

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Tuesday, July 18, 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. Espeguard, Dave Nething; Representatives Bill Amerman, Tracy Boe, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Glen Froseth, Pat Galvin, Jim Kasper, George J. Keiser, Dan J. Ruby, Don Vigasaa

Members absent: Senators Tony Grindberg, Joel C. Heitkamp, Duane Mutch; Representatives Nancy Johnson, Scot Kelsh

Others present: See attached [appendix](#)

UNEMPLOYMENT INSURANCE TAX RATE STRUCTURE STUDY

Chairman Krebsbach called on Ms. Beth Zander, Job Service North Dakota, for comments regarding the committee's study of the unemployment insurance tax rate structure. Ms. Zander submitted [written testimony](#), a copy of which is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Bob Olson, Job Service North Dakota, said representatives of Job Service can provide the committee with information regarding the number of employers that paid money to get a positive rating.

In response to a question from Representative Dosch, Ms. Zander said premium rates were adjusted for 2006 because the reserve was growing too fast. She said premium rates were decreased by .15 percent.

In response to a question from Representative Dosch, Mr. Larry Anderson, Job Service North Dakota, said the balance in the unemployment insurance trust fund is approximately \$97 million.

IMPLEMENTATION OF A SHARED WORK DEMONSTRATION PROJECT STUDY

Mr. Anderson submitted [written testimony](#) regarding the committee's study of the shared work demonstration project, a copy of which is on file in the Legislative Council office.

REEMPLOYMENT PROCESSES STUDY

Mr. Anderson submitted [written testimony](#) regarding the committee's study of Job Service North Dakota reemployment processes, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Krebsbach, Mr. Anderson said Job Service officials should be able

to complete work on this study within 30 to 60 days and make a final report to the committee after that.

In response to a question from Representative Kasper, Mr. Anderson said if an employer disagrees with an employee's claim of being job-attached, the employer must respond on the back of the notice that is sent to the employer. He said the Unemployment Insurance Advisory Council attempted to redesign the notice in a format that would not impose additional administrative burdens on employers and Job Service personnel. In addition, he said, the Advisory Council examined the rights of employers and employees and the changes that would be required to the Job Service automated system. He said the cost of the changes was approximately \$13,000.

In response to a question from Senator Krebsbach, Mr. Anderson said of the approximately 18,000 to 20,000 claims submitted each year, about 15 to 20 percent are disputed.

In response to a question from Representative Dosch, Mr. Anderson said because Job Service officials are concerned with security and privacy issues, the notices sent to employers do not contain the work address of the employee. However, he said, he will discuss the issue with the Advisory Council.

In response to a question from Representative Kasper, Mr. Anderson said Job Service takes its responsibility to address fraud seriously. He said the potential exists for an inordinately high amount of fraud if the estimate of approximately 8 percent of claims involve fraud.

In response to a question from Representative Keiser, Mr. Anderson said although the federal proposal to return responsibility for the public labor exchange system to the states appears to be no longer an issue, the federal funding for administration of the system has been declining for the last decade. He said the Job Service staff has been reduced from approximately 400 employees to 300 employees over the last decade and Job Service is relying more heavily on automation to meet service requirements. He said to implement and administer the Work First Project on a statewide basis would require a general fund appropriation. He said there appears to be a groundswell of interest in a proposal to develop a reoccurring state revenue source to meet workforce development needs that are needed to sustain continued growth in the state.

In response to a question from Representative Kasper, Mr. Anderson said Job Service has not done

a cost-benefit analysis of its recommendations with respect to this study. He said North Dakota is the top performing state with respect to duration of unemployment insurance benefits. Therefore, he said, the cost incurred to further reduce the duration of benefits may equal or exceed the benefit of the Work First Project.

It was moved by Senator Nething, seconded by Senator Espeland, and carried on a voice vote that representatives of Job Service North Dakota be requested to work with the Legislative Council staff to prepare bill drafts based upon the recommendations included in the report of Job Service.

Mr. Anderson said he would work with the Legislative Council staff to develop bill drafts relating to the modified tax rate, implementation of a fee for employers having job-attached employees, and appropriating funds for reemployment programs.

PUBLIC IMPROVEMENT CONTRACT STUDY

Chairman Krebsbach called on Mr. Todd D. Kranda, North Dakota American Council of Engineering Companies, Mandan, for comments regarding the committee's study of public employment contracts. Mr. Kranda submitted a [written summary](#) of the progress of the joint industry committee formed to provide a recommendation to this committee. A copy of the summary is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Kranda said the joint industry committee will seek comment from representatives of cities, counties, and institutions of higher education before a final report is submitted to this committee.

