

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday, September 27, 2006  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Karen K. Krebsbach, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Karen K. Krebsbach, Duaine C. Espgaard, Tony Grindberg, Joel C. Heitkamp, Duane Mutch, Dave Nething; Representatives Bill Amerman, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Glen Froseth, Pat Galvin, Nancy Johnson, Jim Kasper, George J. Keiser, Dan J. Ruby, Don Vigesaa

**Members absent:** Representatives Tracy Boe, Scot Kelsh

**Others present:** See attached [appendix](#)

Representative Merle Boucher, member of the Legislative Council, was also in attendance.

**It was moved by Senator Nething, seconded by Representative Keiser, and carried on a voice vote that the minutes of the August 29, 2006, meeting be approved as distributed.**

#### UNEMPLOYMENT INSURANCE TAX RATE AND REEMPLOYMENT PROCESSES STUDIES

At the request of Chairman Krebsbach, committee counsel distributed a bill draft [\[70163.0100\]](#) relating to modifying the unemployment insurance tax rate structure and two bill drafts relating to establishing a return-to-employer fee. He said one of the bill drafts [\[70164.0100\]](#) would establish a \$100 fee to be assessed to an employer for each job-attached employee and the second bill draft [\[70164.0200\]](#) would establish a formula for determining a return-to-employer fee assessed to an employer for which cumulative contributions are less than the employer's cumulative benefits.

Chairman Krebsbach called on Mr. Larry D. Anderson, Job Service North Dakota, for comments regarding the bill drafts. Mr. Anderson submitted [written testimony](#), a copy of which is on file in the Legislative Council office.

Representative Keiser said the bill draft relating to the modification of unemployment insurance tax rates raises a policy question with respect to whether a negative balance employer should benefit from a surplus in the unemployment insurance trust fund. He said the negative balance employer does not contribute to the surplus in the trust fund. He said the bill draft provides both positive balance and negative balance employer groups a reduction in rates when there is a surplus in the fund.

In response to a question from Representative Ruby, Mr. Anderson said if the balance in the trust fund were to fall below the targeted balance, the existing provisions in law providing for reaching the balance would become effective and positive and negative balance employers would see rate increases.

Representative Keiser said most employers would see rate increases in that situation, except the negative balance employers in the highest rate class would not see any further increase.

In response to a question from Senator Nething, Representative Keiser said imposition of a return-to-employer fee for job-attached employees of negative balance employers is a good policy to address the job-attached status. He said there should be some discussion regarding the appropriate level of the fee during the next legislative session.

Representative Galvin said it was not the original intent of the unemployment insurance program to pay employees for choosing not to work and providing for the convenience of employers.

In response to a question from Representative Amerman, Mr. Anderson said if an employer chooses not to pay the return-to-employer fee for an employee, that employee may receive benefits if the employee complies with the job search requirements and may return to work with that employer at a later date.

Mr. Russ Hanson, Associated General Contractors of North Dakota, Bismarck, said he supports rewarding those employers who have helped build the reserve in the unemployment insurance trust fund. He said members of the construction industry look seriously at the need for job-attached employees due to the need of retaining critical employees and the cost of training employees. He said he favors the current policy with respect to job-attached status and he will attempt to provide information to the members of the next Legislative Assembly regarding the additional costs that would be associated with imposing a return-to-employer fee.

Mr. Tom Balzer, North Dakota Motor Carriers Association, Bismarck, said the imposition of a return-to-employer fee on job-attached employees of a negative balance employer is fair and equitable in that it is based on experience and the impact on the fund of the utilization of the job-attached status. He said allowing a reduction in rates to employers that have helped contribute to a surplus in the unemployment insurance trust fund is a good policy.

**It was moved by Representative Keiser, seconded by Senator Espegard, and carried on a roll call vote that the bill draft relating to the imposition of a return-to-employer fee on negative balance employers be approved and recommended to the Legislative Council.** Senators Krebsbach, Espegard, Grindberg, Mutch, and Nething and Representatives Clark, Dietrich, Dosch, Froseth, Galvin, Johnson, Kasper, Keiser, Ruby, and Vigesaa voted "aye." Representative Amerman voted "nay."

Representative Keiser said he would prefer that the bill draft relating to the modification of unemployment insurance rates provide for a reduction in rates only to positive balance employers that helped contribute to the surplus in the unemployment insurance trust fund.

**It was moved by Representative Dosch and seconded by Representative Keiser that the bill draft relating to reducing the unemployment insurance tax rate of all employers when there is a surplus in the unemployment insurance reserve fund be approved and recommended to the Legislative Council.**

Senator Nething said the bill draft would be a better idea if it were amended to provide a rate reduction only for positive balance employers.

