

**2013 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1112**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1112  
January 15, 2013  
Job 17241

Conference Committee

*Kristie Helgler*

## Explanation or reason for introduction of bill/resolution:

Use of liens to collect contributions owed to Job Service North Dakota

## Minutes:

Testimony 1

Hearing opened.

**Darren Brostrom**, Director of Unemployment Insurance with Job Service North Dakota:  
Refer to written testimony, attachment 1

**Representative Boschee:** 3:08 Explain how this system creates and efficiency verses working it though the county process?

**Brostrom:** We don't use the lien process extensively, we use the judgment process. To do the paperwork for judgments it takes about an hour and when we do file a judgment we also do a summons and complaint which is served by a Sheriff. Then it has to be sent to the Attorney General's office and it takes a couple days to get back to us. The lien process that the Secretary of State offers is an automated process. It is much quicker and the lien will show up in all counties verses us sending it to all the individual counties.

**Representative Frantsvog:** 4:45 Difference in cost?

**Brostrom:** No cost from the Secretary of State's office. I do not have a dollar amount of what the cost of a lie, difference is around \$45 in addition to the staff time. Staff time is the bigger issue.

**Representative Vigesaa:** 5:26 More effective lien than recording it with the county?

**Brostrom:** Not a magic bullet, I think it's a step towards efficiency, we have 6 million dollars outstanding and we don't have the staff.

**Representative Vigesaa:** 6:20 With regard to the amount currently owed, how many cases account for that?

**Brostrom:** I believe about 4.9 million is from employer taxes due. I could get that number for you.

**Representative Vigesaa:** 7:09 Do you ever write off a lien?

**Brostrom:** We do not unless there is a waiver requested and approved.

**Representative Vigesaa:** 7:42 If the business from which you are trying to collect goes out of business and no longer exists what happens to the lien?

**Brostrom:** We go after corporate officers, or we wait for that individual to start a new business in North Dakota. We have interstate agreements with other states to collect dollars if they started another business in another state. The debt is still valid in our system.

**Representative Vigesaa:** 8:44 Minimum threshold when you file a lien?

**Brostrom:** Dollar amount has changed over time as workloads have changed. The minimum is 50 or 100 dollars.

**Representative Vigesaa;** Would you ever place liens on third-party providers?

**Brostrom:** The way they set up their business, they are not actually the liable entity, so no.

**Representative Louser:** 9:55 How and when a lien would be perfected with the Secretary of State?

**Brostrom:** Process is new to me, I believe we submit the lien, the following morning, the lien is then valid through the Secretary of State's office. Unsure what they do?

**Chairman Keiser:** 10:52 Are you going to be placing liens not only on employers but also individuals if there is an over payment?

**Brostrom:** Written into the employer side. We would use the county recorder for claimants This bill no not eliminate that option for us.

**Chairman Keiser:** Page 2, line 2, but on page 1, line 20...difference in time.

**Brostrom:** Section B on page 2 deals with the recorder's office.

**Chairman Keiser:** But remember you are going to file with the auditor, the auditor is going to file with the recorder so is it really 8:00?

**Brostrom:** Sorry, I cannot answer that question right now, my understanding is that Section A covers the Secretary of State's office and I believed that filing was then effective and did not have to be filed with the recorder in the county.

**Clara Jenkinson:** 13:10 Here to confirm that Job Service did work with the Secretary of State to develop HB 1112 and supports it. Mirrors language that was provided for in the tax code. Will be a seamless process, the system will download data from Job Service overnight. In the morning, liens will be marked as profected with the date and time. Once the system is developed and tested, there will be no extra work for our department. It is a central indexing system. The Secretary of State's Office will be the filing office of record.

**Representative Vigesaa:** 14:49 How many state agencies use to file?

**Clara:** Right now the tax commissioner.

**Chairman Keiser:** Is there any notice to the employers that the lien has been filed?

**Clara:** No, not from the Secretary of State, whether or not Job Service does.

Hearing closed.

