

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/13/2015**

Bill/Resolution No.: HB 1293

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$30,000	\$0	\$15,000
<b>Expenditures</b>	\$0	\$0	\$193,000	\$30,000	\$145,000	\$15,000
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$145,000	\$15,000

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1293 would create chapter 34-06.2 and require certain employers to obtain an equal pay certificate from the Department. The Department would be required to review applications, issue equal pay certificates, and otherwise ensure employers are complying with the provisions of HB 1293.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

1. 34-06.2-02(2) - This sub-section would require the Department to review requests from employers to be exempt from the requirements of the bill when its application would cause "undue hardship" on the employer. Department staff would be required to spend time reviewing each request on a case-by-case basis and issuing a decision on the request to be exempt from application of the chapter.

2. 34-06.2-03 and 34-06.2-04 - These sections require the Department to accept and process applications for equal pay certificates from employers. The Department would be required to generate the forms necessary for the application process, update in-house software through ITD to input and track applications and certificates, and review applications to ensure their compliance with the chapter. Department staff would be required to spend time reviewing each application to ensure its compliance with the chapter. In addition, it is not entirely clear whether the commissioner has any discretion in issuing a certificate to an employer under HB 1293. As a result, this note assumes some staff time would be required to investigate certain applications based upon the materials provided by employers to ensure compliance with the chapter.

3. 34-06.2-05 - This section would allow the commissioner to revoke or suspend an equal pay certificate if an employer fails to comply with the provisions of the chapter. This would imply there is some oversight requirement that the Department must undertake with regards to employers covered by this bill. As a result, the Department has assumed staff time will be necessary for such oversight efforts.

4. 34-06.2-07 - This section permits an employer to request a hearing under N.D.C.C. ch. 28-32 upon receiving notice of a suspension or revocation of a certificate or termination of a contract with the state. The Department has included estimated costs associated with the Office of Administrative Hearings and other professional fees and services in this note.

5. 34-06.2-09 - This section requires the commissioner to report to legislative management regarding the number of certificates issued and the processes used by businesses to comply with the chapter. Department staff will be required to spend time gathering and reviewing information to compile the report.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department has assumed 100 employers will apply for an equal pay certificate each fiscal year in the upcoming biennium. This equates to 200 applications per biennium at \$150 each, for total revenue of \$30,000 in the 2015-17 biennium. These funds are deposited in a special fund with the state treasury to be used by the commissioner for the administration of this chapter (34-06.2-03(1)). For the 2017-19 biennium, the Department assumed a 50% reduction in the number of applications, as the equal pay certificate issued by the Department is valid for 4 years (34-06.2-04).

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department has estimated the following expenditures associated with HB 1293 in the 2015-17 biennium in this note:

1. ITD (Generate forms, update and deploy in-house software programs) - \$10,000.00
  2. Operating Expenses (office supplies, etc.) - \$5,000.00
  3. OAH/Professional Fees and Services - \$50,000.00
  4. 1 FTE to implement HB 1293 (salary, benefits, etc.) - \$153,000.00
  5. Costs associated with biennial report - \$5,000.00
- Total Estimated Expenditures for 2015-17 Biennium - \$223,000.00

For the 2017-19 Biennium, the Department assumed a 50% reduction in the number of applications received, as the equal pay certificates are valid for 4 years (34-06.2-04). The Department estimated that this would result in a 25% reduction in the Department's on-going expenditures described above. In addition, the Department would not have the one-time expenditures for ITD in the 2017-19 biennium. Therefore, the Department has estimated total expenditures in the 2017-19 biennium would be \$160,000.00.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

It is estimated the Department would need an appropriations increase of \$223,000.00 for the 2015-17 biennium. The Department's 2015-17 budget is contained within SB 2007. This appropriation would be \$193,000 of general funds and \$30,000 of special fund authority. It is expected the special fund created by HB 1293 could be used to defray a portion of these general fund expenditures. However, it will take some time for the special fund to contain sufficient funds to cover a portion of the Department's expenditures under HB 1293.

