

**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

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

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

24 4. Thirty months after the completion or discontinuance of the project, the bureau  
25 shall determine the total benefits paid to employees of the employing unit or units.  
26 If the total amount paid to the employees of the unit or units exceeds the total  
27 amount of contributions collected from the units under the North Dakota  
28 Unemployment Compensation Law, the general or prime contractor or the owner  
29 shall pay the total amount of benefits paid to the employees of the units which  
30 exceeded the total amount of contributions collected from the unit or units. If the  
31 general or prime contractor or the owner does not pay the payment requirement,

- 1            job service North Dakota shall collect the payment from the surety company that  
2            executed the surety bond or bank that issued the irrevocable letter of credit. The  
3            general or prime contractor or the owner shall remain liable for any amount of  
4            benefits paid to the employees working on the project which exceeds the amount  
5            of contributions collected from the employers who worked on the project which is  
6            not covered by the amount of the bond or irrevocable letter of credit.
- 7            5. For the purposes of this section, a project includes all entities that employ or  
8            contract for the employment of, or is employing directly or indirectly through  
9            agents, independent contractors, or subcontractors, excluding design and  
10           engineering firms. Each employing unit, whether contractor, subcontractor, or  
11           otherwise, involved in the project is subject to this section, excluding design and  
12           engineering firms.
- 13           6. Each employing unit having employees working on a project subject to this section,  
14           excluding design and engineering firms, shall maintain separate records for all  
15           employment on the project showing each individual's name, social security  
16           number, wages paid, and the dates the wages were paid. The employers shall  
17           submit separate reports from other employment subject to the North Dakota  
18           Unemployment Compensation Law under a separate reporting account established  
19           for the project.
- 20           7. This section applies to projects for which bids are let after August 1, 2001.
- 21           8. The determination of whether a project is subject to this section must be made in  
22           the same manner as provided for in section 52-04-17.
- 23           9. This section does not apply to any project in which the state is the owner or  
24           contractor.