

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

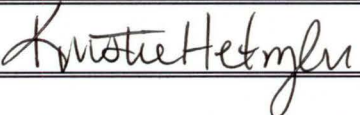
HB 1462

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1462
January 28, 2013
Job 17845

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Unemployment compensation premiums for new employers in construction industry

Minutes:

Attachments

Hearing reconvened.

Rep. Ben Koppelman, District 16, West Fargo: Refer to written testimony, attachment 1. (ended 4:55)

Doreen Redmond, the North Dakota Association of Builders: Opposes HB 1462. Provided attachment 2, statement from Rusty Wysocki.

Representative Becker: 7:09 Why would it be better to do this in the future than now?

Redmond: We do not believe that the timing is right with the influx of contractors coming into the state at this time.

Representative Becker: 8:30 For the people you represent, in what way would this be detrimental?

Redmond: 9:18 They got a better experience rating after they have paid in and not had too many claims. What they are saying is that they can build up a reserve.

Chairman Keiser: In the handout, note the first bullet point. How?

Redmond: 10:38 One of Rusty's comments,

11:25 **Mark Dougherty**: Opposes HB 1462 Provided written testimony, attachment 3. I think it's a timing thing, and changing this right now might be a hardship on a lot of people in the state. Perhaps we should step back and take a closer look.

Chairman Keiser: 14:07 What is happening on the unemployment side in your organization, AGC?

Mark: 14:32 We are laying off fewer than we used to. The one big problem is the horizontal guys, the ones who build our sewers and water systems. They have to shut down this time of year, so they have to lay their people off.

Tom Balzer, North Dakota Motor Carriers Association: 16:10 Some of the issues we have are that both the positive and negative have to have a starting point. The other thing is that there are a lot of employers that would really have benefit or who would have liked to have used someone else's experience rate as their starting point. Stand in opposition.

Neutral:

Darren Brostrom, director of the Unemployment Insurance with Job Service North Dakota: Refer to written testimony, attachment 4.

Chairman Keiser: 27:50 If we change our system now or later, won't we have a similar fiscal note due to IT requirements?

Darren: The difference we will see at this point is our status in our modernization project. The benefit we'd see if we do not adopt this bill now but do so later would be that we'd be able to make the changes using an updated, flexible system.

Representative Ruby: If there were a delay to allow for the updating of your system, would that solve that problem?

Darren: I believe it would as far as the IT part of it.

Representative Ruby: 31:13 What would that timeline be?

Darren: 42 months, with implementation in all 4 states.

Representative Ruby: Classifications are generally in the positive balance isn't it wrong basically to put the burden of bringing the classification that is in the negative balance?

Darren: The factors that would need to be addressed at the same time are the unpaid taxes and the number of those businesses that close within first three years.

Representative Ruby: Is that risk any greater for those sub classifications? (35:00)

Darren: The average life span of a business in ND is seven years. Seven years provides you a time period to build up a reserve and fund those benefit payment that may result after it goes out of business. The average age of these categories is less than three years. So they pose more of a risk.

Representative Becker: Did you calculate the rate for the higher risk group?

Darren: 36:20: Yes

Representative Vigesaa: 36:47 You mentioned that the average length of business for this category is 3 years, has that changed since we experienced this construction boom?

Darren: I'm not exactly positive. I can tell you anecdotally that we have many businesses coming in and going out.

Representative Vigesaa: Based on what you've seen, has the average age gone down in recent times?

Darren: I would say it probably has, but not sure to what extent.

38:16 **Chairman Keiser:** To help those who are new, perhaps we could walk about what positive and negative.

38:52 **Darren:** A negative balance employer is one that has had their staff draw out more in benefits than what they paid in. Others may be subsidizing those employers. Positive employer is one without or very little claims, they have a lower rate.

Chairman Keiser: It's a self-insurance program then? Everyone can access the lowest rate, it is only the initial rate that varies?

Darren: Correct.

Hearing closed.

Representative N. Johnson: Moves a do not pass.

Representative Gruchalla: Seconds.

Roll call vote on do not pass

Yes: 10

No: 2

Absent: 3

Carrier: Representative Vigesaa

At minute 46:40, conversation to 1468

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1462

- 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				\$80,640		
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).*

Financial impacts of HB 1462 - Computer programming: \$80,640. Further detail is provided within part 2B of this fiscal note.