**Name:** Troy Seibel

**Agency:** Department of Labor and Human Rights

**Telephone:** 328-2660

**Date Prepared:** 01/16/2015

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1293**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1293  
1/21/2015  
22277

- Subcommittee  
 Conference Committee



### Explanation or reason for introduction of bill/resolution:

Equal pay certificates; provide a report to legislative management and continuing appropriation.

### Minutes:

Attachments 1-5

**Chairman Keiser:** Opens the hearing on HB 1293.

**Kylie Oversen~District 42 in Grand Forks:** (Attachment 1 & 2).

4:05

**Representative Ruby:** Would this certificate requirement also be required of a company that was owned by women?

**Oversen:** Absolutely.

**Representative Becker:** Are there other certificates that are required where we are following state laws?

**Oversen:** I don't think so.

**Representative Kasper:** How do you see that this owner would provide all of that proof and what process would they go through?

**Oversen:** Under this bill, we are not asking the employer to provide pages and pages of documentation, it will simply be this equal pay statement provided by the department of labor. They may certify we follow laws to set pay scales and it has to be signed by someone with authority within the business. It's not intended to provide the investigation that would proof such. The investigation would only come if there is a complaint.

**Representative Kasper:** What your are asking a business owner to do is to sign a document that, yes, I'm following the North Dakota law.

**Oversen:** That's correct.

**Representative Kasper:** Is there the assumption that there is some or a lot of businesses in North Dakota that don't make their best effort to follow North Dakota law?

**Oversen:** Most businesses have the right intentions to equalize the pay gap and follow the law. This is one more way for businesses to follow the law.

**Chairman Keiser:** If the first bill had a problem and we corrected it, is there an additional business form to sign this, if we corrected the problem? This would affect the contract which would be slightly different, is that what the purpose is?

**Oversen:** Yes. The first bill wasn't intended as a full correction of the problem of pay equity. This is one more tool to change.

**Chairman Keiser:** Page 4, lines 1-3, if they may obtain an administrative hearing. If they obtain an administrative hearing, can they still go to district court in this language?

**Oversen:** Yes.

**Representative Boschee:** If this were not to pass, is there some other remedy of some sort of action on contractors with the state that are founded?

**Oversen:** If this law were not to pass that wouldn't change any of the remedies.

**Representative Louser:** If this law were to pass, could this reduce the number of business that would compete for contracts with the state?

**Oversen:** I would hope not. It isn't an additional regulation.

**Representative Becker:** The equal pay laws are important and necessary, one could argue that all laws are important and necessary. If you are in compliance, why not have a certificate saying that we are in compliance of all laws?

**Oversen:** If you want to create a bill, you certify with all laws that would be your discretion. In this specific bill, the data that we have shown, show that the laws in the books have not been effective in addressing the wage gap. Again this is one more step forward.

**Representative Frantsvog:** A business signs this form that they are in complying with the law and they do it in good faith. Then it's found, they are not following the law, what is the penalty?

**Oversen:** We allow the business to correct and comply before the department of labor would make any changes.

**Representative Frantsvog:** Is it possible for a business to get a certificate from somebody that says they are in compliance?

**Oversen:** If they were asking for a certification from the department of labor that would likely require an investigation of their records to show that they are in compliance. I don't know if there is a mechanism to make that happen without an investigation to show that they are in compliance. They are already at risk for a complaint that they are not in compliance and won't necessarily change that aspect.

**Chairman Keiser:** The one unique thing about this bill is, if you are found not being compliant, you lose the contract immediately. There is no opportunity to correct it and maintain the contract? Is that true?

**Oversen:** That's incorrect, on page 3, lines 13-16, that is permissive authority to the commissioner to revoke or suspend if the business fails to make the good faith to correct. They are given the opportunity to correct.

