

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1237

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1237
1/17/2017
26962

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Bond requirements for professional employer organizations.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing of HB 1237.

Rep Owens~District 17-Grand Forks: Attachment 1. HB 1237 was brought forward before to ensure that certain companies are not penalized for being successful. We were charging our in-state more than out-of-state for a particular item. It deals with professional groups that act as the employer for other organizations.

What happens is out-of-states employer organizations can come in with a \$100,000 bond & that is all they have to cover for. In the meantime, our employer organizations in the state, can pay a 100% or turn around & pay 5% of their wages. The issue is, they report their wages on a regular bases & after a certain point, the 5% grows to much more than the \$100,000 bond. This puts them at a disadvantage.

Whoever, a situation did arise after I put in this bill, that if we changed it the way the bill is before you at the moment, we do exactly do the reverse to our own public employee organizations in which the ones that are starting up, are force to pay more than they need to pay.

I brought an amendment that greatly simplifies this bill. It protects any new public employee organization in ND, give them time to grow into their own. It covers for the medium employee groups & the external employee groups allow for the \$100,000 bond or the 5% & it covers the larger organizations in the state by not punishing them.

This is a hog house amendment.

5:00

Rep Ruby: When this formula was put in place & there was a huge issue. The idea of the greater of those was to protect the bottom from that situation of someone switching over. Also, by change, shut their doors. Was any of that talked about SUTA dumping?

Owens: Yes, there was discussion. The discussion was, why did this come in to begin with? Explains the situation.

Rep Ruby: Most of the construction is in the negative balance, so they have a high amount because they consistently, system is set up to allow it, are in the negative. I'm not sure this protects the fund. I don't know how many construction companies use the PEO's.

Owens: Yes, very rarely would a construction goes this route, this is more property management, administrative organizations. With smaller companies that don't want to handle all their HR, so they outsource it & the way the PEO's operate, is collection of many smaller companies that they are doing the business for. I do believe that it's minimized but I do not have hard numbers for you.

Helen Brunner~Owner of Frontier Payroll Services: This bill will affect us greatly affected us because we have grown. It has affected us because our gross wages have grown, we had to get a bigger bond. Now, instead of a \$100,000 bond, we have a \$442,000. Because we are growing, we are being penalized.

We have to pay out almost \$25,000, also we have professional liability insurance that is up to a million dollars & we pay for that. We have always had coverage in addition to the bond. SUTA dumping was taken care of in 2005.

We collect that all unemployment from employers and pay it quarterly. As far as WSI, we collect that also. We have a good working relationship with WSI & Job Service. We feel we are being penalized because we are growing. I think the SUTA dumping was taken care of a long time ago.

13:20

Rep Ruby: We treat the out-of-state companies almost better than in-state, I don't see this in the language where it differentiates out-of-state, in-state.

Bruner: The point that I was trying to make on that is that they come in here & they meet the \$100,000 bond. They already have it from other states that they are in. They only have 5 or 10 employees; their wages are never greater 5%. Ours is greater than \$100,000, so they are covered under the \$100,000 bond they already have.

Rep Ruby: That has to do with bigger company that is expanding that already has some of those things in place.

Bruner: Right.

Chairman Keiser: Two interesting concepts. one, fairness with a level playing field & two, the insurance by nature, requires us to collect relative to the risk. By having a floor of \$100,000 bond, that gives us a floor, even for a very small company. You come & say that you are at \$241,000, but that also suggests that there is a lot more risk. Insurances is discriminatory by nature & it's based on risk. To make it fair for in-state, out-of-state people, simply say, pay. What we need to know is if we have adequate bonding to begin with & if \$100,000 is too much? Do you understand what I'm saying?

Bruner: I do, but we have professional liability insurance up to a million dollars & I don't see other service companies having such large bonds.

Rep Ruby: You mention about the fix for SUTA dumping, is that for people at a negative rate?

Bruner: No, everybody is that their own rate since 2005.

Rep Ruby: What you are doing is charging them what their rate is & then basically the premium that you would be bonding for is not necessarily benefit, correct? If someone defaulted, you would have to pay for that premium? That's what you're are bonding for, that premium payment, right?

Bruner: Right.

Rep Ruby: How easy is it to find companies that will bond?