**Rep Ruby:** Do Pass

**Rep Vigesaa:** Second

**Yes:** 15

**No:** 0

**Absent:** 0

**Carried by:** Rep Vigesaa

Date: 1-15-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1112**

**House Industry, Business, and Labor Committee**

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider  Consent Calendar

Motion Made By Ruby Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 15 No 0

Absent 0

Floor Assignment Vigesaa

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1112: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1112 was placed on the Eleventh order on the calendar.

**2013 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1112**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1112  
February 19, 2013  
Job Number 19166

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to use of liens to collect contributions owed to job service of North Dakota

## Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Darren Brostrom, Director of Unemployment Insurance with Job Service: Written Testimony Attached (1).

Chairman Klein: Asked if the amount of money that they are short on collecting is from the employers not paying there due compensation to the state or is it overpayments or is there a breakdown you could talk to us about.

Darren Brostrom: Said it is a combination of the two, but this bill only addresses the employer.

Chairman Klein: Said this is only employer related. So currently we are waiting for six million dollars in outstanding monies that employers are sitting on that they should have paid for their unemployment compensation.

Darren Brostrom: Said the six million dollar amount does include claimants and employers but for the most part it is employer dollars.

Senator Laffen: Asked what they would need for staff to be able to collect those six million dollars.

Darren Brostrom: Said it is hard to project, they have three staff now in their collection department and then they have an administration unit that supports all areas of unemployment insurance. The holdup is more so in the administrative unit and the Attorney General's office because they utilize the judgment process, which is a legal process that the Attorney General must participate in and as they participate they put a limit of the number of cases that they will get from them each week. It would have to be a combination of additional staffing there as well as within their agency.



Senator Murphy: Said that this bill would allow the current FTE's that you have to be more efficient. This is going to save you time.

Darren Brostrom: Said that is why they are doing this to make us more efficient. The secretary of state has created an excellent process and it does impact all counties rather than individual counties.

Chairman Klein: Asked of the total amount owed is there a lot of penalty in there or what kind of penalty do we impose on the employer who doesn't file on a regular bases.

Darren Brostrom: Said the penalty amounts are minor, twenty to five hundred dollars. The difference is the penalties could accrue if they continued to have a problem year after year.

Chairman Klein: Asked if they could make them quit doing business if they didn't pay their unemployment.

Darren Brostrom: Said what they found is some industries, which are easy to jump in and out of, will start up a business and when they find out they owe too much money they shut it down and open it under their spouses name or change the name.

Chairman Klein: Asked if there was a time table for implementation of the new technology system.

Darren Brostrom: Said sometime in 2014 that they would be able to utilize it.

Clara Jenkins, Director of Business Systems and Programs for the Secretary of State: Said they are in support of the bill. Essentially what job service has indicated to them is that they want to copy the software that was developed to enable the download of tax liens. It is going to be relatively easy to do.

Chairman Klein: Said you have the technology to do taxes and you are waiting for the technology to do these unemployment liens?

Clara Jenkins: Said they do have the technology right now to do the tax liens but because they are developing a new software system job service didn't want build an interface to the main frame and then build another one to the new system. They are waiting for the new software to be finished.

Chairman Klein: Closed the hearing.

Senator Murphy: Motioned a do pass.

Senator Sorvaag: Seconded the motion.

Senator Sinner: Asked about a fiscal note.

Chairman Klein: Said there will be no fiscal note.

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Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Murphy.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1112  
March 11, 2013  
Job Number 19716

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to use of liens to collect contributions owed to job service of North Dakota

## Minutes:

Amendment and Vote

Chairman Klein: Opened the meeting.

Senator Laffen: Moved to bring HB 1112 back to the committee.

Senator Unruh: Seconded the motion.

Chairman Klein: Called for a voice vote which carried.

