

2017 HOUSE APPROPRIATIONS

HB 1007

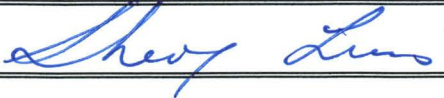
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division Medora Room, State Capitol

HB1007
1/4/2017
Recording Job# 26559

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Attachments A & B

Chairman Brandenburg: Opened the hearing on HB1007. See also HB1067.

Michelle Kommer, Commissioner, ND Labor Department: See attachment A and B.

Chairman Brandenburg: Looking at the FTE's, they were reduced by one FTE. In HB1067 and HB1007 there is no reduction in the appropriation. That's probably something we have to address in the bill.

Representative Kempenich: One of the questions is that it comes down to the trends that we are seeing. We do look at the historical chart of where claims were and where we're at today. If at some point someone would quit, that position may not be filled. It will be a conversation with everybody's agency; to try to "right size". So if it would drop down to where there are five cases per investigator; the cost effectiveness of that becomes an issue also.

Michelle Kommer: To clarify, the chart before you are the pending claims; which does not include the inflow. I have analyzed claim volume back to 2004 and what I'm seeing is that when the claims spike in 2012; it's my opinion, that 2012 prior to the draft increase is more likely to be our new normal. That's the volume for which we are staffed.

Representative Nathe: So the number of claims are dropping?

Michelle Kommer: I believe it's due to part of the activity in the western part of the state. We have been tracking our claims by county for some time and we are seeing a reduction in claims from those counties. But, our labor force has increased 2.84% in the last 18 months.

Representative Brabandt: The person that was being eliminated, did this person quit or was laid off?

Michelle Kommer: Yes, she left the department. It was not an involuntary separation.

Representative Brabandt: Give me an example of a wage claim and an example of an employment case.

Michelle Kommer: There is no standard. There are a variety of employment and wage claims; some are very complex and some are quite simple. It makes it difficult for us to do projections when it comes to when our backlogs will be resolved. An example of a simple wage claim would be an employer making an unauthorized deduction from a final paycheck. A more complex claim is where the employer is leaving the state and you have an employee who is due wages, overtime, travel costs and expenses; and we have to investigate all those specifics relating to the particular wage claim. We deal with discrimination and retaliation claims. The five things we see are discrimination in employment, housing, public service, public accommodation and credit transactions. Most of our employment cases are employment discrimination claims; lesser of them are retaliation. Less yet, about 6% are public service, public accommodation and housing.

Representative Kempenich: There was a case in the paper where the EEOC took on a discrimination claim. How does that work? Did this office have that claim to start with?

Michelle Kommer: I asked the same question. That claim was filed in our office and we referred it to the EEOC for charging. The reason for that is that the issue, sexual orientation discrimination, is not a currently protected class that's covered under North Dakota statute. So in those cases, we defer those to the EEOC for charging.

Representative Kempenich: Another issue that was brought up earlier was the owner of a business claiming that something was damaged. One of them involved international workers. Does the federal government get directly involved in that or does it just go to the labor department?

Michelle Kommer: If the work was performed in North Dakota, then we would have jurisdiction. We do track out of state claims.

Representative Kempenich: It was international workers; they had a green card. Does that come through your office on that type of issue?

Michelle Kommer: It would depend.

Chairman Brandenburg: I think you're talking about H2A workers. Is that what your questioning?

Representative Kempenich: Yes.

Representative Vigesaa: I'm curious concerning President Obama's overtime rule that was dismissed. Has your office received a lot of calls and did you have to do a lot of preparation work for what could have potentially been a lot of questions about who would and would not fall into this new overtime rule that President Obama had issued?

Michelle Kommer: I can't answer that question. I'll have to defer to my team.

Lonnie Grothier: We did receive a lot of questions on the new overtime law. It wasn't going to be adopted on the state level. So, for specific questions, we would still refer to the federal government.

Representative Vigesaa: So being an employer in North Dakota, I wouldn't have had to follow the rule. Is that what you're saying?

Lonnie Grothier: That's not what I'm saying.

Michelle Kommer: On the state level, if someone had a complaint that they were not being paid that new adjusted salary, they couldn't file with our office for the salary claim; they would have to file with the federal department of labor. If they filed that they weren't classified proper with being exempt or that they weren't receiving overtime, they could file with us and we would look into the overtime; but not the salary requirement.

Vice Chairman Boehning: Are the federal funds coming in for HUD claims?

Michelle Kommer: That is what those funds represent. We have work sharing agreements with HUD and with the EEOC. We're provided funding based on the number of claims resolved and housing/employment discrimination.

Vice Chairman Boehning: So you won't receive anything until you resolve a claim now?

Michelle Kommer: That's correct.

Vice Chairman Boehning: There must be a lot of claims coming in right away?

Michelle Kommer: Yes.

Representative Delmore: Do you see the loss of the one FTE has affected giving good service to the citizens of North Dakota? What impact do you think that's had on your office?

Michelle Kommer: What I have been told is that we have exceptionally talented administrative team.

Representative Brabandt: Have there ever been more than 15 employees in the department of labor?

Michelle Kommer: There have not been more than fifteen.

Vice Chairman Boehning: You said you put together a chart going back quite a few years. Can we get a copy of that?

Michelle Kommer: Yes.

Chairman Brandenburg: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division
Medora Room, State Capitol

HB1007
1/16/2017
Recording Job# 26889

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Attachment A

Chairman Brandenburg: Opened the hearing on HB1007 and HB1067.

Michelle Kommer, Commissioner, Department of Labor: See attachment A.

Representative Delmore: In light of the new security at the capitol, has any of that changed? Do you have a cost figure for that?

Michelle Kommer: We do not have that number yet. I'm meeting with facilities middle to late this week to get that number.

Representative Delmore: With the improved security do you still see that as a high priority for your office?

Michelle Kommer: I do. It's my perception and my team's as well that if one of the people we serve is upset, they're going to get through security to access our office and the person with whom they're displeased.

Michelle Kommer continued with her testimony.

Chairman Brandenburg: What you're saying is it's more work and more cost?

Michelle Kommer: It is.

Michelle Kommer continued with her testimony.

Chairman Brandenburg: Is it because some businesses have left the state, went broke, can't pay it or you have some that just aren't going to pay? Is it a combination of all?

Michelle Kommer: My belief is that our average days open are directly related to the number of cases per investigator. Our investigator caseload has dramatically increased; it more than doubled from 2012 to the present time. It's gone down in the last fiscal year; but it's still more than double what it was in 2012. Our internal benchmark is about 22 cases per investigator.

Vice Chairman Boehning: Is there any legislation this year that will directly impact your office?

Michelle Kommer: Yes. There is at least one piece of legislation. I don't have the bill number for this at this time; it's being submitted today. The legislation is proposing a new section to Chapter 54 of the Century Code to require equal pay certificates for contractors that contract with the state of North Dakota in contracts over \$500,000.00; where the employer has more than 40 FTE's. My understanding was it was introduced in 2015 and at that time it was estimated that there could be significant impacts to the department of labor; because it is a new work stream. The legislation proposes that if an employer is going to enter into a contract with the state of North Dakota for more than \$500,000.00, that they must first obtain a certificate of equal pay from the department of labor. In order to do that, they would pay \$150.00 and they would certify that they do not discriminate against men or women in their pay practices, that they have certain pay practices in place to prevent that and that they comply with provisions of federal and state law. There's a suggestion that there's ongoing oversight as well; so it would be the management of the certification process as well as oversight.

Vice Chairman Boehning: You said it's going to cost \$150.00 to have your office certify. That seems like that is very low.

Michelle Kommer: I can add that my predecessor, in his testimony from 2015, did estimate at least one FTE for the department of labor. In addition to that, he suggested that once the oversight responsibility was further defined, that it would likely require more than one FTE. Our claims management system does not have any capacity to manage this work. It would require an improvement in that system in order to manage this work.

Vice Chairman Boehning: Does the federal government require the same reporting as this bill would do?

Michelle Kommer: There is a federal equal pay certificate program in place. I'm not familiar with the specifics of it to know how similar it is to this proposal.

Vice Chairman Boehning: If there is federal money involved and they're doing it, why do we want to do it as a redundancy? Most of the contracts in our state, I believe, have over \$500,000.00. If they're already doing it, why do we want to do it again?

Michelle Kommer: I respectfully suggest you ask that question of the bill's sponsor.

Representative Nathe: On the spend down money, do you foresee that whole \$848,000.00 to be used by the end of the biennium? You mentioned for the administrative position there would be some turn back. Is there any other turn back money out of the \$848,000.00? If so, what's the ballpark figure?

Becky Deichert, Fiscal Analyst, Office of Management and Budget: We don't expect much if anything being left over; especially in the salary line.

Representative Nathe: So just the \$44,000.00?

Chairman Brandenburg: So what you're anticipating is \$44,000.00. Is that the right number?

Alex Cronquist, Fiscal Analyst, ND Legislative Council: That \$44,000.00 number appears to be a reference to the allotment that was taken from salaries and wages; so that wouldn't be turned back.

Chairman Brandenburg: If you look at that number, what will be left out of that \$848,000.00?

Becky Deichert: Part of that was reduced because of the FTE they turned back in their budget.

Chairman Brandenburg: If you go to the back page on the green sheet in ongoing spending in 2013-2015 and 2015-2017, we went from \$1.8 million to \$2.3 million. What we're trying to figure out in these budgets is that we're trying to get back to the budget cycle somewhere between 2013-2015 and 2015-2017.

Becky Deichert: You want to point out also that when the budget was put together for the department labor, they came in under their limit of what we gave them for general fund money.

Chairman Brandenburg: You might want to put that together so we can sort this out. We don't want to punish them more either.

Becky Deichert: Correct.

Michelle Kommer: I would be pleased to have \$2.15 million if the claims resembled the numbers that we were experiencing when that was our budget. I intend to identify opportunities to streamline our internal processes. But at this time, what we can't control is the claims volume.

Chairman Brandenburg: We know we have to work this and what you have for turn back would give us an idea of what we can use to carry into the next budget cycle.

Michelle Kommer: When I stood here on January 10, I said that I promised you transparency. I want to let you know that last week we did lose a team member. We're one FTE lower today than I was on January 10. I thought of one other piece of legislation that could change our workflow in the department of labor.

Representative Nathe: The FTE that left what was that position?

Michelle Kommer: He was an investigator.

Chairman Brandenburg: So you're at 14 right now.

Michelle Kommer: For this biennium on January 10 we had one vacancy technically. With the departure of that team member, we have two vacant FTE's. The original vacancy was an administrative assistant; the second vacancy was the compliance investigator.

Representative Nathe: Without that compliance investigator that left, can you still meet the compliance with some of the things you mentioned earlier?

Michelle Kommer: It does cause me great concern. We are not in compliance with those benchmarks today. We look at them in three buckets; one of them is HUD regulatory, we always hit 100 days because our funding is directly tied to that. The EEOC benchmark is 180 days; we're not consistently meeting that today. The third bucket is the internal wage claims benchmark of 90 days; we're not hitting that today.

Representative Nathe: How do those compliant rates rate against other states? Do you have any information on that? How do we compare?

Michelle Kommer: I do not have any specific data to answer your question. My predecessor had done some research. What I understand is he found difficulty in finding a comparison.

Chairman Brandenburg: The caseload you like to be around is 22 and you're at 61 right now.

Michelle Kommer: Yes.

Representative Delmore: Is it your intent to fill that FTE as soon as you can?

Michelle Kommer: It is my hope to do so. I'm waiting to have a chance to visit with the Governor's office. There are a lot of things in play pertaining to FTE's. I have not posted the position at this time.

Vice Chairman Boehning: What are the qualifications to become an investigator?

Michelle Kommer: I have had an opportunity to look at the job description. It requires a four-year degree. It requires the demonstrative ability to examine information, to apply frameworks and to conduct analysis. It requires experience with writing analysis and writing. It does not require law training, a specific paralegal or legal degree; but we do look for that four-year professional degree along with experience that demonstrates the competencies that make an investigator successful in this role.

Lonnie Grothier, Administrative Officer, Department of Labor: She explained the job description well.

Representative Nathe: For the compliance investigator, the one that has left, can you give us a total for the salary and benefits?

Becky Deichert: I'll have to look for that.

Vice Chairman Boehning: The last time you hired an investigator how long did it take to fill and did you have a lot of applicants?

Lonnie Grothier: This particular investigator was hired last June. We probably posted for two or three weeks and then had 30 to 40 applicants.

Vice Chairman Boehning: So it's not like some of these agencies and they posted it and might get five applicants that are qualified.

Becky Deichert: With benefits it would be roughly around \$160,000.00 per biennium.

Lonnie Grothier: To go back to Representative Delmore's question about security. The added security right now is good and helpful; however, it's my understanding that the doors being locked and the metal detectors are going away again when session is over.

Chairman Brandenburg: What you're saying is during session is when people will be going through the security.

Chairman Brandenburg: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division Medora Room, State Capitol

HB1007
2/2/2017
Recording Job# 27845

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Attachments A and B

Chairman Brandenburg: Opened the hearing on HB1007 and HB1067.

Representative Delmore: Explained proposed changes to budget. See attachments A and B.

Vice Chairman Boehning: Maybe OMB can answer this. That FTE funding \$53,000.00 for one employee for two years? What's the rationale behind that number?