Ms. Maren Daley, Job Service North Dakota, said representatives of Job Service could attempt to provide the committee with language to revise the bill draft so that only positive balance employers would benefit from reductions due to a surplus in the fund.

After consultation with representatives of Job Service North Dakota, committee counsel distributed a bill draft [70206.0100] that provides that negative balance employers would not benefit from a reduction in unemployment insurance tax rates when there is a surplus in the unemployment insurance trust fund.

Ms. Daley said if the bill draft were approved by the committee and introduced during the next legislative session, Job Service would submit the proposal to the United States Department of Labor for confirmation that the proposal conforms to federal requirements. She said representatives of Job Service could provide the committee members with the response from the Department of Labor and address any other concerns regarding the proposal when the bill is before the standing committees.

Senator Nething said if there are concerns regarding conformity with federal laws, it may be better to introduce the proposal as an agency bill during the legislative session rather than forward it from this committee.

In response to a question from Representative Ruby, Ms. Daley said a Department of Labor response would likely be delivered rather quickly. She said the bigger issue is likely the impact the change in policy would have upon certain employers.

In response to a question from Senator Krebsbach, Ms. Daley said although introduction of the bill draft by the Legislative Council would add some credibility to

the proposal, she would also be comfortable introducing the proposal as an agency bill.

Senator Nething said because the impact of the proposal merits more discussion and not everybody involved has had the opportunity to review the impact of the bill draft, he would be more comfortable in having the proposal introduced as an agency bill.

Representative Ruby said there has been significant discussion during this interim regarding various proposals to address unemployment insurance tax rates. He said the goal is to get employers to the positive balance status and the bill draft would aid in doing that.

Representative Dosch said he has no problem rejecting the bill draft that provides a rate reduction for all employers and approving the bill draft that would provide a rate reduction for only positive balance employers in the event of a surplus. He said his motion to approve the bill draft was made simply to attempt to do something before the drafting of a second bill draft.

After this discussion, **the motion failed on a roll call vote.** Senators Krebsbach, Grindberg, and Nething and Representatives Dosch, Galvin, Johnson, and Kasper voted "aye." Senators Espegard, Heitkamp, and Mutch and Representatives Amerman, Clark, Dietrich, Froseth, Ruby, and Vigesaa voted "nay."

**It was moved by Senator Espegard, seconded by Representative Dietrich, and carried on a roll call vote that the bill draft relating to providing an unemployment insurance tax rate reduction for positive balance employers when there is a surplus in the unemployment insurance reserve fund be approved and recommended to the Legislative Council.** Senators Espegard, Grindberg, Heitkamp, Mutch, and Nething and Representatives Amerman, Clark, Dietrich, Dosch, Froseth, Galvin, Johnson, Kasper, Ruby, and Vigesaa voted "aye." Senator Krebsbach voted "nay."

## **PUBLIC IMPROVEMENT CONTRACT STUDY**

At the request of Chairman Krebsbach, committee counsel reviewed two bill drafts relating to construction of public improvements. He said one bill draft [70162.0200] is a revision of a bill draft presented at the last meeting of the committee which clarifies a number of statutory provisions relating to public improvement contracts. He said the second bill draft [70202.0100] incorporates all of the provisions within the first bill draft and also includes provisions relating to the construction management delivery method for the construction of public improvements.

Ms. Bonnie Staiger, AIA North Dakota, Bismarck, said the representatives of the various industry groups that developed the proposal for the bill drafts prefer the bill draft that includes the construction management provisions. She said the various industry groups have been at odds for several years

on many of the issues presented in the bill draft and the Legislative Assembly has frequently had to adjudicate the issues presented by the various groups. She said representatives of the groups have been able to work together during this interim to address their concerns and agree upon the proposals included in the bill drafts. Although many issues have been agreed upon, she said, there is more work to do. If the bill draft containing the construction management provisions is approved by the committee, she said, the representatives of the various industry groups will propose some revisions during the legislative session. Before approving the bill draft, she said, the committee may desire to make three minor revisions. She requested that the word "portion" be inserted on line 26, page 9, after the word "construction". On line 24, page 19, she said, "shall" should be changed to "may". With respect to the bonding provisions in North Dakota Century Code Section 48-02.1-23 on page 24, she said, the representatives of the industry group have agreed that section should state that the mechanical and electrical contractors be responsible for their own bonds.