Bruner: It's not easy.

Rep Bosch: If you are collecting money every pay period, your risk is only the link of time from the last collection to the current collect.

Bruner: No.

Chairman Keiser: The rate classification is higher?

Bruner: Right.

Rep Bosch: If something happened today, you would just pay it.

Bruner: Correct.

Rep Bosch: The bond only comes to play if something financially, you were not able to cover that?

Bruner: Yes.

Chairman Keiser: Anyone else here to testify in opposition, neutral?

Darren Brostrom~Job Service of ND: We are neutral on this bill. This isn't really a job service bond. In the early 2000's, the PEO's came into play fairly extensively. There was concern about PEO's nationwide & that there was manipulation of rates. Unemployment insurance, specifically, Helen is correct.

Specifically, to this program, we have not called in a bond. There is around 99 to 100 PEO's in our system & we found only 1 in the negative status. We enjoy the security of having a bond.

Rep Ruby: Are you flexible to give other ways that they can insure that than just going with regular bonds?

Brostrom: We don't hold the bond. Where Job Service comes into the statute is the 5% is based off of their quarterly contribution wage reports to Job Service. The bond is sold by the Secretary of State & they can answer that. If you look at the code, this isn't in job service statute. Job Service isn't the only entity that would benefit should a bond have to be called in. The bond would be used to covered to tax wage benefit or other entitlement due to a covered employee.

Rep Boschee: Of the 99-100 PEO's, how many employees total they represent?

Brostrom: I don't have the numbers but it is large.

Chairman Keiser: The hoghouse amendment, what is 5% mean because there is no minimum.

Brostrom: I haven't seen the amendment. The 5% will vary greatly.

Rena Blans~ND with Secretary of State Office: We are neutral. I haven't seen the amendment but I want to make a clarification. Rep Ruby, you are correct that when we have the registration, whether out-of-state or in-state, the requirements are the same for the bonds.

Rep Ruby: The options, do you allow a letter of credit or corporate guarantee loan?

Blans: Currently, we do not, but the law says, it's this type of bond & we hold the bond for the subservice for the other agencies if they needed get it. Currently, the minimum bond is \$100,000 but they may require larger if their wages are such.

Chairman Keiser: How much does it cost for these bonds & how really available are they, especially for the smaller businesses?

Blans: To my knowledge we haven't had any complaints about not getting any bonds. As far as the cost, I don't know specifically.

Helen Brunner: My total cost comes around to \$24,000 total.

Chairman Keiser: Do you want to work on an amendment for letters of credit?

Rep Ruby: I think that would be a good idea to work on some flexibility. I would like to work with the bill carrier & sponsor.

Chairman Keiser: I can share; we have added letters of credit as an option to the bond.

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1237
1/23/2017
27253

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Bond requirements for professional employer organizations.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing of HB 1237.

Rep C Johnson: This is the hog house amendment from LC. Attachment 1. Basically, it replaces the section of the description of the bond & the change will be the lesser amount of \$100,000 or 5% of total wages reported on the employer quarterly contributions.

Chairman Keiser: The second thing is section 5.

Rep C Johnson: Yes, they added the definition.

Rep C Johnson: Moves to adopt the amendment.

Rep Beadle: Second.

Chairman Keiser: We are simply making our in-state PEO's comparable in term of requirements of bonding as the out-of-state by going to the lesser of those 2 figures. Also, we allow letters of credit.

Rep Ruby: When we change it to the lesser, it allows people to be less than the \$100,000. But at the 5% of the wages, is that sufficient to cover? The premium isn't as high, especially for the smaller groups. What's your thoughts?

Chairman Keiser: It is for the premium.

Voice vote – Motion Carried.

Chairman Keiser: We have HB 1237 before us, what are the wishes of the committee?

Rep C Johnson: Moves a Do Pass as Amended.

Rep Ruby: Second.

Roll call was taken on HB 1237 for a Do Pass as Amended with 13 yes, 0 no, 1 absent & Rep C Johnson is the carrier.

1/23/17 DA

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1237

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 43-55-05 of the North Dakota Century Code, relating to professional employer organization bonding requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

43-55-05. Bond.

