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ROLL NUMBER

DESCRIPTION

1278

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1278

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1278

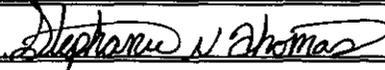
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1177

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1278.

Larry Anderson, Job Service ND: See written testimony #1.

Overview of handout #1

Rep. Johnson: Give me a sense of what amount that would need to be?

Larry: We would want to provide for adequate protection of the reserves and money for the Insurance Trust Fund, more in the neighborhood of a \$2 million bond requirement on a project in that magnitude.

Rep. Vigesaa: What changed from then until now? I'm assuming it's in the rate structure.

Larry: I don't believe it was adequate in 2001, and when the policy was established by the 2001 legislative assembly, I believe that we miscalculated the central liability to the Unemployment Insurance Trust Fund. This bill attempts to put that risk more into perspective.

Rep. Kasper: Why in your example #2 did you use a positive employer base, and then in example #1 you're using the negative? Is the rational because currently these employers aren't positive based employers, or the numbers come out better this way?

Larry: We specifically felt that the way HB 1278 is currently structured provided for to high of a protection on the potential liability, so we were looking for a formula that would lower the bond requirement.

Rep. Kasper: The flaw in your supposition is that all of the contractors that are getting these larger projects are positive based contractors, and some of them I don't think are.

Larry: They perhaps are not. We're just using the positive minimum there as part of the formula to align at the bottom.

Rep. Dosch: In the UI world, is this something you're seeing in other states to address this type of issue?

Larry: Actually, I did a national search, and even Wyoming statute that was from 1987 that allows the established based upon is inactive, so we're the only state in the nation with a constructional risk of protection bond requirement on all these construction projects.

Rep. Ruby: You're actually using a worst case scenario of benefits that you paid out of your risk. So, worst case scenario is the amount that you collect based on the best positive balance. That would then change some of the formula. Wouldn't you just go to something similar in the middle of those two rights so there's no negative rate, or the highest positive rate, or something like that?

Larry: That's precisely why we offered the alternative amendment for consideration by the committee. If we used any rate other than the positive minimum, we're going to have a higher denominator that we're working with, and it's going to cause the bond requirement to be higher.

Rep. Kasper: What you're trying to do is give your best guess on what might happen, and I'm wondering since 1987, have you been able to track any large construction projects, or familiar to see the actual history of claims or is it that you don't have that available?

Larry: Yes, we have. Those large construction projects that we have in the state of ND since, have not had an adverse impact on the unemployment Insurance Trust Fund, however we've enjoyed relatively a good economic condition, so that the unemployment opportunities for those workers following the completion of the large construction projects. So, if for some reason that should turn around, my job as your director for the Unemployment Insurance Program is to assist you in developing that policy, and making policy decisions that will ensure the solvency of the Unemployment Insurance Trust Fund. This bill is an effort to provide for some protection against potential liability to the Unemployment Trust Fund.

Rep. Amerman: Aside from changes to what is now the negative minimum, this bill changes it to the positive minimum. Currently, you estimate the benefits paid figured this way, and then the new bill would be figured this way, because how you figure it is with the changes also, right?

Larry: That's what I thought it would be easiest for the committee members to look at how we apply the current law, and what we arrive at the inadequate \$6,816 requirement for the bond or line of credit versus, what the 1278 has currently got which would give us the bond requirement of \$2 million \$646,000.

Rep. Johnson: What kind of a ballpark figure for a line of credit, or a bond of \$15 million for a cost to the company?

Larry: It's not unusual for there to be a bond requirement, performance bonds, and other types of requirements on these large projects. I don't believe there's opposition from the industry.

Rep. Dosch: Is there nothing under the federal UI laws now that allow for the treatment of temporary employees differently, as far as benefits paid, or do we have that flexibility?

Larry: It would work on the large construction projects, the building of a fishing plant would be considered temporary employment, and subsequently we'd be able to treat that differently.

There's no differentiation in federal employment law in temporary and permanent work as it relates to the potential of how you are going to receive them.

Rep. Keiser: What makes an employee eligible for unemployment benefits?

Larry: First you must be able to work, available to work, actively seeking work, and out of work through no fault of your own. The first thing would be to determined if monetarily eligible, and to do this you must have worked a minimum of 2 ½ quarters in your base period, the first 4 of the last 5 calendar quarters, and earned a minimum of \$2900 in those quarters.

Rep. Clark: When was the last time the \$20,300 figure was changed?

Larry: That is currently a part of the statute established based upon a formula in the Unemployment Insurance Tax Law. It's a percent of the average weekly wage in ND. It changes as our average weekly wage goes up.

Rep. Clark: That seems like a relatively small figure for the construction industry.

Larry: Actually, we have a fairly high taxable rate pace in ND in comparison to the other states.

Rep. Zaiser: What is that percentage that you use of the weekly wage?

Larry: It's roughly 66 2/3rd percent.

Rep. Gruchalla: Do the other states not have this similar plan in place?

Larry: They do not.

Rep. Ruby: Even though that would be compensated by this, wouldn't that still be considered the worst one in a 20 to 30 year period?

Larry: No. If for some reason you have a very large construction project and the economy is such that all those workers only get per load, they have no other employment to inter to, and

the benefits paid exceed the contributions, we will invoke the bond to protect the Unemployment Insurance Trust Fund against that dip in the reserve.

Rep. Vigesaa: It appears that you have an additional safety net in that if the benefits exceed is covered by the bond, then the employer actually has to pay out of their own pockets then, correct?

Larry: That's correct.

Rep. Boe: Is there a length of employment that could be met, and the bond would be not needed then?

Larry: Exactly. If those workers on that large construction project leave that project and immediately go to another project and they work for a period of 15 months, then the potential liability to that related specifically to that construction project no longer rests with that project, but rather is assumed by their subsequent employment following that project completion.

Rep. Boe: If the construction project was 7 years in length, and the employer that's employing these people for 7 years on the construction, is there still a need for the bond, or would they have contributions totaling up a not, to not need the bond?

Larry: According to 1278 as currently drafted into it, the bond would be required at the construction of the project. Once it's determined that it exceeds \$50 million dollars, that bond requirement would stay in place until completion of the project, and total completion of potential liability to the Unemployment Insurance Trust Fund related specifically to that project.

Rep. Ruby: How easy is it to get these types of bonds?

Larry: We tried to work with the insurance companies to deal with these matters, and help develop language that would be acceptable to ensure we have this kind of protection. To the best of my knowledge, it's fairly commonplace to have bond requirements on large construction projects, as long as the amount doesn't become too large, then it's not that difficult.

Rep. Dosch: If this bill was to pass, and this is only when you're using the .34%, is that only for the estimated bond calculation. It does not necessarily mean what that employer would actually retain?

Larry: You're exactly right.

Gary Jacobson, Great River Energy: Opposed to HB 1278. I hope we collectively get a hold of this thing before it gallops away on us, because you don't want these types of hidden costs hidden, to appear in financial records when we're going after mega million dollars of financing.

Rep. Amerman: With the Transmission Authority, proposed Pipeline Authority, new ethanol plants, and bio diesel plants, do you see that there are going to be quite a few of these \$50 million projects?

Gary: Yes I do.

Rep. Kasper: On the bond, the way I understand it is it would be purchased by the contractor, not by Great River, and so Great Rivers liability would simply be the extra cost of the bond that the contractor has to purchase for the project, which probably in the world of your numbers that your company deals in is comparable to something very small. So, I don't see a problem financial statement, it might be a problem on extra cost of the project.

Gary: I do believe the final person that has to pay for this claim of everybody else goes to the prime contractor who is the owner. If we're are looking at advancing this project, our financial wizards and the people of institutions who are borrowing the money from, we want to know where the surprises are, and it becomes part of your total financial package.

Rep. Kasper: Before a contractor would be able to engage in a project, according to this bill the contractor would have to buy the bond, and pay the cash with the bond. So, the bond is

there to alleviate the liability down the road, so there would be no liability if there is a bond or line of credit.

Rep. Boe: Approximately, how long does it take to build a generation plant?

Gary: The actual construction time on most generating stations right now, you're probably talking 3 to 4 years.

Curtis Jabs, Basin Electric Power Cooperative: Oppose HB 1278.

