

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Thursday, January 5, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Karen K. Krebsbach, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Karen K. Krebsbach, Duaine C. Espeland, Tony Grindberg, Duane Mutch, Dave Nething; Representatives Bill Amerman, Tracy Boe, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Pat Galvin, Nancy Johnson, Jim Kasper, George J. Keiser, Scot Kelsh, Dan J. Ruby, Don Vigesaa

Members absent: Senator Joel C. Heitkamp; Representative Glen Froseth

Others present: David O'Connell, State Senator, Lansford

Merle Boucher, State Representative, Rolette

See attached appendix for additional persons present.

It was moved by Senator Grindberg, seconded by Representative Keiser, and carried on a voice vote that the minutes of the November 8, 2005, meeting be approved as distributed.

PUBLIC IMPROVEMENT CONTRACT STUDY

Chairman Krebsbach called on Ms. Bonnie Staiger, AIA North Dakota, for comments regarding the committee's study of public improvement contracts. Ms. Staiger submitted written testimony, a copy of which is on file in the Legislative Council office. She said she was speaking on behalf of AIA North Dakota; the American Council of Engineering Companies of North Dakota; the Associated General Contractors of North Dakota; the National Electrical Contractors Association; the North Dakota Builders Association; the North Dakota Plumbing, Heating, and Mechanical Contractors Association; and the North Dakota Society of Professional Engineers. She said representatives of those organizations are working as a group to address the issues presented in the study of public improvement contracts. She said the group has been busy and cooperation has been excellent. She said the participating organizations have been represented by key leadership at monthly meetings which have been used to identify the issues presented in the study. She said the representatives of the organizations have reached unanimous consensus that North Dakota Century Code Title 48 is in need of a major overhaul to correct problems with laws that have led to misunderstandings and numerous attempts at piecemeal amendments. In addition, she

said, the representatives of the organizations recognize that with growth and change in the construction industry, new delivery systems such as design-build and construction management must be more clearly defined and represented in law. She said the members of the group intend to work with representatives of the Attorney General's office to further address the issues.

Ms. Staiger said the members of the group have sought to identify areas of the law needing attention, methods to approach the problems, and possible approaches to solve the problems. She said subgroups have been developed to approach each issue and the subgroups are meeting more frequently to work on selections of model laws and modifications of existing law. She said the deliberations of the group also will include other interested parties, such as representatives from the Department of Transportation and the State Board of Higher Education. She said it is the goal of the group to have a draft of legislation ready in March and available for review by the committee by June.

Senator Krebsbach said she is very encouraged by the progress of the group.

In response to a question from Representative Keiser, Ms. Staiger said the members of the group are reaching some consensus on the multiple prime bids issue. She said questions relating to the independence of construction managers are likely to be the most contested issues but the members of the group are willing to take on the issues to try to achieve a consensus.

JOB SERVICE REEMPLOYMENT PROCESSES STUDY

Chairman Krebsbach called on Mr. Larry Anderson, Job Service North Dakota, for comments regarding the committee's study of Job Service reemployment processes. Mr. Anderson submitted written testimony, a copy of which is on file in the Legislative Council office. He said representatives of Job Service are continuing to make progress in collecting data and information essential for the study. He said the Unemployment Insurance Advisory Council will be actively involved in the development and recommendation of the proper levels and best methods for providing reemployment services, the best method of limiting the aggregate number of job-attached claimants, and the means of funding any

additional costs that might be incurred by implementing any of the proposed methods. He said the Governor completed the appointment process to the council in October and the committee held its first meeting in late November. He said that meeting was devoted primarily to orientation and familiarizing the members of the council with Job Service and the unemployment insurance program. He said the council scheduled a meeting to coincide with this meeting and most of the members of the council are present at this meeting.

Mr. Anderson introduced each of the Unemployment Insurance Advisory Council members in attendance. He said the members of the council will reconvene today to determine the steps necessary to carry out its study. He said the council will likely conduct public input meetings around the state to afford businesses an opportunity to be heard before the development of any recommendations to this committee.