PROFESSIONAL EMPLOYER ORGANIZATION STUDY

Chairman Krebsbach called on Mr. Scott DiBiasio, National Association of Professional Employer Organizations, Alexandria, Virginia, for comments regarding the committee's study of professional employer organizations. Mr. DiBiasio distributed [written information](#) regarding regulation of professional employer organizations in other states, a copy of which is on file in the Legislative Council office. He said a professional employer organization allows smaller or medium-sized businesses to cost-effectively manage payroll and various regulatory and associated responsibilities. He said the professional employer organization enters a coemployment relationship with an employer which is currently not defined under North Dakota law. He said the bill draft [\[70028.0100\]](#) under consideration by the committee recognizes the coemployment relationship and establishes a regulatory framework for operation of professional employer organizations. He said the bill draft would designate the professional employer organization as the employer of record, except for

unemployment insurance and workers' compensation purposes. In addition, he said, registration and regulation of professional employer organizations would provide consumers with the confidence that the organizations have proper financial resources. He said an agency of the state would have some oversight so consumers could take problems to the regulatory agency.

Mr. DiBiasio said the important question is which agency would be most appropriate to be the regulatory agency. Although it appears the Secretary of State would be the appropriate regulatory authority, he said, the Department of Labor or the Insurance Commissioner's office could also likely serve as the regulatory agency. He said regulation of professional employer organizations would not impose a significant administrative burden on the regulatory agency and would not likely require significant resources. He said there are three or four professional employer organizations domiciled in the state at this time. He said the regulatory official in Rhode Island devotes approximately 10 percent of one full-time position to regulation of professional employer organizations. He said his organization would be willing to assist in developing necessary registration forms and regulations. He requested the committee to consider approving the bill draft with some technical revisions.

In response to a question from Representative Kasper, Mr. DiBiasio said the provision in the bill draft for alternative registration would allow a professional employer organization to fulfill registration requirements by demonstrating accreditation by a national accrediting entity.

Mr. Art Geiger, Avitus Group, Billings, Montana, said although there is limited activity by professional employer organizations in this state, the industry is growing nationally. Therefore, he said, there is likely to be increased activity in this state. He said the cost of regulating professional employer organizations could be covered by the registration fees and alternative registrations could reduce administrative duties. He said the Secretary of State seems to be the most appropriate official to handle the registration and regulation of professional employer organizations.

In response to a question from Representative Keiser, Mr. DiBiasio said he does not object to including in the bill draft appropriate cross-references to statutory provisions that relate to the determination of an employer for the purposes of unemployment insurance and workers' compensation insurance.

Representative Keiser said he does not believe it is necessary to provide professional employer organizations 180 days to register after the effective date of the regulatory legislation. In addition, he said, providing 180 days for completion of a registration renewal is unacceptable.

Mr. DiBiasio said he would not object to reducing that timeframe if the Secretary of State could assure that processing of registration applications would not take that long.

Chairman Krebsbach called on Mr. Alvin A. Jaeger, Secretary of State, for comments regarding the committee's study of professional employer organizations. Mr. Jaeger submitted [written comments](#), a copy of which is on file in the Legislative Council office. He said he has always worked closely with legislative committees and other interested parties to develop proposals that may impact his office. However, he said, in this instance representatives of the professional employer organization industry have not met with him to discuss regulation of professional employer organizations. He said if someone is going to suggest his office be the agency to regulate an industry, it would have been courteous to discuss the issue with him.

Mr. Jaeger said many of the provisions in the bill draft are not consistent with the operations of his office. Therefore, he said, the bill draft would require substantial revisions if the Secretary of State's office would be the regulatory agency. He said the office would need an additional appropriation to cover the cost of administering the regulatory program because fees collected would go to the general fund.

In response to a question from Representative Keiser, Mr. Jaeger said although the bill draft under consideration establishes a regulatory structure that would be incompatible with his office, the Secretary of State could serve as the regulatory official if the draft were revised to allow the Secretary of State to implement the regulatory requirements effectively and efficiently.

Representative Keiser said the bill draft appears to be much like a professional and occupational board licensing in that the professional employer industry is seeking credibility and attempting to make the public more accepting of the industry. He said it may be appropriate to revise the bill draft to simply provide for licensing of professional employer organizations with third-party accreditation.

Mr. Jaeger said his office does not have the staff necessary to review the financial soundness of professional employer organizations.

Senator Krebsbach said the Department of Commerce may be an agency that could register professional employer organizations.

Senator Nething said the bill draft should be revised to allow the Secretary of State to keep the registration fees in the Secretary of State's general services operating fund.