- 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.*

Two financial impacts arise as a result of the language within HB 1462: 1) Computer programming charges of \$80,640. The change to computer programming relates to the reprogramming of the rate assignment programs, creation of a new dataset to store reserves for construction industries, reprogramming of the rate notice program, reprogramming of the rate schedule, creation of experience rate listings, reprogramming of the rate projection program, reprogramming of multiple web services and the updating system documentation. 2) Costs associated with modifying existing system requirements to incorporate changes associated with the passage of this bill and the effect of these changes on vendor quotes received for the build phase of our UI software modernization consortium project. The actual cost impact to our system modernization effort of the changes proposed in this bill are not known at this time, however, they could be significant. North Dakota is key participant in a federally funded replacement of our outdated, mainframe-based UI technology system. As one member of a four member state partnership with Colorado, Wyoming and Arizona, significant requirements identification and initial design work has taken place over a three year period. The culmination of this work has resulted in an RFP and subsequent vendor responses to the RFP offering programming services based upon the design provided. We are currently in the intent to award stage of the project. Changes to the design of the North Dakota tax rating system at this time will result in changes to the requirements and subsequent design of the project and will very likely result in additional charges as a result of an immediate project change order. The amount of the cost increase is unknown at this time, but could be significant and will impact not only North Dakota but three other states."

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.*

None

- 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.*

\$80,640 to reprogram the Job Service legacy UI technology systems.

- 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.*

No appropriation for these changes has been requested, however, Job Service does not have funding to complete the noted changes. Additional federal funds to pay the associated programming expenses does not exist and cannot be expected.

Name: Darren Brostrom

Agency: Job Service North Dakota

Telephone: 701-328-2843

Date Prepared: 01/24/2013

Date: 1-28-2013Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1462**

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 CalendarMotion Made By Johnson Seconded By Gruchalla

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

Total Yes 10 No 2Absent 3Floor Assignment Vigesaa

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

REPORT OF STANDING COMMITTEE

HB 1462: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING).
HB 1462 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1462

1.28.2013

① HB 1462
1-28-2013

~~Testimony on HB 1300~~

Mr. Chairman and members of the House Industry, Business and Labor, I am Rep. Ben Koppelman from District 16 in West Fargo, ND, and am here to testify in favor of HB1462.

HB1462 is proposed to lessen the encumbrance upon new construction employers whose industry typically does not produce negative balance employers. It would reduce the rate for that group by about four percent, which would save the new employer about \$1,200.00 per full-time employee. The lost revenue would be spread over and paid by negative balance employers through an approximate ¼% increase in premium. It would result in a nominal increase on a per employee basis for the negative balance employers. This is appropriate because this group's employees already collect much more in benefits than what their employers pay in. In short, the rest of the employers subsidize negative balance employers.

The current unemployment system is based on the premise that the employers of the state as a whole subsidize negative balance employers, namely negative balance construction employers. It starts new non-construction employers at a rate of 1.25% for two years, and new construction employers at 9.78% for three years. Following that time-period, employers are rated on their individual experience. When this system was created after a large over-hall, our state used a three-digit code identification, which separated construction from non-construction. This lumped all types of construction, from pavers to painters, into one negative balance employer category. As a result, it was determined that construction should pay the most because they use the system the most. The unintended consequence of this grouping was that it placed segments of the construction industry into a high-risk group even they statistically were not in a high-risk business.

This bill's solution to this inequity is to rate new employers based on a four-digit code, which would identify the segment of the industry that they are entering, and what the track record of that industry-segment is. Then based on the collective experience of their industry-segment, it is determined if they are high of low risk to the fund. The lower risk, or likely positive balance new employers would pay the minimum negative rate (currently 6.18%) and have a probation period of 2 years. The higher risk, or likely

negative balance new employers rate would remain at the maximum negative balance employer rate (currently 9.78%) and have a probation period of 3 years.

This change would result in higher compliance as many now skirt the system and consider their employees subcontractors because of the unaffordable rates. It would likely improve the timely payment of premiums due to more affordable rates. This change would also result in a higher success rate of new construction companies, because the governmental overhead would be reduced.

These new employers would be on a more level playing field with their competitors. It would make sense that some construction industries would not want to offer any relief for their future competitors on the premise of a solvent fund, and it may also cause some reconfiguration for Job Service.

However, that should not deter us from trying to right a wrong, and to rate these employer groups based on their likely risk not on an arbitrary rate.

Mr. Chairman and members of the committee, I urge a do-pass recommendation of HB1462. This concludes my testimony and would be happy to answer any questions.

RUSTY WYSOCKI
BUILDING
COMPANY

Remodeling
Additions
Improvements

Quality of Life Begins With Your Home!

January 26, 2013

TO: House Industry, Business and Labor Committee

Reference: HB 1462

② HB 1462
1-28-2013

In light of studying the language in HB 1462, and the Job Service Overview and Impact of Proposed New Construction Employer UI Tax Rates publication, the North Dakota Association of Builders stands opposed to HB 1462.

