Increases travel and other personal reimbursements on aggravation claims to 100%.
- Increases Death Benefits: Increase in the lifetime death benefit cap from \$250,000 to \$300,000; and increase in the weekly dependency allowance from \$10 to \$15 per child. Burial expense increases from \$6,500 to \$10,000; one-time payments for spouses and dependent children increases from \$1,200 to \$2,500 for spouse and from \$400 to \$800 per dependent child.

Fiscal Impact: It is anticipated that the proposed legislation in its entirety will increase future premium rate levels by about 1.5% or between \$2.0 and \$2.5 million per year and increases discounted reserve levels by approximately \$500,000.

HB 1151: Engrossed Bill with Senate Amendments, WSI Employer Services Bill (Board supports)

House IBL Vote: Do Pass 12-0, House Vote: 94-0

Senate IBL Vote: Do Pass 7-0, Senate vote: 45-0

Signed by the Governor 5/1/2009

- Further clarifies definition of wages for employer reporting purposes.
- Clarifies Information Fund (Housekeeping).
- Transparency in grant program—allows for disclosure of employer grant information and reporting of grant information.
- Repeals Mine Foreman Certification statute.

Fiscal Impact: No significant fiscal impact is anticipated.

HCR 3008: Pre-existing Study Resolution (Board supports)
House IBL Vote: Do Pass 12-0, House vote: 89-3
Senate IBL Vote: Do Pass 7-0, Senate vote: Adopted by Consent
Filed with the Secretary of State

- Resolution to study workers' compensation laws regarding prior injuries, pre-existing or degenerative conditions, triggers and aggravations.

Fiscal Impact: No fiscal impact is anticipated.

2009 Interim Industry, Business and Labor Committee Proposals

HB 1035: Engrossed Reserve Surplus Clarification Bill (Board supports)
House IBL Vote: Do Pass 12-1, House vote: 79-13
Senate IBL Vote: Do Pass 7-0, Senate vote: 41-0
Signed by the Governor 4/30/2009

- Clarifies WSI's fund surplus requirement statute.
- Establishes parameters for when the reserves and surpluses fall outside of the 120%-140% range.
- Excludes from surplus funds earmarked for specific programs or projects directed by the legislature.
- Changes criteria for an employer Board member position from \$10-\$25 thousand in premium to under \$25 thousand in premium.

Fiscal Impact: Establishes parameters should fund surplus levels fall outside of the statutory range.

HB 1036: Premium Rates Bill (Board supports)
House IBL Vote: Do Pass 8-5, House vote: 62-32
Senate IBL Vote: Do Pass 6-0, Senate vote: 44-0
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- Establishes that premium rates will be determined actuarially.
- The selected statewide average premium rate level change may not deviate by more than 5 percentage points from the statewide actuarial indicated rate.

Fiscal Impact: No fiscal impact is anticipated.

HB 1037: Engrossed Independent Biennial Performance Evaluation Bill (Board supports)
House IBL Vote: Do Pass 10-2, House vote: 78-16
Senate IBL Vote: Do Pass 6-1, Senate vote: 34-12
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- Outlines the element selection process for the independent biennial performance evaluation.
- Requires the report be provided to the interim Workers' Compensation Review Committee and the Governor.

Fiscal Impact: No fiscal impact is anticipated.

2009 Interim Workers' Compensation Review Committee Proposals

HB 1061: Artificial Members Bill (Board supports)

House IBL Vote: Do Pass 12-0, House Vote: 94-0

Senate IBL Vote: Do Pass 7-0, Senate vote: 44-0

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- Provides for payment of “artificial members” such as eyeglasses, contact lenses, dental braces, and orthopedic braces if an injury occurs and damages those prescriptive devices.

Fiscal Impact: The proposed legislation will increase future benefit costs. To the extent that costs increase, future rate levels will be adjusted accordingly.

HB 1062: Vocational Rehabilitation Bill (Board supports)

House IBL Vote: Do Pass 12-0, House Vote: 94-0

Senate IBL Vote: Do Pass 6-0, Senate vote: 44-0

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- Allows an extension of an additional 20 weeks to the current 104-week limit for retraining programs.
- Expands the categories within the rehabilitation hierarchy that would be eligible for up to two months of job search benefits.
- Establishes a pilot program to assess new methods of providing rehabilitation services with the goal of improving the outcome of these services.
- Pilot program will include cost-benefit analysis and employer/worker satisfaction information. This information will be included in an annual report to the interim Workers' Compensation Review Committee.
- Establishes that WSI will collect data on the status of claims that receive rehabilitation services with follow-up data to determine the effectiveness of job searches, returns to work, including post-injury earnings.