Rep. Keiser: I know that Basin, Great River and any other business doing business in the state of ND believes that they have a sense of cooperate responsibility, and should pay for any cost associated with unemployment, that they would be directly or indirectly responsible for, and that is what this bill attempts to ensure.

Hearing Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1278

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-23-2007

Recorder Job Number: 1730

Committee Clerk Signature

Lisa M Thomas

Minutes: **There was a subcommittee appointed to discuss HB 1278. HB 1278 relates to construction project risk protection. Members of the appointed subcommittee are: Rep. Amerman, Rep. Vigesaa, and Rep. Clark. Rep. Keiser was also present at the meeting. Rep. Vigesaa called the subcommittee meeting to order.**

Rep Vigesaa: Today we are going to receive some amendments from Job Service and offer these gentlemen the podium if they have some comments concerning the amendments.

Darren (*who did not give his first or last name, or sign the register*) was present from Job Services to introduce the amendments proposed by Job Service. See attached amendments.

Rep. Keiser: The approach we are taking here is kind of, well, if enacted I'm not sure it appears to me that everybody gets laid off. We are assuming the worst scenario.

Darren: This assumes a worst case scenario. The bill as it is originally written, is written to provide one hundred percent protection to the trust fund.

Rep. Keiser: How many weeks are you using?

Darren: We are using, originally, the bill was set up with twenty-six weeks for the first year and corresponding years. With the alternative it is just twelve weeks.

Rep. Keiser: The question is, is it reasonable to think in the case of if they had jobs to go to, what can we reasonably assume? Is it forty percent? Is it sixty percent?

Darren: We are open to any situation.

Rep. Vigesaa: The first alternative is to take the average weekly benefit times the average term of a claim. The second alternative takes, because both of these jobs are going to be higher paying jobs, then we took the maximum benefit and took those times the average amount of time. What do you think is a reasonable percentage?

Darren: We've gone from six thousand dollars up to one point two million. The bond is what is going to cost us the money.

Another unidentified man: Do you remember these employees all coming from an aggregate of all companies, or was it just occurring?

Rep. Keiser: I think it was everybody.

Darren: In almost every situation, it will never be one hundred percent.

Rep. Keiser: You remember the pipeline story, where they rebuilt the pipeline.

Rep. Vigesaa: How big of a bond would that be?

Darren: It all depends upon this. Maybe five percent.

Rep. Vigesaa: Do you feel that this obligation goes above and beyond that bond?

Rep. Keiser: It will be above and beyond.

Clerk can no longer understand or hear the tape. Referring to hand written notes from here to the end.

Rep. Keiser: If a business left the state, how do you collect unemployment?

Rep. Vigesaa: They decide how to determine the numbers, it is referenced in page two.

Rep. Vigesaa: They have to decide the duration.

Rep. Keiser: Twelve weeks plenty.

Darren: Twelve weeks is the minimum, ten on average.

Refer to attached notes. Subcommittee meeting was closed. No action was taken.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1278

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2117

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on HB 1278. HB 1278 relates to construction project risk protection. Rep. Dosch was absent.

Rep. Vigesaa: I think the amendments should be coming around. *See attached amendment.*

One of the things that the industry wanted to have in there was that any place where referred to the owner, we amended it to say "owner in those situations in which there is no general or prime contractor" that is throughout the bill. Then we came up with a new calculation based on conversations with the Job Service and the industry, along with our subcommittee and we have now come up with using the same rate, however, using the maximum weekly benefit, using twelve weeks for the duration for the first year. That lowered the alternative number to one million six hundred and sixty four thousand. In visiting with the industry, we went with a percentage of that to calculate the amount of the bond or letter of credit we would need. We chose sixty percent, so sixty percent of the one million six is the requirement for the bond and that seems to be satisfactory to the industry and Job Service was okay. The other amendment, we have inserted *multiplied by sixty percent* and changed the duration from twenty-six to twelve. The amount of the bond would be just under one million dollars that they would be required to post.

Rep. Vigesaa moved to adopt the amendments. Rep. Zaiser seconded.

Voice Vote: Unanimous. Amendments are adopted.

Rep. Vigesaa moved a DO PASS AS AMENDED. Rep. Clark seconded.

Roll Call Vote: 13 yes. 0 no. 1 absent.

Carrier: Rep. Vigesaa

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

Page 2, line 28, after "contractor" insert a comma

Page 2, line 28, after "owner" insert "in those situations in which there is no general or prime contractor,"

Page 2, line 31, after "contractor" insert a comma

Page 2, line 31, after "owner" insert "in those situations in which there is no general or prime contractor,"

Page 3, line 3, after "contractor" insert a comma

Page 3, line 3, after "owner" insert "in those situations in which there is no general or prime contractor,"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

Page 2, line 11, after “contributions” insert ,multiplied by sixty percent

Page 2, line 21, replace “twenty-six’ with “twelve”

Page 2, line 28, after “contractor” insert a comma

Page 2, line 28, after “owner” insert “in those situations in which there is no general or prime contractor.”

Page 2, line 31, after “contractor” insert a comma

Page 2, line 31, after “owner” insert “in those situations in which there is no general or prime contractor.”

Page 3, line 3, after “contractor” insert a comma

Page 3, line 3, after “owner” insert “in those situations in which there is no general or prime contractor.”

Renumber accordingly

January 29, 2007

**House Amendments to HB 1278 (78236.0101) - Industry, Business and Labor
Committee 01/30/2007**

Page 2, line 11, after "contributions" insert ", multiplied by sixty percent"

Page 2, line 21, replace "twenty-six" with "twelve"

Page 2, line 28, after "contractor" insert an underscored comma and after "owner" insert "in those situations in which there is no general or prime contractor,"

Page 2, line 31, after "contractor" insert an underscored comma and after "owner" insert "in those situations in which there is no general or prime contractor,"

**House Amendments to HB 1278 (78236.0101) - Industry, Business and Labor
Committee 01/30/2007**

Page 3, line 3, after "contractor" insert an underscored comma and after "owner" insert "in those situations in which there is no general or prime contractor,"

Renumber accordingly

Date: 1-29-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1278

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass, as amended

Motion Made By Rep. Vigesaa Seconded By Rep. Clark

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	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

HB 1278: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1278 was placed on the Sixth order on the calendar.

Page 2, line 11, after "contributions" insert ", multiplied by sixty percent"

Page 2, line 21, replace "twenty-six" with "twelve"

Page 2, line 28, after "contractor" insert an underscored comma and after "owner" insert "in those situations in which there is no general or prime contractor,"

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Page 3, line 3, after "contractor" insert an underscored comma and after "owner" insert "in those situations in which there is no general or prime contractor,"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1278

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1278**

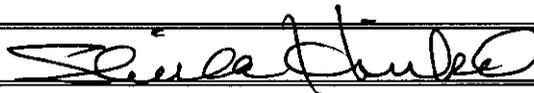
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 5, 2007**

Recorder Job Number: **4326**

Committee Clerk Signature



Construction Project Risk Protection:

Larry Anderson – Director WSI - In Favor

TESTIMONY # 1 ended 5:30m

HB 1278 amends the existing statute. 5204061 Went over page 1 & page 2

S Klein: What we're doing here is excluding design and engineering firms... what...we would be doing that because...?

Larry A: Because of the way the current statute is currently written and all of the contractors and sub-contractors on construction projects that exceed 50 million dollars have to report wages that they pay on behalf of that contract separately.

S Klein: A project with \$50 million, and if their portion is just....

Larry A: Even if their portion is \$10,000, and they're an existing business. They have to prepare a wage and contribution report based upon their entire business. The statute says, "if you work on this project in excess of that amount, in additional amount because you were a part of that contract. We feel it places an undo reporting burden on those businesses.

S Klein: So you felt we were "under-bonded," so on a big project, the employer is required to bond through job service.

Larry A: Potential liability of the trust fund because of the gasification plant. Policy makers back at that time put in risk protection legislation to prevent that from happening.

S Klein: So the 50 million dollar figure is high enough that we won't drag everyone in but allow us to cover, these are huge projects.

Larry A: Very large construction projects. We're starting to see more and more of the projects in ND, more than the gasification plant construction.

S Klein: Now we are providing a different mechanism to determine what the bond should be?

Larry A: Exactly. Just changing the formula to calculate the bond requirement, using different variables.

