

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1135

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to amend and reenact sections 52-04-05, 52-04-06, and 52-04-09 of the  
2 North Dakota Century Code, relating to the required level of the unemployment compensation  
3 trust fund reserve and employer contribution rates.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 52-04-05 of the 1997 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **52-04-05. (Effective through December 31, 2000) Determination of rates.**

8 1. For each calendar year, the bureau shall estimate the amount of income needed to  
9 pay benefits and maintain a balance in the unemployment compensation fund, that  
10 as of October 1, 1989, is equal to twenty-five percent of the average annual  
11 amount of benefits paid. On each October first after October 1, 1989, the amount  
12 of the trust fund reserve must be sixty percent of the average annual amount of  
13 benefits paid. The average annual amount of benefits paid must be computed by  
14 dividing the total amount of benefits paid and projected to be paid during the  
15 previous thirty-six months by three. On October 1, 1999, the required amount of  
16 the trust fund reserve becomes a targeted amount as determined under this  
17 subsection. The solvency target is an average high cost multiple of one. The  
18 average high cost multiple is the number of years the bureau could pay  
19 unemployment compensation, based on the reserve ratio, if the bureau paid the  
20 compensation at a rate equivalent to the average benefit cost rate in the one  
21 calendar year during the preceding twenty calendar years and the two calendar  
22 years during the preceding ten calendar years in which the benefit cost rates were  
23 the highest. "Reserve ratio" means the ratio determined by dividing the balance in  
24 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]. Progress towards 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 fourteen percent of this difference. If the trust fund reserve reaches or exceeds the targeted amount and 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. When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached.

2. Rates must be determined as follows:

- a. 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 one percent is the average required rate.
- b. ~~The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~ If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to

1 fall within the range described above. A future rate schedule that would  
2 generate less income than any past rate schedule may not be used. The  
3 negative employer minimum rate is the positive employer maximum rate plus  
4 five and one-tenth percent.

- 5 c. ~~The maximum rate for each calendar year is the average required rate,~~  
6 ~~multiplied by three, rounded to the nearest one-tenth of one percent. The~~  
7 ~~positive employer maximum rate must be set so that all the rates combined~~  
8 ~~generate the average required rate. The negative employer maximum rate is~~  
9 ~~the negative employer minimum rate plus three and six-tenths percent.~~

10 However, the maximum rate must be at least five and four-tenths percent.

- 11 3. a. Except as otherwise provided in this subsection, an employer's rate may not  
12 be less than the ~~maximum~~ negative employer minimum rate for a calendar  
13 year unless the employer's account has been chargeable with benefits  
14 throughout the thirty-six-consecutive-calendar-month period ending on  
15 September thirtieth of the preceding calendar year. If an employer in  
16 construction services has not been subject to the law as required, that  
17 employer qualifies for a reduced rate if the account has been chargeable with  
18 benefits throughout the twenty-four-consecutive-calendar-month period  
19 ending September thirtieth of the preceding calendar year. ~~However, an~~  
20 ~~employer in construction services must be assigned the maximum rate or~~  
21 ~~seven percent, whichever is greater, for any year if, as of the computation~~  
22 ~~date, the cumulative benefits charged to the employer's account equal or~~  
23 ~~exceed the cumulative contributions paid on or before October thirty first with~~  
24 ~~respect to wages paid by that employer before October first of that year. An~~  
25 employer identified as belonging to industry group number 161, highway and  
26 street construction, except elevated highways, provided in the standard  
27 industrial classification manual, must be assigned ~~a maximum rate or eight~~  
28 ~~and one half percent, whichever is greater,~~ within the negative employer rate  
29 ranges with an additional one and one-half percent added to the rate for any  
30 year if, as of the computation date, the cumulative benefits charged to the  
31 employer's account equal or exceed the cumulative contributions paid on or

1 before October thirty-first of that year. If an employer in nonconstruction  
2 services has not been subject to the law as required, the employer in  
3 nonconstruction services qualifies for a reduced rate if the account has been  
4 chargeable with benefits throughout the twelve-consecutive-calendar-month  
5 period ending September thirtieth of the preceding calendar year.

6 b. An employer that does not qualify under subdivision a is subject to a rate  
7 determined as follows:

8 (1) For each calendar year new employers must be assigned a rate that is  
9 one hundred fifty percent of ~~two and two-tenths percent~~ the positive  
10 employer maximum rate or a rate of one percent, whichever is greater,  
11 unless the employer is classified in construction services. However, an  
12 employer must be assigned the maximum rate within the negative  
13 employer rate ranges for any year if, as of the computation date, the  
14 cumulative benefits charged to that employer's account equal or  
15 exceed the cumulative contributions paid on or before October  
16 thirty-first with respect to wages paid by that employer before October  
17 first of that year.

18 (2) New employers in construction services must be assigned a rate of  
19 seven percent or the maximum rate, whichever is greater the negative  
20 employer maximum rate.