Fiscal Impact: The proposed legislation will increase benefit costs by up to \$435,000 or less than 0.5 percent of statewide premium rate levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

HB 1063: Engrossed with Senate Amendments, Pre-existing Conditions Bill (Board supports)

House IBL Vote: Do Pass 10-1, House Vote: 94-0

Senate IBL Vote: Do Pass 6-0, Senate vote: 45-1

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- Injured worker is not liable for medical expenses paid by WSI for up to the first 60 days of treatment if pre-existing condition was unknown, or up until the time the pre-existing condition became known.
- Expenses incurred under this section cannot be charged to the employer for purposes of experience rating.

Fiscal Impact: The proposed legislation will increase future benefit costs. To the extent that costs increase, future rate levels will be adjusted accordingly.

HB 1064: Engrossed Long-term TTD COLA/AWW Calculation Bill (Board neutral)

House IBL Vote: Do Pass 12-0, House Vote: 94-0

Senate IBL Vote: Do Pass 6-0, Senate vote: 47-0

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- Shortens waiting period for eligibility of supplementary benefits (COLAs) for pre-1/1/06 total disability claims from 7 to 3 years.
- Expands supplementary benefit eligibility for pre-1/1/06 claims to include both permanent total and temporary total benefit recipients.

Fiscal Impact: The proposed legislation will serve to potentially increase required discounted reserve levels by as much as \$4 million, however if favorable claim emergence continues, costs will be offset. Anticipate no premium rate level impact because the COLA proposal does not apply to future injuries.

SB 2055: Presumption Clause Bill (Board supports)

Senate IBL Vote: Do Pass 6-0, Senate Vote: 46-0

House IBL Vote: Do Pass 12-0, House Vote: 92-0

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- Clarifies that the presumption clause can be rebutted if there exists clear and convincing evidence the condition or impairment was not work-related.

Fiscal Impact: No material premium rate level or reserve level impact is anticipated.

SB 2056: Payment of Mileage Door-to-Door Bill (Board supports)

Senate IBL Vote: Do Pass 7-0, Senate Vote: 45-0

House IBL Vote: Do Pass 12-0, House Vote: 92-0

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- The calculation of mileage paid to injured workers for appointments for travel by motor vehicle will be for miles actually used and necessarily traveled, instead of city limit to city limit.

Fiscal Impact: No significant impact is anticipated.

SB 2057: Engrossed Loss of Vision Permanent Partial Impairment (PPI) Bill (Board supports)

Senate IBL Vote: Do Pass 6-0, Senate Vote: 45-0

House IBL Vote: Do Pass 11-0, House Vote: 92-0

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- Adds a permanent partial impairment schedule award for the partial loss of eye sight.

Fiscal Impact: The proposed legislation will increase future benefit costs. To the extent that costs increase, future rate levels will be adjusted accordingly.

SB 2058: IME Definition Bill (Board supports)

Senate IBL Vote: Do Pass 6-1, Senate Vote: 46-0

House IBL Vote: Do Pass 9-2, House Vote: 88-4

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- Defines an independent medical examination (IME) as an actual exam conducted on an injured worker, and an independent medical review (IMR) as a review in which only the injured workers' records are reviewed.

Fiscal Impact: No premium rate level or reserve level impact is anticipated.

SB 2059: Engrossed with House Amendments, Independent Review (OIR) Attorney Fees Bill (Board supports)
Senate IBL Vote: Do Pass 7-0, Senate Vote: 45-0
House IBL Vote: Do Pass 11-1, House Vote: 87-1
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- Provides for attorney fees and costs for review of a claim after successful completion of the Office of Independent Review (OIR) process or review of a settlement offer. Attorney fees are capped at \$500 and costs are capped at \$150.
- Requires report to the Legislative Assembly on the number of injured workers eligible for attorney fees and costs.

Fiscal Impact: The proposed legislation will increase attorney fee payments. However, no material premium rate level or reserve level impact is anticipated. Based on historical data the anticipated attorney fee and cost increases could be up to \$120,000 per year. To the extent this provision increases future utilization, future premium rate levels will be adjusted accordingly.

2009 Other Bills

HB 1073: Engrossed Bill with Senate Amendments, Coverage for Emergency Volunteer Healthcare Practitioners (Board supports)
House IBL Vote: Do Pass 13-0, House Vote: 91-1
Senate IBL Vote: Do Pass 7-0, Senate vote: 45-0
Signed by the Governor 4/28/2009

- An in-state emergency volunteer healthcare practitioner who dies or is injured as a result of providing health or veterinary services is deemed eligible for benefits for the death or injury under North Dakota workforce safety & insurance law.