Levi Kinnischtzke, Fiscal Analyst, ND Legislative Council: The amount that was originally reduced and suggested by the agency; the total amount was \$96,000.00. As part of the process, the executive branch starting at the original 2015-2017 appropriation and the legislative branch starting at the adjusted 2015-2017 appropriations; taking into account the allotments. To reconcile those two starting points, we have to adjust for those allotments. The reduction for that FTE is about \$96,000.00; but adding back salaries that were cut during the allotment of \$42,000.00; that's how you get to that \$53,000.00 amount.

Vice Chairman Boehning: Can't we reflect that we're taking out that FTE at the \$95,000.00 and reflect that in another line item so that it looks clear to us?

Levi Kinnischtzke: The whole amount for the \$96,000.00 is taken out. What you see on this sheet is reflective of the changes to the base. That difference between \$96,000.00 and the \$53,000.00 is reflected; but it's reflected in the base.

Chairman Brandenburg: Is there a way that we can have a footnote to identify that the FTE was \$96,000.00; but there's only \$52,000.00 left because in the allotments it was taken out before?

Levi Kinnischtzke: Absolutely.

Representative Delmore: So the \$96,000.00 was added back to the cuts; so \$52,998.00 is what actually is taken out of the FTE?

Becky Deichert: \$95,792.00 and then the amount for the allotment that you would subtract is \$42,794.00.

Michelle Kommer, Commissioner, Department of Labor and Human Rights: When I first appeared in front of you it was my 11th day in this role. I can't imagine what more we could take out without compromising the service to the public.

Representative Kempenich: The one thing we do in past sessions is look at the caseloads and where we're at.

Representative Kempenich: Made a motion for a do pass on the budget.

Representative Delmore: Seconded the motion.

Vice Chairman Boehning: Are there any bills tracking that may affect your department heavily?

Michelle Kommer: We were tracking a bill related to equal pay certificates. That did have a fiscal note attached to it that would have affected our department. There was a recommendation by Representative Schneider, who was the sponsor of that bill, she recommended a "Do Not Pass"; because we were able to come to a positive solution to achieve the same result without brand new work stream and brand new process. At this time, I am not aware of any bills that indicate that they will have a fiscal effect on our department.

Representative Delmore: We did have a conversation when I visited about that.

Michelle Kommer: HB1272, is the bill that requires tenants who have a disability and get documentation from a medical provider; this bill creates a penalty and monetary fine for people that fraudulently receive that documentation. It relates to the department of labor because there were words in that bill that would have compromised our HUD funding. It would have put us out of compliance with our agreement with HUD. The subcommittee met this morning and I believe that bill is on a good path to achieve the intent of the bill but to remove the conflict with HUD. If something happens there, we will lose our HUD funding which was \$624,000.00 over the last 5 years.

Representative Vigesaa: I think we're going to have to wait for some amendments before we can move the bill; because we're working off the base budget.

Levi Kinnischtzke: The committee needs to decide which of the governor's recommendations or other ideas the committee may have that they want to approve. I will move those amounts over to the House version column that you see in that spreadsheet. The Governor Burgum recommendations for the 1% salary increase will be removed, the 5% cost share of health insurance will not be going forward; but the committee needs to decide

whether they want to put those other amounts forward or if they need adjustment. Once you decide on those you can make a motion.

Representative Vigesaa: I don't think we made any changes beyond what's on this sheet. We would add the funding for the health insurance increase, we would take out the \$52,998.00 for adjusting salaries for moving that one position and reduce the operating expenses by \$32,409.00 and that would be it.

Vice Chairman Boehning: Don't we have to move those base payroll changes over to continue or is that the 1%?

Levi Kinnischtzke: No. That is not the 1%. Base payroll changes are changes that you'll see in every agency; typically, they're the cost to continue items for salaries and wages. Yes, those would have to be addressed as well. The 1% that Governor Dalrymple originally proposed is on that second line; however, Governor Burgum had taken that 1%.

Vice Chairman Boehning: How do we handle the FTE? What do we have to do for that? That \$52,000.00 for the FTE automatically goes away then? We'll have 14 FTE's versus the 15?

Levi Kinnischtzke: That's correct.

Representative Vigesaa: In each one of these budgets, the cost to continue has to be amended in on each of budgets into the original legislative bill?

Levi Kinnischtzke: Yes, that's correct.

Levi Kinnischtzke explained the different worksheets and how they work.

Chairman Brandenburg: Closed the hearing.

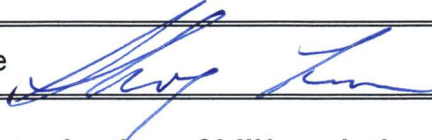
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division Medora Room, State Capitol

HB1007
2/3/2017
Recording Job# 27859

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Attachment A.

Chairman Brandenburg: Opened the hearing on HB1007 and HB1067.

Levi Kinnitschke, Fiscal Analyst, ND Legislative Council: See attachment A.

Representative Delmore: We never adopted that increase, so we're not working off that budget.

Representative Nathe: The health insurance is just a suggestion by the governor. Governor Dalrymple had a budget that we can work with.

Chairman Brandenburg: I shared with Representative Delmore when she carries it to the floor, you worked hard to find \$80,000.00 cuts in your budget and there's \$40,000.00 that come back with the insurance; that puts it at a \$38,000.00 difference.

Chairman Brandenburg: Closed the hearing.

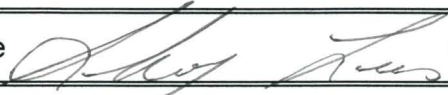
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division
Medora Room, State Capitol

HB1007
2/7/2017
Recording Job# 27967

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Attachments A and B

Chairman Brandenburg: Opened the hearing on HB1007 and HB1067.

Representative Delmore: Explained attachments A and B.

Representative Delmore: Made a motion to move amendment.

Representative Nathe: Seconded the motion.

Voice Vote Made.

Motion passed.

Representative Delmore: Made a motion for "Do Pass as Amended".

Representative Brabandt: Seconded the motion.

Roll Call Vote: 5 Yeas 2 Absent 0 Nays

Motion Passed.

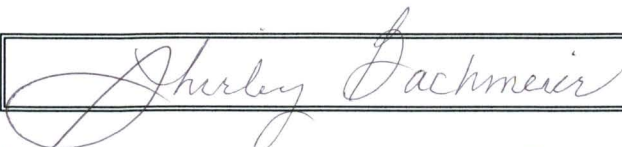
Chairman Brandenburg: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1007
2/14/2017
28361

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Minutes:

Chairmen Delzer: Opened the meeting on HB 1007.

Representative Delmore: 2:00 – 3:26 This information was taken from proposed amendments to HB 1007(17.0492.01001). The labor commissioner in this state seems to change places frequently and so there weren't a lot of changes. It's a fairly small budget. We go back to the 2011 – 2013: there were 12 employees; 2013 – 2015: there were 13 employees and we have reduced them from 15 to 14 FTE's in this project. We also took money out of operating. The cost to continue is there with the salaries and benefit increases. Funding is added to increase for health insurance premiums. One administrative assistant FTE position is removed and as a result of the 2015-17 biennial budget reductions, the department will remove funding of \$42,794 for the FTE position which it brings the total to \$95,792. The other amount was added back for the allotment. Funding for operating was reduced by \$32,409 to provide total operating expense funding of \$328,918.

Chairman Delzer: Any questions by the committee? Rep. Delmore, would you like to move that amendment?

Representative Delmore: I would move to adopt Amendment 17.0492.01001.

Representative Brandenburg: seconded that motion.

Chairman Delzer: Discussion on the motion to amend. Say none, all those in favor of amending HB 1007 with Amendment 17.0492.010001, signify by Voice Vote. All in favor. Motion carries to adopt Amendment.

Chairman Delzer: Discussion on Do Pass - As Amended motion. Say none.

Representative Delmore: Motion for a Do Pass - As Amended on HB 1007.

House Appropriations Committee

HB 1007

2/14/2017

Page 2

Representative Brandenburg: Seconded the motion.

A Roll Call vote was taken. Yes: 16 No: 1 Absent 4

Representative Delmore: Floor Assignment.

Chairman Delzer: The committee meeting for HB 1007 is adjourned.

5/15/17
1/28

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1007

Page 1, replace lines 12 through 17 with:

"Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	361,327	(32,409)	328,918
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	437,832	2,084	439,916
Total general fund	\$2,347,241	(\$40,352)	\$2,306,889
Full-time equivalent positions	15.00	(1.00)	14.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$40,068 for increases in employee health insurance premiums from \$1,130 to \$1,249 per month."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	361,327	(32,409)	328,918
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	437,832	2,084	439,916
General fund	\$2,347,241	(\$40,352)	\$2,306,889
FTE	15.00	(1.00)	14.00

Department No. 406 - Labor Commissioner - Detail of House Changes

	Adds Funding for Base Payroll Changes ¹	Adds Funding for Health Insurance Increases ²	Removes FTE Position ³	Adjusts Funding for Operating Expenses ⁴	Total House Changes
Salaries and wages	\$7,071	\$40,068	(\$52,998)		(\$5,859)
Operating expenses				(32,409)	(32,409)
Total all funds	\$7,071	\$40,068	(\$52,998)	(\$32,409)	(\$38,268)
Less estimated income	2,084	0	0	0	2,084
General fund	\$4,987	\$40,068	(\$52,998)	(\$32,409)	(\$40,352)
FTE	0.00	0.00	(1.00)	0.00	(1.00)

¹ Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

² Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

³ One administrative assistant FTE position is removed. As a result of the 2015-17 biennium budget reductions, the department removed funding of \$42,794 for this FTE position for a total reduction of \$95,792.

203

⁴ Funding for operating expenses is reduced by \$32,409 to provide total operating expenses funding of \$328,918.

This amendment also adds a section detailing the amount of funding provided to the agency for employee health insurance premium increases.

Date: 2-7-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. *#B1007*

House Appropriations - Government Operations Division Committee

☐ Subcommittee

Amendment LC# or Description: 12.0492.01001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Belmont Seconded By Rep. Natter

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment

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

Newton Canis

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1007**

House Appropriations - Government Operations Division Committee

☐ Subcommittee

Amendment LC# or Description: 17.0492.01001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Delmore Seconded By Representative Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Brandenburg	X		Representative Delmore	X	
Vice Chairman Boehning	X				
Representative Brabandt	X				
Representative Nathe	X				
Representative Kempenich					
Representative Vigesaa					

Total (Yes) 5 No _____

Absent 2

Floor Assignment Representative Delmore

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

Motion Carried

Date: 2/14/2017
Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1007**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: 17.0492.0100'1

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Delmore Seconded By Representative Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carries

Date: 2/14/2017
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1007**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Delmore Seconded By Representative Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X		Representative Streyle	A	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading		X	Representative Boe	X	
Representative Kreidt	A		Representative Delmore	X	
Representative Martinson	X		Representative Holman	X	
Representative Meier	A				
Representative Monson	A				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 16 No 1

Absent 4

Floor Assignment Representative Delmore

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

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1007: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 1 NAYS, 4 ABSENT AND NOT VOTING). HB 1007 was placed on the Sixth order on the calendar.

Page 1, replace lines 12 through 17 with:

"Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
Total general fund	\$2,347,241	(\$40,352)	\$2,306,889
Full-time equivalent positions	15.00	(1.00)	14.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$40,068 for increases in employee health insurance premiums from \$1,130 to \$1,249 per month."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
General fund	\$2,347,241	(\$40,352)	\$2,306,889
FTE	15.00	(1.00)	14.00

Department No. 406 - Labor Commissioner - Detail of House Changes

	Adds Funding for Base Payroll Changes ¹	Adds Funding for Health Insurance Increases ²	Removes FTE Position ³	Adjusts Funding for Operating Expenses ⁴	Total House Changes
Salaries and wages	\$7,071	\$40,068	(\$52,998)		(\$5,859)
Operating expenses				(32,409)	(32,409)
Total all funds	\$7,071	\$40,068	(\$52,998)	(\$32,409)	(\$38,268)
Less estimated income	<u>2,084</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,084</u>
General fund	\$4,987	\$40,068	(\$52,998)	(\$32,409)	(\$40,352)
FTE	0.00	0.00	(1.00)	0.00	(1.00)

¹ Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

² Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

³ One administrative assistant FTE position is removed. As a result of the 2015-17 biennium budget reductions, the department removed funding of \$42,794 for this FTE position for a total reduction of \$95,792.

⁴ Funding for operating expenses is reduced by \$32,409 to provide total operating expenses funding of \$328,918.

This amendment also adds a section detailing the amount of funding provided to the agency for employee health insurance premium increases.

2017 SENATE APPROPRIATIONS

HB 1007

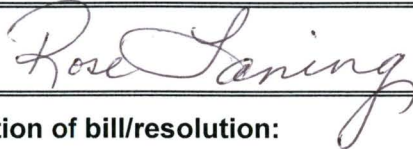
2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1007
3/2/2017
Job # 28597

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Testimony Attached # 1.

Legislative Council: Levi Kinnischtzke

OMB: Becky Deichert

Chairman Holmberg called the committee to order on HB 1007.

Michelle Kommer, Labor Commissioner, State of North Dakota

ND Dept. of Labor and Human Rights, Testimony on HB 1007 - Testimony Attached # 1.