**Chairman Keiser:** Before the state contract would be pulled.

**Oversen:** Correct.

**Representative Kasper:** Page 3 line 18, how does the labor commission know that there is a violation by the business owner? Will they have a certificate, how does the labor commissioner supposed to know if there is a violation? Second concern, you're give the labor commissioner the opportunity to avoid a contract that could be multi-million dollars, do you want the labor commissioner to have that much power?

**Oversen:** To your first point, we aren't changing the existing mechanism for a complaint. A complaint would still have to be filed for the department of labor to have a finding that a businesses in not in compliance with existing equal pay laws. The commissioner still does not have the discretion to say "unfounded and we believe you are in violation". The complaint would still have to come forward before the department of labor would make that determination. Two, the department of labor, to revoke a contract, I say that's the teeth of the bill. If we allow the department of labor to issue the certificate and the complaint does come forward and if founded, that certificate doesn't mean much if we can't say "your contract is voided". Whether or not you believe it or not if this section belongs within the powers of the department of labor or under another agency of the state, it's up to your discretion.

**Representative Kasper:** Let's take this further in the practical world, say a contract is half way done, contractors are working and contract is in place, and now we find out of 100 possible violations of the statue, one exists. This says that the contract is void.

**Oversen:** No, this says that the business has an opportunity to correct the violation and make a good faith effort and then the commissioner has the discretion, permissive authority.

**Representative Ruby:** This bill is a specific set of employers and employees. Can you give one instance of a problem where this will address?

**Oversen:** I don't have an example.

**Renee Stromme~North Dakota Women's Network:** We support HB 1293. We want the state resources that are reserved for business that follows pay equity legislation and take a role in pay discrimination.

**Tom Ricker~President of AFL-CIO:** I want to rise in support of HB 1293 and as a tax paying citizen, I would like my tax dollars being spent to not further discrimination in projects that our state approves.

**TJ Jerke~North Dakota Human Rights Coalition:** Stand in support of HB 1293.

**Chairman Keiser:** Is there anyone else here in support of HB 1293, opposition.

**Andy Peterson~President & CEO the Greater ND Chamber:** (Attachment 3).

**Sherry Neas~OMB Central Services Division:** (Attachment 4).

**29:20**

**Representative M Nelson:** Does OMB spend a significant amount of time following up to see if contractors are obeying their contracts?

**Neas:** OMB does not follow specifically follow up on things like equal pay. With this bill though, it's not them just simply certifying in the bid document, it's them actually paying a fee, submitting an application and whatever documentation is required. We don't know what the process would be that the labor commission would have. If you were going to certify, I would think there would be some kind of evidence that they are or are not in compliance. Also, in the ladder part of the bill, I would think that if I would have to comply with the law and check to see if they are compliant, I would think there would be additional oversight. There are some questions that we don't know about this bill but I anticipate that in order that we are in compliant, there would be work that would be associated with that agency.

**Representative M Nelson:** Are you aware of any cases where a contractor that was out of compliance under the contracts and discriminated and know of any penalties?

**Neas:** No, I do not.

**Representative Boschee:** Do you have policy for practice of what a potential remedy would be if a contractor working with the state right now is found to be non-compliance with state equal pay?

**Neas:** In current practice we have templets for procure letters that walks through it.

**Chairman Keiser:** Is there anyone else here to testify on HB 1293 in opposition, neutral?

**Troy Seibel~Commission of the Department of Labor:** (Attachment 5).

**38:40**

**Representative Louser:** With the ability to revoke or suspend, how would you determine at what threshold you are going to do?

**Seibel:** I would make that determination after consultation with the governor's office. You are right, we would have to weight in every case the impact, not only to the employee and contractor but to the tax payers of the state of North Dakota.

**Representative M Nelson:** Current practices, is there any sort of check to see that he is a contractor with the state or to notify state agencies that this person is found to be discriminating, that they are violating a state contract?