Senator Laffen: Made a motion to reconsider the actions whereby they recommended a do pass on HB 1112.

Senator Unruh: Seconded the motion.

Chairman Klein: Called for a voice vote which carried. There was a bill that was defeated in the House and we didn't withdraw it that dealt with locked out workers. The intent of the way we were going to carry that bill was for a do not pass. In the light of what happened we are now looking at a bill to provide what we believe was the law before. The Supreme Court wasn't quite sure of the meaning and the decision was a split decision.

Senator Unruh: Said she had proposed amendments for HB 1112. The amendments clarify the language as the courts were looking for in the ruling.

Chairman Klein: Said we did hear that the court went way back looking into even committee hearings, trying to decide, to get a handle on what we actually meant. I think everyone seemed to think what the law meant was that it meant that lock outs weren't included.

## Discussion

Senator Unruh: Described the amendment. (4:32-5:30)

Senator Unruh: Moved to adopt the amendment 13.8089.01002.

Senator Laffen: Seconded the motion.

Discussion (6:22-10:15)

Darren Brostrom, Director of Unemployment Insurance for Job Service: The amendments were explained correctly. The Chief Justice recommended that the legislature clarify some of the language. This in fact does include labor disputes and takes out the piece on claimant's work stoppage, which was considered a problem in the legal context of plain language. (10:20-12:09)

Discussion continued on the clarification of the amendment (12:10-16:38)

Senator Murphy: Said he would like to make sure that the committee understands what they would be doing and doesn't know if there is a rush to do this. If you want to do this to unions for whatever reason because unions are bad or whatever the majority here thinks. You certainly don't want to do it to the people you don't intend to do it to. If were not sure where that is, I think we need to find that out.

Maren Daley, Executive Director of Job Service: Said that Senator Murphy had raised some very good questions which they had been debating through long afternoons and evenings at Job Service. He is correct that this does not just apply to unions, however if you have a lock out typically in a non-union situation, as Darren said when they apply for unemployment insurance they would either be temporarily laid off because of lack of work or the employer would of terminated them. There is not a contract as such where they are locked out for a period of time pending resolution of that contract. It gets down to if you have a contract that you have reemployment rights or you are temporarily laid off for lack of work, in which case you would get benefits. We have worked through laboriously several of those examples. (17:25-20:35)

Discussion continued on non-union workers locked out and unemployment insurance, (20:36-30:00)

Chairman Klein: Committee we have a motion on the amendment and a second, the clerk will call the roll.

Roll Call Vote: Yes - 5 No - 2

Chairman Klein: We have the amendment on HB 1112.

Senator Unruh: Moved a do pass recommendation on HB 1112 as amended.

Senator Laffen: Seconded the motion.

Discussion 30:34-32:20

Roll Call Vote: Yes - 5 No - 2 Absent - 0

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Floor Assignment: Senator Unruh

Discussion continued 33:00-39:33

March 8, 2013

*AB*  
3-12-13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112

Page 1, line 1, after "52-04-12" insert "and subsection 4 of section 52-06-02"

Page 1, line 2, after "Dakota" insert "and to unemployment insurance eligibility in the case of a labor dispute; and to declare an emergency"

Page 2, after line 15, insert:

**"SECTION 2. AMENDMENT.** Subsection 4 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. For any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed ~~lockout~~; provided, that this subsection does not apply if it is shown that:
  - a. The individual is not participating in or directly interested in the labor dispute ~~which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind~~; and
  - b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the ~~stoppage~~ labor dispute, there were members employed at the premises at which the ~~strike, sympathy strike, or a claimant's work stoppage~~ labor dispute of any kind occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

**SECTION 3. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure."

Renumber accordingly

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1112**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Murphy Seconded By Senator Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1112**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number Motion made to bring bill back to Committee

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Laffen Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Laffen			Senator Sinner		
Senator Andrist					
Senator Sorvaag					
Senator Unruh					