S Andrist: Do you have a sense for a significant challenge to these companies to get that extra million dollars in bonding? You say that bonding is very difficult, I would guess these would be large firms and it wouldn't be that difficult. What kind of problem would that make to those contractors?

Larry A: We did see input and tried to work with large contractors and work providers in these bonds and credits. To the best of our knowledge, based on the financial standing of contractor, but fairly routine for in that business.

S Klein: You list \$2 - \$10 per \$1000, that would vary depending on the credibility of the company.

S Potter: They are paying unemployment insurance in addition to the bond, bond is because the project you're underestimating what the unemployment rate should be.

Larry A: That's correct. We use the formula on page 2, Exhibit 1, average of 12 weeks as the maximum amount. If we had a project completed, and all the workers then were laid off and no other job to go to, and received 12 weeks of benefits at \$351 a week, would vastly exceed the benefits allowed for the workers.

S Potter: We're not figuring on 100% unemployment, that's a little extreme, like that never happens, what is the average when a big project closes down? How many of those people are going to be filing for these claims?

Larry A: It depends on the economic conditions at any given time. Now it depends on if we have the workers.

S Potter: When you say "significant," what's that number? 20% unemployed, or 10?

Larry A: I don't recall, I recollect near zero.

S Hacker: Do other states do similar things?

Larry A: Did the research when the policy makers put this into effect in our state. It was patterned after a bill in MT or WY. This is very unique to ND w/patterned after WY.

S Hacker: Do you feel this will have a substantial effect on those people who want to do business in ND?

Larry A: We want to be sensitive to this not becoming an impediment people doing business in ND. Trying to keep it economic-development friendly in a manner proposed. Bonding is common.

S Klein: The sub-committee worked out a formula?

Larry A: Everyone that participated in the committee that chaired, there was a lot of give-n-take, one of the original amendments to the bill would have required the formula to be near two million dollars, then we got it down to 1.6 million dollars to the current amount.

S Behm: So in a big project, they need to cover the smaller contractors.

Larry A: General contractors require a bond equal to the formula to cover the project.

S Behm: *Statement* If I were a general contractor, I would want to know who the sub contractors are.

Larry A: They would want qualified sub contractors.

S Wanzek: This bond only relates to unemployment insurance.

Larry A: Correct, this is to protect them.

S Wanzek: As I read the current law, the employer must pay the difference between the contributions and the potential benefits that are ultimately paid out in the end and the bond is there to make sure that they form that responsibility.

Larry A: They are required to pay out of their calculated taxes on wages paid. Purpose of the bond is for liability above and beyond what the existing experience rating would provide for.

S Klein: As an example, they paid their calculated negative balance rating and they paid in a million dollars. Now the projects complete, we have all this unemployment, they're hit to the fund is 2 million dollars. How does that work?

Larry A: What would occur is we would call in the bond if they were unable to in the process make contributions to provide for the payout of the benefit that we pay out.

S Klein: This only is in projects over 50 million dollars.

Larry A: That's correct

S Hacker: Can you give me an example to see the same template to see something different by running the numbers. So we can see more than one example.

Larry A: I'll run 3 or 4 examples for you.

S Wanzek: On lines, section 4, line 30 *Read from the bill*

Larry A: Yes, they're responsible for that to prevent socialized cost. If the employer doesn't pay, the cost will be shared.

S Klein: In the old language, the bond is for the contractors. This legislature creates a new formula for what the bond is worth so it can cover a big hit.

Larry A: The current bill wouldn't cover it.

S Potter: Using the example, the fund would recover, but 1.6 million paid out, the employer still pays the difference?

Larry A: The compromise is 60% protection of liability.

S Potter: Will Job Service still attempt to recover that other 600,000 dollars that wasn't paid for by the bond?

Larry A: Yes. Call in the board when the need to .

S Klein: If there is a major hit to the fund, we're not going to share it with the rest of the employers in ND, what you're trying to do is have that particular contractor pony-up for all the expenses involved in the project.

Larry A: That's correct.

S Klein: If you can't do it through the bond, you're going to continue to hurrang-them until they pay.

Larry A: We will use approved collection methods.

S Wanzek: I'm asking for my own personal information, from a negative employers prospectives, aren't there also regular premiums paid, or regular contributions made that would off-set the difference between the 1.6 million and the \$90,000 bond?

Larry A: The formula provides you the actual calculation on contributions that would be made VS the total potential benefit payout. No, there aren't any other taxes from these businesses except this additional protection to the bond.

S Wanzek: These 200 employees and this special project, you're going to require the company to have a bond, plus, aren't these 200 individuals classified in a higher experience rating? Wouldn't they have regular negative employers rating? You projections are projected, the 200 individuals which would be construction workers, which the employer would be paying premiums for unemployment insurance.

Larry A: They would have a potential liability.

S Klein: In your example, 200 employees with normal contribution provide \$20,000, there's a potential however, if all those folks went to the unemployment ranks of having a 1.6 million dollar hit on the fund....what you're doing here the difference between benefits paid and the potential contributions is what the bond would cover some of.

Larry A: To clarify that point. The formula as currently proposed uses the current year positive employer minimum, it's not using the actual tax rate of the general contractors. The previous statute uses the minimum negative tax rate of 6%. The current year positive was driven by the desire in the sub-committee not to drive the bonds requirements through the ceiling.

S Hacker: When going through example, the \$998,000, you used 100% employees, you claimed that they paid in at 200 employees, and then they paid out at 200 for 2 years at 12 weeks, full benefit on.... Is that realistic that the whole project that when they're done that everyone is going to max out their unemployment claim?

Larry A: We're attempting to look into the future and determine what would be the impact to the unemployment insurance. What would be the impact to all the employers in ND if these positions unfold. That was what policy makers were faced with. They tried to anticipate.

The formula used in Exhibit 1 VS Exhibit 2 are different, and the amount of bond was lesser.

S Hacker: Is it realistic that all those people are going to be laid off for a maximum time?

Larry A: It's possible.

Gary Jacobson – Great River Energy - Neutral

Gary worked on the House side when Basin and they worked together. We were concerned and asked if it is worth it to have this cost and be burdened with the amount. What is the worst case scenario. We are comfortable with the bill, we have the projects to use the program. If it is a way to handle the negatives, how can we prepare. With the added cost, we try to work with

the system. We're not here to fight it or create more wordage for you to be concerned about, this is a neutral issue.

S Potter: These are extreme calculations, having 100% unemployment when we haven't had 4% unemployment in our state in many years is unreal, this is tactical or political, would you like to see it passed as is, or have us amend it and send it back to the House?

Gary J: We have other bills to address. We have many members who have worked on this, still mutual.

S Klein: As you continue to work with this in the last two sessions, we continue to work toward maintaining that health job service balance, is that enough flexibility? Does this give you room you can support?

Gary J: Yes, 60% level we thought, not a worst case scenario, but a little worse than the best situation.

S Hacker: The concept in itself, I need your opinion, this is supposed an insurance program, but now you're posting bond which you're going to cover yourself anyway, is this insurance anymore?

Gary J: I don't know.

S Klein: So they are being insured for 40%?

Gary J: Yes

S Klein: Whose responsible for 40% layoffs if they should occur, the construction company or should it be the rate payers of the state? Have we found the balance here?

Gary J: The reason why the funding exists is for those kinds of situations to cover some percentage of the project, any project.

S Wanzek: I'm still struggling with my questions to Larry, in your defense, I'm thinking \$350 million dollar project, those are the kinds of projects that are starting to occur that we haven't

seen in some time, and I'm imagining that there might be a need to bring some construction workers in that otherwise wouldn't be in here, and when the project's done, and there isn't another project in the state, it is possible that a high percentage of them of them could be laid off for some time. The bond is only meant for the employer if the benefits exceed the contributions on that project. We use the minimum tax rate of the positive employer just for the purposes of calculation, to determine the contribution.

Gary J: This workforce is a skilled force. These people are wanted as they are skilled. Our fear is that we would not get these skilled people for these projects.

S Klein: This isn't necessarily a cost to the company, it will be a cost to the project which you have to pass on anyway.

Gary J: Right

S Behm: I think it's a tax more than insurance.

Gary J: *Chuckles*

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1278 B**

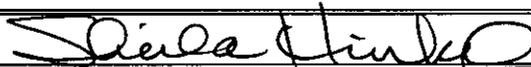
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4500**

Committee Clerk Signature



Construction Project Risk Protection:

S Klein: Bill talking about risk protection, and projects, and there's an issue with the fund and why they should bond.,

S Heitkamp: Was Job Service in favor of this?