**Seibel:** No, there is not.

**Chairman Keiser:** Revocation of certificate, it is permissive, you may revoke this. I like you, but no way can I give you of the power, but I can't find a solution to revoking the contract. Do you see anyone in government to have that power because that won't be you?

**Seibel:** I don't and I share your thought, it creates an issue.

**Representative Kasper:** I don't think we could allow anyone in state government to revoke a contract that has been negotiated. There has to be remedies through court system to address that.

**Chairman Keiser:** Closes the hearing on HB 1293. What are the wishes of the committee?

**Representative Becker:** Moves a Do Not Pass.

**Representative Kasper:** Second.

**Representative Becker:** OMB gave compelling testimony as did the department of labor. This bill is unnecessary. I will be voting do not pass.

**Representative M Nelson:** The testimony was compelling that currently on the contracts that are being issued, there is nothing being done about it. Even if there is a complaint, the state does not take action. The bill is not in the form that it needs to be, I think we should keep this alive. I do believe this is an issue and we should be doing something on the legislative level.

**Representative Kasper:** I did not hear in testimony that's not being done. The testimony points out that this is already taken care of in law. Let this bill go away.

**Rollcall was taken on HB 1093 for a Do Not Pass with 11 yes, 4 no, 0 absent and Representative Beadle is the carrier.**

Date: Jan 21, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1293

House Industry, Business & Labor Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep Becker Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman		x
Representative Devlin	x		Representative Boschee		x
Representative Frantsvog	x		Representative Hanson		x
Representative Kasper	x		Representative M Nelson		x
Representative Laning	x				

Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep Beadle

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

**REPORT OF STANDING COMMITTEE**

**HB 1293: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1293 was placed on the Eleventh order on the calendar.

**2015 TESTIMONY**

**HB 1293**

1

**Testimony - House Bill 1293**  
**House Industry, Business, and Labor Committee**  
**January 21, 2015**

Chairman Keiser and members of the House Industry, Business, and Labor committee, my name is Kylie Oversen and I represent District 42 in Grand Forks. I am here to testify in support of HB 1293, which requires businesses contracting with the state for over \$500,000 to certify that the business is in compliance with existing equal pay laws.

As outlined in the previous bill, HB 1257, North Dakota has had an equal pay law in the code since 1965. Previously, Congress had also passed the Civil Rights Act of 1964 and the Equal Pay Act of 1963. For fifty years, the state of North Dakota has publicly recognized the harmful impacts of pay disparity among men and women. Despite the enactment of equal pay laws in the 1960's at the state and federal level, a significant gap remains between what men earn and what women earn, for equal work. These discrepancies cannot be simply explained away by differentials in education, experience, or performance.

The wage gap is calculated by the difference in men's and women's median earnings. The calculations are based on data from the Census Bureau, the Department of Education, and the Bureau of Labor Statistics. The most recent data show that in North Dakota, women earn only 70% of what men earn. That amount of take home pay that women lose out on significantly affects their ability to care and provide for their families. We know that more and more women are the primary earners in their families.

HB 1293 directs the commissioner of labor to ensure that businesses contracting with the state of North Dakota are in compliance with equal pay laws. To clarify on page 1, under section 34-06.2-02, the intent is that any business having 40 or more employees in North Dakota or in the business's primary place of business that wishes to contract with the state for an amount greater than \$500,000, must have an equal pay certificate on file with the department of labor.

Moving to page 2, you can see that the business is also required to submit a \$150 filing fee, and that those fees shall be used for the administration of this chapter. The intent is that this be a one-time filing fee. The commissioner of labor may

request that this fee be submitted upon each application, but I will leave that to his and this committee's discretion if you feel it is not clear in the language. I believe that will also depend on a final answer from the office of management and budget as to how many businesses this will impact. The rest of page 2 outlines specifically what a business must certify, including compliance with existing laws; that the average compensation for female employees is not consistently below average compensation for male employees; that employees of a certain sex are not restricted to certain jobs; that discrepancies in compensation will be promptly corrected; and a brief explanation of how the business sets compensation and benefit rates.