I'll state the following reasons:

- This bill could potentially increase the rate for positive category construction companies by distributing the project reduction of \$1.9 million dollars in tax revenue.
- ND has an increase of new construction employers being insured in the state because of a construction boom in the western part of the state. The state should take advantage of this potential increase of revenue.
- Contrary to popular belief, the construction cycle may be limited in growth in the western part of the state. It is very likely the same construction employers doing business today may not be doing business in ND in three (3) years. The existing construction employers will be left with increased rates to supplement the employees of employers not in business. (Why would we do that to ourselves?)
- The current law as written, with the time period and rate structure, protects existing construction employers by requiring new employers to build a reasonable reserve.
- Shouldn't the builders' associations (national, state and local) look out for the current members? Of course we want new members to fill our ranks, but not at the cost of the existing members.
- As stated by Job Service, if this bill is enacted now, it could put an unnecessary strain on the Job Service systems. They have stated that change to a four (4) digit code would be very cumbersome, now, but with the changes they are implementing, not in the future.

We stand opposed to HB 1462.

Rusty Wysocki

Rusty Wysocki Building Co., Inc.
P.O. Box 14120
Grand Forks, ND 58208-4120

701.772.0075 | Office
701.772.0075 | Fax
218.779.6091 | Cellular

rustywysocki@msn.com

Testimony HB 1462
House Industry, Business and Labor Committee
January 28, 2013

(3) 1462
1-28-2013

Chairman Keiser and members of the House Industry, Business and Labor Committee, for the record my name is Mark Dougherty. I am the Membership Services Director for the Associated General Contractors of North Dakota. I speak here in opposition to HB 1462.

This committee has been instrumental in creating an Unemployment Insurance system that has served North Dakota well. Our system is one of the few in the country that is solvent and was so before the current boom in the Bakken. The AGC of North Dakota thanks you for that outcome, because a solvent unemployment insurance system is vital to our industry.

With Job Service's current work load of keeping up with the State's employment needs; being in the midst of USDOL mandated projects; working on a computer system replacement; and the existing fragile nature of Job Service's current mainframe system it may be bad timing to ask for the changes required by HB 1462. We would hate to have a serious system melt down now, when the need for employment management in the State is so vitally crucial to so many. When the current systems upgrades and current projects are complete this type of change will be much easier and safer.

The particular groups benefiting from HB 1462 may be deserving of the reduction in their unemployment insurance tax based on the rating changes proposed in this bill, but we would like to note they also have the highest amount of unpaid unemployment insurance taxes of all the categories of employers. From information obtained from Job Service this unpaid tax amount is almost as big as the estimated tax savings. Both the unpaid taxes and the savings will have to be shared by the other North Dakota employers.

Based on the above information, we feel there needs to be additional work done to more clearly define the need for the unemployment insurance tax change and the consequences these changes will have on our system and other employers. We also feel it should be clear what the risks to the existing mainframe may be so we don't put the functionality of the entire system in jeopardy. The delay for further study would give Job Service the time needed to complete their current system upgrades and thereby making the changes if deemed prudent much safer and easier.

We appreciate the opportunity to testify today in opposition to HB 1462 and request the committee's consideration of a "Do Not Pass" recommendation. If there are any questions, I will be happy to answer them if I'm able.

House Bill 1462
Testimony of Darren Brostrom
Job Service North Dakota
Before the
House Committee on
Industry, Business and Labor
Representative George Keiser, Chair
January 28, 2013

(4) HB 1462
1-28-2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today to provide information as to the impacts of House Bill 1462.

Job Service is taking a neutral stance on this bill. Arguments could be made on both sides of the issue, and ultimately a decision regarding the shifting of tax burden from one occupational group to another is a statewide policy decision that should be made by the legislative body.

Although Job Service remains neutral, we do have concerns with the impacts and timing of the changes resulting from this bill. My testimony today will hopefully provide background and relevant data that will help you as you deliberate on the issue.

House Bill 1462 addresses the way in which new construction employer tax rates are assigned. The rate setting process proposed within this bill has been previously debated by the North Dakota legislature, most recently in the 2011 and 2005 legislative sessions. In both of these instances the bill under consideration failed to pass.

After the 2005 session, an interim study was requested and conducted with participation from the North Dakota Association of Builders, the Labor Market Information Center, and the Unemployment Insurance unit of Job Service.

The results of the study were presented to the interim committee in July 2006 and the interim committee's recommendation was that existing statute was sound, and changes were not recommended.