21 (3) Assignment by the bureau of an employer's industrial classification for  
22 the purposes of this section must be the two digit major group provided  
23 in the standard industrial classification manual, in accordance with  
24 established classification practices found in the standard industrial  
25 classification manual issued by the executive office of the president,  
26 office of management and budget.

27 4. An employer who has ceased to be liable for contributions shall continue its  
28 established experience rating account if it again becomes liable within three years  
29 from the date that it ceased to be liable. Such employer's rate, however, must be  
30 determined in accordance with subsection 3.

31 **(Effective after December 31, 2000) Determination of rates.**

1           1. For each calendar year, the bureau shall estimate the amount of income needed to  
2           pay benefits and maintain a balance in the unemployment compensation fund, that  
3           as of October 1, 1989, is equal to twenty-five percent of the average annual  
4           amount of benefits paid. On each October first after October 1, 1989, the amount  
5           of the trust fund reserve must be sixty percent of the average annual amount of  
6           benefits paid. The average annual amount of benefits paid must be computed by  
7           dividing the total amount of benefits paid and projected to be paid during the  
8           previous thirty-six months by three. On October 1, 1999, the required amount of  
9           the trust fund reserve becomes a targeted amount as determined under this  
10          subsection. The solvency target is an average high cost multiple of one. The  
11          average high cost multiple is the number of years the bureau could pay  
12          unemployment compensation, based on the reserve ratio, if the bureau paid the  
13          compensation at a rate equivalent to the average benefit cost rate in the one  
14          calendar year during the preceding twenty calendar years and the two calendar  
15          years during the preceding ten calendar years in which the benefit cost rates were  
16          the highest. "Reserve ratio" means the ratio determined by dividing the balance in  
17          the trust fund reserve at the end of the calendar year by the total covered wages in  
18          the state for that year. "Benefit cost rate" means the rate determined by dividing  
19          the unemployment compensation benefits paid during a calendar year by the total  
20          covered wages in the state for that year. The computation of the reserve ratio and  
21          benefit cost rate must exclude the wages and unemployment compensation paid  
22          by employers covered under section 3309 of the Internal Revenue Code of 1986,  
23          as amended, [26 U.S.C. 3309]. Progress towards achieving the targeted amount  
24          of the trust fund reserve is measured by reducing any difference between one and  
25          the average high cost multiple of the state by an amount that is at least fourteen  
26          percent of this difference. If the trust fund reserve reaches or exceeds the targeted  
27          amount and if the calendar year annual average insured unemployment rate is  
28          above three percent and has increased one hundred ten percent of the average of  
29          the preceding two calendar years, a tax rate will be set to provide for fifty percent  
30          of the additional revenue needed for the trust fund to be derived from tax rate  
31          increases and the remaining fifty percent becomes a drawdown against the trust

fund reserve. When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached.

2. Rates must be determined as follows:

a. 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 one percent is the average required rate.

~~b. The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~ If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. A future rate schedule that would generate less income than any past rate schedule may not be used. The negative employer minimum rate is the positive employer maximum rate plus five and one-tenth percent.

~~c. The maximum rate for each calendar year is the average required rate, multiplied by three, rounded to the nearest one-tenth of one percent.~~ 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 three and six-tenths percent.

However, the maximum rate must be at least five and four-tenths percent.

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the ~~maximum~~ negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on

September thirtieth of the preceding calendar year. 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 twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. ~~However, an employer in construction services must be assigned the maximum rate or seven percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty first with respect to wages paid by that employer before October first of that 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 twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year.

b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:

- (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of two and two-tenths percent the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned the maximum rate 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 thirty-first with respect to wages paid by that employer before October first of that year.
- (2) New employers in construction services must be assigned ~~a rate of seven percent or the maximum rate, whichever is greater~~ the negative employer maximum rate.

(3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable. Such employer's rate, however, must be determined in accordance with subsection 3.

**SECTION 2. AMENDMENT.** Section 52-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**52-04-06. Variations in standard rate of contributions - How determined.**

1. ~~All employers eligible for an experience rate computation must be ranked in descending order by their reserve ratios.~~ An employer's reserve ratio is the percentage of the average annual payroll by which difference between the cumulative six-year contributions paid by that employer on or before October thirty-first of any year, with respect to wages paid by that employer before October first of that same year, exceeds and the cumulative six-year benefits charged to that employer's account before October first of that year, divided by the average annual payroll. Employers whose cumulative contributions exceed cumulative benefits must be assigned within the positive employer rate groups. Employers whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.
2. ~~For each calendar year the bureau shall establish a schedule of rates, with the minimum rate determined under section 52-04-05 assigned to the first rate group. Each successive rate group must be assigned a rate equal to the previous group's rate plus two-tenths of one percent. The number of rate groups in the schedule must be the number required to provide for a rate group at each two-tenths of one percent interval between the minimum rate and two and one-fourth times the average required rate determined under section 52-04-05.~~ For each calendar year



