

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

COMMERCE COMMITTEE

Tuesday, March 9, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative George Keiser, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives George Keiser, Donald L. Clark, Mark A. Dosch, Mary Ekstrom, Pat Galvin, Ron Iverson, Kim Koppelman, Mary K. Nester, Jo Ann Rodenbiker, Dan J. Ruby, Arlo E. Schmidt; Senators Dick Dever, April Fairfield, Tim Flakoll

Members absent: Representative Eliot Glassheim; Senator Karen K. Krebsbach

Others present: See attached appendix

It was moved by Representative Ekstrom, seconded by Representative Iverson, and carried on a voice vote that the minutes of the November 13, 2003, meeting be approved as distributed.

CONTRACTOR COMPETENCY STUDY

Chairman Keiser called on committee counsel to present a background memorandum entitled *Consumer Protection Related to Contractor Competency and Out-of-State Contractors - Background Memorandum* regarding regulation and licensing of contractors in North Dakota and in neighboring states.

Chairman Keiser called on Senator Dwight Cook for comments regarding the study.

Senator Cook said he introduced Senate Bill No. 2252 (2003) which provided for this study. He said the legislation was in response to a problem a constituent encountered with an out-of-state contractor. He said the contractor performed a shoddy shingling job and left the state. He said the Attorney General was not able to locate the contractor and the constituent had no further recourse even though the contractor had guaranteed the work. He said the proposal for the study was designed to explore solutions to the problems posed by out-of-state contractors who have no intention of fulfilling warranties, but not to unduly burden resident contractors.

Chairman Keiser called on Mr. Parrell Grossman, Attorney General's office, for comments regarding the study. Mr. Grossman said the state may not treat out-of-state contractors differently from North Dakota contractors. In addition, he said, any regulation of contractors must take into account the impact the regulation will have on North Dakota contractors. He said the transient merchant licensing law contains

exceptions for businesses that establish a legitimate business location in the state. He said the Attorney General's office has participated in enforcement checks with the Secretary of State and Workforce Safety and Insurance to determine if contractors are licensed and paying required payroll taxes.

Mr. Grossman said one solution to the problem encountered by Senator Cook's constituent may be to establish reasonable bonding requirements for all contractors.

In response to a question from Senator Flakoll, Mr. Grossman said representatives of the Attorney General's office often speak with contacts in other states regarding individuals or businesses that may be causing problems in a number of states. He said it is often difficult to contact contractors or transient merchants because the individuals or businesses often operate under several names. He said requiring copies of an individual's driver's license helps the Attorney General's office track transient merchants.

In response to a question from Representative Ruby, Mr. Grossman said imposing requirements, such as bonds, only on nonresidents could raise constitutional concerns.

In response to a question from Representative Schmidt, Mr. Grossman said the Attorney General's office is not able to represent an individual consumer when the consumer has a problem with a contractor who has performed poor workmanship. He said the consumer would need to hire a private attorney to deal with that type of problem because poor workmanship is not a violation of a criminal law.

In response to a question from Senator Flakoll, Mr. Grossman said the Attorney General's office has tried to make local businesses responsible for debts of transient merchants that have used the local businesses as a place of business while in the state.

In response to a question from Senator Dever, Mr. Grossman said consumers are encouraged to check with the Secretary of State regarding the licensure status of a contractor and contact Workforce Safety and Insurance or Job Service North Dakota regarding the payment of payroll taxes. He said the Attorney General's office maintains a data base with respect to complaints received by that office. He said transient merchants are required to carry the transient

merchant's license and each employee is required to carry a duplicate of the license.

In response to a question from Representative Dosch, Mr. Grossman said the Secretary of State could likely require a copy of a federal tax return with a licensure application if the information is kept confidential.

In response to a question from Representative Keiser, Mr. Grossman said consumers have the option of pursuing a civil action against a contractor for poor workmanship. However, he said, even if the consumer receives a judgment against an out-of-state contractor, it is often difficult to collect on the judgment.

In response to a question from Representative Koppelman, Mr. Grossman said constitutional issues such as equal protection are a concern when a state treats nonresidents differently from residents. He said treating different classes of contractors' licenses differently could address some of the problems by focusing more stringent licensing requirements on the categories of contractors in which most problems arise. However, he said, doing so would also affect many legitimate contractors. He said the Attorney General's office and other state agencies have tried to provide consumer education. However, he said, when demand exceeds the capacity of local contractors, many people are more concerned with getting the work done than with investigating a contractor. He said the consumer has to make the ultimate decision as to whom to hire.

In response to a question from Representative Iverson, Mr. Grossman said the legislation enacted during the 2003 legislative session enhanced the ability of the Secretary of State to address some problems associated with contractors. He said he has looked at the laws of many other states and does not see any obvious answer to the concern raised. He said addressing the problem is often a matter of the lack of resources and focus.