(Speaking from testimony) -

(19:52) **Senator Mathern:** I've a question about our claims process being too paper dependent compared to what is done in other states. Can you elaborate?

Michelle Kommer: The cost of investing and automating our claims management process is – I have gotten 2 estimates and to take one step forward in automating our claims process range from \$8,000 to \$50,000. (Gave Senator Mathern copies of 5 forms that are utilized today for a person to file a claim.) They are accessed on our website and manually completed. Of the 28 states that have automated these processes, they create a form online. Why that creates efficiency isn't just because we don't have paper moving back and forth, but they actually act as a screening tool. If someone filled out a wage claim form, send it to us, then we are responsible to determine if they worked in ND. If you didn't work in ND, we don't have jurisdiction over your claim. If that was an online environment, it allows the person who is completing the form to receive that information immediately. You answer the question, "Did you work in ND?" if your answer is no, you get a pop-up message that says, "We're sorry, but we don't have jurisdiction over your claim." We'd never get the claim. To give you some statistics, the Equal Employment Opportunity Commission filters out 20-30% of their claims before they ever become a claim. There are efficiencies, as opposed to us receiving that claim, signing an investigator to call the person back and obtain this information. We don't have to hire a developer to do some of this work. There is technology available to do that type of work and it's \$350/month.

Senator Bowman: In Watford City last night and they are talking about hiring a lot of people again for fracking crews. As we see an increase in the amount of workers, does that increase the amount of jobs or work that you have to do in your office?

Michelle Kommer: Yes, it does. We see two things. On the wage side of things, we see the claims increase the claims increase as the labor force increases. We also see the increase continuing as the labor force decreases on the wage side of things because employers went bankrupt and left the state and left people unpaid. Employers came in from out of state and didn't understand ND payroll law. We see the increase in claims tied to population more significantly on the wage side. We also see it on the discrimination side but it is less extreme so there is an absolute correlation between population and our claims volume.

(25:12) **Senator Kilzer:** I've had quite a few complaints among my constituents who are employed for 15 or 20 or more years and then are let go and someone new out of school is hired at a much cheaper salary. A couple of employers have done this to their employees. Is that one of the reasons that your cases pending curve went up pretty rapidly? And do these people have any recourse?

Michelle Kommer: Are we seeing age discrimination claims correlate to our increase in claims as a whole? No. In terms of the claims that we receive, in order, we receive disability claims at the highest frequency. From there its retaliation and then 2nd and 3rd are national origin and color and age discrimination is today not one of the predominate claims that we receive in our department.

Is there recourse for those folks through our department? Yes, there is. Age is a protected class in ND and also federally, so if a person believes that they were discriminated against specifically because of their age, they could contact our department and file a complaint which we would investigate to determine if that was indeed the case.

Senator Kilzer: I don't think it's really age discrimination. I think it's the years of employment so that they can get cheaper beginners to fill a slot.

Michelle Kommer: I thought it to be an age related claim because typically, with factual circumstances, the protected class that's implicated is age. Unless one can show that they were discriminated against because of the protected class, then there is not an underlying discrimination claim. If an employer reduced their workforce, targeted folks that were making more money and did so through an objective process that considered a number of factors, and we're unable to tie that to a protected class, then there may not be an underlying claim. One thing that is very important for that analysis is that there are two types of discrimination: one is overt discrimination and another is called disparate impact. Overt discrimination is you lost your job because of your race or your age or another protected class. Disparate impact discrimination is where an employer implements a policy, rule or reduces its workforce and it disparately and unintentionally impacts a protected class more than others. A case could be made for age discrimination if it disparately impacted people over 40. Or race discrimination is the decision to disparately impact only African American employees. The answer to your question is that really all the facts would need to be considered.

Senator Wanzek: I'm assuming most of your claims are private business or private sector, but are there some claims that would be public, like county employees or city employees or even state employees?

Michelle Kommer: We recently went through our pending claims and say there were 420 claims, for example. Of those, there were 9 claims that appeared to be from a state agency or a public entity. That is within the scope of our work and we do see those from time to time.

Chairman Holmberg: Closed the hearing on HB 1007.

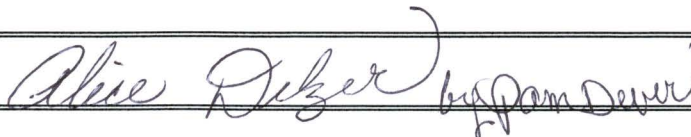
2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1007
3/27/2017
JOB # 29702

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

- | |
|--|
| 1. Letter dated 03-26-17 from Labor Commissioner
2. Letter dated 03-23-17 from Labor Commissioner |
|--|

Chairman Holmberg: Called the Committee to order on HB 1007. All committee members were present. Alex Cronquist, Legislative Council and Becky Deichert, OMB were also present.

Michelle Kommer, Labor Commissioner: I am three months into my job. When I testified the first time, I did not have this information at that time. So thank you for letting me come back. She testified in favor of HB 1007 and presented written Testimony attached # 1, asking for changes in statute. The highest challenge in Labor Dept. is in our claims backlog. That's why I am here today. I have spent a great deal of time researching what the other 49 states are doing. I am aware of a couple of statute changes. If you were to make these changes, we would conserve money for our state, and not compromise the rights of the people in ND. She explained the 5 types of discrimination claims. **(0.03.57)** Not the claims load but the work involved with the claims. Both of her documents share stories about discrimination. The first is carving out correctional systems from the definition of a "public services". This is the most common way that we see states approaching this. **(0.07.00)** The second way would still allow the inmate to make a claim. But it allows the correctional facility to make a response. My preference is the first statutory change. If you do not like that, then the second one would help us. It is not from the volume areas but the time and department morale perspective is important.

Chairman Holmberg: Any questions on this proposal? **(0.8.28)**

Senator Mathern: On your second proposal; how is that different from our present practice? Don't you presently have the ability to decide no problem cause exists?

Michelle: We investigate the claims; so what is different about this is that statutory allows us to dispense of an investigation. Today, we follow up with an investigation. It all matters. even though the investigation may be short or brief, we follow up.

Senator Mathern: Why don't you limit this to Department of Corrections issues? I am afraid it is such a broad thing and you could dismiss anything from anybody without an investigation.

Michelle: We could limit that to claims coming from the Department of Corrections.

Senator Grabinger: You said other states have done this. Has that been legally challenged?

Michelle: I am not aware of any legal challenges. The federal government is who we look as an example for what is permissible or not. The federal governments does not allow these types of claims which is why so many states have modeled their statutes after the federal government.

Chairman Holmberg: Please go to 2.0.

Michelle: (0.10.31) The background is really the same. Our second challenge is claims backlog. We have 469 claims sitting in our pending case drawers as cases continue to come in. I conducted a simple forecast based on 2016 claims data. I was trying to figure out, if cases were opened and closed at the same rate in 2016, how long would it take to resolve the claims backlog. Over the next two years, not only would we not make a dent on backlog on the employment side, but we would have our claims backlogged on wage claims increase by 41 per year. We are looking at internal process efficiencies. What I am asking with today is before the claims come in, I need help. Most states limit the dollar amount of the claims before the claims come in. Gave an e.g.in Indiana (12.11) The reason for the difference in floor and ceiling is because the amount of time that the tax payer money is being spent on the claim. The big claims need to go to district court. Most complex issues when the claims are so big. What we see when the claims are that big, they become very complex, and there are probably resources to address this issue through the district court. I was able to look at all our claims data back to 2002. The impact is on the second page of this memo. This is dated from 2012 to present. The percentages are about the same. About 2% of the claims we get are below \$50. On the high side, 13% of claims are over \$10,000. The chart on the second page shows the amount of claims filed for certain dollar amounts. This would be one way, to help us get our arms around the claims load. **(0.14.47)**

Senator Sorvaag: On the over \$10,000. how many did the Department make a ruling on and settled so they didn't have to go to court?

Michelle: I don't have that information with me. On the employment side, less than 1% result in probably cause determination. That number is higher on the wage side, maybe 20%. I believe I can get that, but not 100% sure. We have a data desert. Not easy to get that information.

Senator Hogue: I go back to your first request. District courts get a lot of frivolous complaints from inmates. You are not wanting to deal with those, because they take time and resources. I am curious why you prefer the 1st option? You have other frivolous complaints that are not exclusive from inmates, but why would you not want some discretion to dismiss the frivolous complaints?

(0.16.45) **Michelle:** It is not that we wouldn't want the discretion, but in part, I wanted to make a solution that you would be comfortable. The first option is much more targeted. I think it would solve the issue for now. Maybe two years from now we can address how we might address the frivolous claims in other ways. (17.11)

Senator Sorvaag: If you did it to everybody, how do you determine what is frivolous if you don't investigate?

Michelle: We investigate every claim that goes in, unless we don't have jurisdiction. I am learning about a practice that is in place by the EOC, which is a federal counterpart, as well as a number of other states, where they do triage claims as they come in. Like A, B, C and C not contain a valid claim; and B, being you can't really tell; and A, maybe are very clear. We are not enough in that process for me to ask you to make a statute change to implement that. I would like to pursue later. it is a direction I would like very much to pursue.

Senator Mathern: On your first option, if it's about sauerkraut at the prison, would that be dismissed? What if it was about sauerkraut and not getting that? It is just about an action that took place in the prison?

Michelle: What we are doing here, is we are not disallowing a claim from the person. We are changing the definition of public service to exclude a correctional facility. If the person had a legitimate claim of discrimination, we could determine this before they were imprisoned. from the correctional facility. We would absolutely consider that claim.

Chairman Holmberg: Thank you. Senator Hogue, Senator Sorvaag and Senator Mathern will be on the subcommittee. You might have to meet only once.
The hearing was closed on HB 1007.

2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1007
3/29/2017
JOB # 29788

☒ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Sam Dever for Alice Devere

Explanation or reason for introduction of bill/resolution:

A Subcommittee Hearing for the Department of Labor

Minutes:

1. Proposed Amendment # 17.0492.02002

Chairman Hogue called the subcommittee to order on HB 1007 in the Harvest Room. Let the record show that all three members were present: Senator Hogue, Chair; Senator Sorvaag and Senator Mathern. Chris Kadrmas, Legislative Council and Becky Deichert, OMB were also present.

Chairman Hogue: You will recall that we discussed some amendments along the line of what the labor commissioner suggested. What I have in front of you is amendment 17.0492.02002. It is not about the budget, but about some policy changes. We don't do policy in appropriations. After they were presented to the commissioner, I visited with IBL and the chairman of Judiciary. They were agreeable with those proposals. With that blessing I had the amendments prepared and you can see what they do on section 3. Section 3 is where we inserted the ability of the commissioner not to hear cases brought by those who are incarcerated and committed to the physical custody of the Dept. of Corrections. Legislative Council changed the wording from what the commission had suggested, but it accomplished what she is seeking. Which is to not have to hear those cases. **(2.21)**

Senator Mathern: On the section 3 amendment, I understand that these individuals have a process to seek some remedy regarding discriminatory practices. Within the DOCR, we aren't totally eliminating them, is that right?

Chairman Hogue: They have a grievance process within DOCR. Some of them who are experienced in the courts also initiate federal habeas corpus actions to petition the federal courts for relief about mutterers that are strictly administrative and relate to their treatment at DOCR.

Senator Mathern: I just wanted to confirm they have a process. That was confirmed.

Chairman Hogue: The section 4 amendment is another policy matter and unrelated to section 3. It is for claims or unpaid wages or other benefits. The commissioner requested to

not have to handle smaller dollar claims. The language was \$50, and we raised it to \$200. But with the suggestion of Senator Mathern that the department would be directed to channel the employee to the small claims court in the city or county where they live. She indicated that they do that now. This amendment would tell them that. The thing I wanted to discuss with the commissioner is that we did not put the cap of \$10,000 on here. Senator Sorvaag thought that was too low. Any thoughts, Commissioner?

Commissioner Michelle Kommer: I have a couple of things. I may be able to get you actual data. On the top side, as I met with my team on this matter, one of the concerns and challenges with these high dollar claims is that the reason they are high dollar claims is because the claimant has sat without a paycheck for many months. We want to achieve a balance between a person's responsibility and accountability. The two reasons on the top side for the limitation on one is to encourage accountability but more so in those high dollar claims, typically involve complex issues that are more appropriately managed through the court system. It takes a lot of time to focus on those claims. The \$10,000 that we had proposed is actually the highest of the caps. I showed you the lowest low and the highest high that peer states have in their system. I do continue to encourage a cap on the top side as well.

Senator Sorvaag: I brought up right away the cap is too low. I still think the cap is too low. Let's take an oil worker. These are blue collar workers. They are doing hard work. I don't think they should be thrown into the court system. I don't think they should have to incur the cost of an attorney. I am not concerned what other states do. \$10,000 is way too low. \$10,000 is not that big of an amount. It is not uncommon for an employee go without a salary for a month. I am open to discussion if we are going to do a cap, but I won't go along with that low of a cap.