Page 3 outlines the duties and authorities of the commissioner of labor in regards to issuance, rejection, or revocation of the equal pay certificates. You will note on line 11 that the certificates shall be valid for four years. On the bottom of page 4 and on to page 5, you will also note that a business is allowed an administrative hearing, pursuant to chapter 28-32. Under chapter 28-32, a business may also appeal a decision of the commissioner of labor to district court.

Finally, on page 5, lines 5 and 6 state that company data submitted to the commissioner is exempt from open records.

In closing, Mr. Chairman and members of the committee, this bill is intended to give our equal pay laws one more enforcement mechanism. Estimates show that if pay inequity continues to level out at the same rate that it has been going since the 1960's, it may take 50 more years before the wage gap disappears. The original intention of our equal pay law stands, but the laws have not been effective in equalizing pay. This bill gives our state one more tool to ensure that women in North Dakota, and their families, do not have to wait 50 more years to see pay equity become a reality.

Mr. Chairman and members of the committee, I urge you to favorably consider HB 1293 and I would be happy to answer any questions that you have.

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1.

Industry, Business, and Labor Committee  
House of Representatives  
January 21, 2014  
House Bills 1257, 1293, and 1294

Mr. Chairman, Members of the Committee:

My name is Ellen Chaffee. I live in Bismarck and worked for the State of North Dakota in the university system for 31 years, 1969-1977 and 1985 through 2008. I urge your support for House Bills 1257, 1293, and 1294.

I am grateful for the leadership opportunities the State of North Dakota afforded me and, like so many others in service to the State, I worked long and hard to fulfill that trust. In all of my roles, over all of those years, I encountered and experienced practices that treated women unfairly relative to men. Many times, an equitable salary for a single mother would enable her to further her education or care for her children instead of taking a second job. It would lift a struggling two-income family into warmer, safer vehicles and living quarters. And in leadership positions, an equitable salary would recognize the very same qualities it recognizes in men and put her on a more level playing field as an advocate for her organization. All of these benefits to women circle back and become benefits to the employer as well in the form of retention and recruitment success.

It is still true that a man who asks about his salary is seen as ambitious and self-confident, while a woman is seen as – well, in less flattering ways. Moreover, the man is more likely to get the raise even when she does ask. That is one of the reasons I led two independent universities 75 miles apart for nine years for the same salary I would have made for serving just one of them. Some matters are cultural and cannot be addressed directly by law. What we can do, however, is create supportive conditions for both women and men to advance the cause of pay equity. These bills help do that, and I urge your support.

Thank you.



Testimony of Andy Peterson  
Greater North Dakota Chamber of Commerce  
HB 1293  
January 21, 2015

Mr. Chairman and members of the committee, my name is Andy Peterson; I am the President and CEO of the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in opposition to House Bill 1257.

House Bill 1293 is an unnecessary bill and if enacted, an unnecessary headache for business owners in the state. This bill hopes to alleviate any gender compensation discrimination in the workplace by forcing all applicable businesses hoping to receive a state contract to be awarded an equal pay certificate. This certificate is an arbitrary piece of paper saying that they are in compliance with federal and North Dakota law.

Both federal law and North Dakota law dictate that a person's sex is not grounds for lesser pay or unfair treatment. Requiring businesses to pay to obtain a piece of paper to say they are in compliance with law is unnecessary paperwork, time, resources, and adds an additional burden to the labor commissioner's office.

Further, the language is incredibly vague and undefined. How does one quantify working conditions of two comparable jobs? How does one measure effort, especially when operating under the high stress conditions of potential lawsuits or potentially being refused a state contract because of the conditions of this bill.