Fiscal Impact: Not quantifiable, due to a lack of historical experience.

HB 1201: Office of Independent Review Name Change (Board supports)
House IBL Vote: Do Pass 12-0, House Vote: 93-1
Senate IBL Vote: Do Pass 4-3, Senate vote: 46-1
Signed by the Governor 3/24/2009

- Changes the WSI Office of Independent Review (OIR) to Decision Review Office (DRO).

Fiscal Impact: No significant impact is anticipated. However there will be nominal costs associated with changing office letterhead and publications.

HB 1455: Engrossed Bill for Benefits for Surviving Spouse following death of Permanent Total Disability (PTD) recipient (Board supports)
House IBL Vote: Do Pass 11-1, House Vote: 93-1
Senate IBL Vote: Do Pass 7-0, Senate vote: 44-0
Signed by the Governor 3/24/2009

- Provides that a surviving spouse would be eligible to receive, for up to 6 months, a decedent's permanent total disability, supplementary or additional benefits payable benefits if the injured employee was permanently and totally disabled for at least 10 years and was married to the surviving spouse for at least 10 years and provided WSI approved home health care for the decedent..

Fiscal Impact: The proposed legislation will increase discounted reserve levels for known claims by less than \$100,000 and will not have a material impact on premium rate levels.

HB 1464: Engrossed Bill for WSI Administrative Hearings, WSI Board Duties and WSI Personnel (Board supports)

House IBL Vote: Do Pass 13-0, House Vote: 92-2

Senate IBL Vote: Do Pass 7-0, Senate vote: 46-0

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- Requires Director of Office of Administrative Hearings (OAH) to file a biennial report with the governor and the state advisory council for administrative hearings.
- Requires WSI hearings to be conducted by OAH and that OAH's decisions are final.
- Establishes WSI Board power and duties including assisting the organization with developing and submitting a budget, responding to audit recommendations and establish employer premium rates, etc.
- Establishes that the organization, not the board, may expend funds through authorized continuing appropriations.
- Requires Board to make formal recommendations to the Governor regarding premium rates, dividends, investment allocations, and legislation.
- Removes WSI employee exemption from the state's classified personnel system.
- Repeals WSI personnel system statute and organizational spending authority statute.

Fiscal Impact: No direct fiscal impact.

HB 1525: Engrossed Bill with Senate Amendments, Study of Post-Retirement Benefits (Board supports)

House IBL Vote: Do Pass 12-1, House vote: 94-0

Senate Appropriation Vote: Do Pass 13-0, Senate vote: 47-0

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- WSI shall study the additional benefits payable (ABP) structure that comprises the post-retirement benefit structure and report back to the interim Workers' Compensation Review Committee.

Fiscal Impact: \$50,000 for the cost of the study.

HB 1561: Engrossed Bill for Treating Doctor's Opinion in WSI Claims (Board supports)

House IBL Vote: Do Pass 12-0, House vote: 94-0

Senate IBL Vote: Do Pass 7-0, Senate vote: 41-0

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- WSI shall justify why it is not following treating doctor's opinion.

Fiscal Impact: No material impact.

HCR 3013: Injured Worker Legal Representation Study Resolution (Board supports)

House IBL Vote: Do Pass 12-0, House: Adopted by Consent

Senate IBL Vote: Do Pass 4-3, Senate: Adopted by Consent

Filed with the Secretary of State

- Resolution to study the availability of legal representation for injured workers to assist injured workers in understanding and pursuing WSI decisions.

Fiscal Impact: No impact anticipated.

SB 2071: Engrossed Bill to Establish an Exemption from WSI for Independent Truckers (Board supports)

Senate IBL Vote: Do Pass 7-0, Senate Vote: 43-0

House IBL Vote: Do Pass 12-0, House Vote: 92-0

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- Permits an individual or employer of the trucking industry to rebut the presumption of employment in workers' compensation law by meeting the elements of a 7-point test.

Fiscal Impact: Eliminating the requirement of coverage for certain members of the trucking industry should not have an impact on statewide premium levels. To the extent that some independent owner operators opt of the workers' compensation system, collected premiums will decline; but WSI should realize a reduction in losses that will offset the drop in income.

SB 2419: Engrossed with House Amendments, Rehabilitation Allowances for Second Household and Travel Expenses Bill (Board supports)

Senate IBL Vote: Do Pass 6-0, Senate vote: 47-0

House IBL Vote: Do Pass 12-0, House Vote: 90-0

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- Provides injured workers a 30% expense allowance for maintaining a 2nd household or traveling more than 25 miles one-way when attending a retraining program.
- Provides a sliding scale mileage allowance for those commuting less than 50 miles round trip while attending a school program.