Chairman Krebsbach requested the Legislative Council staff to work with the Secretary of State and representatives of the professional employer organization industry to revise the bill draft to designate the Secretary of State as the official responsible for registering professional employer organizations and to address the concerns of the Secretary of State.

Chairman Krebsbach called on Ms. Lisa Fair McEvers, Commissioner, Labor Department, for comments regarding the committee's study of professional employer organizations. Ms. McEvers

submitted [written testimony](#), a copy of which is on file in the Legislative Council office.

PHARMACY BENEFITS MANAGEMENT INDUSTRY STUDY

Chairman Krebsbach called on Dr. Patricia A. Hill, North Dakota Pharmacists Association, regarding the committee's study of the pharmacy benefits management (PBM) industry. Ms. Hill submitted [written testimony](#), a copy of which is on file in the Legislative Council office.

In response to a question from Senator Krebsbach, Dr. Hill said she believes the business practices of PBMs result in higher health care costs in the state.

In response to a question from Representative Ruby, Dr. Hill said the PBM industry is an unregulated industry but some states, e.g., Maine, have chosen to put oversight in place to protect consumers.

Representative Ruby said transparency laws will not accomplish much if a PBM's business practices are legal.

Mr. Peter Harty, Medco Health Solutions, Inc., Colorado Springs, Colorado, said although the legislation in Maine was allowed to stand, the United States Supreme Court did not rule on the merits of the case. Although the Maine law has survived federal legal challenge, he said, that law is not good public policy. He said there is still a contrary decision in the circuit court in the District of Columbia which enjoins the District of Columbia PBM regulatory legislation. He said the Medco settlement mentioned in Dr. Hill's testimony has not been finalized and the case could still go to trial. He said Medco denies any wrongdoing but may settle if it makes business sense. With respect to the information provided by Dr. Hill regarding Caremark, Inc., he said, there are two sides to every story and the whistleblowers involved in the pending lawsuit stand to collect significant sums of money from the lawsuit. He said spread pricing is a common business practice and must be considered in the big picture and not with respect to individual transactions. He said more than 20 states have considered PBM legislation but only Kansas has recently passed a registration law. He said businesses should be allowed to decide how they want to conduct business. He said the growth rates for drug expenditures are decreasing because of tools used by PBMs, such as mail service pharmacies and the use of generic drugs.

In response to a question from Representative Kasper, Mr. Harty said a client's request for proposals and contract negotiations with a PBM determine how and what type of payment will be made to the PBM. He said the model is moving toward the use of an administrative fee and the passing on of rebates to the client. Although the gross revenues for Medco have increased from about \$8 billion to \$10 billion in the late 1990s to approximately \$36 billion per year, he said, the company's net margin is only 1.6 percent.

In response to a question from Representative Keiser, Mr. Harty said the marketplace generally determines whether a PBM acts as a fiduciary for its client under the contract negotiated between the client and the PBM.

Mr. Bob Harms, Caremark, Inc., Bismarck, said the legislation adopted by the Legislative Assembly in 2005 should be left as is so the impact can be determined. He said the PBM industry is not causing health care costs to increase in this state and is not negatively impacting local pharmacists. He said the industry is saving consumers money in this state and across the country. Although the report discussed by Dr. Hill suggests that Caremark, Inc., has resold drugs, he said, that practice would be contrary to the company's policy. He said 31 states have addressed the PBM issue this year and only Kansas and Mississippi have adopted laws that are narrow in scope.

Representative Keiser said the legislation adopted by the Legislative Assembly has been effective. He said the committee should receive an update on its impact from the Insurance Commissioner at a future meeting.

Mr. Chuck Johnson, Insurance Department, said the legislation has required insurance companies to report information regarding PBMs. He said insurance companies have filed the required information with the annual statements of the companies and have generally indicated that rebates have been shared with policyholders or used to reduce premiums.

In response to a question from Senator Nething, Mr. Dan Ulmer, Noridian Mutual Insurance Company, Bismarck, said Blue Cross Blue Shield of North Dakota owns less than 10 percent of Prime Therapeutics. He said the ownership interests have changed with the addition of two new Blue Cross Blue Shield groups. He said Blue Cross Blue Shield of North Dakota is one of the original owners of the company and approximately 10 Blue Cross Blue Shield plans are involved.

In response to a question from Representative Kasper, Mr. Ulmer said drug manufacturer rebates are returned by the PBM to the North Dakota Public Employees Retirement System (PERS) group health plan. He said the sharing of rebates varies by the client and may include the use of member rebate accounts and deductions from copayments.

