

NORTH DAKOTA'S UNEMPLOYMENT SYSTEM - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3060 (attached as an appendix) directs a study of the state's unemployment system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board. Testimony before the standing committees indicated that the resolution was introduced as a result of recent increases in unemployment insurance tax rates. Some proponents of the resolution argued that employers should have more involvement in determining rates.

BACKGROUND

Job Service North Dakota

The federal Social Security Act of 1935 included provisions for the creation of a program for the payment of benefits to unemployed individuals. Under the federal law, payments are made to states with approved unemployment compensation laws under which the state administers an unemployment compensation program through public employment offices. The state program administration must conform with rules established by the federal government. The state of North Dakota has provided unemployment insurance to its residents since 1937 through the state and federal partnership. North Dakota Century Code (NDCC) Section 52-02-01 provides that Job Service North Dakota is responsible for administering the unemployment program in this state. That section also provides that Job Service must be administered by an executive director appointed by the Governor.

North Dakota Century Code Section 52-02-07 requires Job Service North Dakota to appoint a State Advisory Council and authorizes Job Service to appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives and members representing the general public. The purpose of the councils is to aid Job Service in formulating policies, in discussing problems related to the administration of Job Service, and in assuring impartiality and freedom from political influence in the solution of the problems.

Unemployment Compensation Fund

North Dakota Century Code Section 52-03-01 provides for the establishment of an unemployment compensation fund to be administered by Job Service North Dakota. That section provides that the fund consists of:

1. All contributions collected under the North Dakota Unemployment Compensation Law.

2. All fines collected pursuant to the provisions of the North Dakota Unemployment Compensation Law.
3. Interest earned upon any money in the fund.
4. Any property or securities acquired through the use of money belonging to the fund.
5. All earnings of the property or securities.
6. All money recovered on losses sustained by the fund.
7. All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act.
8. All money credited to this state's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act.
9. All money received from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Compensation Act of 1970.
10. All money received for the fund from any other source.

North Dakota Century Code Section 52-03-03 requires that Job Service North Dakota maintain a clearing account, the unemployment trust fund account, and a benefit account within the unemployment compensation fund. After clearance of all funds, the funds must be deposited in the United States Treasury to the credit of the state in the unemployment trust fund. The benefit account consists of all money requisitioned from the state's account in the unemployment trust fund to be used for the payment of benefits. Section 52-03-07 provides that money credited to the account of the state in the unemployment trust fund may be used for administration of the unemployment compensation program.

North Dakota Century Code Section 52-02-17 was amended by the 2001 Legislative Assembly to require Job Service North Dakota to report to the Legislative Council before March 1 of each year the actual trust fund balance and the targeted modified average high-cost multiplier, as of December 1 of the previous year. In addition, the report must include a projected trust fund balance for the next three years. Before the 2001 amendment to Section 52-02-17, that section provided that the trust fund balance must be maintained at a level of at least \$40 million.

Contributions and Ratesetting

North Dakota Century Code Chapter 52-04 addresses contributions required of employers under the North Dakota Unemployment Compensation Law and the determination of contribution rates. Section 52-04-01 provides that contributions accrue and become payable by each employer with respect to wages paid for employment.

Statutory provisions for the determination of rates were amended significantly by the 1999 Legislative Assembly in an attempt to raise the unemployment trust fund balance. House Bill No. 1135 (1999) provided a seven-year timeframe to achieve targeted unemployment compensation fund reserve goals based in part on a national economic model that estimates the funds needed to pay unemployment claims for a one-year recessionary period based on current wages and historical claims.

North Dakota Century Code Section 52-04-05 establishes the formula for determining the trust fund reserve target. That section provides, in part:

The solvency target is an average high-cost multiple of one. The average high-cost multiple is the number of years the bureau [Job Service North Dakota] could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under Section 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309]. The trust fund reserve target will be achieved over a seven-year period from January 1, 2000. Progress toward achieving the targeted amount of the trust fund reserve is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the trust fund reserve to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty

percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve.

That section authorizes the executive director of Job Service North Dakota to make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. When the trust fund reserve is being rebuilt, rates may not be lowered until the target level is reached. If, while achieving the trust fund reserve target, the trigger of above 3 percent insured unemployment rate and an increase of more than 110 percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase toward achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.