*Voice Vote Carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1112**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:     Do Pass     Do Not Pass     Amended     Adopt Amendment  
                           Rerefer to Appropriations     Reconsider

Motion Made By Senator Laffen                      Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Laffen			Senator Sinner		
Senator Andrist					
Senator Sorvaag					
Senator Unruh					
<i>Vote Carried</i>					

Total    (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1112**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8089.01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Unruh Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Laffen	x		Senator Sinner		x
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1112**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8089.01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Unruh Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Laffen	x		Senator Sinner		x
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Unruh

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1112: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1112: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Sixth order on the calendar.

Page 1, line 1, after "52-04-12" insert "and subsection 4 of section 52-06-02"

Page 1, line 2, after "Dakota" insert "and to unemployment insurance eligibility in the case of a labor dispute; and to declare an emergency"

Page 2, after line 15, insert:

**"SECTION 2. AMENDMENT.** Subsection 4 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. For any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed~~lockout;~~ provided, that this subsection does not apply if it is shown that:
  - a. The individual is not participating in or directly interested in the labor dispute ~~which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind;~~ and
  - b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the ~~stoppage~~labor dispute, there were members employed at the premises at which the ~~strike, sympathy strike, or a claimant's work stoppage~~labor dispute of any kind occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

**SECTION 3. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure."

Renumber accordingly

**2013 CONFERENCE COMMITTEE**

**HB 1112**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1112  
April 10, 2013  
Job 21069

Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 52-04-12 and subsection 4 of section 52-06-02 of the North Dakota Century Code, relating to use of liens to collect contributions owed to job service North Dakota and to unemployment insurance eligibility in the case of a labor dispute; and to declare an emergency.

## Minutes:

Proposed amendment, attachment 1

Meeting called to order. Roll taken.

**Chairman Vigesaa:** We'll start by having the Senate explain their amendments.

**Senator Unruh:** We included amendments under Section 2 that addressed something found in a recent North Dakota Supreme Court ruling. The Chief Justice asked for some clarity in this section of code. The language describing the types of labor disputes that qualify for unemployment benefits was ambiguous, so we provided some clearer language to outline exactly which types of labor disputes qualify for unemployment benefits and which do not. We have amended this section of the code to define a labor dispute as including a strike, sympathy strike, or lockout. That takes out the language of claimant's work stoppage. Those changes are made throughout Subsection 4 in that portion of the code.

1:35 **Chairman Vigesaa:** Does this clarification bring into statute the way Job Service has been treating these types of claims over the years?

**Senator Unruh:** Yes, it does. Job Services has always assumed that a lockout was considered a labor dispute in the code. But a recent North Dakota Supreme Court ruling said that the code was ambiguous and they didn't feel comfortable having that language in there. Job Services has always assumed that a lockout was considered a labor dispute in the code, and we are trying to make that clarification in the code so they can continue their services as they have been in the past.

2:32 **Representative Amerman:** Regarding the Supreme Court ruling, some of it was that we have to be careful not to get into the contract language of a labor organization and an employer. How many times in the past has Job Service ruled on a lockout?

3:16 **Senator Unruh:** There was one case back in the 80's that was considered. I'm not sure if Job Service gave them benefits. One thing for which we think it provides clarity is that the state does remain neutral in labor disputes. We believe that this language clearly outlines that we will not be choosing sides in a labor dispute, upholding our North Dakota right to work principles. We believe this was the legislature's original intent. This is the way Job Service has been carrying out this portion of the code. We believe this language does allow us to remain neutral in labor disputes.