This bill does nothing. It doesn't change current law. It doesn't enhance a system. It doesn't fix anything that is broken. It should not be passed. We request a do not pass recommendation on HB 1293.

Thank you and I'd be happy to answer any questions.

Champions  Business

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Jan 21, 2015

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HB 1293 Testimony

Chairman Keiser  
House Industry, Business and Labor Committee

Mr. Chairman and members of the committee, my name is Sherry Neas of the OMB Central Services Division. OMB opposes this bill. OMB is concerned about the impact of this bill on companies that seek to do business with the State and on state agencies. We anticipate that the Equal Pay certification process will add complexity to the procurement and contracting process, resulting in additional workload and time delays for entering into state contracts.

This bill states, beginning on line 16, "The state may not execute a contract or agreement in excess of five hundred thousand dollars with a business that on any single day during the past twelve months had forty or more full-time employees in this state, or a state where the business has its primary place of business, unless the business has an equal pay certificate or has certified in writing the business is exempt under this chapter."

This language is very broad, so this law would apply to the many different types of contracts entered into by state agencies. OMB is the regulatory agency for procurement of goods and services for the Executive Branch of government. The State Board of Higher Education has authority to establish its own policy for purchasing in coordination with OMB. Agencies also enter into contracts under Public Improvement laws, laws related to Architects, Engineers and Land Surveys, and Concessions. Several agencies have laws that address other types of contracting.

OMB reviewed procurements conducted during a one year period and identified 60 contracts over \$500,000. There would be additional workload associated with determining whether the company had over 40 employees at any time during the preceding 12 months. Then, there would be time delays to entering into the contract while those companies obtained the Equal Pay certificate or exemption. On-going additional oversight of those contracts would be necessary during the life of those contracts to ensure continued compliance.

Implementation of this legislation, if enacted, would require training of agency personnel to ensure they know about this certification requirement and comply with this requirement for every type of contract they do.

North Dakota relies upon private sector businesses to provide the goods and services needed by state agencies. We are concerned that this bill would make it more difficult for companies to do business with the State. Potential bidders or contractors would need to be informed of North Dakota's Equal Pay Certification Process. Businesses will have additional expenses, work, and time to enter into state contracts. There may be businesses that decide not to respond to bids due to the complexity of the state's requirements.

We are additionally concerned about the language in the bill regarding the commissioner voiding the contract. Please refer to page 3 of this bill on line 18. "If a contract or agreement is entered into in

violation of section 34-06.2-02 or is otherwise not in compliance with this chapter, the commissioner may void the contract on behalf of the state." State agencies spend a significant amount of time and effort conducting the procurement process to select contractors, negotiating contracts, and administering contracts to ensure satisfactory delivery of goods or services. Voiding a contract has serious ramifications.

In conclusion, OMB would like the committee to know that OMB and Attorney General solicitation and contract templates already include language requiring the contractor to comply with all applicable state and federal laws.

That concludes my testimony, and I would gladly answer any questions you may have.

Sherry Neas, Director  
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Jack Dalrymple  
Governor

Troy T. Seibel  
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[www.nd.gov/labor](http://www.nd.gov/labor)  
[www.nd.gov/humanrights](http://www.nd.gov/humanrights)

**Testimony on HB 1293  
Prepared for the  
House Industry, Business and Labor Committee**

**January 21, 2015**

Good morning Chairman Keiser and members of the Industry, Business and Labor Committee, my name is Troy Seibel, and I am the Commissioner of Labor. I appear before you today neutral on HB 1293. I am here to provide information about the current statutes regarding equal pay for men and women, how HB 1293 may impact the Department of Labor and Human Rights, the estimated fiscal impacts of HB 1293, and how I would interpret various provisions of HB 1293.

**State and Federal Equal Pay Statutes**

North Dakota's Equal Pay for Men and Women Act is codified at N.D.C.C. ch. 34-06.1. This chapter prohibits discrimination on the basis of gender by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility. The federal law dealing with equal pay is the Equal Pay Act of 1963. This Act also generally prohibits discrimination based on gender in the payment of wages.