1. A professional employer organization shall maintain a bond with a minimum value of the ~~greater~~lesser amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state ~~but not to exceed five hundred thousand dollars.~~
2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
4. ~~Notice~~A professional employer organization shall provide the secretary of state notice of cancellation or nonrenewal of the ~~surety~~-bond required by this section ~~shall be provided to the secretary of state~~ at least forty-five days before cancellation or nonrenewal of the bond.
5. As used in this section, "bond" means a surety bond or an irrevocable letter of credit."

Renumber accordingly

Date: Jan 23, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1237

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0400.01003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Johnson Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

Date: Jan 23, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1237

House Industry, Business and Labor Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions

- Reconsider _____

Motion Made By Rep Johnson

Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	<u>Ab</u>	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep C Johnson

REPORT OF STANDING COMMITTEE

HB 1237: 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 1237 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 43-55-05 of the North Dakota Century Code, relating to professional employer organization bonding requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

43-55-05. Bond.

1. A professional employer organization shall maintain a bond with a minimum value of the ~~greater~~ lesser amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state ~~but not to exceed five hundred thousand dollars.~~
2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
4. ~~Notice~~ A professional employer organization shall provide the secretary of state notice of cancellation or nonrenewal of the ~~surety~~ bond required by this section ~~shall be provided to the secretary of state~~ at least forty-five days before cancellation or nonrenewal of the bond.
5. As used in this section, "bond" means a surety bond or an irrevocable letter of credit.

Re-number accordingly

2017 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1237

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1237
3/14/2017
Job Number 29129

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to professional employer organization bonding requirements

Minutes:

No Attachments

Chairman Klein: Called the committee to order. We will learn a little about PEOs. If anybody has questions in that regard. I guess I have been around awhile so I understand the concept, the battles we have had over the years to make sure they wouldn't be taking more money than they should, whether it be Job Service or Workers' comp.

Helen Bruner, President, Fronteer Personnel Services, Inc.: I am with a company that was established in 1992 in Bismarck, North Dakota. We are a PEO company, we are a co-employer with our clients, other employers throughout the State of North Dakota. What we do with them when we sign them up, if they haven't done it already, we make sure they sign up with Job Service, WSI, North Dakota Withholding, the Secretary of State, all of the steps to becoming a business and make sure they have some kind of a liability license and liability insurance. When we do a payroll for one of our clients we gather the taxes on the invoice. So whether it be state unemployment tax, federal unemployment tax and we gather all of the federal withholdings and we also gather monthly their WSI. (1:05-3:13)

Chairman Klein: You assist a lot of small businesses with working their way through all of the rules and you file the reports so that they are on time so they don't wind up getting their penalties deposited in the FAIR account? That is what your company does and this is kind of a new innovation over the years that has grown in North Dakota.

Helen Bruner: Yes, it has been around for a while. We meet with Job Service and WSI to see if they have any changes coming or concerns that they have. We've met with them over the years and we have complied with their requests. (3:48-4:10)

Chairman Klein: So what are we doing today with HB 1247?

Helen Bruner: We are just trying to get the bill reworded because right now it is basically saying five percent of our wages reported to Job Service, quarterly wages reported. The problem that we run into with that is as we grow as a company and our clients grow their

businesses so we report those taxes or those wages and they keep going up, up, up. So this five percent keeps going up and it gets quite costly and it is unpredictable. We have to get a surety bond and a letter of credit to go along with that from the bank and then we have to pay a fee in to the secretary of state. We have all of this liability going against our company as far as the bank is concerned. What we are trying to do is to keep it at a minimum value, the lesser amount of one hundred thousand dollars or five percent of the quarterly wages. We feel it is unfair to us as a local company because some of the out of state companies have a hundred-thousand-dollar bond with their national company. We keep growing as a company. (4:12-6:12)

Chairman Klein: And that requires you to get a bigger bond every year?

Helen Bruner: Every year. It gets a little out of hand. It is hard to find a bond also. We had to go to another company to get it from out of state because they are hard to find. It is costing us roughly around eighteen thousand dollars for the bond and the letter of credit and the renewal fee and we also have our professional liability insurance on top of that. (6:16-6:50)

Chairman Klein: You worked with Job Service on this?

Helen Bruner: We visited with them, WSI and the Secretary of State.

Senator Roers: How many dollars of payroll do you manage a year?