4:15 **Representative Amerman:** I'm not sure what the legislators' intent has been for decades, but evidently the Supreme Court said we were not doing it right for decades because they give them the benefits. That's why we had the bill before us. There is language that leaves no doubt that if a labor organization goes on strike, that is their decision. It is clearly written and always has been in the code that they will not get benefits. There is also language about sympathy strike. Most contracts between a labor organization and a company will have it in their contract that they cannot go out on a sympathy strike, so it's kind of covered in two places. In the final hour of contract negotiations, a company will give a final offer to the committee members who represent the labor organization. They take it to the membership and turn down the contract. Once they turn down the contract, then there is a vote whether to go on strike or to continue to work under the old contract while the negotiations continue. Then the company says no and locks out the employees. It's quite different than a strike. When a labor organization goes on strike, it's clear that they do not get benefits. But when they get locked out, they still don't give their benefits even though they still want to work under the old contract during the negotiations. I don't think the intent is to always be on the side of the company. There has to be some kind of leeway.

7:44 **Representative Amerman:** Distributed amendment 13.8089.01003, attachment 1. Explained amendment and rationale behind it. I think this is a good compromise. It would give both parties a sixty-day window. After that, they get benefits if the company continues to lock them out. After sixty days, it's not a lockout about contract negotiations but rather to bust the union.

9:50 **Chairman Vigasaa:** Generally, how often would the two parties meet in a sixty day period?

10:00 **Representative Amerman:** When it comes down to a lockout situation, I guess it would depend on the first meeting and whether there is progress. How many times they meet may be up to the timetable of the company. I don't want the state to say how many times they have to meet.

11:09 **Chairman Vigasaa:** My only thought there is that if, for example, the employees chose not to meet within the first sixty days. Then the benefits would kick in without the parties having had a meeting.

**Representative Amerman:** It is true, but it is true on the other side that when you have a lockout, the employees have already said that they would come back to work under the old



contract but the employer says no, this is what we have. When the employer says that, then it's in the employee's court. Elaborated on process.

12:17 **Representative Kasper:** When does a lockout become a lockout? Is there a timeline on the give-and-take of negotiations before someone declares it's a lockout or an impasse?

12:41 **Representative Amerman:** A lockout occurs at the end of a regular contract negotiation. Elaborated on process.

**Representative Kasper** and **Representative Amerman** continued to exchange questions and answers for clarification regarding lockouts. Representative Amerman explained that a lockout occurs when the workers do not accept the new contract but vote to continue working instead of striking while negotiations take place, but the employer says they cannot continue to work.

18:05 **Senator Murphy:** A strike and a lockout are not joined together. They are separate ideas.

**Chairman Vigesaa:** We are up against the clock. Representative Amerman, do you want to offer the amendment, or do you want us to digest it for a day?

**Representative Amerman:** I'd like you to digest it. I think it's a fair amendment. For sixty days, the employees do not get benefits. If there is a continued lockout, I think it's a fair compromise. I'd like us to schedule another meeting.

**Chairman Vigesaa:** Meeting will be adjourned. Second meeting of this conference committee will be scheduled.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1112  
April 10, 2013, afternoon  
Job 21090

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 52-04-12 and subsection 4 of section 52-06-02 of the North Dakota Century Code, relating to use of liens to collect contributions owed to job service North Dakota and to unemployment insurance eligibility in the case of a labor dispute; and to declare an emergency.

## Minutes:

You may make reference to "attached testimony."

Rep. Vigesaa: Conference committee called to order. Roll taken. We had a good discussion this morning. Any further thoughts on HB 1112.

Representative Amerman: I move to accept amendment .01003 that I presented earlier.

Representative Vigesaa: Procedurally speaking, the motion would be to have the Senate recede from their amendment and further amend by adding amendment .01003. I believe this amendment would be a complete amendment, including what's already on the bill.

Representative Amerman: I move that the Senate recedes from its amendment as printed in HJ page 393, and in SJ page 720-721, and be amended as follows.

Sen. Murphy: Second the motion.

Rep. Vigesaa: Further discussion.