New employer rates are currently assigned based upon each employer's 2-digit North American Industry Classification System code (NAICS code). Using this method, new employers fall into one of two categories, new construction or new non-construction. All new construction employers are assigned the maximum negative employer rate. After rate assignment, the employer continues to receive the maximum negative employer rate for 3 years. After 3 years, the employer receives a rate assignment based upon their individual experience with the unemployment insurance system.

The proposed bill aims to create equity among the construction employers of the state by assessing new construction employer risk using the experience rates of existing construction employers. By reviewing the unemployment insurance history of the various construction occupations, the hope was that it would show that some construction employers actually have a positive unemployment insurance experience rate, and that because the active employers within the occupational group as a whole are positive, new construction employers in those occupational groups would be rewarded with a lower initial tax rate.

The way in which HB 1462 addresses this is that it changes four primary pieces of the rate assignment process. 1) New construction employers will be assigned rates based upon 4-digit rather than 2-digit NAICS codes. 2) A high and low new construction rate is created. 3) Prior to completing the yearly rate calculation process, each construction occupational group would need to be assigned either a positive or negative categorization. 4) The bill shortens the timeframe for which new construction employers who are placed into the positive rate categorization would remain at the new employer rate. These employers would be assigned the new rate for 2 rather than 3 years.

Research into this bill identified that in 2013, four occupation groups within the construction category would be identified as positive employers. 1) Residential Building Construction. 2) Land Subdivision. 3) Building Equipment Contractors. 4) Building Finish Contractors. Within these four categories, there are currently 429 new employers.

In reviewing the impact of the bill, calculations were completed to understand the changes that would occur utilizing our current employer population. What was found was that 429 employers would see a total tax reduction of over \$1.9 million. This \$1.9 million would be shifted to the remaining employers within the negative rate schedule, a group that contains both construction and non-construction employers. This shift in liability would result in a tax increase for 2,688 employers.

Using straight averages, 429 employers would see a yearly tax reduction of \$4,528 and 2,688 employers would see a yearly tax increase of \$712. The actual change

in liability would vary in each case based upon the number of individuals on the employer's payroll.

While a change in rate assignment methodology may reflect what appears to be a more equitable way to assign new construction employer tax rates, what is not considered is the history of the construction employers who are no longer active, along with the monies owed to the unemployment system by these employers. By not looking at the history of the employers within the occupational group, a large risk factor is left out of the discussion. In order to understand the risk, two items need to be reviewed; the survival rate of the occupational group and the amount of unpaid taxes of the group.

Job Service records show that over 50% of employers coded as new residential home builders do not survive for the three years it takes to become a tax rated employer. The construction industry is an industry that is easy to enter and exit quickly, raising the risk of employers coming into the state, working for a short period of time and quickly exiting. This increases the risk of non-payment of taxes and subsequently increases the unfunded benefit payments that ultimately are then charged to the state pool of employers. Currently, the four occupational groups noted as positive earlier owe over \$1.1 million in unpaid taxes.

As referenced earlier, there are concerns that Job Service has with this bill. Our concerns relate to the resources necessary to make the programming changes and the impact this change will have on a major IT project in which we are currently engaged.

There are significant risks and costs associated with changing the programming of our mainframe system. The programming surrounding tax rates is complex and the technology is fragile, subsequently a strong risk of failure exists. Another significant impact related to the proposed changes is a lack of IT resources to complete the project. Staff are fully engaged with USDOL mandated projects, an overall system replacement project, and production operations. The use of contractors is an option, but costs increase greatly and the pool of contractors with knowledge of our proprietary mainframe is extremely small.

Job Service is also in the middle of a multiyear project to replace our mainframe system with a modernized, flexible system. In an effort to minimize costs, and in following with USDOL funding directives, system requirements have been developed in conjunction with three other states in a consortium environment. As one member of a four member state partnership with Colorado, Wyoming and Arizona, significant requirements identification and initial design work has taken place over a three year period. This work has resulted in the release of an RFP and subsequent vendor responses to the RFP offering programming services based upon the design provided.

Changes to the design of the North Dakota system at this time will result in changes to the requirements and design of the project and will result in an immediate project change order impacting not only North Dakota but three other states. A change such as the one being proposed would be much more manageable and technologically feasible after implementation of the new modernized system. The risks injected into our system replacement project need to be strongly considered when weighing the change proposed in HB 1462.

There is a fiscal note of \$80,600 associated with the mainframe programming required by this bill. There are also the unknown costs of required changes to the previously mentioned technology modernization project which could be quite high.

Job Service is a federally funded agency, and does not receive any state general fund dollars for the administration of the unemployment insurance program. Although the USDOL periodically funds specific state IT projects when they are deemed a federal priority, they do not fund state law changes. As a result of this, Job Service has no funding source to pay for the changes associated with the bill.

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