Helen Bruner: The quarterly one we had to report in was eight million dollars for a quarter.

Senator Roers: Thirty-two million dollars roughly but what is the average employee count for your customers, how big of companies do you work with?

Helen Bruner: We have a client with 250 employees, that is our biggest one and we have clients with one employee and ten employees. I can't say what our average is but it is verily low.

Senator Roers: And Job Service is fine with one hundred thousand dollars of protection?

Helen Bruner: Yes, we have not had a problem.

Darren Brostrom, Unemployment Director of Job Service of North Dakota: I came to provide information with any questions that come up because in the House when the bill came through I think there was a misunderstanding that this was a Job Service bond. This isn't a Job Service bond but it is a bond that would benefit Job Service and WSI or any other entity that was owed money as a result of a PEO failure. We have found over the last decade working with PEOs that they have been good organizations to work with. They provide a good service and we have not had a situation in which a PEO has caused us an issue that would have us to call in a bond. Helen and her staff did meet with us early on and we did talk about the bill and we don't have any concerns with it. (9:20-10:28)

Senator Roers: How many PEOs are there?

Darren Brostrom: I believe right around one hundred that are registered. Active is a lot lower than that.

Senator Roers: This bond gives you some assurance that if you run into a bad actor you have something to go back to for inaccurate funds being brought to your office.

Darren Brostrom: Obviously the bond provides protection. We haven't had issues with it.

Senator Campbell: The bottom line is you are okay with as they grow they will be bonded less?

Darren Brostrom: Yes, we are neutral but we are okay if the bond was lowered.

Chairman Klein: Darren goes back to the time when we were concerned with the SUTA dumping, do you want to explain what the SUTA dumping was?

Darren Brostrom: SUTA is the State Unemployment Tax Act. It was basically when a PEO or a payroll provider would take on a customer in an effort to lower that customer's unemployment rate. He gave an example of a construction company. There was a great push nationwide to fix that problem and in fact the federal government created some software that would run cross matches and check employer's patterns and identify those situations and we were able to introduce legislation to stop that. (13:39-14:49)

Chairman Klein: How does that flow through now? Do they still have a blended rate?

Darren Brostrom: There is a few different options for them depending and not every PEO handles it the same way. They do have some options for blended rates with some Grandfathered employees. Most of the PEOs that we deal with choose to pay at the employer's rate rather than the PEOs rate. (14:56-15:24)

Senator Campbell: With unemployment it goes back to the PEO, they have less experience of claims, they have a lower rate so if they took on like Roer's construction and that was a higher claim that could lower it all based on the history of their claims, right?

Darren Brostrom: The overall unemployment insurance rate is based on an experience rating system. If you are a brand new employer, you would have a higher rate for three years. Afterwards when you build up three years of history, that determines your rate. If they chose to go to a PEO. Most of the PEOs we deal with are going to handle all of their paperwork for them but they are going to pay at that rate that the construction company brings to the table now. (15:50-16:56)

Chairman Klein: I know that was a hot button issue a few years ago and because of those concerns I think we spent a lot of time trying to work that through and we got it to where it seems to be working. And I heard you say we have weeded out some of the bad actors.

Darren Brostrom: I think we have weeded most of them out but there are a few that exist but don't do much business here.

Senator Campbell moved a do pass.

Senator Roers seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard will carry the bill.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed HB 1237**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Campbell Seconded By Senator Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

HB 1237, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1237 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1237

Jan 17, 2017

17.0400.01001
Title.

Prepared by the Legislative Council staff for
Representative Owens
January 16, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1237

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 43-55-05 of the North Dakota Century Code, relating to bonding requirements for professional employer organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A professional employer organization shall maintain a bond with a minimum value of the ~~greater~~lesser amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five hundred thousand dollars."

Renumber accordingly

1237

Our renewal fees for the PEO license are as follows:

Secretary of State Renewal Fee: \$500.00

Surety Bond Fee: \$8890.00

Letter of Credit Fee: \$8840.00

\$18,230.00

In addition what we pay for PL Ins \$5240.00

Total for cost for Insurance and PEO fees: \$23,470.00

Helen

Jan 23, 2017

17.0400.01003
Title.

Prepared by the Legislative Council staff for
Representative C. Johnson
January 19, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1237

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