In response to a question from Senator Krebsbach, Mr. Anderson said Job Service and the Unemployment Insurance Advisory Council will partner with other business organizations to help get representatives of businesses involved in the council's study.

Mr. Anderson said there has been a perception of an unfair subsidization of negative balance employers but a report compiled by Job Service suggests that the level of subsidization may not be as great as some people believe. He said the report indicates there is even some subsidization of certain positive balance employers. A copy of the report is on file in the Legislative Council office.

Representative Keiser said while it is true there is some subsidization of certain positive balance employers, those positive balance employers will eventually pay those funds back to the fund because their experience rating will change, whereas the experience rating for the worst negative balance employers will not change.

In response to a question from Representative Ruby, Mr. Anderson said the majority of the positive balance employers are doing the most to help the unemployment insurance trust fund reach a solvency level.

SHARED WORK DEMONSTRATION PROJECT STUDY

Mr. Anderson submitted written comments regarding the shared work demonstration project study, a copy of which is on file in the Legislative Council office. He said the purpose of a shared work program is to allow an employer to reduce the hours of work of a number of employees, rather than completely lay off a less certain number of employees, and to allow those employees, assuming all other eligibility factors are met, to draw an unemployment insurance benefit to partially offset the loss of wages due to the reduction in hours. He said Job Service is negotiating with an employer in an effort to come to an

understanding and eventually a contract to operate such a demonstration project. He said the difficulty in establishing the project has related to the requirement that the project operate in such a manner that the selected employer's unemployment insurance experience ratings are not compromised and the unemployment trust fund is not so negatively impacted as to result in a greater tax burden to the remainder of the employers contributing to the trust fund. He said representatives of Job Service began a new effort to identify a method through which to make the demonstration project possible through the contracted employer assuming chargeability for all benefit payments attributable to the base period wages and for an expressed willingness on the part of the contracted employer to provide for a voluntary contribution if deemed necessary and appropriate. He said this method was presented to officials of the targeted employer at a meeting held on January 4, 2006, and the representatives of the company verbally agreed to the inclusion of those provisions in an agreement. He said the representatives of Job Service and the company are now able to move to negotiating the specific provisions of the agreement to include acceptance and concurrence with the collective bargaining agent.

In response to a question from Representative Keiser, Mr. Anderson said although the arrangement devised by Job Service is essentially like that of reimbursing employers, the demonstration project would not affect reimbursing employers.

Chairman Krebsbach thanked Mr. Anderson and the staff of Job Service North Dakota for undertaking the task of developing the demonstration project.

UNEMPLOYMENT INSURANCE TAX RATE STRUCTURE STUDY

Chairman Krebsbach called on Ms. Beth Zander, Job Service North Dakota, for comments regarding the study of the unemployment insurance tax rate structure. Ms. Zander submitted written testimony and other documents, copies of which are on file in the Legislative Council office. She said representatives of Job Service have established a schedule for conducting the study and are ahead of that schedule. She said the executive officer of the North Dakota Association of Builders has agreed to assist with the data analysis phase of the study and representatives of the Chamber of Commerce have been invited to participate. She said the first data analysis meeting will be held in mid-January. She said the team conducting the study will begin looking at the wage comparison data that has been compiled. In addition, she said, data collection efforts will continue as Job Service compiles a comparison of benefits paid to taxable wages. She said Job Service will also calculate the impact to the trust fund of the assignment of the new employer rate to the construction industries specified in the study directive. Because economic forecasts have indicated that housing starts are cooling, she said, Job Service will

continue to track economic projections regarding housing starts.

PROFESSIONAL EMPLOYER ORGANIZATION STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a bill draft [70028.0100] which relates to the registration and regulation of professional employer organizations. Committee counsel said the bill draft is a comprehensive registration and regulatory model that was originally drafted by representatives of the professional employer organization industry and submitted to the Legislative Council office for review. He said the bill draft designates Workforce Safety and Insurance as the state entity responsible for registering professional employer organizations and provides that entity with the responsibility to regulate the industry.