1           the bureau shall establish a schedule of positive employer rate groups within the  
2           positive employer minimum rate and the positive employer maximum rate  
3           determined under section 52-04-05. Each successive rate group for positive  
4           employer rate groups must be assigned a rate equal to the previous group's rate  
5           plus one-tenth of one percent. The number of rate groups in the positive employer  
6           schedule must be the number required to provide for a rate group at each  
7           one-tenth of one percent interval between the positive employer minimum rate and  
8           the positive employer maximum rate determined under section 52-04-05. For each  
9           calendar year the bureau shall establish a schedule of negative employer rate  
10           groups with the negative employer minimum rate and the negative employer  
11           maximum rate determined under section 52-04-05. Each successive rate group  
12           for negative employer rate groups must be assigned a rate equal to the previous  
13           group's rate plus four-tenths of one percent. The number of rate groups in the  
14           negative employer schedule must be the number required to provide for a rate  
15           group at each four-tenths of one percent interval between the negative employer  
16           minimum rate and the negative employer maximum rate determined under section  
17           52-04-05.

- 18           3. ~~Employers must be assigned to the groups in the rate schedule in the rank order of~~  
19           ~~their reserve ratios, as determined in subsection 1, with the highest reserve ratio~~  
20           ~~employers assigned to the first rate group. Each successively ranked employer~~  
21           ~~must be assigned to the groups in the rate schedule so that those employers~~  
22           ~~reporting seventy-eight percent of the eligible employer's prior year's taxable~~  
23           ~~wages are equally distributed in those rate groups at or below the average rate~~  
24           ~~required of employers eligible for experience rating or the minimum rate group,~~  
25           ~~whichever is greater, and twenty-two percent of those wages are equally~~  
26           ~~distributed in the remaining rate groups. Positive employers must be assigned to~~  
27           the rate in the positive employer rate schedule in the rank order of their reserve  
28           ratios, as determined in subsection 1, with the highest reserve ratio positive  
29           employers assigned to the first positive employer rate. Each successively ranked  
30           positive employer must be assigned to a rate within the positive employer rate  
31           schedule so that each rate within the rate schedule is assigned the same

1           proportion of the positive employers prior year's taxable wages. Negative  
2           employers must be assigned to the rate in the negative employer rate schedule in  
3           the rank order of their reserve ratios, as determined in subsection 1, with the  
4           highest reserve ratio negative employers assigned to the first negative employer  
5           rate. Each successively ranked negative employer must be assigned to a rate  
6           within the negative employer rate schedule so that each rate within the rate  
7           schedule is assigned the same proportion of the negative employer's prior year's  
8           taxable wages.

9           4. ~~The average rate of employers eligible for experience rating is determined as~~  
10          ~~follows:~~

11          a. ~~The estimated amount of taxes to be paid each year by employers not eligible~~  
12             ~~for experience rating must be subtracted from the total required income for~~  
13             ~~the year determined under section 52-04-05.~~

14          b. ~~The remainder must be divided by the estimated taxable wages of those~~  
15             ~~employers eligible for experience rating, with the result rounded to the nearest~~  
16             ~~one-tenth of one percent.~~

17          5. After each year's rate schedule has been established, an employer may pay into  
18          the fund an amount in excess of the contributions required to be paid under this  
19          section. That amount must be credited to the employer's separate account. The  
20          employer's rate must be recomputed with the amount included in the calculation  
21          only if that amount was paid by April thirtieth of that year. Payments may not be  
22          refunded or used as credit in the payment of contributions.

23          6. 5. In the bureau's determination of the projected income requirements for computing  
24          contribution rates and taxable wage base, only the wages paid by, and the cost of  
25          benefits attributable to, tax-rated employers may be taken into account.

26          7. 6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars  
27          and at least three times its established average annual payroll, the tax rate for that  
28          employer is the negative employer maximum rate of contribution in effect that year,  
29          beginning the first day of the calendar quarter in which it occurred and for the  
30          remainder of the calendar year.

1           **SECTION 3. AMENDMENT.** Section 52-04-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **52-04-09. Classification of employers to determine contributions - Regulations**

4 **governing.** An employer's rate for a calendar year must be determined on the basis of the  
5 employer's experience with contribution payments and benefit charges as of October first of the  
6 preceding year. If when such determination is to be made an employer has failed to file a  
7 required report or filed an insufficient report, the bureau shall notify the employer thereof by  
8 certified mail addressed to the employer's last known address. Unless the employer files the  
9 report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for  
10 the following calendar year may not be less than the negative employer maximum rate. For  
11 employers identified as belonging to industry group number 161, highway and street  
12 construction, except elevated highways, for the effective period set forth in section 52-04-05,  
13 the employer's rate for the following calendar year may not be less than the negative employer  
14 maximum rate plus one and one-half percent. If, at any time, an employer has failed to file a  
15 required report or filed an insufficient report, the bureau may, at any time, estimate the wage  
16 information required by the report on the basis of reasonably available evidence. The bureau  
17 shall notify the employer of the estimate by certified mail addressed to the employer's last  
18 known address. Unless the employer files the report or a sufficient report within fifteen days  
19 after the mailing of the notice, the estimate becomes final for all purposes, except that if the  
20 amount of estimated wages is less than the actual wages, the bureau may reconsider the  
21 estimate.