Senator Mathern: (0.10.41) You noted the comment teaching personal responsibility. I happen to have a few cases that have come to my attention wherein individuals have been charged with a sexual crime essentially got in involved in some sting operations by law enforcement, get a job and then when they don't get paid by the employer. You know if you raise any problems here we're going to say that you went across town and your probation says you shouldn't have went across town, so some of these people are under duress not to report anything. So it's not like they are just sitting around not concerned. They're being threatened. And at some point, their spouse or somebody says "Hey, wait a minute here, you'd better go after this money". Well it might be 6 months or a year after, so I don't think it's all irresponsible. Sometimes they don't feel they can say it. (0.12.07)

Commissioner Kommer: Nor do I. It is not 100% accountability thing. It is a balance we are working to achieve. Nearly all of the claims we receive on the wage side, are from employees that no longer work for the employer. So it is illegal in ND to retaliate against an individual who has filed a claim whose asserted their rights. Hopefully they're not experiencing the type of duress that you spoke of. (0.12.54)

Senator Sorvaag: To move this along I am going to move the amendment # 17.0492.02002. 2nd by Senator Mathern.

Senator Sorvaag: I think we need to move it along. I think we've made an adjustment and not discouraging 100% with the commissioner, if we go in-depth, that needs to be next session in a policy committee. This is getting into a lot of details. I think we should go forward with the amendments that are here. Next session, if they want to adjust it or get more details then do it through the normal policy channels.

Senator Mathern: I support that. We are giving the commissioner some tools here. Next time we can take it further if there is a need.

Chairman Hogue: I think you wanted to keep some cap in place. I think we are off in policy land here. To put a cap on, I think it might have to go through the policy committee.

Commissioner Kommer: I do appreciate you all very much. I just noticed, Chapter 14.02 it limits the claims, of those confined in a correctional facility. We would have to accept a claim from an inmate from the penitentiary which happens to be at least half the claims that we get from the inmates. I wanted to make that observation to you.

Chairman Hogue: We would want to correct that.

Commissioner Kommer: On page 1 of the amendment, 2b, says that sub-section 1 does not apply to an individual confined in a correction facility as defined in section 12.44.1-01. My amendment excluded those in the correctional facility, as defined in that same chapter. As well as the Penitentiary and associated facilities, as defined in 12.47.01 and the Youth Correction Center as 12.46.01. **(0.16.40)**

Senator Hogue: They are not captured in that. I will work with Legislative Council to work that out. We are trying to say use your grievance process.

Senator Sorvaag: I am fine, but you can tweet that language.

Senator Mathern: Does Legislative Council have to fix on that right now?

Chris Kadrmas, Legislative Council: The subcommittee could move that to make sure it gets included. I will have to look at the draft. The legal council did, and I can verify that. Make sure they are included as per the committee's wishes.

Senator Sorvaag: I would adjust the amendment to move it and included those in the penitentiary. **I so move. 2nd by Senator Mathern.**

Chairman Hogue: Any discussion? We have amendment 17.0492.02002 and further amend it to add in the inmates at the state penitentiary would not be able to submit a claim to the ND Labor Commissioner with claims arising from their incarceration. We will have the clerk call the roll on the amendment.

A Roll Call vote was taken. Yea: 3; Nay: 0; Absent: 0. Motion passed.

Chairman Hogue: We will close the subcommittee hearing on HB 1007

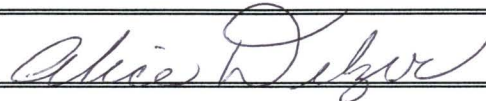
2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1007
3/29/2017
JOB # 29802

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A DO PASS AS AMENDED for the Labor Commissioner

Minutes:

1. Proposed Amendment # 17.0492.02002

Chairman Holmberg: called the Committee to order on HB 1007. All committee members were present. Michael Johnson, Legislative Council, Alex Cronquist, Legislative Council and Lori Laschkewitsch, OMB were also present.

Senator Hogue: This is the budget for the Labor Commissioner. The Labor Commissioner is charged under the statute with investigating and adjudicating some claims for employment discrimination based on race, religion and gender. The Commissioner also has a duty to investigate not only housing but employment discrimination. As you recall she came back to our committee after her budget was heard and she identified two areas where under policy law she would like to see revisions in terms of the number of in types of cases she would be obligated to hear. That is what the subcommittee met about and that's what we have in these amendments. These are her proposals that we modified under Section 3, you'll recall that she described the situation where one of her other duties is to investigate discrimination in the provision in government services. Some clever inmates have used that provision to file complaints against the Department of Corrections for how their living conditions are at the State Penitentiary. You might recall the one she cited, they served tacos on one day but on other days they didn't accommodate the heritage of those who with a German ancestry. Those are the types of complaints that she referenced. There is a grievance process within the Department of Corrections if you don't think you are being treated fairly and so we thought that's the place where that should be, not with the ND Labor Commissioner. So what we do in Section 3 of these Amendments we preclude individuals who are inmates either in the Department of Corrections or in a County jail facility or in a leased or for-rent facility to make complaints to the Department of Labor concerning the conditions of their incarceration. Section 4 was also inspired by her amendments that she brought in. She adjudicates unpaid wages and she wanted to have a range where she would not have to adjudicate them if they were either too small or too large. The range was between \$50 and \$10,000, that was her suggestion. We accepted the idea that there should be some claims that she wouldn't have to adjudicate. but we thought anything under \$200 she could refer those folks to small claims court in the community where they live rather than opening up an investigation in the

Department of Labor. We thought that was a good idea. We did not put any cap on the size of the wage claims that she could hear so if somebody had a \$20,000 wage claim she would still be obliged to investigate those claims. Those are the Amendments.(0.04.55)

Senator Hogue: moved amendment # 17.0492.02002. 2nd by V. Chairman Bowman.

Chairman Holmberg: I had the opportunity to sit in on the subcommittee meeting, and it was superb because remember she came in, she was new, and the committee took the things that made a lot of sense that would help get over the next few years but other issues, like the cap, they said you need to go to the next session to the policy committee and start from there. I thought it showed great restraint and made a lot of sense. Any questions?

Chairman Holmberg: Call the roll on the Amendments on HB 1007.

A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0.

Senator Hogue: Moved a Do Pass as Amended. 2nd by Senator Dever.

Chairman Holmberg: Call the roll on a Do Pass as Amended on 1007.

A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0. Senator Hogue will carry the bill.

The hearing was closed on HB 1007.

March 29, 2017

OK
3/29/17
1 of 3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1007

Page 1, line 2, after "rights" insert "; and to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages"

Page 1, replace lines 12 through 16 with:

"Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	361,327	(32,409)	328,918
Total all funds	\$2,785,073	(\$41,171)	\$2,743,902
Less estimated income	437,832	2,084	439,916
Total general fund	\$2,347,241	(\$43,255)	\$2,303,986"

Page 1, line 19, replace "\$40,068" with "\$37,165 from the general fund"

Page 1, line 20, replace "\$1,249" with "\$1,241"

Page 1, after line 20, insert:

"**SECTION 3. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-15. Public services - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to ~~a person~~ an individual access to the use of and benefit thereof, or to give adverse or unequal treatment to a ~~person~~ an individual in connection therewith because of the ~~person's individual's~~ individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
2. Subsection 1 does not apply to:
 - a. An individual committed to the legal and physical custody of the department of corrections and rehabilitation; or
 - b. An individual confined in a correctional facility, as defined in section 12-44.1-01.

SECTION 4. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within~~ two years from the date the wages are due and the amount of the wages claimed due is at least two hundred dollars. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever~~ If the department denies the claim for wages due because the

amount claimed is less than two hundred dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1

OK
3/24/17
243

2. If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$2,423,746	\$2,417,887	(\$2,903)	\$2,414,984
Operating expenses	361,327	328,918		328,918
Total all funds	\$2,785,073	\$2,746,805	(\$2,903)	\$2,743,902
Less estimated income	437,832	439,916	0	439,916
General fund	\$2,347,241	\$2,306,889	(\$2,903)	\$2,303,986
FTE	15.00	14.00	0.00	14.00

Department No. 406 - Labor Commissioner - Detail of Senate Changes

	Adjusts Funding for Health Insurance Increases ¹	Total Senate Changes
Salaries and wages	(\$2,903)	(\$2,903)
Operating expenses		
Total all funds	(\$2,903)	(\$2,903)
Less estimated income	0	0
General fund	(\$2,903)	(\$2,903)
FTE	0.00	0.00

¹ Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month. Section 2 of the bill is also adjusted to reflect the revised premium rate.

This amendment also:

- Amends North Dakota Century Code Section 14-02.4-15 to preclude correctional system inmates from filing complaints with the Department of Labor and Human Rights.
- Amends Section 34-14-09 to provide that an employee may file a wage complaint with the department for disputes of \$200 or more. The department is to refer an employee to the appropriate small claims court if the wage dispute is under \$200.

CH
3/29/17
3 of 3

Date: 3.29-17Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1007

Senate Appropriations Committee☒ SubcommitteeAmendment LC# or Description: 17.0492.02002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐

Motion Made By Sorvaag Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Mathern	<input checked="" type="checkbox"/>	
Vice Chair Krebsbach			Senator Grabinger		
Vice Chair Bowman			Senator Robinson		
Senator Erbele					
Senator Wanzek					
Senator Kilzer					
Senator Lee					
Senator Dever					
Senator Sorvaag	<input checked="" type="checkbox"/>				
Senator Oehlke					
Senator Hogue	<input checked="" type="checkbox"/>				

Total (Yes) 3 No 0Absent 0

Floor Assignment _____

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

*Motion is to recommend adopt of Amendment
 & further Amend to add in estimates of State person
 would not be able to file claims with the Labor
 Commission*

Date: 3-29-17Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1007**

Senate Appropriations Committee☐ SubcommitteeAmendment LC# or Description: 17.0492.02002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Hogue Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0Absent 0

Floor Assignment _____

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

Date: 3-29-17Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1007**

Senate Appropriations Committee☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent CalendarOther Actions: ☐ Reconsider ☐ _____

Motion Made By Hogue Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0Absent 0Floor Assignment Hogue

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

REPORT OF STANDING COMMITTEE

HB 1007, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1007 was placed on the Sixth order on the calendar.

Page 1, line 2, after "rights" insert "; and to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages"

Page 1, replace lines 12 through 16 with:

"Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	361,327	(32,409)	328,918
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1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within two years from the date the wages are due and the amount of the wages claimed due is at least two hundred dollars.~~ For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever~~ If the department denies the claim for wages due because the amount claimed is less than two hundred dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1

2. If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee."

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	Adjusts Funding for Health Insurance Increases ¹	Total Senate Changes
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This amendment also:

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2017 CONFERENCE COMMITTEE

HB 1007

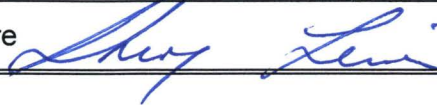
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1007
4/11/2017
Recording Job# 30053

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

See attachments A and B

Chairman Boehning: Opened the conference committee on HB1007.

Senator Hogue: Explained the changes made by the Senate on the budget. See attachment A.

Chairman Boehning: That also takes care of the county jails in that section of law the 12-44?

Senator Hogue: It does.

Chairman Boehning: We'd have all the correctional facilities within the state covered then?

Senator Hogue: Correct.

Chairman Boehning: With the jail that's up in the turtle mountains on the reservation, would apply to this? We wouldn't have to worry about those claims up there since it's federal?

Senator Hogue: The department of corrections leases beds; so it covers that.

Chairman Boehning: With the air bases that would have a correctional facility would be federal so that wouldn't apply here either.

Michelle Kommer, Commissioner, ND Labor Department: See testimony attachment B.

Chairman Boehning: Once you close the claims, does the person that filed the claim have recourse to go back and sue the employer again?

Michelle Kommer: They do not. The case is closed, it's settled and there is no recourse beyond that.

Michelle Kommer continued with her testimony,

Senator Sorvaag: Do you have a number of how many that you settle because of discrimination? If they just didn't have the money, the company's broke, that has nothing to do with you. Am I correct? Do you turn it over to the attorney general to claim that?

Michelle Kommer: We do.

Senator Sorvaag: Do you have any idea how many you end up ruling that it is because of discrimination and how many just get moved on?

Michelle Kommer: Through the wage claim process, we do not deal in terms of discrimination or not; it's simply a wage claim. If there is discrimination involved as a part of that story, then a discrimination claim is filed separately in the human rights division. It is not often at all that we see that happen.

Michelle Kommer continued with her testimony.

Senator Sorvaag: We're getting into a lot of policy without a hearing; that's why we were a little hesitant on it. We were also concerned with this high end. We left it off because \$10,000.00 did not seem very high.

Chairman Boehning: We are getting into policy, but policy does drive her budget quite heavily. Personally if I'm going to sue someone, I'm not going to go to the labor commission. I'm going to take my chances with my attorney that will take half of my claim. This might be information that they could share with a client.

Senator Mathern: We received assurance that the labor commissioner would be notifying people who were inquiring of their ability to go through small claims court or to hire an attorney. We felt comfortable that the other options would be a part of her service to the clients coming there.

Chairman Boehning: On the small claims court. Did you come up with an answer for me?

Michelle Kommer: I did. A person can file an action in small claims court up to \$15,000.00. The filing fee is \$10.00. Once a decision has been made in small claims court, it cannot be appealed to the district court.

Representative Delmore: I understand the concerns with not having a hearing. What if we put an effective date on that to make sure that all the information was given to all the parties involved? I think it's something that can help make the department more efficient. Would that be a possibility?