In response to a question from Representative Kasper, Mr. Eric Johnson, Associated General Contractors of North Dakota, Fargo, said the construction manager would be responsible for all of the bond except the mechanical and electrical portions of the contract. He said the bill draft provides for two types of construction management--agency construction management and construction management at-risk. He said the at-risk method enables a construction manager to negotiate for the general construction while the other components, such as mechanical and electrical, would be bid competitively.

**It was moved by Representative Froseth, seconded by Representative Johnson, and carried on a roll call vote that the bill draft relating to public improvement contracts and construction management techniques be revised to incorporate the suggestions made by Ms. Staiger and that the bill draft, as revised, be approved and recommended to the Legislative Council.** Senators Krebsbach, Espeland, Grindberg, Mutch, and Nething and Representatives Amerman, Clark, Dietrich, Dosch, Froseth, Galvin, Johnson, Kasper, Ruby, and Vigasaa voted "aye." No negative votes were cast.

### **PROFESSIONAL EMPLOYER ORGANIZATION STUDY**

At the request of Chairman Krebsbach, committee counsel reviewed a revised bill draft [\[70028.0400\]](#) relating to the licensing of professional employer organizations.

Mr. Alvin A. Jaeger, Secretary of State, said there are a few logistical issues that he discovered after the last meeting that may need to be addressed at some point. If the bill draft is approved by the committee, he

said, the additional concerns can be dealt with during the legislative session.

In response to a question from Representative Amerman, Mr. Jaeger said the licensing requirements apply only to any person that is engaged in a coemployer relationship with a client and performing the functions described within the definition of a professional employer organization.

In response to a question from Representative Ruby, Mr. Jaeger said other business entities that register with the Secretary of State are not required to provide information regarding financial capability. Under the bill draft, he said, if an applicant submits an audited financial statement, the Secretary of State will issue a professional employer organization license.

Mr. Scott DiBiasio, National Association of Professional Employer Organizations, Washington, D.C., said the term "professional employer organization" is relatively new. He said the term is the result of an evolution of a variety of names and some companies performing professional employer organization services still prefer to use other terms, such as "staff leasing organizations." For licensing purposes, he said, the focus must be on the services provided, not the name of the business. He said the intent of requiring an applicant to provide evidence of financial capacity demonstrates that the business has sufficient working capital or a bond to manage the cashflow associated with the work of the business. Although the bill draft is not perfect from his perspective, he said, he appreciates the willingness of the Secretary of State to address some of the issues of concern. He said he may bring up other issues during the legislative session if the bill draft is approved by the committee.

In response to a question from Representative Ruby, Mr. DiBiasio said \$100,000 is considered a benchmark for financial capacity in the professional employer organization business. He said if a person is considering getting into the professional employer organization business, the person should have the ability to get a bond for that amount.

Representative Amerman said he opposes the bill draft. He said if the professional employer organization industry wants to gain legitimacy, it should come through the way business is conducted, not through legislation.

**It was moved by Senator Nething, seconded by Senator Espeland, and carried on a roll call vote that the bill draft, as revised, relating to the licensing of professional employer organizations be approved and recommended to the Legislative Council.** Senators Krebsbach, Espeland, Grindberg, Mutch, and Nething and Representatives Clark, Dietrich, Dosch, Johnson, Kasper, and Vigasaa voted "aye." Senator Heitkamp and Representatives Amerman, Froseth, Galvin, and Ruby voted "nay."

## **WORKFORCE SAFETY AND INSURANCE REPORT**

At the request of Chairman Krebsbach, Mr. Mark Armstrong, Workforce Safety and Insurance, presented [written testimony](#) and a [report](#) regarding the status of the modified workers' compensation program performance audit and the Roughrider Industries safety audit as required by North Dakota Century Code Section 65-06.2-09.

In response to a question from Representative Ruby, Mr. Armstrong said there were no claims submitted during the last reporting period for the Roughrider Industries workers' compensation program. If a claim were submitted, he said, Workforce Safety and Insurance would provide medical benefits. However, he said, there would be no wage replacement payment. He said if a disability extended after the end of the claimant's incarceration, benefits would be continued to cover the disability as with any other claim.

Chairman Krebsbach thanked the members for their work during the interim.

**It was moved by Senator Grindberg, seconded by Senator Nething, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.** Senators Krebsbach, Espgaard, Grindberg, Heitkamp, Mutch, and Nething and Representatives Amerman, Clark, Dietrich, Dosch, Froseth, Galvin, Johnson, Kasper, Ruby, and Vigesaa voted "aye." No negative votes were cast.

**It was moved by Senator Nething, seconded by Representative Johnson, and carried on a voice vote that the meeting be adjourned sine die.** Chairman Krebsbach adjourned the meeting sine die.

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John Bjornson  
Counsel

[ATTACH:1](#)