North Dakota Century Code Sections 52-04-05 and 52-04-06, which were amended by the 1999 and 2001 Legislative Assemblies, set forth the variables used in determining rates. Under Section 52-04-05, rates must be determined as follows:

1. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of 1 percent is the average required rate.
2. If the positive employer maximum rate is at least 1 percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of 1 percent. If the positive employer maximum rate is less than 1 percent, the range for the positive employer minimum rate must be at least one-tenth of 1 percent and must be less than two-tenths of 1 percent (the minimum of one-tenth of 1 percent plus the increment of one-tenth of 1 percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of 1 percent as provided in NDCC Section 52-04-06(2) to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus 5.1 percent.

3. The positive employer maximum rate must be set so that all the rates combined generate the average required rate. The negative employer maximum rate is the negative employer minimum rate plus 3.6 percent. However, the maximum rate must be at least 5.4 percent.

North Dakota Century Code Section 52-04-05 further provides that unless otherwise provided, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the 36-consecutive-calendar-month period ending on September 30 of the preceding calendar year. In addition, if an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending September 30 of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the 12-consecutive-calendar-month period ending September 30 of the preceding calendar year.

North Dakota Century Code Section 52-04-05 also placed a limit on the increase of rates for calendar years 2000, 2001, and 2002. That section provides that during the building of the trust fund reserve, the rate assigned to an employer may not exceed 130 percent of the previous year's rate for that employer and an employer may not receive more than a 10 percent decrease in that employer's rate from the previous year's rate for calendar years 2000, 2001, and 2002. However, the rate limitation provision for calendar years 2000, 2001, and 2002 did not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. With respect to a new employer, Section 52-04-05 provides that for each calendar year, the new employer must be assigned a rate that is 150 percent of the positive employer maximum rate or a rate of 1 percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October 31 with respect to wages paid by that employer before October 1 of that year. A new employer in construction services must be assigned the negative employer maximum rate.

Under NDCC Section 52-04-05, the executive director of Job Service North Dakota is authorized to provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three

consecutive years immediately preceding the computation date or subject to the law as required, with up to a 30 percent reduction to that employer's rate for any year if that employer has in place a plan approved by Job Service which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

North Dakota Century Code Section 52-04-06 addresses the determination of rate groups. That section provides that an employer's reserve ratio is the difference between the six-year contributions paid by that employer on or before October 31 of any year, with respect to wages paid by that employer before October 1 of that same year, and the six-year benefits charged to that employer's account before October 1 of that year, divided by the average annual payroll. Job Service North Dakota is required to assign an employer whose cumulative contributions exceed cumulative benefits within the positive employer rate groups. An employer whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.

Under NDCC Section 52-04-06, Job Service North Dakota is required to establish, for each calendar year, a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under Section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate plus one-tenth of 1 percent. The number of rate groups in the positive employer schedule must be the number required to provide for a rate group at each one-tenth of 1 percent interval between the positive employer minimum rate and the positive employer maximum rate determined under Section 52-04-05. In addition, for each calendar year, Job Service is required to establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under Section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of 1 percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of 1 percent interval between the negative employer minimum rate and the negative employer maximum rate determined under Section 52-04-05.

North Dakota Century Code Section 52-04-06 further requires Job Service North Dakota to assign positive employers to the rate in the positive employer rate schedule in the rank order of their reserve ratios with the highest reserve ratio positive employers assigned to the first positive employer rate. Job Service is required to assign each successively ranked positive employer to a rate within the positive employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the positive employer's prior year's taxable wages. That section includes similar assignment requirements for negative employers.

POSSIBLE STUDY APPROACH

In undertaking this study, the committee should seek additional information regarding the current and projected reserve amounts in the unemployment trust fund. In addition, because the rate increase limitations contained in NDCC Section 52-04-05 have ceased, the committee should seek information from Job Service North Dakota regarding rate increases necessary to meet the targeted trust fund reserve levels and information to assist in determining the appropriateness of the assignment of rate classes for positive and negative employers. The committee may also request

information from Job Service regarding the process of communicating rate determinations to employers. The committee should also seek information regarding the effectiveness of governing boards such as the Workforce Safety and Insurance (formerly Workers Compensation Bureau) Board of Directors to aid in the determination of the feasibility and desirability of creating an unemployment compensation board.

ATTACH:1