In response to a question from Representative Ruby, committee counsel said the definition of "temporary help services" likely should be revised.

Chairman Krebsbach called on Mr. Arthur L. Geiger, Better Business Systems, Billings, Montana, for comments regarding the bill draft. Mr. Geiger said the professional employer organization industry has grown nationally and he expects to see more activity in North Dakota. Therefore, he said, he is pleased that the committee has the foresight to consider regulation of the industry. He said the definition of "temporary help services" was included in the bill draft to distinguish between those entities and a professional employer organization which would be regulated under the proposed legislation. He said the professional employer organization's national association is working to legitimize the industry and to assure the financial strength of professional employer organizations. He said the Employer Services Assurance Corporation operates much like the Federal Deposit Insurance Corporation to provide for an intense process of analyzing and accrediting businesses as professional employer organizations.

In response to a question from Senator Krebsbach, Mr. Geiger said the Employer Services Assurance Corporation is a private accrediting and certifying entity.

Mr. Geiger said Workforce Safety and Insurance was selected as the entity to regulate professional employer organizations because that entity has experience in dealing with professional employer organizations. However, he said, there may be another state agency that is more appropriate for that responsibility.

Mr. Todd J. Cohn, National Association of Professional Employer Organizations, Washington, D.C., said his association is supportive of the spirit of the bill draft because it appears to be a responsible approach to regulation of the industry and would statutorily establish the rights and responsibilities of a professional employer organization and a client of the organization. He said the bill draft is similar to legislation enacted in 27 other states. He said he

expects that at least eight more states will consider similar legislation during legislative sessions in 2006 and 2007.

Mr. Cohn said the bill draft would allow for competition within the professional employer organization market in the state. He said the bill draft is a good approach and will allow small and medium-sized businesses to flourish. He said one of the more difficult issues to address in adopting legislation regulating professional employer organizations is to determine the appropriate agency to oversee the regulation. He said some states have designated the state insurance department as the regulatory agency while other states have designated the state unemployment insurance agency as the regulatory agency. He said Arizona has placed the regulatory responsibility upon the Secretary of State.

In response to a question from Representative Kasper, Mr. Cohn said the comprehensive approach developed in the bill draft may help health insurers feel more comfortable in providing health insurance coverage to professional employer organizations.

In response to a question from Senator Krebsbach, Mr. Geiger said the registration fee for a limited registration is lower because there is not much compliance oversight for the state.

In response to a question from Representative Keiser, Mr. Geiger said the bill draft allows a professional employer organization in existence upon the effective date of the legislation to become registered within 180 days after the effective date of the bill. He said the 180-day window was provided so that the professional employer organizations and the registering entity would have some time to become acquainted with the law and deal with the process of registration.

In response to a question from Representative Keiser, Mr. Cohn said the preservation of the experience rating system for workers' compensation coverage would not be affected by the bill draft.

In response to a question from Senator Krebsbach, Mr. Todd G. Fuchs, Payroll Express, Fargo, said although there was some problem regarding the availability of health insurance for professional employer organizations when he first started his business in 1995, insurers have since opened up to the industry.

Mr. Fuchs said with respect to the provision in the bill draft relating to the conviction of a crime as a basis for disciplinary action, the crime should be related to the operation of the business and not a conviction such as a driving under the influence conviction.

In response to a question from Representative Ruby, Mr. Fuchs said registration and regulation of the professional employer industry would be good for the industry and would help make North Dakota law consistent with laws in other states.

Mr. Geiger said although it may be unusual for representatives of an industry to seek regulation, regulation of professional employer organizations would eliminate some confusion that may exist with

various government agencies. He said adopting a regulatory structure would establish consistencies with respect to definitions of professional employer organizations and legitimize the industry.

In response to a question from Representative Vigesaa, Mr. Geiger said a professional employer organization would seek a limited registration if the organization does not have an office in the state but has a client within the state.