Chairman Keiser called on Mr. Alvin A. Jaeger, Secretary of State, for comments regarding the committee's study of contractor competency. Mr. Jaeger submitted written information regarding the licensing of contractors, copies of which are on file in the Legislative Council office. Mr. Jaeger said the laws regarding the licensing of contractors are very inclusive and do not differentiate between a building contractor and a road contractor. Although proof of liability insurance is required, he said, the law does not specify a particular amount of insurance. He said approximately 50 percent of the 6,000 licensed contractors hold a Class D license. He said most complaints with respect to contractors are generally related to Class D licensees. Although the Secretary of State has the authority to revoke a contractor's license, he said, consumers expect more. He said consumers want problems resolved and want

restitution, which is something the Secretary of State is unable to provide.

Mr. Jaeger said if a contractor is performing services without a license, he refers the matter to a state's attorney for prosecution. However, he said, the referrals are often not given high priority because state's attorneys have other important issues with which to deal. He said the onsite inspections have generated attention and assist in encouraging consumers to investigate the background of contractors and to protect themselves. He said there is no test that is required of a contractor to measure a contractor's competency. He said he is not authorized to conduct background checks on applicants.

Mr. Jaeger said Senate Bill No. 2252 was an attempt to make the laws regulating contractors more meaningful. He said it is difficult to address situations such as the situation that prompted the study. He said he is not aware of any legal way to address nonresident contractors differently from resident contractors.

In response to a question from Senator Flakoll, Mr. Jaeger said he has made efforts to educate representatives of political subdivisions that engage in business with contractors regarding the licensing laws and bidding requirements. He said some political subdivisions have contracted with unlicensed contractors. He said it is difficult to categorize different types of contractors because the contractor licensing law is so inclusive.

In response to a question from Senator Fairfield, Mr. Jaeger said complaints are received in a variety of circumstances, not just claims associated with work done after disasters or storms.

Chairman Keiser called on Ms. Doreen Mehlhoff, North Dakota Association of Builders, for comments regarding contractor competency. Ms. Mehlhoff said a survey of members of the North Dakota Association of Builders indicates that the members generally favor testing of contractors and continuing education requirements. She said residential contractors are in favor of making the business more professional. She said many of the building contractors are also licensed in other states. She said providing the opportunity for consumers to check an online data base for contractor complaints would assist consumers in choosing contractors. In addition, she said, rather than directing people to the Attorney General's office and the Secretary of State with questions regarding problems with contractors, a central office to handle the questions would be preferable. Another way to assist the consumer, she said, would be to issue a license card to contractors that can be shown to consumers when requested.

In response to a question from Senator Dever, Ms. Mehlhoff said cities and counties can require building permits, but many areas of the state have no such requirements. In areas that require building

permits, she said, a contractor is required to show a contractor's license before obtaining a building permit.

Chairman Keiser called on Ms. Jodi Bjornson, Workforce Safety and Insurance, for comments regarding regulation of contractors. Ms. Bjornson said Workforce Safety and Insurance participated in the contractor complaint task force during the last two years. She said the task force was a successful vehicle to ensure workers' compensation coverage. She said Workforce Safety and Insurance has worked well with the Secretary of State to ensure that contractors provide proof of insurance before licensure of the contractor. She said the Workforce Safety and Insurance web site contains an online employer look-up feature where an individual can check the status of an employer's account. In addition, she said, Workforce Safety and Insurance has implemented broader provisions to share information with the public through which the public can be informed whether an employer has insured employees. During the last legislative session, she said, legislation was enacted to allow Workforce Safety and Insurance to inform the public regarding whether an employer's account is active or delinquent. She said the agency has also implemented telephone audits of nonresident employers.

UNEMPLOYMENT COMPENSATION SYSTEM STUDY

Chairman Keiser called on committee counsel to review a bill draft [50010.0200] relating to the establishment of the Unemployment Insurance Advisory Council. Committee counsel said this bill draft implements recommendations suggested at the last committee meeting. He said the bill draft provides for a seven-member Unemployment Insurance Advisory Council appointed by the Governor. He said five members must represent employers, one member must represent employees, and one member must be an at-large member.

Chairman Keiser called on Ms. Maren Daley, Job Service North Dakota, for comments regarding the bill draft. Ms. Daley submitted written testimony, a copy of which is on file in the Legislative Council office. Ms. Daley said she supports the bill draft. However, she said, it will be important that the appointees to the council have a genuine interest in the unemployment insurance program and in assuring that the program meets its major goal of providing economic stabilization during times of economic turmoil. She said with the discussion regarding federal reform of the unemployment insurance system and the potential of establishing a statewide reemployment project, the council would have significant issues to address. In addition, she said, replacement of the unemployment insurance mainframe computer system will be an important topic for discussion.