Fiscal Impact: No material impact.

SB 2431: Engrossed with House Amendments, Independent Medical Examinations (IME) Bill (Board supports)

Senate IBL Vote: Do Pass 7-0, Senate vote: 46-0

House IBL Vote: Do Pass 11-0, House Vote: 88-0

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- Requires WSI to make a reasonable effort to either designate a duly qualified doctor licensed in the state in which the injured worker resides or a duly qualified doctor within a 275 mile radius of the injured worker's residence to conduct IMEs.

Fiscal Impact: No material impact.

SB 2432: Engrossed with House Amendments, Changes to the Designated Medical Provider or Preferred Provider Statute Bill (Board supports)

Senate IBL Vote: Do Pass 7-0, Senate vote: 46-0

House IBL Vote: Do Pass 11-0, House Vote: 88-0

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- Allows an injured worker to request a change in medical providers after 30 days instead of 60 days from date of injury.

Fiscal Impact: No material impact anticipated.

SB 2433: Engrossed Bill with House Amendments for Work Search (Board supports)

Senate IBL Vote: **Do Pass 5-2**, Senate vote: **47-0**

House IBL Vote: **Do Pass 12-0**, House Vote: **88-0**

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- Requires WSI when the first appropriate vocational rehabilitation option is identified, to notify the injured worker of the obligation to make a good-faith work search or good-faith work trial and provide information to the injured worker regarding reinstatement of benefits if the work search or work trial were unsuccessful.

Fiscal Impact: No material impact anticipated.

2009 Failed Bills

HB 1160: Examination of WSI by the Insurance Commissioner (Board opposes)

House IBL Vote: **Do Not Pass 9-2**, House Vote: **5-89**

- Allows for the Insurance Commissioner to request periodic reports about claims, grievances, administrative hearings and other information.
- Requires WSI to transmit an annual statement not later than September 1st of each year to the Insurance Commissioner including the financial statement from the preceding June 30th. Also requires quarterly financial statements to be provided.
- Establishes that the Insurance Commissioner or their designee may conduct an examination of WSI at their discretion and provides that these examinations be furnished to the Governor to be reviewed for a recommended course of action.
- Establishes that confidential records from WSI will remain confidential.
- Provides for a continuing appropriation for the funds necessary to pay for the expense of the examination.

Fiscal Impact: As prepared by the North Dakota Insurance Department the bill will require 5 new FTE's. The additional FTE's and associated costs are estimated at \$1.16 million. The proposal will also increase WSI administrative costs, including an estimated \$100,000 for the examination cost, an additional FTE and additional funding for training and resources to prepare periodic and annual filings to conform with statutory accounting principles.

HB 1247: Weekly Dependency Allowance Changes (Board opposes)

House IBL Vote: **Do Not Pass 8-4**, House Vote: **36-58**

- Increases the dependency allowance from \$10 to \$30 per week per child.
- Allows combined wage-loss benefits and dependency allowance to exceed an injured worker's pre-injury net wage.

Fiscal Impact: Reserve level increase for existing claims will be \$1.2 to \$3.0 million. Premium rates will increase less than 0.5% per year, or less than \$750,000 based on current levels.

HB 1408: Engrossed Bill Allowing Employers to Self-Insure for WSI Coverage (Board opposes)
House IBL Vote: Do Not Pass 6-5, House Vote: 7-86

- Employers would be allowed to obtain private insurance or self-insure for WSI coverage provided certain capitalization requirements are met.

Fiscal Impact: Not quantifiable. However, the introduction of self-insurance will likely generate a need for higher manual premium rates for the employers that continue to purchase insurance coverage through WSI. See complete fiscal note for further information.

HB 1410: Offset for Social Security Retirement (Board opposes)
House IBL Vote: Do Not Pass 9-3, House Vote: 13-81

- Modifies the Social Security Retirement offset calculation.

Fiscal Impact: Should not increase future premium rate levels as it applies to claims from 1989 to 1995. Increases discounted reserve levels by approximately \$4.0 million.

HB 1427: Continuing Jurisdiction of WSI Claims (Board opposes)
House IBL Vote: Do Not Pass 8-4, House Vote: 30-64

- Makes WSI determinations not to reopen a case under continuing jurisdiction an appealable decision.
- Sets forth criteria for claims wherein reopening cannot be denied without a reason given.