Chairman Boehning: You would be talking about giving some of this information?

Representative Delmore: I'm saying set a floor and possibly a ceiling; but give a little beyond when the law goes into effect so we make sure everybody's aware that there's been a change to the rules.

Senator Sorvaag: I supported what was here and I support the floor. I think \$200.00 is reasonable; it's the ceiling where we got into the debate.

Chairman Boehning: Should this information be laid out if they come with a \$20,000.00 claim to say they need to see someone else?

Senator Mathern: Could you outline what you would do as a commissioner? As a claimant comes, what material would you give them to help them make a decision?

Michelle Kommer: We're not doing any counseling today. We put absolutely no burden on the claimant to substantiate their claim. A form asks for the claimant to state the amount of money that they're owed. We do ask them to explain why; but if they don't, we continue to open the investigation and work to determine why they think they're owed this money.

Michelle Kommer continued with her testimony.

Chairman Boehning: Closed the conference committee.

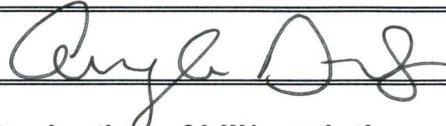
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division Medora Room, State Capitol

HB1007
4/12/2017
Job 30076

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Chairman Boehning: Opened the conference committee on HB1007.

Senator Hogue: Senator Sorvaag and I did some exhaustive research. We thought the top should be about \$15,000.00. We thought \$10,000.00 was too low. We'd be comfortable with \$15,000.00 as the cap and sun setting it.

Representative Delmore: We'd remove the floor and just do a ceiling and sunset?

Senator Hogue: No. We came up with a floor and thought it should be \$200.00.

Representative Delmore: As I look at this, I think that \$125.00 seems to have some cases.

Chairman Boehning: I fully agree. It doesn't look like she gets any return on claims until you get to \$125.00. I like the \$15,000.00 cap. I think the \$125.00 would be a good start.

Senator Mathern: I would be fine with \$125.00 and \$15,000.00.

Chairman Boehning: You would be fine with the \$15,000.00 cap?

Representative Delmore: Yes, I think that's a good place to go.

Representative Brabandt: I'll go along with the \$15,000.00 cap but I like the \$200.00 floor. Let's get paid for the cost of processing.

Representative Delmore: I would prefer not to vote on this until I have the amendment in front of me. I still think that \$125.00 is a better floor because under \$200.00 may not be a lot of money to us, but there are people out there struggling. I like the sunset. I would like a

provision in there that we make sure people are notified. Before we add counseling services, we better make sure there's a staff there trained to counsel and that there are enough people.

Chairman Boehning: I would like to see the amendments as well.

Senator Hogue: Are we settled on the \$125.00?

Representative Delmore: I would propose that we have a floor of \$125.00 and a ceiling of \$15,000.00 and the sunset.

Senator Sorvaag: I would agree.

Chairman Boehning: Closed the conference committee.

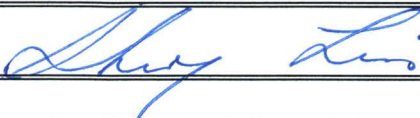
2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1007
4/13/2017
Recording Job# 30125

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of labor and human rights.

Minutes:

Chairman Boehning: Opened the conference committee on HB1007.

Chairman Boehning: Explained amendment 17.0492.02004. Could you explain that bottom language?

Michelle Kommer, Commissioner, ND Labor Department: We did not request this change. It came back from legislative council upon the return of their draft to the Senate Appropriations committee. It's merely a repositioning of the language that was previously in section 3. This makes no changes to the statute as it was previously other than organization.

Chairman Boehning continued with his explanation.

Senator Hogue: Made a motion to recede from the Senate amendments and amend with 17.0492.02004.

Representative Delmore: Seconded the motion.

Roll Call Vote: 6 Yeas 0 Nays 0 Absent.

Motion Carried.

Chairman Boehning: Closed the conference committee.

4/18/17 D10
183

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1007

That the Senate recede from its amendments as printed on pages 1272-1274 of the House Journal and pages 1030-1032 of the Senate Journal and that Engrossed House Bill No. 1007 be amended as follows:

Page 1, line 2, after "rights" insert "; to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages; and to provide an expiration date"

Page 1, replace lines 12 through 16 with:

"Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$41,171)	\$2,743,902
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
Total general fund	\$2,347,241	(\$43,255)	\$2,303,986"

Page 1, line 19, replace "\$40,068" with "\$37,165 from the general fund"

Page 1, line 20, replace "\$1,249" with "\$1,241"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-15. Public services - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to ~~a person~~ an individual access to the use of and benefit thereof, or to give adverse or unequal treatment to a ~~person~~ individual in connection therewith because of the ~~person's~~ individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
2. Subsection 1 does not apply to:
 - a. An individual committed to the legal and physical custody of the department of corrections and rehabilitation; or
 - b. An individual confined in a correctional facility, as defined in section 12-44.1-01.

SECTION 4. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within~~ two years from the date the wages are due and the amount of the wages claimed due is at least one hundred twenty-five

4/18/17 DP
2083

dollars but not more than fifteen thousand dollars. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever~~ If the department denies the claim for wages due because the amount claimed is less than one hundred twenty-five dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1. If the department denies the claim for wages due because the amount claimed is more than fifteen thousand dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in district court under chapter 27-05.

2. If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. ~~With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. ~~With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~

SECTION 5. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2019, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$2,423,746	\$2,417,887	(\$2,903)	\$2,414,984	\$2,414,984	
Operating expenses	361,327	328,918		328,918	328,918	
Total all funds	\$2,785,073	\$2,746,805	(\$2,903)	\$2,743,902	\$2,743,902	\$0
Less estimated income	437,832	439,916	0	439,916	439,916	0
General fund	\$2,347,241	\$2,306,889	(\$2,903)	\$2,303,986	\$2,303,986	\$0
FTE	15.00	14.00	0.00	14.00	14.00	0.00

Department No. 406 - Labor Commissioner - Detail of Conference Committee Changes

	Adjusts Funding for Health Insurance Increases ¹	Total Conference Committee Changes
Salaries and wages	(\$2,903)	(\$2,903)
Operating expenses		

4/18/17 DP
3rd

Total all funds	(\$2,903)	(\$2,903)
Less estimated income	0	0
General fund	(\$2,903)	(\$2,903)
FTE	0.00	0.00

¹ Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month. Section 2 of the bill is also adjusted to reflect the revised premium rate.

This amendment also:

- Amends North Dakota Century Code Section 14-02.4-15 to preclude correctional system inmates from filing complaints with the Department of Labor and Human Rights.
- Amends Section 34-14-09 to provide that an employee may file a wage complaint with the department for disputes of at least \$125 but not more than \$15,000. The department is to refer a claimant to the appropriate small claims court if the wage dispute is under \$125 and refer the claimant to the appropriate district court if the wage dispute is over \$15,000. This amendment is effective through June 30, 2019, and after that date is ineffective. The Senate version included a minimum dispute amount of \$200, but no maximum or expiration date.

**2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB1007 as (re) engrossed

House Appropriations – Government Operations Division Committee

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

Motion Made by: Senator Hogue Seconded by: Representative Delmore

Representatives	4/11	4/12	4/13	Yes	No		Senators	4/11	4/12	4/13	Yes	No
Chairman Boehning	X	X	X	X			Senator Hogue	X	X	X	X	
Representative Brabandt	X	X	X	X			Senator Sorvaag	X	X	X	X	
Representative Delmore	X	X	X	X			Senator Mathern	X	X	X	X	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Representative Boehning Senate Carrier Senator Hogue

LC Number 17.0492.02004 . _____ of amendment

LC Number _____ . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Motion Carried

Insert LC: 17.0492.02004
House Carrier: Boehning
Senate Carrier: Hogue

REPORT OF CONFERENCE COMMITTEE

HB 1007, as engrossed: Your conference committee (Sens. Hogue, Sorvaag, Mathern and Reps. Boehning, Brabandt, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1272-1274, adopt amendments as follows, and place HB 1007 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1272-1274 of the House Journal and pages 1030-1032 of the Senate Journal and that Engrossed House Bill No. 1007 be amended as follows:

Page 1, line 2, after "rights" insert "; to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages; and to provide an expiration date"

Page 1, replace lines 12 through 16 with:

"Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	361,327	(32,409)	328,918
Total all funds	\$2,785,073	(\$41,171)	\$2,743,902
Less estimated income	437,832	2,084	439,916
Total general fund	\$2,347,241	(\$43,255)	\$2,303,986"

Page 1, line 19, replace "\$40,068" with "\$37,165 from the general fund"

Page 1, line 20, replace "\$1,249" with "\$1,241"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-15. Public services - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to ~~a person~~ an individual access to the use of and benefit thereof, or to give adverse or unequal treatment to a ~~person~~ individual in connection therewith because of the ~~person's individual's~~ individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
2. Subsection 1 does not apply to:
 - a. An individual committed to the legal and physical custody of the department of corrections and rehabilitation; or
 - b. An individual confined in a correctional facility, as defined in section 12-44.1-01.

SECTION 4. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within~~ two years from the date the wages are due and the amount of the wages claimed due is at least one hundred twenty-five dollars but not more than fifteen thousand dollars. For purposes of this

Insert LC: 17.0492.02004
House Carrier: Boehning
Senate Carrier: Hogue

section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever If the department denies the claim for wages due because the amount claimed is less than one hundred twenty-five dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1. If the department denies the claim for wages due because the amount claimed is more than fifteen thousand dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in district court under chapter 27-05.~~

2. ~~If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~
3. ~~The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~

SECTION 5. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2019, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$2,423,746	\$2,417,887	(\$2,903)	\$2,414,984	\$2,414,984	
Operating expenses	361,327	328,918		328,918	328,918	
Total all funds	\$2,785,073	\$2,746,805	(\$2,903)	\$2,743,902	\$2,743,902	\$0
Less estimated income	437,832	439,916	0	439,916	439,916	0
General fund	\$2,347,241	\$2,306,889	(\$2,903)	\$2,303,986	\$2,303,986	\$0
FTE	15.00	14.00	0.00	14.00	14.00	0.00

Department No. 406 - Labor Commissioner - Detail of Conference Committee Changes

	Adjusts Funding for Health Insurance Increases ¹	Total Conference Committee Changes
Salaries and wages	(\$2,903)	(\$2,903)
Operating expenses		
Total all funds	(\$2,903)	(\$2,903)
Less estimated income	0	0
	(\$2,903)	(\$2,903)

Insert LC: 17.0492.02004
House Carrier: Boehning
Senate Carrier: Hogue

General fund		
FTE	0.00	0.00

¹ Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month. Section 2 of the bill is also adjusted to reflect the revised premium rate.

This amendment also:

- Amends North Dakota Century Code Section 14-02.4-15 to preclude correctional system inmates from filing complaints with the Department of Labor and Human Rights.
- Amends Section 34-14-09 to provide that an employee may file a wage complaint with the department for disputes of at least \$125 but not more than \$15,000. The department is to refer a claimant to the appropriate small claims court if the wage dispute is under \$125 and refer the claimant to the appropriate district court if the wage dispute is over \$15,000. This amendment is effective through June 30, 2019, and after that date is ineffective. The Senate version included a minimum dispute amount of \$200, but no maximum or expiration date.

Engrossed HB 1007 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1007

Department 406 - Department of Labor and Human Rights
House Bill Nos. 1007 and 1067

Executive Budget Comparison to Prior Biennium Appropriations

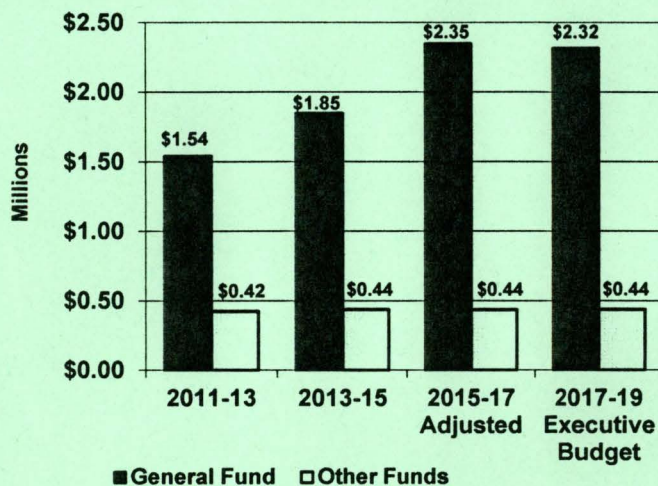
	FTE Positions	General Fund	Other Funds	Total
2017-19 Executive Budget	14.00	\$2,316,868	\$439,916	\$2,756,784
2015-17 Adjusted Legislative Appropriations ¹	15.00	2,347,241	437,832	2,785,073
Increase (Decrease)	(1.00)	(\$30,373)	\$2,084	(\$28,289)

¹The 2015-17 biennium agency appropriation amounts reflect general fund budget reductions made in August 2016.