Chairman Keiser called on Mr. Marv Skar, E. W. Wylie Corporation, Fargo, for comments

regarding the bill draft. Mr. Skar said 80 to 90 percent of the employers in the state are positive balance employers that subsidize the other employers. He said his company rarely receives the benefit of the unemployment insurance system, but saw a 265 percent increase in its premiums. He said an advisory council is essential, but the bill draft should be revised to include 11 members, more of whom are positive balance employers. In addition, he said, the advisory council should be required to meet at least quarterly. He said the members of the advisory council should receive the same amount of reimbursement as members of the Legislative Assembly for attendance at interim committee meetings. He said it is important that individuals appointed to the advisory council be truly interested in the unemployment insurance system.

Chairman Keiser called on Mr. David L. Kemnitz, North Dakota AFL-CIO, for comments regarding the bill draft. Mr. Kemnitz said he has served on unemployment insurance councils in the past. He said he is concerned with the revised bill draft and he preferred the first draft that was discussed at the last meeting. He said the advisory council needs more diversity so that it can balance interests. He said the membership of the advisory council in the draft under consideration is not equitable. If there is no meaningful opportunity to have serious input on the complex issues before the advisory council, he said, there is no incentive to participate.

Chairman Keiser called on Mr. Dick Johnsen, North Dakota Motor Carriers Association, for comments regarding the bill draft. Mr. Johnsen said he could support the bill draft if the changes proposed by Mr. Skar were implemented. He said a good cross-section of membership is needed and additional members could provide diversity.

Ms. Mehlhoff said she supports the bill draft and the recommendations to broaden the membership of the advisory council.

Chairman Keiser called on Mr. Mark Dougherty, Associated General Contractors of North Dakota, for comments. Mr. Dougherty said he supports the bill draft. He said it is often best to begin with a smaller membership and expand the membership later, if necessary.

In response to a question from Senator Dever, Ms. Daley said although North Dakota Century Code Section 52-02-07 provides for an advisory council, the last two Governors have appointed the members of the Workforce Development Council to serve as the advisory council for Job Service North Dakota. She said that council has not focused on unemployment insurance issues.

Chairman Keiser said the Legislative Assembly has worked hard to ensure that members of various boards and commissions are being paid equally. He said the Legislative Assembly adopted legislation a few sessions ago that decoupled the pay of most

boards and commissions from the pay given to members of the Legislative Assembly for attendance at interim meetings. Although the bill draft requires the council to meet at least once per year, he said, the council would have the flexibility to meet more often upon the call of the chairman or the executive director of Job Service North Dakota. He said requiring the establishment of the advisory council by statute demonstrates the importance of the council.

Representative Iverson said he would like to see the bill draft revised to require more than one meeting per year.

At the request of Chairman Keiser, committee counsel distributed a bill draft [50040.0100] relating to the establishment of a tax rate to include a multiplicative portion for the amounts estimated as necessary to reach a calculated solvency target for the unemployment insurance reserve fund.

Chairman Keiser called on Mr. John Graham, Job Service North Dakota, for comments regarding the bill draft. Mr. Graham submitted written testimony, a copy of which is on file in the Legislative Council office. Mr. Graham said the bill draft would create a proportionately greater responsibility on the part of negative balance employers for that portion of the unemployment insurance tax burden, which represents the amount of revenue necessary to make due progress toward the solvency target. He said the current tax structure is calculated by determining the amount necessary to reach a calculated solvency target taking into account the amount necessary to pay estimated benefits and an added percentage necessary to progress toward the required solvency target. He said the impact of the move toward the solvency target falls equally on all unemployment insurance taxpayers. He said the bill draft would require the calculation of the amount necessary to pay estimated benefits, but then would not add the same rate to each calculated rate to reach the solvency target. He said the bill draft would create a ratio between the income estimated as needed to pay the benefits and solvency amount and then multiply that ratio against each rate in the rate array.

In response to a question from Representative Ekstrom, Mr. Graham said if after the solvency target is reached the fund moves away from the solvency target, a new five-year period would be established in which to reach the solvency target.

In response to a question from Representative Keiser, Mr. Graham said approximately 85 to 88 percent of the employers are positive balance employers.

Mr. Skar said he disagrees with the policy issues underlying the unemployment insurance system. He said positive balance employers should not have to pay for the layoffs made by negative balance employers. He said those employers can pass their costs on rather than make all employers pay more. Even with the proposed bill draft, he said, positive

balance employers will continue to subsidize negative balance employers. He said there has been no reduction in unemployment insurance benefits to address the solvency problems.