The Department has entered into a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC). The EEOC is the federal agency charged with enforcing the Equal Pay Act of 1963. Under this work-sharing agreement, the Department and EEOC routinely ask one another to investigate charges of discrimination issued under federal law. At this time, the Department asks the EEOC to investigate all equal pay complaints it receives, as the Department does not have authority to conduct such investigations under state law, nor does it have the resources to conduct investigations of this type.

**HB 1293 and its Impacts**

HB 1293 would create and enact chapter 34-06.2 of the North Dakota Century Code and would require certain employers contracting with the state to obtain a equal pay certificate from the Department. The Department would be required to review applications for equal pay certificates, issue the certificates, and otherwise

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ensure these applicants are complying with the provisions of HB 1293. These responsibilities would be new and significant for the Department.

34-06.2-02(2) (Page No. 1, Lines 22-23)

This sub-section would require the Department to review requests from employers to be exempt from the requirements of the bill when its application would cause "undue hardship" on the employer. Department staff would be required to review each exemption request on a case-by-case basis and make a determination as to whether the employer would be caused undue hardship if required to comply with the chapter. HB 1293 does not define the term "undue hardship". These requests may represent a significant workload for the Department.

34-06.2-03 and 34-06.2-04 (Page 2, Line 3 to Page 3, Line 11)

These sections require the Department to accept and process applications for equal pay certificates from employers. The Department would be required to generate the forms necessary for the application process, update in-house software through ITD to input and track applications and certificates, and review applications to ensure their compliance with the chapter. Department staff would be required to spend time reviewing each application to ensure its compliance with the chapter. However, complicating matters for me is that it is not entirely clear whether the commissioner has any discretion in issuing a equal pay certificate to an employer under HB 1293. Further, it is not clear what level of investigation the Department must undertake under the bill as written. I have assumed some level of discretion, which would require several, comprehensive investigations, depending on the case. Therefore, I must estimate a significant impact on the Department. Ensuring all applicants are in compliance with the various statutes set forth in HB 1293 at the time of application that they stay in compliance is a substantial undertaking for the Department.

34-06.2-05 (Page 3, Lines 12-16)

This section would allow the commissioner to revoke or suspend an equal pay certificate if an employer fails to comply with the provisions of the bill. This would imply there is some oversight requirement that the Department must undertake with regards to employers covered by this bill. As a result, the Department has assumed staff time will be necessary for such oversight efforts. I would also add that it would be a significant undertaking for our Department to oversee all state contractors to ensure their compliance with HB 1293.

**Fiscal Note**

I was asked to prepare a fiscal note on HB 1293, which is attached. I have based the note on several assumptions about how the bill would operate if passed. Specifically, I have assumed that the Department would be dealing with 100 applicants each fiscal year for years FY 1015-16 and 2016-17. These

numbers are based on estimates only. Based on the uncertainties outlined above, I felt I would need to request an additional FTE, as the requirements set forth in HB 1293 would add significant responsibilities for the Department. In addition, the unknown oversight required by HB 1293 alone may require several full-time staff to ensure compliance.

### **Conclusion**

It is my opinion the EEOC has the resources available to carry out the large-scale investigations required in equal pay act cases. Further, the Department's work-sharing agreement with the EEOC currently provides that the EEOC will undertake these types of investigations for the Department. Finally, I would also point out that between the North Dakota Equal Pay for Men and Women Act, the Equal Pay Act of 1963, the North Dakota Human Rights Act, and Title VII, current law provides numerous protections against unlawful discrimination in the workplace in the form of unequal pay based on gender. Therefore, HB 1293 seems to be somewhat heavy-handed in enforcing laws in this area. However, the Department will enforce the laws of this state as enacted.

Thank you and I'd be happy to answer any questions you may have.