Fiscal Impact: Not quantifiable, however WSI anticipates an increase in both the number of administrative appeals and the legal costs associated with those appeals. To the extent those costs increase, rate and reserve levels will increase accordingly.

HB 1524: Changes to Fraud Standard (Board opposes)
House IBL Vote: Do Not Pass 8-4, House Vote: 34-59

- Requires WSI to demonstrate by “clear and convincing” evidence that there was an actual and substantial loss as a result of fraud before an injured worker would forfeit future benefits.

Fiscal Impact: Not quantifiable, however to the extent the legislation hampers WSI’s ability to terminate future benefits when fraud is involved, losses will increase and future premium levels will be adjusted accordingly.

HB 1542: Judicial Review/Liberal Construction of Workers’ Compensation Claims (Board opposes)
House IBL Vote: Do Not Pass 8-4, House Vote: 37-57

- Eliminates requirement that judicial review of claims must be reviewed solely on their merits and not be construed liberally on behalf of any party.

Fiscal Impact: Not quantifiable. However, WSI anticipates the legislation will act to increase the uncertainty of outcomes for claims subject to judicial review.

HCR 3002: Engrossed WSI Governance Study Resolution (Board neutral)
IBL House Vote: Do Not Pass 9-3, House Vote: 24-70

- Studies the governance structure of WSI to determine the feasibility and desirability of the privatization or mutualization of WSI.

Fiscal Impact: No fiscal impact is anticipated.

SB 2426: Engrossed Bill for Changes to the Additional Benefit Payable (ABP) Statute (Board opposes)

Senate IBL Vote: Do Pass 7-0, Senate vote: 46-1

House IBL Vote: Do Not Pass 8-5, House Vote: 31-59

- Increases ABP payment schedule.

Fiscal Impact: Available information suggests that annual costs will increase by a material amount, in excess of \$1 million.

SB 2310: Engrossed Bill for Judicial Review/Liberal Construction of Workers' Compensation Claims (Board opposes)

Senate IBL Vote: Do Pass 7-0, Senate vote: 46-0

House IBL Vote: Do Not Pass 8-5, House Vote: 37-55

- Eliminates requirement that the title may not be construed liberally on behalf of any party.

Fiscal Impact: Not quantifiable. However, WSI anticipates the legislation will act to increase the uncertainty of outcomes for claims subject to judicial review.

SB 2386: Changes Definitions of Permanent Total Disability (PTD), Temporary Total Disability (TTD) and Compensability of Pre-Existing Injuries (Board opposes)

Senate IBL Vote: Do Not Pass 4-3, Senate vote: 14-31

- Redefines the standards for PTD, reverting back to a more subjective definition.
- Redefines TTD and eliminates the 104-week limit.
- Redefines when pre-existing injuries are compensable.

Fiscal Impact: The change is anticipated to increase premium rate levels by more than 1.0% or more than \$1.5 million dollars per year. The total reserve level increase for PTD claims will fall in the range of \$5 million to \$7 million dollars.

SB 2430: Removes 5-year Cap for Temporary Partial Disability (TPD) Benefits (Board opposes)

Senate IBL Vote: Do Not Pass 7-0, Senate vote: 4-39

- Extends (TPD) benefits indefinitely versus the current 5 year limitation.

Fiscal Impact: Though difficult to quantify, the impact on premium rate and reserves would be material.

SB 2434: Reapplication of Disability Benefits (Board opposes)

Senate IBL Vote: Do Not Pass 4-3, Senate vote: 9-36

- Eliminates requirement that the injured worker has sustained a significant change in compensable medical condition, the injured worker has sustained an actual wage-loss, and the injured worker has not retired or voluntarily withdrawn from the labor market before benefits can be reinstated.
- Requires WSI to reinstate disability benefits if, as a result of their injury, their pre-injury net wage is reduced by 10% for at least 5 consecutive calendar days.

Fiscal Impact: Not quantifiable, however WSI anticipates that the legislation will act to increase costs, possibly by a material amount. The proposed change may also act to increase the level of uncertainty of any actuarial estimates associated with older injuries.

SB 2435: Continuing Jurisdiction of WSI Claims (Board opposes)

Senate IBL Vote: Do Not Pass 5-2, Senate vote: 8-37

- Makes WSI determinations not to reopen a case under continuing jurisdiction an appealable decision.
- Sets forth criteria for claims wherein reopening cannot be unreasonably denied.

Fiscal Impact: Not quantifiable, however WSI anticipates an increase in both the number of administrative appeals and the legal costs associated with those appeals. To the extent those costs increase, rate and reserve levels will increase accordingly.