S Klein: Job Service was very much in favor of this. The issue is, if you have a project over 50 million dollars, should that company provide a bond after the end of the project they would have this huge hit on the job fund.

S Hacker: Considering the other bill we just looked at, I see our industry taking off. Are we laying new regulations, and we start to pile them all together that makes the industry not as attractive as it once was in ND? We've had two bills right in a row, I'm starting to see that developing. I think that companies, I don't have a problem with those, that's why I drafted an amendment. Every time we have the unemployment insurance come to me and say, "we're trying to protect the fund," I don't disagree with protecting the fund, but I have to bring up to the committee that I think we need to recognize that this is insurance. These guys are going to end up bonding to the point where it's not insurance any more, then why should we require them to be in the unemployment trust fund anyway? Why not force them to make an unemployment BOND. They'll bond during the project, so they don't pay the premiums. They'll have a bond,

the point is, I don't think it's insurance. I'll pass the amendment out. You multiply 50% by the number of employees, example they had 200 employees, they claimed all 200 would be laid off at the job. I found that unrealistic, and thought maybe 50%.

S Heitkamp: How does this compare to other states?

S Behm: It's a good way to do it.

S Hacker: We're the only state in the nation that requires this legislation. I think we are starting to throw pieces of legislation on top of these companies.

S Potter: I agree with this. Someway to lower this about ½. I thought the estimates from Job Service were way overblown, but I do understand the reason why do this, too. This is a "one shot deal", not a company that is in ND forever, it's a one time project and they're gone, they could leave us holding the bag and it's just like you bond the oil companies to make sure that they close down the well when it's over, you have to leave ourselves whole. There's a reason for it. It makes it more reasonable. I don't know if the companies are going to like it, once again, we've amended it and it goes over there, and who knows what happens.

S Klein: When they started, they were trying to cover 100% of there butt, now they've got it down to 60% of what the actual hit would be. The biggest concern is the fact that their funds are getting tighter and tighter and they're scrambling to make sure they've got enough coverage.

S Hacker: I find it interesting, we sat in here the last session and everybody's excited about a certain plant that was going to be built, and now it's not going to be in the state of ND.

S Klein: There's nothing wrong with putting an amendment on and sending it back over and allowing the conference committee to air this out one more time. I don't have a problem with that.

Motion for Amendment – S Hacker

Second by S Heitkamp

Roll call vote for DO PASS ON THE AMENDMENT as proposed by S Hacker –

6-0-1 passed

Motion for DO PASS AS AMENDED by S Heitkamp

Second by S Hacker

Roll call vote for DO PASS AS AMENDED – 6-0-1 Passed

Carrier – S Hacker

78236.0201
Title.0300

Adopted by the Industry, Business and Labor
Committee

March 6, 2007



Handwritten signature and date: 3-6-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1278

Page 2, line 20, after "multiply" insert "fifty percent of" and remove the first underscored comma

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1278, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1278 was placed on the Sixth order on the calendar.

Page 2, line 20, after "multiply" insert "fifty percent of" and remove the first underscored comma

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1278

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1278

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: 28 March 2007

Recorder Job Number: 5598

Committee Clerk Signature *Jan Prindle*

Minutes:

The conference committee on HB 1278 was called to order. Attending were Representative Vigesaa, Chair, Representatives Dosch and Thorpe and Senators Hacker, Wanzek, and Potter.

Chairman Vigesaa: We'll begin by having the Senate explain the rationale for their amendment.

Senator Hacker: The amendments we did are a simple change to formula. In the formula they used every employee working on the project would be collecting benefits for the average 12 weeks and the 50% language was just an arbitrary number trying to get it more in perspective of what may occur out there. If someone had 200 employees we don't believe 200 employees would be collecting unemployment.

Representative Dosch: We are talking about bonding here and we have to ask ourselves some "what if" scenarios. If you are laying 200 people off there may be 200 initially. Especially if it's in the smaller communities. Whether they go the whole duration is questionable. They are going to be drawing unemployment. What the House looked at is what happened to us when coal gasification had completed construction and the huge impact that had on the unemployment fund and taking years for that fund to recover. All the other

businesses and employers had to pick up the tab on that one. The purpose and numbers were based on that activity and the scenario of that happening again.

Chairman Vigesaa distributed information prepared by Job Service North Dakota.

(Attachment #1) He went through the attachment. It shows the differences between the House and the Senate amendments. We feel it's a very low cost for industry to provide the bond. We worked with industry and Job Service to come up with this. We had a subcommittee who worked with them to come up with the formula our bill was sent out with. Job Service, although they wanted the full 100% was okay with the 60%. We feel this is adequate protection for the fund and industry was on board.

Senator Potter: Walk me through the differences here.

Chairman Vigesaa: If you will look on the center of page 5, we used the 26 weeks which the full amount that they can claim unemployment benefits. On page 6, we went to 12 weeks, then we took the revised number times 60% to get the revised calculation of \$998,456. We used the rationale that those people are probably not going to claim benefits for the full 26 weeks.

Senator Potter: From our perspective what we are trying to do is save these large projects some money. We have more of these projects now than when we built the gasification plant. The chances of people being all layed off. . The market is small, in fact many of the people that would be working are from out of state because we don't have enough employees in the area and they are going to be transient and know when the project is over. It doesn't come as a surprise to them if they are suddenly unemployed and they are making plans for it. To project that we are going to have 100% unemployment for any time is overkill.

Representative Dosch: In response to that, they may know when the project is going to be done but that does not preclude them from drawing unemployment. It's going to take some time relocate and they will file for unemployment during that time period. The fact that there

are multiple projects going on in the state, that's why this bill is even more important. We had one project that ended—that was the coal gasification. Now if we have 2 or 3 or 4 projects going on at the same time and 1 or 2 of those projects end and we multiply the impact by 2 what we experienced just in the gasification plant. When one stops and the other starts are they going to be overlapping? Those are things we don't know. When you look at the example of a 106.0 million project, the price of the bond is \$10.0. Is that really unreasonable to protect the integrity of our fund?

Senator Hacker: The purpose of the amendments is three fold. What is the most accurate estimation? If you have multiple projects likely they are not going to start at the same time because of the shortage of employees. We would probably see an overlap of some sort and a sharing when the employees end one job and move on to the other job. Different skills apply to different timelines in the construction projects. If we continue as a Legislative Assembly to pile new things on top of employers it only gives slightly more reason to do the project elsewhere. We have seen those projects not happen in ND. If we require someone to bond this entire amount—is it still insurance? I'm not sure it is then why are we charging them unemployment insurance premiums. There is a conceptional motivation behind the amendment. That's ultimately where it came from.

Chairman Vigesaa: I just want to remind everyone that we sat down with industry in our subcommittee and they were on board at 100%. They are okay with the amount of bond requirement at the level we had it. I don't believe that on a project of this size the bond cost will be onerous to that industry. They indicated so during our subcommittee. We are quite firm on our numbers.

Senator Wanzek: I think the real question is where is that balance. At what point to do protect the fund and at what point are we getting kind of obsessive. Is the gasification plant the only historical situation that we have? I think we want to get to that point where what we

think is going to happen. I'm not certain where that's at. You feel you are there and I'm not sure if that's obsessive or not.

Representative Dosch: When you are looking at the fund taking a huge hit when that construction projection ended and maybe Job Service can tell us how many years it took us to recover. I think we are just this year solvent in that fund. We have had to raise premiums and it taken a considerable time period to recover from one incident. That why with all this other stuff now occurring in the state, we need to learn from history what has happened to the fund and how to protect ourselves from that happening again. The industry didn't think this was a big issue to them and yet the protection that it affords the fund is considerable.

Chairman Vigesaa: We don't want to get in the situation where we create a negative balance employer because when you do that every one else is going to pay. We don't want to get into that situation again and when the industry is agreeing to the amount of bond in our version of the bill, it's not 100% protection, but it is adequate protection. We feel with our bill that's going to be accomplished. I want to reiterate that industry was involved in the negotiations of the formula and they were on board with our changes. On a project of that size I do not believe the bond requirement would be onerous. We did change the weeks in the formula from 26 to 12 and we did that because the average is about a 10 something for weekly duration of benefits.