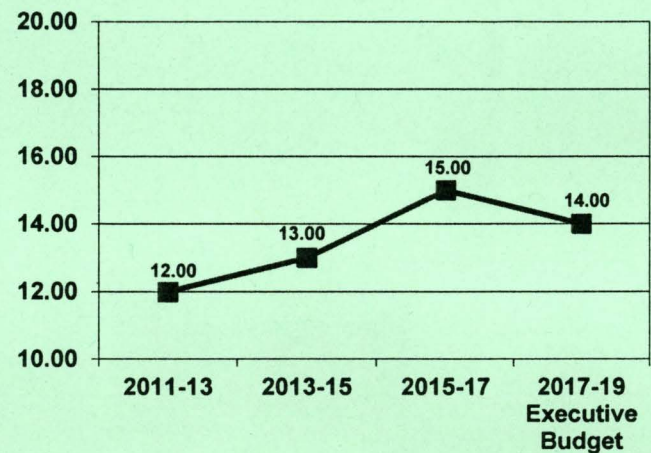
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2017-19 Executive Budget	\$2,316,868	\$0	\$2,316,868
2015-17 Adjusted Legislative Appropriations	2,347,241	0	2,347,241
Increase (Decrease)	(\$30,373)	\$0	(\$30,373)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2017-19 Executive Budget	\$2,316,868	\$439,916	\$2,756,784
2017-19 Base Level	2,347,241	437,832	2,785,073
Increase (Decrease)	(\$30,373)	\$2,084	(\$28,289)

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$9,979 is for salary increases and \$40,068 is for health insurance increases	\$50,047		\$50,047
2. Adjusts salaries, including the removal of funding for 1 administrative assistant FTE position	(\$52,998)		(\$52,998)
3. Adjusts operating expenses	(\$34,409)		(\$32,409)

Continuing Appropriations

There are no continuing appropriations for this agency.

Deficiency Appropriation

There is no deficiency appropriation for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

At this time, no major related legislation has been introduced affecting this agency.

Department of Labor and Human Rights - Budget No. 406
House Bill Nos. 1007 and 1067
Base Level Funding Changes

	Executive Budget Recommendation			
	FTE Position	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073
2017-19 Ongoing Funding Changes				
Base payroll changes		\$4,987	\$2,084	\$7,071
Salary increase		9,979		9,979
Health insurance increase		40,068		40,068
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)
Adjusts operating expenses		(32,409)		(32,409)
Total ongoing funding changes	(1.00)	(\$30,373)	\$2,084	(\$28,289)
One-time funding items				
No one-time funding items				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$30,373)	\$2,084	(\$28,289)
2017-19 Total Funding	14.00	\$2,316,868	\$439,916	\$2,756,784

Other Sections in Department of Labor and Human Rights - Budget No. 406

Executive Budget Recommendation

No other sections for this agency

Department 406 - Department of Labor and Human Rights

Appropriations Comparisons to the Original and Adjusted Base Budgets

General Fund Appropriations Adjustments (As a result of the August 2016 General Fund Budget Reductions)

	Ongoing	One-Time	Total
2015-17 original general fund appropriations	\$2,435,626	\$76,135	\$2,511,761
General fund reductions	(88,385)	(76,135)	(164,520)
Adjusted 2015-17 appropriations	\$2,347,241	\$0	\$2,347,241
Executive Budget changes	(30,373)	0	(30,373)
2017-19 Executive Budget	\$2,316,868	\$0	\$2,316,868

Summary of August 2016 General Fund Budget Reductions

	Ongoing	One-Time	Total
Reduced salaries and wages, including overtime	(\$22,794)	(\$20,000)	(\$42,794)
Reduced operating expenses, including funding for information technology paper file storage	(65,591)	(56,135)	(121,726)
Total reductions	(\$88,385)	(\$76,135)	(\$164,520)
Percentage reduction to ongoing and one-time general fund appropriations	3.63%	100.00%	6.55%

2017-19 Executive Budget Changes to the Original and Adjusted Base Budgets

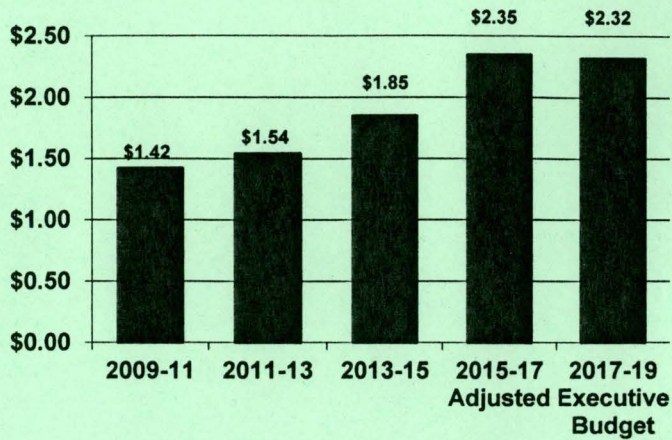
	Changes to Original Budget	Budget Reduction Adjustments	Changes to Adjusted Budget
Adds funding for recommended salary and benefit increases	\$50,047	\$0	\$50,047
Base payroll changes	4,987	0	4,987
Adjusts salaries and wages, including the removal of 1 administrative assistant FTE position	(75,792)	22,794	(52,998)
Adjusts operating expenses	(98,000)	65,591	(32,409)
Total	(\$118,758)	\$88,385	(\$30,373)

Department 406 - Department of Labor and Human Rights

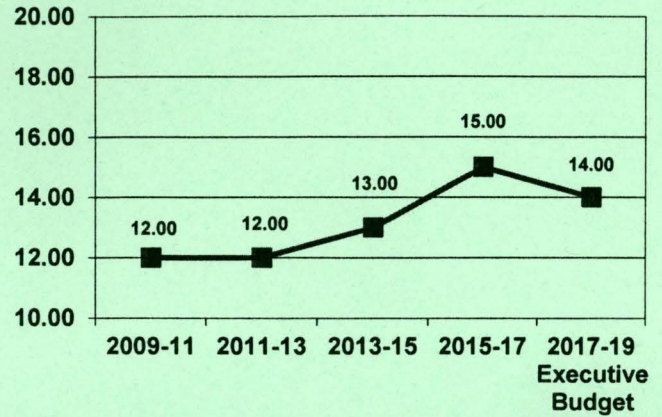
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2009-11

Agency Funding (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2009-11	2011-13	2013-15	2015-17 Adjusted	2017-19 Executive Budget
Ongoing general fund appropriations	\$1,421,583	\$1,540,125	\$1,847,425	\$2,347,241	\$2,316,868
Increase (decrease) from previous biennium	N/A	\$118,542	\$307,300	\$499,816	(\$30,373)
Percentage increase (decrease) from previous biennium	N/A	8.3%	20.0%	27.1%	(1.3%)
Cumulative percentage increase (decrease) from 2009-11 biennium	N/A	8.3%	30.0%	65.1%	63.0%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2011-13 Biennium

No major changes

2013-15 Biennium

- | | |
|---|----------|
| 1. Added funding for 1 compliance investigator FTE position | \$91,150 |
|---|----------|

2015-17 Biennium

- | | |
|--|-----------|
| 1. Added funding for 2 compliance investigator FTE positions and related funding | \$364,109 |
|--|-----------|

2017-19 Biennium (Executive Budget Recommendation)

- | | |
|---|------------|
| 1. Adjusts salaries, including the removal of funding for 1 administrative assistant FTE position | (\$52,998) |
|---|------------|



DEPARTMENT OF LABOR AND HUMAN RIGHTS

Testimony on HB 1007/1067

PREPARED FOR THE HOUSE APPROPRIATIONS COMMITTEE –
GOVERNMENT OPERATIONS, JANUARY 4, 2017

MICHELLE KOMMER, LABOR COMMISSIONER

Testimony on HB 1007/1067
Prepared for the House Appropriations Committee – Government Operations Division
January 4th, 2017

I. Introduction

Good afternoon Chairman Brandenburg and members of the House Appropriations Committee - Government Operations Division, my name is Michelle Kommer and I am the Commissioner of Labor for the North Dakota Department of Labor & Human Rights.

Today marks my 11th day in my role. I feel fortunate to be joining you here today and I will do my best to be informative and responsive. And while I may not have immediate answers to your questions, I assure you I will promptly follow up to provide you information as requested. I appreciate your grace and understanding.

II. Department Scope

I would like to begin with a brief overview of the scope of the Department's responsibilities. The Department has three primary areas of responsibility. First, the Department establishes and enforces laws and regulations relating to the wages and working conditions of employees in North Dakota. This is our Wage and Hour Division. Second, the Department administers and enforces North Dakota's human rights and housing laws. This is our Human Rights Division. Finally, the Department is tasked with educating the public about all areas of the law for which it is responsible. See Exhibit A for Department Scope illustration.

a. Wage & Hour Division

The Wage and Hour Division enforces minimum wage and overtime laws and regulations (N.D.C.C. ch. 34-06). In addition, the Division enforces North Dakota's laws and regulations dealing with equal pay for men and women, child labor, labor unions, employment agencies, and wage collection (N.D.C.C. chs. 34-06.1, 34-07, 34-12, 34-13, and 34-14). The Wage and Hour Division receives and investigates claims of unpaid wages or overtime, failure to pay minimum wage, misclassification of employees, and other general complaints that North Dakota's labor laws are not being followed. The Division also reviews requests to issue

youth employment certificates for 14 and 15-year old workers. See Exhibit B for Wage & Hour Responsibilities illustration.

b. Human Rights Division

The Human Rights Division administers and enforces the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and works to prevent discrimination through education about the rights and responsibilities provided under North Dakota's human rights and housing laws. Finally, the Human Rights Division handles complaints of retaliation under North Dakota's "whistleblower" law (N.D.C.C. § 34-01-20) and Public Employee Relations Act (N.D.C.C. § 34-11.1-04.1).

In addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination, the Department's Human Rights Division also investigates cases for the United States Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC). See Exhibit C for Human Rights Responsibilities illustration.

c. Education

In addition to the Department's enforcement duties, the Commissioner of Labor is required to "improve working conditions and living conditions of employees and advance their opportunities for profitable employment", to "...foster, promote, and develop welfare of both wage earners and industries in N.D.", and "...promote friendly and cooperative relations between employers and employees." To do this, the Department broadens awareness of wage and hour issues and human rights protections through public education and outreach, working with groups representing human rights, business, labor,

professional, and non-profit organizations. The Department provides speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and other community groups. The Department conducted 62 presentations and 3 conventions (booth) during the first eighteen months of this biennium (7/1/15 – 12/31/16). See Exhibit D for list of activities.

III. Department Activity

a. Claims. Claims began a rapid acceleration during FY12, consistent with growth of the labor force. By FY13, wage claims had more than doubled compared to the average of the prior eight years (FY05 – FY12)¹, and employment discrimination claims increased by 16% in that same timeframe². While more recent claim activity has decreased from a peak during FY13³, the Department continues to work to resolve pending claims ("backlog"), to reduce the average time a claim is open, and decrease investigator caseload⁴, all of which had grown exponentially as a result of the substantial increase in volume of claims. See Exhibit E for Pending Claims/Average Caseload.

i. Wage. Specific to wage claims, we have seen a decrease in claims from FY13-FY16, and we predict claims to decrease for FY17 based on current activity⁵. That said, current incoming volume remains high as compared to claims volume prior to FY12, as does our claims backlog⁶, average time a claim is open, and investigator caseload as seen in Exhibit E.

¹ The average of wage claims received FY-5 – 12 was 336 claims, while 764 wage claims were received in 2013 alone.

² The average of employment claims received FY-5 – 12 was 198 claims, while 231 employment claims were received in 2013 (16.41% increase).

³ Wage and employment claims opened in FY13 = 995, FY14=966, FY15=937, FY16=777, and FY17=514 (annualized). Housing, public service and accommodation claims are not included in these numbers.

⁴ The average investigator caseload was 26 in FY12, as compared to 61 in FY16.

⁵ Wage claims opened in FY13=764; FY14=734; FY15=639; FY16=496, FY17 336 (annualized).

⁶ Note that FY16's pending wage claims (316) were more than twice FY12's (135), when activity first began to the drastic upward trend.

As noted previously, the decreased claim volume has created an opportunity to demonstrate progress toward decreasing the number of pending wage claims and average caseload.

The Department has made great strides in case closures during the current biennium:

Wage Claims Closed 7/1/15 – 12/31/16	
Claims Closed	780
Avg. Days to Closure	230
# Claims Settled	301
Amount collected	\$719,151

- ii. **Employment (Discrimination & Retaliation)**⁷. Employment claim volume held fairly steady from FY15 to FY16, with a minor decrease of 5.7% (298 claims in FY15 compared to 281 in FY16), and is projected to decrease for FY17 based on current activity. Here too, there continues to be claim backlog due to the significant claim increase beginning in FY12⁸, as seen in Exhibit E.

Employment claim closure during this biennium is as follows:

Employment Claims Closed 7/1/15 – 12/31/16⁹	
Claims Closed	338
Avg. Days to Closure	383
# Claims Settled	58
Amount collected	\$989,776

- iii. **Other.** The Department also receives claims relating to housing discrimination, as well as discrimination in public services, public accommodations, and credit. This claim volume is

⁷ This category includes complaints alleging retaliation under the "whistleblower" statute (N.D.C.C. §34-01-20)

⁸ FY16's pending employment claims (264) were more than triple FY12's (84).