Representative Amerman: In the essence of time, as was stated today that the reason that the Senate put the original amendments on was to get better clarification to the Supreme Court ruling on how unemployment should be handled in these situations. I believe this amendment also gives the same clarification, only in a more compromising manner when it comes to a lock-out. I hope that we can support the amendments.

Rep. Vigesaa: Any further discussion. The clerk will take the roll on the proposal from Rep. Amerman.

2 YES    4 NO    0 ABSENT    MOTION FAILED

Rep. Vigesaa: Further motions.

Senator Murphy: I guess that one thing that was said today that I take exception to. That is, by going ahead with this bill, that somehow the Legislature is staying neutral in labor disputes. I know that I tried to stay out and did stay out of an opinion as to whether the lockout was right or wrong for the most part, certainly once this session began. My contention was that they deserved to be able to apply and be accepted for unemployment compensation. To say that when you're locked out of your job, that you can't even apply for unemployment compensation when you want to go to work. It doesn't seem right to me and it seems that we use social services because we do not allow those locked out workers, who need help, to collect the unemployment compensation that the fund has been paid into for that purpose. That's the reason that I didn't like this in the first place. I don't think that it keeps us neutral. I think it is a lot tougher on workers than the state would need to be.

4:55 Senator Klein: I believe, Sen. Murphy, that the neutrality comes from the fact that we believe that historically, we've always treated locked-out workers the same. The neutral comment would be the fact that we had a bill that would have provided locked-out workers benefits that clearly would have been covered and that bill was defeated. The neutrality comes from the fact that we're attempting here to clarify the law. You can say that the employers have paid into the fund, but they didn't pay into the fund for locked-out workers. They paid into the fund for all the other things that come about from unemployment. Actuarially we'd have to change the way we do business; and this is going to cost one particular company up to \$4 million. Keep in mind for the House members, this is not retroactive. We are not taking the opportunity for those folks who are now covered under this; this will not steal their opportunity to get unemployment compensation. But I believe the neutrality comes from us trying to clearly define what we've always believed was ND Job Service regulation rules and to me, and maybe the words don't quite justify the means here, but that's what the reference to neutrality was.

Rep. Vigesaa: Further discussion; motions.

6:40 Representative Kasper: I move that the House accede to the Senate amendments.

Representative Vigesaa: The motion has been made, is there a second.

Sen. Klein: Second the motion.

Representative Amerman: I was trying my best to explain to Rep. Kasper this morning the difference in how strikes and lockouts occur. Very simply, a strike is basically when the workers pull the trigger and decide to go on strike. A lockout is when the company pulls the trigger and decides to lock the workers out. What happens to this bill now is that, now it doesn't matter who pulls the trigger, it's the workers that get shot. That's the way it is.

Representative Kasper: You did a good job of explaining. I was the one that had trouble understanding. I think Sen. Klein made the point of why I am making the motion and that is, this legislative body and Job Service have always felt, under the current statute that goes back many years that lockouts were not covered. In the court ruling, however they

got to that point, said "No, you weren't clear on legislative intent, or your legislation wasn't clear"; if you want to clarify that lockouts are not covered, you have to pass a bill. That's what we have done. I think we are just keeping law as it currently is and that's why I support the Senate version.

Rep. Vigesaa: Any further discussion. Clerk will take the roll on a motion for the House to accede to the Senate amendments on HB 1112.