Senator Hacker: Twelve weeks is probably more accurate. With the amount of money being insignificant—I totally agree. Ten thousand dollars on a \$106.0 million project is a drop in the bucket. Even if you go to 100% and its \$15 – 16.0, it's still a drop in the bucket. It is so inexpensive that it doesn't really matter then why don't we just get to the maximum amount of protection. That would be our version—using the 100%.

Representative Vigesaa: If cost is not the issue, let's go for the most protection.

Representative Dosch: These construction companies will come in and build it and in two or three years they are gone and who is holding the bag—every ND business that remains.

These guys are gone and they don't care. We need to look out for us and we're doing it for a minimal dollar amount.

Senator Potter: Representative Dosch outline why we need the bill. We don't want that kind of hit to all the employers in ND. The question still is how much is enough? I really believe there is going to be more than 50% unemployment from one of these plants closing down. I don't see it as happening. I think this is a reasonable accommodation of where we are going. We are addressing the needs but we're not over charging.

Senator Wanzek: I certainly believe the risk protection should be reflected on the risk that's out there. If I can be convinced that the risk objective has been met in the House version, I'd be more inclined to move; however, I want to be sure of that. If we can have more time and another meeting, I could look at it. Would either the House version or the Senate version address a big hit?

Representative Dosch: The original version was for 100% protection. We felt too that was not a good way to go and that's why we did back it down to the 60%.

Maren Daily, executive director of Job Service: It would have lessened the hit. Bonding protection was not imposed at that time. Other states are thinking about bonding bills and thinking it's a very smart idea because of the nature of construction projects. I worked in risk management at a very large financial institution for 18 years so I've been through economic cycles and done significant risk management. That's what this whole thing is about. It's having something reasonable and not overly burdensome that weather through various economies. From a risk management formulation, the 60% investment in bond or a reduction in the number of employees we anticipate might pay unemployment insurance, but mixing

them is asking for ___?___. If you want to go one or the other, it's 60% or take 50% of

employees, but putting them together you lose a significant risk management.

Senator Hacker: Maybe Job Service could put together essentially what happened with the coal gasification plant: how employees they originally had, how many collected unemployment, how long they collected it.

Daily: We attempted to do that, but we don't have the data. We have worked out a model of what is on the slate coming up with multiple projects.

Senator Hacker: Is there any way to get some information on an example project where the contractor comes from out of state and do they shop for a new job before they finish the present job. Is it halfway? Before they start? In my mind it would be not a very good business for company to do one project and then say . . . I'm just wondering how that process works for those contractors.

Daily: We have met with several of these energy company people. They are planning these large projects and they are trying to coordinate the others as they are very concerned about having a workforce. They are trying to stagger some of their projects so they can have an available workforce but they also recognize these types of projects are going on across the country and in all likelihood people will be transferring and could be applying for unemployment for several weeks before they get resituated at that next project. It goes beyond ND.

Larry Anderson, director of unemployment: We worked with industry representative and we also worked with the representatives of the associations of industries and 4 labor unions. . . . (Unable to hear.)

Senator Hacker: Did you have a conversation with them about the Senate amended it?

Anderson: They were on board with those amendments as well. . . . (Unable to hear.)

Chairman Vigessaa: Are there any motions to be made?

Page 7

House Industry, Business and Labor

Bill/Resolution No 1278

Hearing Date: 28 Mar 07

Senator Wanzek: I would appreciate one more meeting. I'm not saying the House version is excessive, I just want to be sure.

Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1278

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: 30 March 2007

Recorder Job Number: 1278

Committee Clerk Signature

Jan Prindle

Minutes:

(The major part of the meeting did not record.)

Attending: Representatives Vigesaa, Dosch, Thorpe and Senators Hacker, Wanzek Potter.

(4.18)

Representative Vigesaa: The House version is at the 60% and with the Senate you would be at about 30% level because you are taking that again by half. I was surprised that it was this high.

Senator Potter: What number is unemployed during the year? It has nothing to do with large projects shutting down.

(Unstructured conversation—several people talking at once.)

(No recording for the rest of the meeting.)

A motion was made by Representative Thorpe and Seconded by Senator Potter that the Senate recede from the Senate amendments and amend the 60% to 45%.

A roll call vote was taken: Yes: 2, No: 4, Absent: 0.

The motion failed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1278

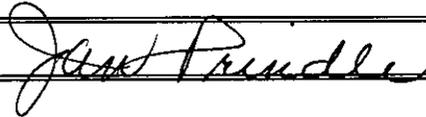
House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: 2 April 2007

Recorder Job Number: 5661

Committee Clerk Signature



Minutes:

Attending Representatives Vigesaa, Dosch, Thorpe and Senators Hacker, Wanzek and Potter.

Chairman Vigesaa called the meeting to order. We would like to settle this today, I hope. Who would like to begin the conversation?

Representative Dosch: Some of this is repetitive in nature, you keep going back and forth and what it boils down to is the industry is fine with either version. If people were adamantly opposed to either side of the deal you would say lets come to some common ground. Here we are talking \$50.0 million plus projects—huge projects—and we're talking about a \$10.0 bond. Given that scenario why not go for the option that going to provide the most protection to the fund and the most protection to the ND businesses. Is this a matter of protecting the fund and the people of ND more, or are we going to try to argue ourselves down for less. **I move that the Senate recede from their amendments** and we go with the House version that provides more protection to the fund and the businesses of ND.

Representative Thorpe: I second that.

Senator Potter: I don't think it's our job to figure out what pleases the various lobbyists. I hear that a lot "we have everybody together on this." It just doesn't matter to me. What matters is what the best law is. I think it's overstated what the risk is to the fund. I want to

provide as business friendly an attitude on this issue and it seems to me that is closer to the house version and we're willing to compromise to some extent.

Senator Wanzek: If we recede from this amendment, the House will no longer see the Bill and we would have it on the Senate floor. It would have to go back to the floor and be voted on. I don't know if it's a big enough issue that it will change the outcome. I don't know. That's just something to consider. If we further amend then it goes back to both houses then you have twice the opportunity for a measure to go down. We could lose the entire thing.

Representative Dosch: It is a consideration.

Senator Hacker: If you read the non-underscoring language you will find out quickly the companies that are responsible for that difference. They can bond the difference and they can do that without this legislation.

Representative Dosch: I don't know of any business where if don't have to do something, you're going to do it. This comes from an experience the state had.

Chairman Vigesaa: I would remind the committee members that Job Service did indicate that one employer did have 84% of their employees file for unemployment in 2006. I would feel the same that there is always that "what if" out there. Hopefully you would never ever have the situation again like you had in the 80s, but we can't predict the future. We don't know for sure. If we had a downturn in the economy and had some large projects that were completed and a good share of them file, I guess for the small difference that we are at between our numbers, I would rather err on the side of more protection. We are not that far apart from the motion that was made on Friday (45%) that failed. The difference between the two is not that much and I don't think it's going to affect that company's bottom line too much to bond for the higher amount. I just feel more comfortable if we go for the higher and afford the state a little more protection. It's also protecting all the rest of the employers of the State of ND too if a big project went down—that's going to fall back on all the rest of us that are employers. I feel that

Page 3

House Industry, Business and Labor

Bill/Resolution No **HB 1278**

Hearing Date: **2 Apr 07**

we need to afford them the bill that's going to give them protection as well. For the small

amount of difference that we are talking, I would rather err on the side of being a little bit

positive on the amount funding. We have a motion on the table.

A roll call vote was taken: Yes: 4 (1 Senator), No: 2, Absent: 0

Chairman Vigesaa closed the meeting on HB 1278.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1278**

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **9 April 2007**

Recorder Job Number: **None**

Committee Clerk Signature



Minutes:

Attending: Representatives Vigesaa, Dosch, Thorpe and Senators Hacker, Wanzek, Potter.

Chairman Vigesaa opened discussion of HB 1278.

Senator Hacker: I Move the Senate Recede from Its Amendments and amend the bill by on page 2, line 11, replace "sixty" with "fifty."

Senator Potter: I second.

Representative Dosch: I think this is an excellent compromise. I'll support it.

A roll call vote was taken: Yes: 6, No: 0, Absent: 0.

The motion passed.