In response to a question from Representative Kasper, Mr. Sparb Collins, Public Employees Retirement System, said PERS receives general information regarding rebate amounts from Blue Cross Blue Shield but does not receive a detailed report. He said he is not certain how the rebate amounts are calculated and PERS relies on Blue Cross Blue Shield to properly credit PERS with rebates. He said the group health plan is a fully insured plan and PERS has no contract with a PBM. However, he said, Blue Cross Blue Shield has a contractual arrangement with the PBM. He said Blue

Cross Blue Shield puts the rebate funds into the PERS account. He said he can talk with representatives of Blue Cross Blue Shield to try obtain more information regarding rebates and can further discuss that issue when the group health insurance plan is renewed. Because the group health insurance plan is a fully insured plan which limits the state's financial risk, he said, PERS generally only receives a response to its solicitation from Blue Cross Blue Shield.

Representative Kasper suggested PERS obtain more detailed information from Blue Cross Blue Shield to verify that PERS is receiving all rebates provided by pharmaceutical manufacturers.

TRAVEL AND TOURISM LIABILITY INSURANCE REPORT

Chairman Krebsbach called on Mr. Larry Maslowski, Insurance Department, for comments regarding a report of the Insurance Commissioner regarding the commissioner's compilation of existing data with respect to the state's liability insurance marketplace as required by Chapter 151 of the 2005 Session Laws of North Dakota.

Mr. Maslowski submitted a [written report](#), a copy of which is on file in the Legislative Council office.

In response to a question from Senator Krebsbach, Mr. Maslowski said the report offers several recommendations and the Insurance Commissioner has indicated no preference for any of the specific recommendations. He said there has been no response to the report from representatives of the travel and tourism industry.

Representative Keiser said although liability insurance for certain tourism businesses is an important issue, it appears the idea of the study was to find a low-cost premium for some high-risk ventures.

Representative Dosch said the issue is important to small tourism businesses and the committee should attempt to do something to aid those businesses.

In response to a question from Representative Dosch, Mr. Maslowski said copies of the report were provided to the Division of Tourism and the Department of Commerce. He said he has received no response from representatives of those agencies regarding the report.

Representative Keiser said the availability of insurance is important but he does not support reducing liability.

Senator Nething said recommendation Nos. 3, 4, 5, 7, and 8 should be explored further.

Chairman Krebsbach requested that representatives of the Division of Tourism be invited to respond to the survey at the next meeting of the committee.

Representative Froseth said he would like to hear from tourism industry officials regarding what type of liability issues there may be.

Senator Nething said the Tax Commissioner could address whether the recommendation involving tax credits is feasible.

Ms. Jennifer S. N. Clark, Legislative Council, said the liability issue was raised during a focus group conducted during the last interim by the Economic Development Committee. She said a representative of a tourist-related business suggested there were challenges obtaining insurance coverage.

Representative Dosch said representatives of the Insurance Department and the Division of Tourism should discuss the report and determine what may be done to assist the industry.

Representative Keiser said testimony at the next meeting of the committee from an individual who writes surplus lines of insurance may shed further light on this issue.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION REPORT

At the request of Chairman Krebsbach, committee counsel distributed a report prepared by the State Board of Agricultural Research and Education which reviews the research activities and expenditures of the board. A copy of the report is on file in the Legislative Council office.

Chairman Krebsbach said if any members of the committee have any questions regarding the report, contact the Legislative Council office so a representative of the board can attend the next meeting of the committee to address questions.

STANDARD OF LOSS RATIO FOR ACCIDENT AND HEALTH INSURERS STUDY

Chairman Krebsbach said the committee must decide whether any further study is necessary regarding the committee's study of the appropriate minimum standard of loss ratio for accident health insurers.

Representative Keiser said the Insurance Commissioner indicated the establishment of the minimum standard of loss ratio by statute may be one factor contributing to the dominance of the health insurance market by Blue Cross Blue Shield of North Dakota. He said smaller insurers may find it more difficult to enter the market due to the high standard of loss ratio. He said having a lower standard of loss ratio may encourage competition. He said the committee could consider reducing the statutory standard or delegating the authority to the Insurance Commissioner. He said there also could be a statutory limit with some flexibility given to the Insurance Commissioner to adjust the standard of loss ratio.

Representative Kasper said more competition is needed and he may consider bringing a bill draft to the committee for its consideration.

Chairman Krebsbach scheduled the next meeting of the committee for August 29, 2006. There being no further business, Chairman Krebsbach adjourned the meeting at 3:10 p.m.

John Bjornson
Committee Counsel

[ATTACH:1](#)