**4 YES 2 NO 0 ABSENT      MOTION CARRIED**

**HOUSE ACCEDES TO SENATE AMENDMENTS ON HJ PAGE 939**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/12/2013**

Amendment to: HB 1112

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1112 does not have a direct fiscal impact. As a result, no revenue, expenditure or appropriation amounts are noted.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The intent of the new lien process is to provide internal efficiencies that will allow Job Service to process an increasing workload without the addition of staff; a fiscal impact is not expected. This lien process is critical in light of federal budget cuts and the need to continue to identify efficient, effective processes. The amendment added to HB 1112 also provides for no direct fiscal impact other than to stop the payment of Unemployment Insurance benefits to claimants impacted by a lockout. Lockouts occur on rare occasions and the financial impact of benefit payments as a result of a lockout will vary by situation. A prior bill from the 2013 Legislative session, SB 2224, would have allowed benefit payments to locked out workers. The fiscal note for that bill indicated that benefit payouts in the average amount of \$8,892 per employee could be expected if locked out workers became eligible to receive benefits. Conversely, HB 1112 identifies lockouts as a disqualifying situation as it relates to eligibility for benefits, and as a result the expenditure of \$8,892 per employee would be eliminated in future lockout situations. HB 1112 also removes the potential for statewide employer unemployment insurance tax rate increases that could come about as a result of an employer moving to a negative status due to unemployment insurance benefit payments during a large and lengthy lockout situation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Darren Brostrom

**Agency:** Job Service North Dakota

**Telephone:** 701-328-2843

**Date Prepared:** 03/14/2013

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **House Industry, Business and Labor**

Bill/Resolution No. 1112 as (re) engrossed

Date: 4-10-2013 pm

Roll Call Vote #: 1

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House ~~Senate~~ Amendments on HJ SJ page(s) 939 ..

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Amerman Seconded by: Murphy

Representatives				Senators					
	4/8	4-10	Yes	No		4-8	4-10	Yes	No
Vigesaa	✓	✓		✓		Urcub	✓	✓	✓
Kasper	✓	✓		✓		Klein	✓	✓	✓
Amerman	✓	✓	✓			Murphy	✓	✓	✓

Vote Count Yes: 2 **(No):** 4 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment  
13, 8089-01003

## 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **House Industry, Business and Labor**

Bill/Resolution No. 1112 as (re) engrossed

Date: 4-10-2013 pm

Roll Call Vote #: 2

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 939 - 1

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1112 was placed on the Seventh order of business on the calendar

Motion Made by: Kasper Seconded by: Klein

Representatives				Yes	No	Senators				Yes	No
<u>Vigesaa</u>				✓		<u>Unruh</u>				✓	
<u>Kasper</u>				✓		<u>Klein</u>				✓	
<u>Amerman</u>					✓	<u>murphy</u>					✓

Vote Count Yes: 4 No: 2 Absent: \_\_\_\_\_

House Carrier Vigesaa Senate Carrier ~~Klein~~ Unruh

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment



**REPORT OF CONFERENCE COMMITTEE**

**HB 1112:** Your conference committee (Sens. Unruh, Klein, Murphy and Reps. Vigesaa, Kasper, Amerman) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 939 and place HB 1112 on the Seventh order.

HB 1112 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY**

**HB 1112**

2013  
1-15-2013  
HB 1112  
①

**House Bill 1112**  
Testimony of Darren Brostrom  
Job Service North Dakota  
Before the  
House Committee On  
Industry, Business and Labor  
Representative George Keiser, Chair  
January 15, 2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today in support of House Bill 1112 which would allow Job Service North Dakota to file liens with the Secretary of State's office rather than only with a County Recorder.

Current statute allows Job Service to file liens to recoup monies owed, however, it only provides for lien filing with the County Recorder in the county where the property is located. Filing a lien with the Secretary of State allows for one filing to be effective in all counties within North Dakota.

Job Service rarely utilizes the current lien process, choosing instead to utilize the judgment process in our collections activities. Both the current lien process and the judgment process require a significant investment in staff time. With our expanding workload we are continually looking for ways to do more with less and to be as effective and efficient as possible.

By filing liens with the Secretary of State's office via a largely automated process, we will reduce the level of staff effort needed and ultimately enhance the collection of monies owed. This does not mean that we will not utilize the

judgment process going forward, but it does provide an additional efficient avenue to collect monies owed.