In response to a question from Senator Krebsbach, Mr. Geiger said Workforce Safety and Insurance and Job Service impose various reporting requirements on professional employer organizations that are operating in the state. If a registration requirement were in place, he said, representatives of those agencies would likely become aware of a professional employer organization operating in the state that was not registered.

In response to a question from Representative Johnson, committee counsel said the 180-day period during which an existing professional employer organization may become registered may not be necessary because individuals should become aware of the registration requirement before the effective date of the Act. Rather than provide the 180-day grace period, he said, the effective date of the Act could be delayed to allow additional time for the regulatory agency and any professional employer organization operating in the state to prepare for the registration process.

Ms. Clara Jenkins, Secretary of State's office, said she had concerns with the concept of registering professional employer organizations rather than licensing the organizations. She said all businesses are required to register with the Secretary of State. She said if there is going to be regulation of the businesses, the businesses should be licensed or certified.

In response to a question from Representative Kasper, Ms. Jenkins said the registration and regulation of professional employer organizations by the Secretary of State would likely require additional funding for the office. Because the Secretary of State was unavailable to attend the meeting today, she said, she would prefer that questions regarding having the Secretary of State serve as the regulatory official be deferred until the Secretary of State is available to address those questions.

In response to a question from Senator Krebsbach, Ms. Jenkins said the Labor Department may be an appropriate regulatory agency for professional employer organizations because the department licenses employment agencies.

Mr. Jim Fettig, Command Center, said his business addresses the staffing side of the industry rather than the type of services provided by a professional employer organization. He said the bill draft appears to be well-written and well-intentioned and spells out the differences between staffing services and professional employer organizations. He said representatives of Workforce Safety and Insurance

have a very good understanding of the industries and would likely be well-suited as regulators of the professional employer organization industry. Although the Labor Department has had the responsibility to license employment agencies, he said, it is unlikely that there are any licensed agencies. He said regulation of the professional employer organization industry would likely help grow the industry in the state and eliminate some of the problems that may have been associated with the industry.

Ms. Anne Jorgenson Green, Workforce Safety and Insurance, said although representatives of Workforce Safety and Insurance are fundamentally in favor of the concept of registration of professional employer organizations, they are not convinced that the agency is the correct regulatory agency. She said it may not be appropriate to have Workforce Safety and Insurance as the sole regulatory agency and the sole insurer of the industry. She said there are also concerns with the impact of the bill draft on North Dakota Century Code Section 65-01-09. She said it is important to assure that there is consistency in definitions so that confusion can be eliminated.

Senator Nething said he is not comfortable with having Workforce Safety and Insurance being the agency regulating professional employer organizations. However, he said, he is not sure what is the most appropriate regulatory agency.

Senator Krebsbach said although the Labor Commissioner or the Secretary of State could each serve as a regulatory agency, she believes the Secretary of State may be the best option.

Senator Grindberg requested that the Secretary of State be invited to comment regarding the bill draft at the next meeting. He said the Secretary of State could provide information regarding various fees collected by the Secretary of State.

Representative Keiser said he is concerned with the cost and the liability that may be incurred with respect to registration of professional employer organizations. He said he is also not comfortable with placing that regulatory authority with Workforce Safety and Insurance.

STANDARD OF LOSS RATIO FOR HEALTH INSURERS STUDY

Chairman Krebsbach called on Mr. Jim Poolman, Insurance Commissioner, for comments regarding the study of the standard of loss ratio for health insurers. Mr. Poolman submitted written testimony prepared by Mr. Michael L. Fix of the Insurance Department, a copy of which is on file in the Legislative Council office.

Mr. Poolman said he is concerned with exploring methods through which there may be a more competitive business environment in the state which would encourage health insurers to do business in this state. During the last legislative session, he said, he had inquiries from insurance companies desiring to do business in the state and he requested the Senate Appropriations Committee to include a provision in the

Insurance Department's appropriations bill that would provide the commissioner with the flexibility to adjust minimum loss ratio requirements by rule. He said that provision was defeated in the Senate by one vote. He said South Dakota law allows the Insurance Commissioner the flexibility to respond to the marketplace.