The committee adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1278 (, as (re)engrossed):

Date: 3-30-07

Your Conference Committee IB&L

For the Senate:

For the House:

	Yes/No			Yes/No	
x Sen Hacker		X	x Rep. Uigesaa		X
x Sen Wanzek	X		x Rep. Dasch		X
x Sen Potter		X	x Rep. Thorpe	X	

recommends that the (SENATE) (HOUSE) (ACCEDE to) (RECEDE) from

the (Senate) (House) amendments on (SJ/HJ) page(s) _____ -- _____

_____ and place _____ on the Seventh order.

X, adopt (further) amendments as follows, and place 1278 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>60% to 45%</u>	

MOTION MADE BY: Rep. Thorpe

SECONDED BY: Sen Potter

VOTE COUNT: 2 YES 4 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1278 (, as (re)engrossed):

Date: 4-2-07

Your Conference Committee IB4L

For the Senate:

For the House:

	Yes/NO			Yes/NO	
x Sen Hacker		X	x Rep. Uigesaa	X	
x Sen Wanzek	X		x Rep. Dosch	X	
x Sen Potter		X	x Rep. Thorpe	X	

recommends that the (SENATE) (HOUSE) (ACCEDE to) (RECEDE) (from)

the (Senate) (House) amendments on (SJ/HJ) page(s) _____ -- _____

_____ and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Dosch

SECONDED BY: Rep. Thorpe

VOTE COUNT: 4 YES 2 NO 0 ABSENT

Conference Committee Amendments to Engrossed HB 1278 (78236.0202) - 04/09/2007

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 762 of the Senate Journal and that Engrossed House Bill No. 1278 be amended as follows:

Page 2, line 11, replace "sixty" with "fifty"

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1278 (, as (re)engrossed):

Date: 4-9-07

Your Conference Committee IB&L

For the Senate:

For the House:

	Yes/No		Yes/No
<input checked="" type="checkbox"/> Sen Hacker	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Rep. Viggsaa	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Sen Wanzek	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Rep. Bosch	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Sen Potter	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Rep. Thorpe	<input checked="" type="checkbox"/>

recommends that the (SENATE)HOUSE) (ACCEDE to) (RECEDE) from)

the (Senate)House) amendments on (SJ/HJ) page(s) _____ -- _____

_____ and place _____ on the Seventh order.

, adopt (~~final~~) amendments as follows, and place 1278 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>replace 60 with 50</u>	

MOTION MADE BY: Sen Hacker

SECONDED BY: Sen Potter

VOTE COUNT: 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1278, as engrossed: Your conference committee (Sens. Hacker, Wanzek, Potter and Reps. Vigesaa, Dosch, Thorpe) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1001, adopt amendments as follows, and place HB 1278 on the Seventh order:

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 762 of the Senate Journal and that Engrossed House Bill No. 1278 be amended as follows:

Page 2, line 11, replace "sixty" with "fifty"

Renumber accordingly

Engrossed HB 1278 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1278

#1

House Bill 1278
Testimony of Larry D. Anderson
Job Service North Dakota
before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chairman
January 16, 2007

Mr. Chairman and Members of the Committee, I am Larry Anderson, Director of Workforce and Unemployment Insurance Programs with Job Service North Dakota.

House Bill 1278 is a bill relating to construction project risk protection as it relates to the Unemployment Insurance (UI) Trust Fund. This bill is an amendment to existing statute 52-04-06.1.

The current law was established in 1987 and was at the time referred to as Incremental Bonding. It was patterned after then existing Wyoming statute. The intent of the bill was to provide protection to the UI Trust Fund from the risk of significant fund shortcomings as a result of layoffs after large construction projects were completed. The statute was significantly overhauled in the 2001 Legislative session.

The statute attempts to protect the trust fund by requiring general or prime contractors to acquire a bond or letter of credit to cover the shortfalls that may occur between the UI tax contributions made by employers working on a covered project, and the UI benefits paid

to claimants who worked on the project and are ultimately laid off. The bill only applies to construction projects with estimated construction costs of at least \$50 million dollars.

There are two problems associated with the current law. The first being that a reporting burden is placed on a group of employers that pose little risk to the UI Trust Fund, and the second is that the formula for calculating the amount of the bond or letter of credit greatly over-estimates the future tax contributions of the employer, resulting in extremely low potential liability calculations.

When the statute was enacted in 1987, design and engineering firms were excluded from the reporting requirements of the law. This was due to the minimal risk this group posed to the trust fund. However, in the 2001 rewrite of the legislation, this group was again required to report as all other subcontractors on the affected projects. House Bill 1278 seeks to again exclude these firms from the reporting requirements because the burden of reporting does not correspond to the risk of this particular employer group.

The second problem relates to the calculation of the required bond or letter of credit amounts. Enclosed with my testimony today, I am providing an example of both existing and proposed liability calculations. These examples are labeled Exhibit 1, and I ask that you refer to them for detail as to the examples I will be discussing.

The first example being provided is for an actual project in North Dakota. For reference, the total construction costs for this project are estimated to be over \$100 million dollars. The project is lasting 1.5 years and there will be 200 people working on the project.

Under current law, the bond or letter of credit for this \$100 million dollar project is calculated to be \$6,816.23. It should be noted that each claimant may receive as much as \$9,126.00 in a benefit year. The current bond calculations do not provide protection for even one claimant.

The primary problem with the liability calculation lies within the estimation of contributions. Job Service has found that the tax rate for most of the employers associated with these projects is not the negative employer minimum rate, but is significantly less. The result being that the estimated contributions are much higher than the amount actually received.

House Bill 1278 changes the calculation of liability in order to provide a more realistic estimation of the potential liability to the UI Trust Fund. Because of this change, and because House Bill 1278 is intended to provide protection to the trust fund, the bond or letter of credit amount is significantly higher. The amount based on the new calculations is \$2,646,894.00.

Based on conversations with agents for insurance companies who deal with surety bonding, it is recognized that some of these companies may be hesitant to provide bonds in this amount, particularly due to the fact that the liability associated with the bond remains for a period of 30 months. In cases such as this, it is expected that letters of credit will be the option chosen by the general contractor. Both of these options require the general contractor to have significant financial resources.

Although House Bill 1278 is written to provide the most protection for the trust fund, it may be reasonable to consider a lower percentage of liability coverage. By using a duration of 12 weeks and an average weekly benefit amount of \$250.00 rather than the maximum duration and maximum weekly benefit amount, the bond or letter of credit amount would be reduced to. \$1,179,294.00. An example of this alternative is included in Exhibit 1 and would require an Amendment to the Bill.

House Bill 1278 does not have any implementation costs associated with it, making a fiscal note for implementation and changes unnecessary.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer any questions from the committee.

EXAMPLE # 1 - CURRENT LAW:

Calculation of Estimated Contributions

- Current year negative employer minimum tax rate, or 6%, whichever is greater – 6.05%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years (round to nearest 10th of a year) 1.5

6.05% X \$20,300 X 200 X 1.5 = Estimated Contributions of \$368,445.00

Calculation of Estimated Benefits Paid

- Ratio of benefits paid to contributions paid by ALL employers in the construction industry in the most recent 3 fiscal years.
 - Benefits paid - \$47,630,158.65
 - Contributions paid - \$46,764,805.90
- Ratio – 101.85%
- Estimated contributions - \$368,445.00

\$47,630,158.65 ÷ \$46,764,805.90 = 101.85% X \$368,445.00 = Estimated Benefits of \$375,261.23

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$375,261.23
- Estimated contributions - \$368,445.00

\$375,261.23 - \$368,445.00 = Required Bond/Letter of Credit Amount of \$6,816.23

EXAMPLE # 2 – HB 1278:

Calculation of Estimated Contributions

- Current year positive employer minimum tax rate – .34%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years - 1.5

.34% X \$20,300 X 200 X 1.5 = Estimated Contributions of \$20,706.00

EXHIBIT 1

Calculation of Estimated Benefits Paid

- Number of employees working on the project – 200
- Current year maximum weekly benefit amount - \$351
- First year maximum duration (# of weeks a claimant can receive benefits) – 26
- Subsequent year duration - 12

$$200 \times \$351 \times 26 = \text{First year benefits } \$1,825,200.00$$

$$200 \times \$351 \times 12 \times 1 \text{ (total project length – the first year)} = \text{Subsequent year benefits } \$842,400.00$$

$$\$1,825,200.00 + \$842,400.00 = \text{Total Estimated Benefits } \$2,667,600.00$$

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$2,667,600.00
- Estimated contributions - \$368,445.00

$$\$2,667,600.00 - \$20,706.00 = \text{Required Bond/Letter of Credit Amount of } \$2,646,894.00$$

ALTERNATIVE BASED ON HB 1278 (would require amending HB 1278)

Use the average weekly benefit amount and a duration of 12 weeks rather than maximum weekly benefit amount and 26 weeks when calculating the bond amount. By using current year averages, the bond amount would go from \$2,646,894.00 to approximately \$1,179,294.00.