⁹ This chart excludes complaints alleging retaliation under the "Whistleblower" statute (N.D.C.C. §34-01-20)

comparatively small, representing an average of 6% of total claims opened in FY15 – FY16.¹⁰

b. Other Activity. The Department also responds to telephone, email, and walk-in activity from citizens across the state, having received a combined total of 17,109 contacts during from FY15 – FY16. In addition, requests for youth employment certificates for 14 and 15-year old workers remained steady in FY15 and FY16¹¹.

IV. Team. The Department of Labor currently has 15 FTE's, inclusive of the Commissioner, the Human Rights Director, ten investigators, two administrative employees, and one vacant administrative position¹². See Exhibit F for Organization Chart.

As discussed here today, during FY12, the Department experienced a significant increase in claims which corresponded to labor force growth in the oil patch counties, causing drastic increases in investigator caseload and the timeframes for case resolution.

The 2015 Committee and Legislature acknowledged the remarkable claims increase and need for additional staff, and granted the Department the ability to hire two additional investigators. As a result of tremendous effort by the investigative and administrative support teams, FY16 is the first year since FY10 that the number of wage cases closed has exceeded the number of cases opened. Unfortunately, while the Department has made progress, the claims volume remains high, resulting in continued claims backlog and intense investigator caseloads as illustrated in Exhibit E. It will be our goal in the next biennium to continue to reduce and stabilize both the claims backlog and investigator caseload, as well as identify additional mechanisms for process efficiencies.

¹⁰ Housing claims represented an average of 3% of total claims from FY15 – FY16.

¹¹ There was a 21%+ increase in youth employment certificates from FY10 when 985 certificates were requested, compared to 1,200 in FY14; 1,257 in FY15; and 1,052 in FY16.

¹² The Administrative Assistant position that was vacated in March of 2016 was not replaced in anticipation of budget cuts. See "Budget Request" section below for additional detail.

V. **Budget Request.** With that background, I will walk through the information requested by the Chairman.

a. **"Base Budget".** In the current biennium, the Department's total original appropriation was \$2,949,593. Salaries and wages comprised \$2,466,540 of the total appropriation (84%), with operating expenses accounting for the remaining \$483,053. The Department was budgeted to receive \$437,832 in federal funds.

Chart 1.

	2015 - 2017 Budget	Allotments	2015-17 Budget Rev.
Salaries & Wages	\$ 2,466,540	\$ (42,794)	\$ 2,423,746
Operating Expenses	\$ 483,053	\$ (121,726)	\$ 361,327
Total	\$ 2,949,593	\$ (164,520)	\$ 2,785,073
Less estimated income	\$ 437,832		\$ 437,832
General Fund	\$ 2,511,761		\$ 2,347,241

b. **"Base Budget" Changes.** Between January and August 2016 the Department's budget was reduced by \$164,520 in total (6.55 %). See Chart 1 above. Reductions included the following:

- \$20,000 one-time reduction in overtime wages which was budgeted to reduce case backlog
- \$56,135 one-time reduction for "paperless" project which would have converted the Department's paper-based system to images
- \$22,794 in salaries & wages relating to staff turnover and vacancies
- \$5,000+ reduction in related expenses (office supplies, IT equipment, etc.)
- \$20,000 reduction in travel expenses which was budgeted to provide required HUD training to investigators (required before an investigator can staff a housing claim)
- \$10,000 reduction in professional development relating to staff training
- \$30,000+ reduction in other operational expenses (supplies, postage, printing, facilities, etc.)

c. **Estimated 2015-17 Biennium Spending.** The Department anticipates to utilize nearly all of the funding appropriated to salary and benefits, with the exception of the amount saved by not replacing the

Administrative Assistant position in March of 2016 (approximately \$75,000 -this position has been removed from the Executive Budget). Any remaining portion not utilized would be a result of other turn-over and open positions during the biennium. With respect to operating costs, we expect to use nearly all the funds appropriated.

- d. Executive Budget.** The recommended 2017-19 budget is \$2,756,784, of which \$2,427,866 is salary and wages (88%) and \$328,918 is operating expenses (12%). The most significant change is the elimination of one FTE from the Department's staff of 15, with the remaining reductions coming from operations.

Chart 2.

	2015-17 Budget Rev.	Executive 2017-19 Budget
Salaries & Wages	\$ 2,423,746	\$ 2,427,866
Operating Expenses	\$ 361,327	\$ 328,918
Total	\$ 2,785,073	\$ 2,756,784
Less estimated income	\$ 437,832	\$ 439,916
General Fund	\$ 2,347,241	\$ 2,316,868

- e. Other.** There were no financial audit findings in the most recent audit of our department, nor were there any major ongoing funding changes approved by the 2013 or 2015 Legislative Assemblies for the Department. The Department's federal funding, which supplements the legislatively approved state general funding, is received through work-sharing/cooperative agreements with the EEOC and HUD. Projections for federal funds show that the Department is expected to receive about the same amount of federal revenue for the 2015-2017 biennium. Although federal revenue can be speculative and uncertain, there are no known changes in the level of federal funding to be received by the Department.

VI. Conclusion

In the past five years, the department has seen remarkable growth in claims, leading to a significant increase in case backlog, time to resolve, and

investigator caseload. While claims have decreased overall in the most recent years, and the Department has made significant strides during this biennium, the claims backlog and intense investigator caseloads persist. The budget presented for your consideration has been reduced to the extent possible without the risk of reversing this early but positive trend.

Thank you and I am happy to answer any questions you may have.

Exhibit A

Department Scope



Wage & Hour Division

- Minimum Wage & Overtime, Equal Pay, Child Labor, Labor Unions, Employment Agencies, Wage Collection



Human Rights Division

- Discrimination in employment, housing, public services, public accommodations, and credit transactions.



Education & Awareness

- Broaden awareness of wage and hour issues and human rights protections through public education and outreach.

Exhibit B

Wage & Hour Division



Minimum Wage & Overtime, *N.D.C.C. ch. 34-06*



Equal Pay, *N.D.C.C. ch. 34-06.1*



Child Labor, *N.D.C.C. ch. 34-07*



Labor Union, *N.D.C.C. ch. 34-12*



Employment Agency, *N.D.C.C. ch. 34-13*



Wage Collection, *N.D.C.C. ch. 34-14*

Exhibit C

Human Rights Division

Discrimination Claims



Human Rights Act, *N.D.C.C. ch. 14-02.4*



ND Housing Discrimination Act,
N.D.C.C. ch. 14-02.5

Retaliation Claims



ND "Whistleblower" law, *N.D.C.C. ch. 34-01-20*



ND Public Employee Relations Act,
N.D.C.C. ch. 34-11.1-04.1

Exhibit D**Education & Awareness***7/1/15 – 12/31/16*

Discrimination - Housing	17
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Discrimination - General	37
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Various	8
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Convention Booths	3
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65

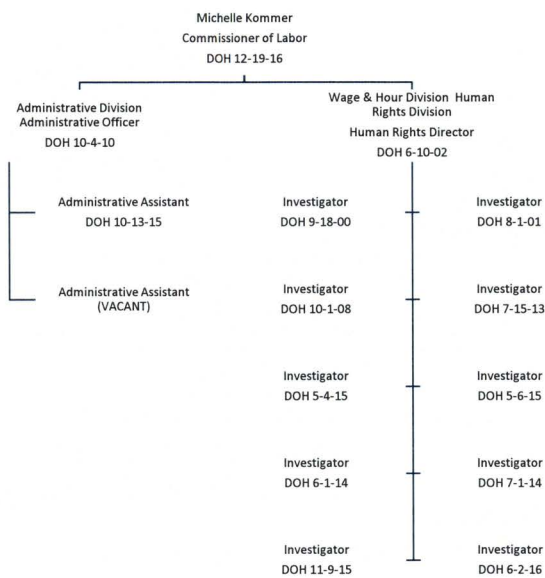
Exhibit E

Pending Claims/Average Caseload



Exhibit F

ND DOL Team





Memorandum

Date: January 10, 2017

To: Chairman Brandenburg and House Appropriations
Committee – Government Operations

From: Michelle Kommer, Labor Commissioner

RE: Response to request for information

Thank you for the time we spent together on January 4th. Included in this memorandum is the additional information that was requested during the hearing.

Request #1: "Spend-down Report". I have attached the Appropriation Status Report as of January 9, 2017. This report shows our expenditures by line item (Salaries and Wages, and Operating Expenses) as compared to the *current budget*¹. You will note that as of the date of this report, 24% of the biennium remains. The NDDOL has 29% of Salaries and Wages, and 40 % of Operating Expenses remaining. Additional detail follows:

Salaries and Wages. As noted in testimony on January 4th, the 2015-17 base budget was reduced by more than \$44,000 in Salaries & Wages. This reduction was a combination of dollars relating to the Administrative Assistant vacancy

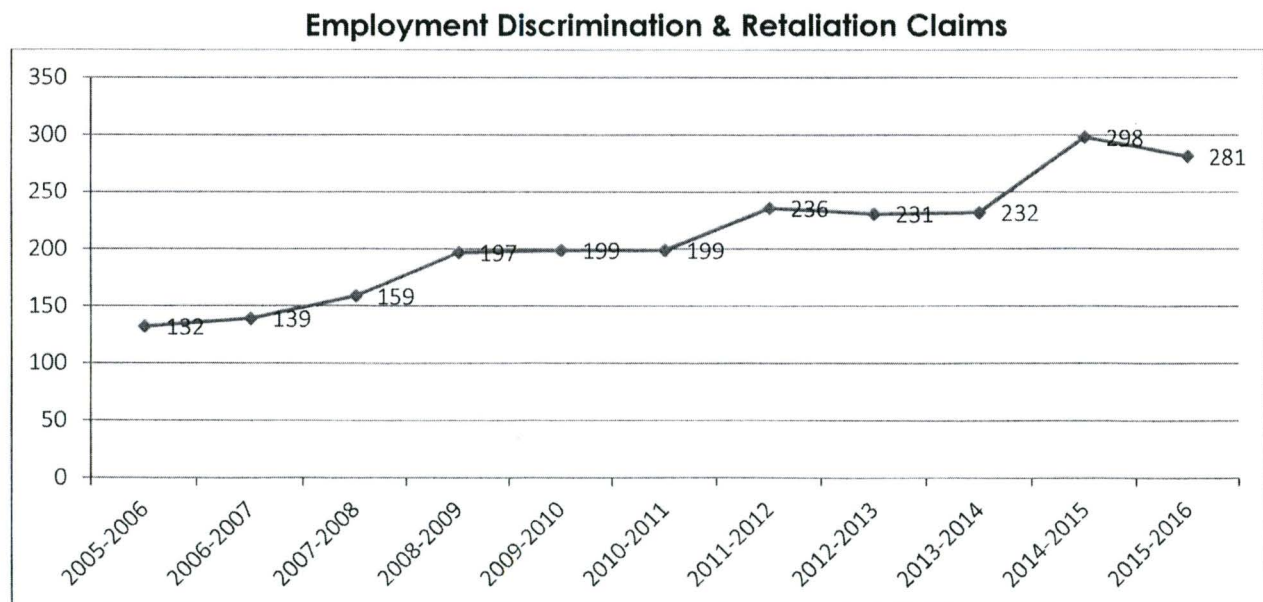
¹ The "current budget" is the original 2015-17 budget reduced by 6.55%.

(vacated March 2016) and the elimination of budgeted overtime. We anticipate that we will turn back amounts relating to the Administrative Assistant vacancy at the end of the biennium, but will otherwise be on target to expend the remaining Salaries & Wages budget for this biennium.

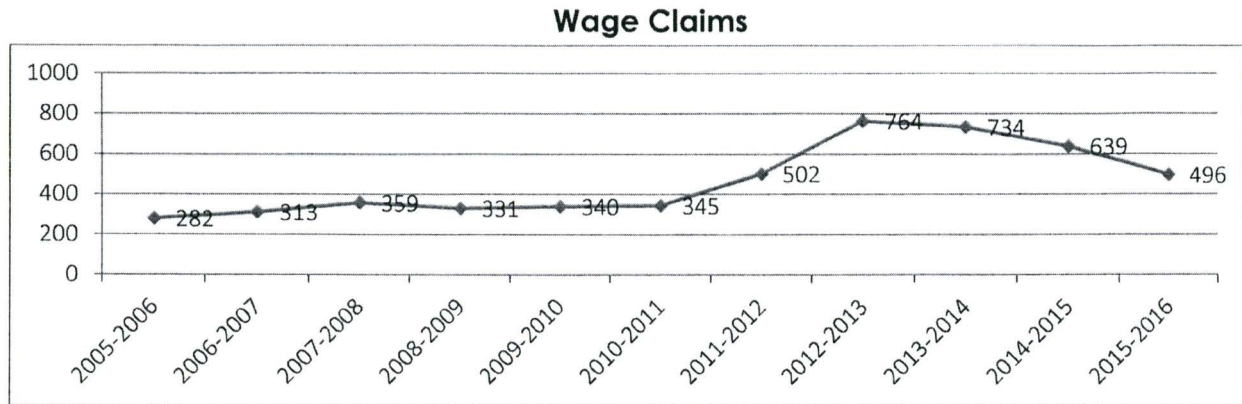
Operating Expenses. During the last six months of the biennium we plan for normal operating expenses, as well as improvement to the security of our agency entryway to ensure the safety of our team and a comfortable client experience. We must also make minimal investment in our claims management database to correct and improve functionality. For these reasons, we do not anticipate turn-back in this line item.