Collecting monies owed is a key component in effectively administering the Unemployment Insurance program, and it serves to keep tax rates down for the employers of the state. Job Service does an effective job of collecting money owed, but a backlog of collection cases does exist. In 2012, almost \$8.9 million was recovered via our Collections Department, but another \$6 million remains outstanding due to lack of staff resources. By utilizing the automation provided by the Secretary of State's office, the backlog of collection activity will be addressed in a much more efficient and timely manner.

This bill does not provide Job Service with any additional powers as it relates to liens, it simply aligns Unemployment Insurance statute with the ability to utilize the Secretary of State's office as the conduit for filing liens. This process is consistent with the lien filing processes utilized by other state agencies such as the Tax Department.

We have met with the Secretary of State's office concerning this and they have indicated that they have no opposition to our utilization of the process. Because the process is automated, they will not face any additional workload as a result of any liens filed by Job Service. It should be noted that if passed it is projected that usage of this new process will not come to fruition until sometime in 2014 due to a technology system upgrade the Secretary of State is currently implementing.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.

**House Bill 1112**  
Testimony of Darren Brostrom  
Job Service North Dakota  
Before the  
Senate Committee On  
Industry, Business and Labor  
Senator Jerry Klein, Chair  
February 19, 2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service. I am here today in support of House Bill 1112 which would allow Job Service North Dakota to file liens with the Secretary of State's office rather than only with a County Recorder.

Current statute allows Job Service to file liens to recoup monies owed, however, it only provides for lien filing with the County Recorder in the county where the property is located. Filing a lien with the Secretary of State allows for one filing to be effective in all counties within North Dakota.

Job Service rarely utilizes the current lien process, choosing instead to utilize the judgment process in our collections activities. Both the current lien process and the judgment process require a significant investment in staff time. With our expanding workload we are continually looking for ways to do more with less and to be as effective and efficient as possible.

By filing liens with the Secretary of State's office via a largely automated process, we will reduce the level of staff effort needed and ultimately enhance the collection of monies owed.

1

Collecting monies owed is a key component in effectively administering the Unemployment Insurance program, and it serves to keep tax rates down for the employers of the state. Job Service does an effective job of collecting money owed, but a backlog of collection cases does exist. In 2012, almost \$8.9 million was recovered via our Collections Department, but another \$6 million remains outstanding due to lack of staff resources. By utilizing the automation provided by the Secretary of State's office, the backlog of collection activity will be addressed in a much more efficient and timely manner.

This bill does not provide Job Service with any additional powers as it relates to liens, it simply aligns statute with the ability to utilize the Secretary of State's office as the conduit for filing liens. This process is consistent with the lien filing process utilized by the state Tax Department.

The Secretary of State's office has indicated that they have no opposition to our utilization of the process. Because the process is automated, they will not face any additional workload as a result of any liens filed by Job Service. It should be noted that if passed it is projected that usage of this new process will not come to fruition until after the implementation of a technology system upgrade in which the Secretary of State is currently engaged.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112

That the Senate recede from its amendments as printed on page 939 of the House Journal and pages 720 and 721 of the Senate Journal and that House Bill No. 1112 be amended as follows:

Page 1, line 1, after "52-04-12" insert "and subsection 4 of section 52-06-02"

Page 1, line 2, after "Dakota" insert "and to unemployment insurance eligibility in the case of a labor dispute"

Page 2, after line 15, insert:

**"SECTION 2. AMENDMENT.** Subsection 4 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~For~~Except as provided in subdivision b, for any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, lockout, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed; provided, that this ~~subsection~~subdivision does not apply if it is shown that:
  - a. (1) The individual is not participating in or directly interested in the labor dispute ~~which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind;~~ and
  - b. (2) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the ~~stoppage~~labor dispute, there were members employed at the premises at which the ~~strike, sympathy strike, or a claimant's work stoppage~~labor dispute of any kind occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.
- b. In the case of a lockout, the disqualification from benefits under this subsection applies only during the first sixty days of the lockout."

Renumber accordingly