In response to a question from Senator Flakoll, Mr. Skar said the majority of employers should not be required to subsidize seasonal employers and employers who make the economic decision to close their businesses for some time.

In response to a question from Representative Keiser, Mr. Skar said the unemployment insurance system has become an entitlement program that does not make people seek work.

Mr. Dougherty said unemployment insurance benefits are good for employees and other businesses because the employees are able to continue contributing money to the economy. He said unemployment insurance is an insurance product where if an employer has a bad record, the employer pays more.

In response to a question from Senator Dever, Mr. Graham said it may be possible to use previous years to calculate rates that would have been paid by chronic negative balance employers if the rates were not capped.

In response to a question from Senator Flakoll, Mr. Graham said changing the taxable wage base shifts employers' rates, but does not change the amount needed to pay benefits in a significant manner. He said he can further examine the effect of such a change.

IMPACT OF FEDERAL CHANGES RELATING TO UNEMPLOYMENT INSURANCE AND WORKFORCE TRAINING STUDY

Chairman Keiser called on Mr. Graham for comments regarding the committee's study of the impact of pending federal legislation that would significantly change the respective federal-state responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs. Mr. Graham submitted written testimony, a copy of which is on file in the Legislative Council office.

Mr. Graham said Congress enacted the Temporary Extended Unemployment Compensation Act of 2002 in March 2002. He said that Act distributed \$8 billion of excess Reed Act funds to several states. Of that amount, he said, North Dakota's share was \$15,267,000. He said use of those funds is limited to payment of benefits or for expenditures in support of administration of the unemployment insurance program. He said the senior management team at Job Service North Dakota has recognized the mainframe computer system that supports the unemployment insurance program is in need of replacement. He said the mainframe computer will no longer be supported by the maker in the very near

future. In addition, he said, the trend in the development of applications is to house the applications on servers and make the applications accessible over the Internet. He said those applications are extremely difficult to interface with the Job Service North Dakota mainframe computer. He said the estimated cost of replacing the mainframe computer system is prohibitive. He said an estimate received from a consultant in 2002 indicated that the cost for replacing the system would be \$22 million. However, he said, since that time, several states have let contracts for unemployment insurance system replacement in excess of \$30 million. He said taking a more formal approach to estimating the cost during the next interim would assist in preparing a specific replacement proposal for the 2007 Legislative Assembly. In addition, he said, if other states complete successful projects within the next two years, the software developed by those states may be available for transfer to North Dakota at a more reasonable price. He said this committee may consider recommending to the Legislative Assembly support for an appropriation of \$250,000 to fund preparatory studies, including a possible request for information regarding the cost and the appropriate technology to replace the mainframe computer application used to process unemployment insurance claims and tax reporting and payments.

Mr. Graham said the United States Department of Labor is expressing a greater interest in actions by states in support of reemployment of unemployed insurance claimants. He said federal funding of the labor exchange and workforce development programs has not been sufficient in states like North Dakota which do not supplement federal administrative grants to adequately serve the reemployment needs of all unemployment insurance claimants. He said Job Service North Dakota believes that methods can be explored which may result in more rapid reemployment of unemployment insurance claimants and that the unemployed insurance trust would experience less of a drain through payment of benefits. He said representatives of Job Service North Dakota would like the opportunity to present a more complete proposal to the committee at a future meeting regarding a pilot project relating to intensive

reemployment actions designed to demonstrate whether such actions could have a significant effect on reducing expenditures from the unemployment insurance trust fund. He said it is hoped that the proposed pilot project would result in decreasing the average duration of claims by a significant amount, which would reduce payment of benefits from the trust fund.

In response to a question from Representative Ekstrom, Mr. Graham said hopefully the mainframe computer system will work until 2007 or 2008. He said the system software is over 20 years old and the operating system is not used by anyone else. He said whenever a change is made by the federal government which requires changes in the computer system, the changes cost North Dakota more than other states because of the old computer system.

In response to a question from Representative Kerzman, Mr. Graham said he would attempt to provide the committee more information regarding reemployment of claimants, especially seasonal job-attached claimants. By reducing the duration of claims by one week, he said, the positive impact to the fund could be approximately \$1.5 million.

In response to a question from Senator Dever, Ms. Daley said she serves on the Strategic Information Technology Advisory Committee. She said that committee prioritizes information technology projects and the unemployment insurance computer project ranks high on the priority list.

Mr. Skar said he has concerns regarding the potential cost of the computer replacement project. He questioned whether leasing a system may be less expensive.

Chairman Keiser said questions such as those will be addressed in the study that Job Service North Dakota is proposing.

There being no further business, Chairman Keiser adjourned the meeting at 2:05 p.m.

John Bjornson
Committee Counsel

ATTACH:1