In response to a question from Senator Krebsbach, Mr. Poolman said the Minnesota law for establishing minimum loss ratio requirements is rather complex and is based upon the assessment paid by insurers to the Minnesota high-risk health pool. He said if the Minnesota law were in place in North Dakota, every health insurer other than Blue Cross Blue Shield would fall under the 60 percent loss ratio category. He said the National Association of Insurance Commissioners has set a model formula that has been adopted by 28 states, 22 of which allow the Insurance Commissioner to set the minimum loss ratio by rule. He said he would like to have the ability to be able to respond to the market and provide consumers with more health insurance options.

In response to a question from Representative Keiser, Mr. Poolman said he does not have specific information regarding the number of health insurance companies operating in other states and a comparison of premium amounts from other states. He said premiums are affected by many factors other than the minimum loss ratios.

In response to a question from Senator Grindberg, Mr. Poolman said competition is a good regulatory tool. However, he said, there are few choices available in North Dakota with respect to health insurance. He said the loss ratio statute discourages businesses to come into the North Dakota market because fixed costs will be higher for companies with a smaller number of consumers.

Mr. Dan Ulmer, Noridian Mutual Insurance Company, Bismarck, said the minimum loss ratio law came into effect in the early 1990s as a result of studies relating to small group health insurance reform. He said the minimum loss ratio for Blue Cross Blue Shield is 92 percent. Before the enactment of the statutory minimum loss ratio in 1993, he said, some health insurers were operating in the state with a loss ratio of 11 percent. Although Blue Cross Blue Shield does not mind competition, he said, consumers are entitled to good policies and good value for their money.

In response to a question from Representative Keiser, Mr. Ulmer said the uninsured population in the state has remained steady since the 1990s. He said it may be necessary to reevaluate the effect of the small group reform and other issues that were addressed in the early 1990s. He said sometimes competition in the industry can result in a reduction in cost containment.

Senator Nething requested further information regarding the list of states provided by the Insurance Commissioner in which the minimum loss ratio is adopted by rule or statute.

PHARMACY BENEFITS MANAGEMENT STUDY

Chairman Krebsbach said the committee is going to need to decide if any further action should be taken with respect to the study of pharmacy benefits management. She said the legislation enacted during the 2005 legislative session became effective August 1, 2005, and the impact of that legislation may not be known for some time. She said the committee can continue to monitor the impact of the legislation and gather any other information committee members may deem necessary.

In response to a question from Representative Kasper, Mr. Chuck Johnson, Insurance Department, said the information being gathered by the Insurance Department regarding rebates likely will be available sometime in the summer.

Representative Kasper said the Public Employees Retirement System should be requested to provide information to the committee regarding the impact of the use of pharmacy benefits management.

Senator Nething said pharmacists and representatives of the pharmacy benefits management industry should continue to provide the committee with information during the course of the study.

Chairman Krebsbach said the pharmacy benefits management study will be included on the agenda for a future meeting, probably in June.

Mr. Tony Welder said the committee may be interested in knowing that the pharmacy benefits management law from Maine was recently upheld by a federal court.

In response to a question from Representative Kasper, Mr. Welder said pharmacists are prohibited by federal law from discussing pharmacy contracts or disclosing rates and plans that are accepted by a pharmacy.

MISCELLANEOUS MATTERS

Chairman Krebsbach scheduled the next meeting of the committee for April 6, 2006. At that meeting, she said, the committee will likely receive a report from the Agriculture Research Board on its annual evaluation of research activities and expenditures. In addition, she said, the committee has been designated the responsibility to receive a report from the Insurance Commissioner before July 1, 2006, on the outcome of the commissioner's compilation of existing data regarding the state's liability insurance marketplace. There being no further business, Chairman Krebsbach adjourned the meeting at 1:35 p.m.

John Bjornson
Committee Counsel

[ATTACH:1](#)