EXHIBIT 1

ALTERNATIVE # 2

Use the current maximum weekly benefit amount and a duration of 12 weeks rather than the maximum weekly benefit amount and 26 weeks when calculating the bond amount. By using the current maximum weekly benefit amount and the minimum allowed duration of 12 weeks, the bond would go from \$2,646,894.00 to approximately \$1,664,094.00.

House Bill 1278
Testimony of Larry D. Anderson
Job Service North Dakota
before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chairman
March 5, 2007

Mr. Chairman and Members of the Committee, I am Larry Anderson, Director of Workforce and Unemployment Insurance Programs with Job Service North Dakota.

House Bill 1278 is a bill relating to construction project risk protection as it relates to the Unemployment Insurance (UI) Trust Fund. This bill is an amendment to existing statute 52-04-06.1.

The statute attempts to protect the trust fund by requiring general or prime contractors to acquire a bond or letter of credit to cover the shortfalls that may occur between the UI tax contributions made by employers working on a covered project, and the UI benefits paid to claimants who worked on the project and are ultimately laid off. The bill only applies to construction projects with estimated construction costs of at least \$50 million dollars.

There are two problems associated with the current law. The first being that a reporting burden is placed on a group of employers that pose little risk to the UI Trust Fund, and the second is that the formula for calculating the amount of the bond or letter of credit

greatly over-estimates the future tax contributions of the employer, resulting in extremely low potential liability calculations.

House Bill 1278 addresses the first problem by excluding design and engineering firms from the reporting requirements of the bonding process because the burden of reporting does not correspond to the risk of this particular employer group.

House Bill 1278 addresses the second problem by changing the calculation of the bond amount in order to provide a more realistic estimation of the potential liability to the UI Trust Fund.

The engrossed bill that you have before you today was amended in the House Industry Business and Labor committee at the direction of a subcommittee assigned to work on the bill. The subcommittee was assigned to work on an amendment in order to provide for an appropriate balance between protection of the Trust Fund and the interests of economic development. During subcommittee meetings, members of the energy industry, Job Service North Dakota, and State Representatives worked together to establish an appropriate method of bond calculation.

Enclosed with my testimony today, I am providing an example of both existing and proposed liability calculations. These examples are labeled Exhibit 1, and I ask that you

refer to them for detail as to the way in which the bonds are calculated. The example provided is for an actual project in North Dakota. For reference, the total construction costs for this project are estimated to be over \$100 million dollars. The project is lasting 1.5 years and there will be 200 people working on the project.

Under current law, the bond or letter of credit for this \$100 million dollar project is calculated to be \$6,816.23. It should be noted that each claimant may receive as much as \$9,126.00 in a benefit year, so the current bond calculations do not provide protection for even one claimant. In contrast, the changes proposed in HB 1278 would provide for a bond or letter of credit in the amount of \$998,456.40. Research into bonding of these amounts has shown that bond amounts of this size can be obtained by contractors for between \$2 and \$10 per thousand dollars of coverage, depending upon the contractor's creditworthiness.

While the bond amounts will still not completely protect the UI Trust Fund from potential liability, it provides for a significant improvement over the current law without being overly burdensome to employers throughout the state.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer any questions from the committee.

BOND CALCULATION USING

CURRENT LAW:

Calculation of Estimated Contributions

- Current year negative employer minimum tax rate, or 6%, whichever is greater – 6.05%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years (round to nearest 10th of a year) 1.5

$$6.05\% \times \$20,300 \times 200 \times 1.5 = \text{Estimated Contributions of } \$368,445.00$$

Calculation of Estimated Benefits Paid

- Ratio of benefits paid to contributions paid by ALL employers in the construction industry in the most recent 3 fiscal years.
 - Benefits paid - \$47,630,158.65
 - Contributions paid - \$46,764,805.90
- Ratio – 101.85%
- Estimated contributions - \$368,445.00

$$\$47,630,158.65 \div \$46,764,805.90 = 101.85\% \times \$368,445.00 = \text{Estimated Benefits of } \$375,261.23$$

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$375,261.23
- Estimated contributions - \$368,445.00

$$\$375,261.23 - \$368,445.00 = \text{Required Bond/Letter of Credit Amount of } \underline{\underline{\$6,816.23}}$$

**BOND CALCULATION USING
PROPOSED HB 1278:**

Calculation of Estimated Contributions

- Current year positive employer minimum tax rate – .34%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years - 1.5

$$.34\% \times \$20,300 \times 200 \times 1.5 = \text{Estimated Contributions of } \$20,706.00$$

Calculation of Estimated Benefits Paid

- Number of employees working on the project – 200
- Current year maximum weekly benefit amount - \$351
- Claim duration used for each year of project - 12

$$200 \times \$351 \times 12 \times 2 \text{ (project length)} = \text{Total Estimated Benefits } \$1,684,800.00$$

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$1,684,800.00
- Estimated contributions - \$20,706.00

$$\$1,684,800.00 - \$20,706.00 = \text{Difference Between Contributions and Benefits } \$1,664,094.00$$

$$\$1,664,094.00 \times 60\% = \text{Required Bond/Letter of Credit Amount of } \underline{\$998,456.40}$$

#1

HB 1278

Background Information and Recommendations Job Service North Dakota

Enclosed within this document are examples of bond calculations, costs of obtaining bonds, and other information in relation to HB 1278.

House Changes to Bond Calculations:

The original bill introduced provided 100% protection to the UI Trust Fund. The calculation proposed in the bill provided this protection partially by using the actual potential maximum claimant duration of 26 weeks in the calculation of potential benefits, and resulted in a bond of \$2.6 million dollars. After hearing testimony on the bill, the House convened a subcommittee to meet on the bill and provide suggestions as to potential changes to the bill based upon the needs of the affected industry and the interest of protecting both the UI Trust Fund and the employers of North Dakota. After meeting with representatives from Basin Electric, Great River Energy, and Job Service, the conference committee suggested two changes to the way in which the bond amounts were to be calculated. The first change was to change the claim duration amount from 26 to 12 weeks. The reason 12 weeks was chosen is that this is the minimum number of weeks that can be assigned to a claimant. Claimants don't have to utilize the entire 12 weeks, but it is the minimum made available to them. The change to 12 weeks reduced the bond amount by 37%. The second change to the calculation was to create a 60% multiplier which was applied to the bond amount. Several percentages were discussed, with 60% ultimately being the amount agreed to by all of the parties involved in the subcommittee as an acceptable level of risk for the state to accept. This multiplier reduced the bond amount by an additional 40%.

Senate Changes to Bond Calculations:

The version passed by the House was amended by the Senate to further reduce the required bond amount. The amendment changes the calculation to multiply the number of employees on the project by 50%, this is based upon the belief of the Senate that only 50% of the employees will file a claim for Unemployment Insurance. This change further reduced the required bond amount by approximately 50%.

Cost of Obtaining Bonds:

Research and information provided by industry representatives has established that obtaining the required bonds will cost project owners between \$2 and \$10 per thousand dollars of bond coverage. Using these figures, the total cost of obtaining a bond of \$1 million dollars could range from \$2,000 to \$10,000 depending upon the credit worthiness of the contractor. The other option available to the contractor is to obtain a letter of credit from a financial institution. This may be the chosen method for those employers with good relationships with their banks.

Testimony by Affected Industry:

- The Energy Industry, specifically representatives of Basin Electric and Great River Energy, testified in opposition to the originally introduced version of HB 1278.
- Representatives of Job Service North Dakota, Basin Electric, and Great River Energy participated in the House subcommittee in which the amended House version was developed.
- Representatives of Basin Electric and Great River Energy attended the Senate IB&L hearing on HB 1278, with a representative of Great River Energy testifying as neutral on the bill.

