

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1278

Introduced by

Representatives Wald, Keiser

Senator Klein

1 A BILL for an Act to amend and reenact section 52-04-06.1 of the North Dakota Century Code,
2 relating to construction project risk protection.

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

4 **SECTION 1. AMENDMENT.** Section 52-04-06.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **52-04-06.1. Construction project risk protection.**

- 7 1. Any project in this state with an estimated construction cost of at least fifty million
8 dollars which is planned to be completed or discontinued within a period of seven
9 years is subject to this section. The general or prime contractor, or the owner in
10 those situations in which there is no general or prime contractor, of a project that
11 meets the criteria specified under this section shall post the bond or irrevocable
12 letter of credit required in subsection 2 before commencement of construction work
13 on the project and shall report annually, within thirty days of the anniversary date
14 the project becomes subject to this section, to the bureau any change in the
15 construction costs of projects subject to this section.
- 16 2. If the bureau determines that the project is or will be within the criteria stated by
17 this section, the bureau shall require the general or prime contractor, or the owner
18 in those situations in which there is no general or prime contractor, for whom the
19 project is being constructed, on behalf of each employing unit, excluding design
20 and engineering firms, to post a bond executed by a surety company authorized to
21 do business in the state or an irrevocable letter of credit from a federal deposit
22 insurance corporation insured state or nationally chartered bank authorized to do
23 business in the state which will insure payment for all benefits claimed by
24 employees of all employing units working on the project. The bureau may adjust

the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.

3. The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions, multiplied by sixty percent. The estimation of contributions expected must be made as follows: multiply the current year's ~~negative~~ positive employer minimum rate ~~or six percent, whichever is greater~~ times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: ~~the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions~~ multiply fifty percent of the estimated number of employees from the project plans, times the current year's maximum weekly benefit amount times the duration, twelve weeks for the first year and twelve weeks for subsequent years, times the number of years between the start date and the completion date rounded up to the next whole number.

4. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of the employing unit or units. If the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law, the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall pay the total amount of benefits paid to the employees of the units which exceeded the

total amount of contributions collected from the unit or units. If the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall remain liable for any amount of benefits paid to the employees working on the project which exceeds the amount of contributions collected from the employers who worked on the project which is not covered by the amount of the bond or irrevocable letter of credit.

5. For the purposes of this section, a project includes all entities that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors, excluding design and engineering firms. Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section, excluding design and engineering firms.
6. Each employing unit having employees working on a project subject to this section, excluding design and engineering firms, shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.
7. This section applies to projects for which bids are let after August 1, 2001.
8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.
9. This section does not apply to any project in which the state is the owner or contractor.