Job Service Recommendation:

Job Service North Dakota recommends the House version of HB 1278. This version of the bill provides a higher level of protection for times of economic downturn, while minimizing the monetary burden placed upon industry during good economic times. The protection provided by HB 1278 is designed for, and most needed during tougher economic times. By basing the bond calculations of HB 1278 on current economic conditions; low unemployment, and low claimant duration, the protection provided by the bill will more than likely prove to be inadequate during periods of economic decline.

By nature, each project that would be affected by the bonding requirement of HB 1278 will come to an end. Ideally, as each project ends, the various employees working on the project would move directly to the next project without experiencing a period of layoff. However, differing schedules and project ownership does not lead to this situation. Although specific percentages are not available to provide to the committee in this recommendation, a period of layoff does occur for many, if not most, of the individuals working on construction projects. At the current maximum weekly benefit amount of \$351, for every week of unemployment experienced by the 200 employees working on a project, \$70,200 in benefits are paid out. Current average claimant duration in North Dakota is approximately 10 weeks, one of the lowest in the nation. In declining economic times, claimant duration could easily climb to the national average of 15 weeks or higher, resulting in benefit payouts in excess of \$1 million.

It is felt that with the relatively minor cost to the project owners, between \$2,000 and \$10,000 for \$1 million of coverage, industry will not find the requirements of HB 1278 to be a hindrance to doing business in North Dakota. This is especially true when the cost of the bond is compared to the overall project cost of \$100 million dollars. The protection provided by these dollars provides protection not only to the UI Trust Fund, but to all of the other employers within North Dakota.

Following are examples of what the bond or letter of credit would be based on various percentages. Please note that if the projections were based upon the percentage of employees expected to draw benefits, the 60% multiplier should be dropped from the calculation. The examples listed below show the bond amount based upon the use of various multipliers in place of the 60%, not on a percentage of employees drawing benefits. If percentage of employees drawing benefits were used, the numbers would be very similar, but not exactly what is displayed.

The amounts provided in the first example are from an actual project in ND within the 4th quarter of 2006. This project has an estimated project cost of \$106 million dollars. At the level of bond proposed in HB 1278, the cost of obtaining a bond for a contractor with excellent credit would be approximately \$2,000.00 or 0.0019% of the project cost.

Multiplier	Bond/Letter of Credit Required	Cost to Obtain Bond/Letter of Credit	
		\$2 per thousand	\$10 per thousand
10%	\$166,409.40	\$332.82	\$1,664.09
20%	\$332,818.80	\$665.64	\$3,328.19
30%	\$499,228.20	\$998.46	\$4,992.28
40%	\$665,637.60	\$1,331.28	\$6,656.38
50%	\$832,047.00	\$1,664.09	\$8,320.47
60% (<i>proposed</i>)	\$998,456.40	\$1,996.91	\$9,984.56

The following numbers are based upon a smaller project, around \$50 million, with 75 employees and a 1 year completion time:

Multiplier	Bond/Letter of Credit Required	Cost to Obtain Bond/Letter of Credit	
		\$2 per thousand	\$10 per thousand
10%	\$31,072.35	\$62.14	\$310.72
20%	\$62,144.70	\$124.29	\$621.45
30%	\$93,217.05	\$186.43	\$932.17
40%	\$124,289.40	\$248.58	\$1,242.89
50%	\$155,361.75	\$310.72	\$1,553.62
60% (<i>proposed</i>)	\$186,434.10	\$372.87	\$1,864.34

Examples showing the bond amounts required by the current law, Original Bill (prior to amendment), House version (as amended and passed by the House), Senate version (as amended and passed by the Senate), are displayed on the remaining pages.

BOND CALCULATION USING

CURRENT LAW:

Calculation of Estimated Contributions

- Current year negative employer minimum tax rate, or 6%, whichever is greater – 6.05%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years (round to nearest 10th of a year) 1.5

$$6.05\% \times \$20,300 \times 200 \times 1.5 = \text{Estimated Contributions of } \$368,445.00$$

Calculation of Estimated Benefits Paid

- Ratio of benefits paid to contributions paid by ALL employers in the construction industry in the most recent 3 fiscal years.
 - Benefits paid - \$47,630,158.65
 - Contributions paid - \$46,764,805.90
- Ratio – 101.85%
- Estimated contributions - \$368,445.00

$$\$47,630,158.65 \div \$46,764,805.90 = 101.85\% \times \$368,445.00 = \text{Estimated Benefits of } \$375,261.23$$

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$375,261.23
- Estimated contributions - \$368,445.00

$$\$375,261.23 - \$368,445.00 = \text{Required Bond/Letter of Credit Amount of } \underline{\$6,816.23}$$

BOND CALCULATION USING

ORIGINAL BILL (PRIOR TO HOUSE AMENDMENT):

Calculation of Estimated Contributions

- Current year positive employer minimum tax rate – .34%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years - 1.5

$$.34\% \times \$20,300 \times 200 \times 1.5 = \text{Estimated Contributions of } \$20,706.00$$

Calculation of Estimated Benefits Paid

- Number of employees working on the project – 200
- Current year maximum weekly benefit amount - \$351
- First year maximum duration (# of weeks a claimant can receive benefits) – 26
- Subsequent year duration - 12

$$200 \times \$351 \times 26 = \text{First year benefits } \$1,825,200.00$$

$$200 \times \$351 \times 12 \times 1 \text{ (total project length – the first year)} = \text{Subsequent year benefits } \$842,400.00$$

$$\$1,825,200.00 + \$842,400.00 = \text{Total Estimated Benefits } \$2,667,600.00$$

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$2,667,600.00
- Estimated contributions - \$368,445.00

$$\$2,667,600.00 - \$20,706.00 = \text{Required Bond/Letter of Credit Amount of } \underline{\underline{\$2,646,894.00}}$$

**BOND CALCULATION USING
PROPOSED HB 1278 (PASSED BY HOUSE):**

Calculation of Estimated Contributions

- Current year positive employer minimum tax rate – .34%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years - 1.5

.34% X \$20,300 X 200 X 1.5 = Estimated Contributions of \$20,706.00

Calculation of Estimated Benefits Paid

- Number of employees working on the project – 200
- Current year maximum weekly benefit amount - \$351
- Claim duration used for each year of project - 12

200 X \$351 X 12 X 2 (project length) = Total Estimated Benefits \$1,684,800.00

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$1,684,800.00
- Estimated contributions - \$20,706.00

\$1,684,800.00 - \$20,706.00 = Difference Between Contributions and Benefits \$1,664,094.00

\$1,664,094.00 X 60% = Required Bond/Letter of Credit Amount of \$998,456.40

The House amendment reduced the bond amount by adjusting the bond calculation to use a duration amount of 12 weeks rather than 26 weeks, and by implementing a multiplier of 60% to the bond calculation amount. These changes were the result of a House Subcommittee meeting in which members of the Energy Industry and Job Service North Dakota participated.

**BOND CALCULATION USING
SENATE AMENDED VERSION OF HB 1278:**

Calculation of Estimated Contributions

- Current year positive employer minimum tax rate – .34%
- Current year taxable wage base - \$20,300
- Estimated number of employees on the project - 200
- Length of project in years - 1.5

.34% X \$20,300 X 200 X 1.5 = Estimated Contributions of \$20,706.00

Calculation of Estimated Benefits Paid

- Number of employees working on the project – 200
- Current year maximum weekly benefit amount - \$351
- Claim duration used for each year of project - 12

(200 X 50%) X \$351 X 12 X 2 (project length) = Total Estimated Benefits \$842,400.00

Calculation of Bond/Letter of Credit Amount

- Estimated benefits paid - \$1,684,800.00
- Estimated contributions - \$20,706.00

\$842,400.00 - \$20,706.00 = Difference Between Contributions and Benefits \$821,694.00

\$821,694.00 X 60% = Required Bond/Letter of Credit Amount of \$493,016.40

The Senate amendment requires that the number of claimants receiving benefits in the benefits paid calculation be based upon the number of employees working on the project multiplied by 50%. This is due to the belief of the committee that only 50% of the workers will become claimants. This amendment cuts the bond amount by a little more than half. The number is not exactly half because the amendment does not change the contribution calculation. The contribution calculation continues to use the total number of employees on the project.