Request #2: Claims Data.

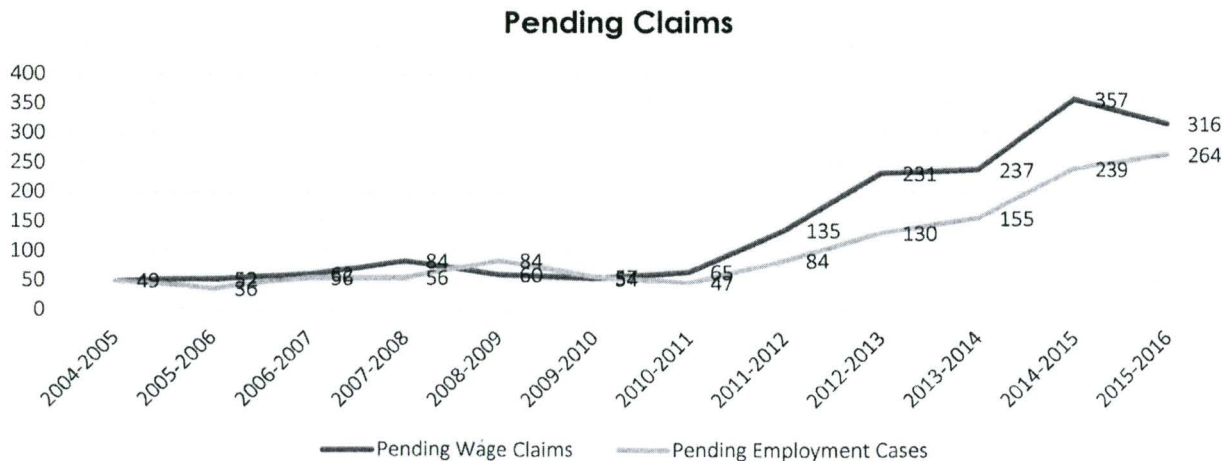
Employment. As discussed in January 4th's testimony, the Department saw a slight decrease in employment discrimination and retaliation claims from FY15 to FY16, however, claims volume in FY 2016 was nevertheless the second highest in the past ten-year period.



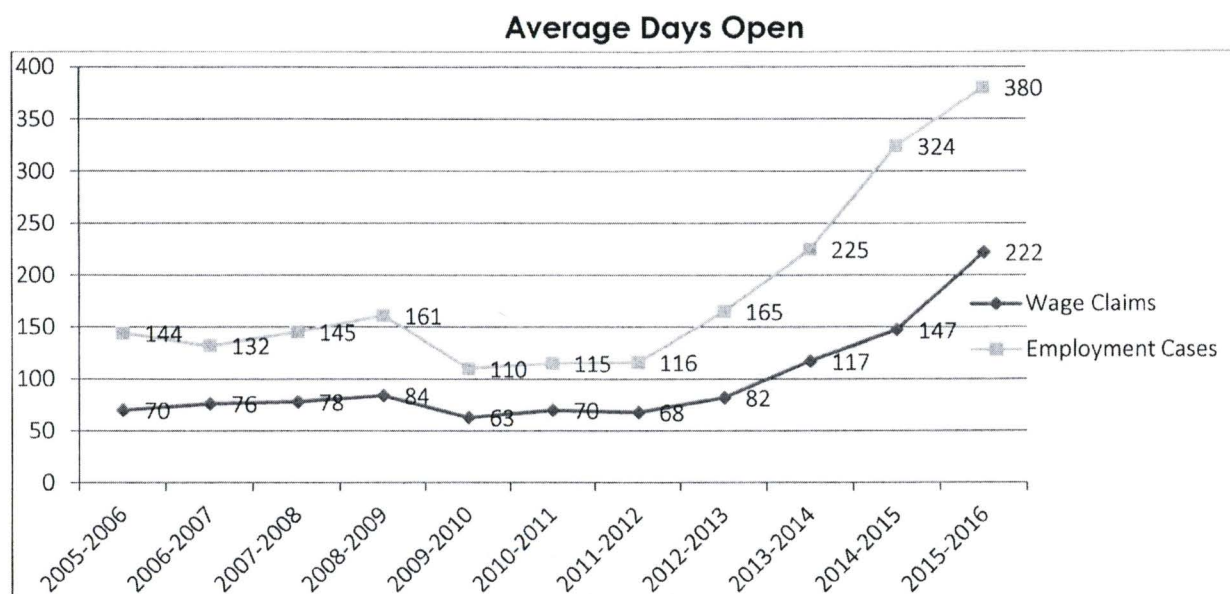
Wage. Wage claims have decreased since the peak in FY14 which corresponded with the timeframe during which the Department experienced an influx of wage claims related to employers in oil-related business who ceased doing business or reduced their workforce in western North Dakota.



Pending Claims. As reported in testimony on January 4th, the number of claims pending, or "backlog", has increased significantly as a result of the dramatic increase in claims which began in FY12, which was then managed by a team of seven (7) investigators. In 2013, one (1) investigator was added to the team. New and pending claims continued to accumulate, and the investigative team remained static until two (2) FTE's were approved for hire in early 2015. Pending claims were reduced for the first time during FY16 when the department achieved full staffing level.



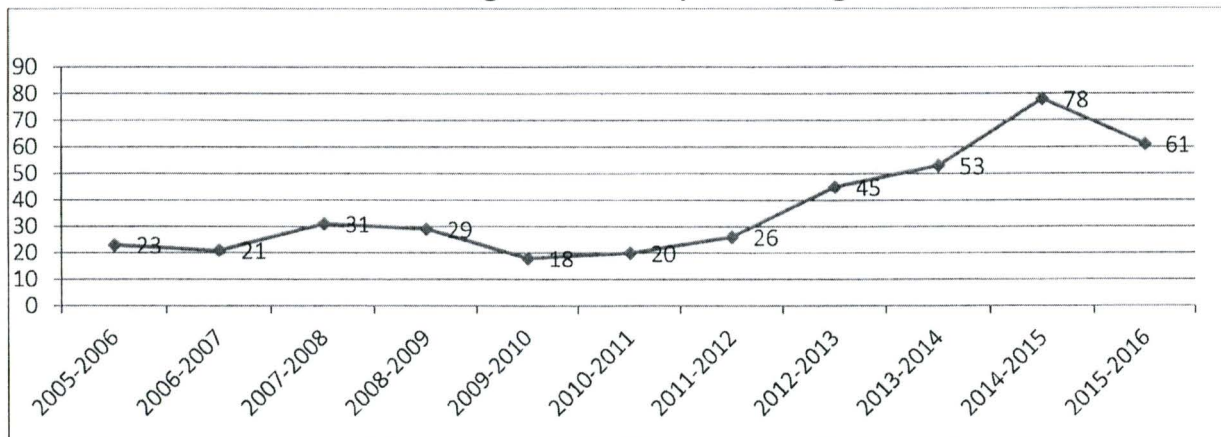
Average days open. In addition to an increase in the number of cases pending, as seen in the "Pending Claims" chart above, the chart below shows that the average number of days a case is open has also increased. This chart also illustrates risk of non-compliance with claim resolution timeframes set forth in regulation (100 days – housing claims), administrative code (180 days - employment, public service, and public accommodation claims), and internal policy (90 days – wage claims)².



² The Department diligently monitors housing employment discrimination claim resolution time to ensure compliance with regulation, so as not to jeopardize federal funding.

Caseload. As noted above, the average caseload by investigator has increased substantially since claims volume accelerated in FY12, having doubled from FY12 to FY14, even considering the staff addition of one investigator in 2013. These intense workloads resulted in a period of high turnover between 2014 and 2016 (8 investigators), which has a direct impact on the case backlog and time to resolve a case, as the Department trains new investigators to become proficient in addressing these complex matters.

Average Caseload per Investigator



Conclusion

As can be synthesized from the information above, in order to effectively serve the public, and respond to claims submitted within timeframes set forth by regulation³, administrative code⁴, and internal policy, *while* maintaining a reasonable caseload per investigator to ensure the most efficient operation of the Department, it is critical to maintain current staffing levels for the next biennium.

³ N.D.C.C. §14-02-05.22 (2)

⁴ North Dakota Administrative Code §46-04-01-08(8)

Run Date: Jan 10, 2017
4310AA

APPROPRIATION STATUS REPORT

Current As of Jan 9, 2017

Percent of Biennium Remaining 24%

	Original Appropriation	Current Appropriation	Expenditures	Remaining Appropriation	Encumbrances	% Remaining
Expenditures by Line Item						
40610 Salaries and Wages	\$2,466,540.00	\$2,423,746.00	\$1,715,850.24	\$707,895.76	\$0.00	29%
40630 Operating Expenses	\$483,053.00	\$351,327.00	\$210,479.90	\$140,847.10	\$0.00	40%
Total Expenditures	\$2,949,593.00	\$2,775,073.00	\$1,926,330.14	\$848,742.86	\$0.00	31%
Expenditures by Funding Source						
General Funds	\$2,511,761.00	\$2,337,241.00	\$1,639,784.23	\$697,456.77	\$0.00	30%
Federal Funds	\$437,832.00	\$437,832.00	\$286,545.91	\$151,286.09	\$0.00	35%
Total Expenditures by Source	\$2,949,593.00	\$2,775,073.00	\$1,926,330.14	\$848,742.86	\$0.00	31%

February 2, 2017

HB1007 / HB1067

Attachment A

Department of Labor and Human Rights - Budget No. 406
House Bill No. 1007
Base Level Funding Changes

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073	15.00	\$2,347,241	\$437,832	\$2,785,073	0.00	\$0	\$0	\$0
2017-19 Ongoing Funding Changes												
Base payroll changes		\$4,987	\$2,084	\$7,071				\$0		(\$4,987)	(\$2,084)	(\$7,071)
Salary increase - Performance				0				0				0
Health insurance increase		40,068		40,068				0		(40,068)		(40,068)
Employee portion of health insurance		(20,990)		(20,990)				0		20,990		20,990
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)				0	1.00	52,998		52,998
Adjusts operating expenses		(32,409)		(32,409)				0		32,409		32,409
Total ongoing funding changes	(1.00)	(\$61,342)	\$2,084	(\$59,258)	0.00	\$0	\$0	\$0	1.00	\$61,342	(\$2,084)	\$59,258
One-time funding items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$61,342)	\$2,084	(\$59,258)	0.00	\$0	\$0	\$0	1.00	\$61,342	(\$2,084)	\$59,258
2017-19 Total Funding	14.00	\$2,285,899	\$439,916	\$2,725,815	15.00	\$2,347,241	\$437,832	\$2,785,073	1.00	\$61,342 2.7%	(\$2,084) (0.5%)	\$59,258 2.2%

Other Sections in Department of Labor and Human Rights - Budget No. 406

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)			
No other sections for this agency				

House Version			
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|--|--|--|--|

February 2, 2017

HB 1007 / HB 1067

Attachment B

Prepared by the Legislative Council staff
for Government Operations Division

February 1, 2017

HOUSE BILL NO. 1007
LISTING OF PROPOSED CHANGES TO BASE LEVEL*

Department of Labor and Human Rights

Proposed funding changes:

Description	FTE	General Fund	Special Funds	Total
1 Add funding for base payroll changes, including cost to continue July 1, 2016 salary increase (Agency request)		\$4,987	\$2,084	\$7,071
2 Add funding for July 1, 2018, 1 percent salary increase (Governor Dalrymple)		\$9,979		\$9,979
3 Add funding for health insurance increase (Governor Dalrymple)		\$40,068		\$40,068
4 Adjust salaries, including the removal of funding for 1 FTE position (Agency request)	(1.00)	(\$52,998)		(\$52,998)
5 Adjust funding for operating expenses (Agency request)		(\$32,409)		(\$32,409)
6 Reduce funding for 5 percent employee health insurance contribution (Governor Burgum)		(\$20,990)		(\$20,990)
Total proposed funding changes	<u>(1.00)</u>	<u>(\$51,363)</u>	<u>\$2,084</u>	<u>(\$49,279)</u>

*NOTE: GO Division indicated goal is to reach a general fund reduction of 5 percent from Governor Dalrymple's budget (\$146,216 reduction from base budget)

February 3, 2017

HB1007 / HB1067

Attachment A

Department of Labor and Human Rights - Budget No. 406

House Bill No. 1007

Base Level Funding Changes

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073	15.00	\$2,347,241	\$437,832	\$2,785,073	0.00	\$0	\$0	\$0
2017-19 Ongoing Funding Changes												
Base payroll changes		\$4,987	\$2,084	\$7,071		\$4,987	\$2,084	\$7,071				\$0
Salary increase - Performance				0				0				0
Health insurance increase		40,068		40,068		40,068		40,068				0
Employee portion of health insurance		(20,990)		(20,990)				0		20,990		20,990
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)	(1.00)	(52,998)		(52,998)				0
Adjusts operating expenses		(32,409)		(32,409)		(32,409)		(32,409)				0
Total ongoing funding changes	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)	0.00	\$20,990	\$0	\$20,990
One-time funding items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)	0.00	\$20,990	\$0	\$20,990
2017-19 Total Funding	14.00	\$2,285,899	\$439,916	\$2,725,815	14.00	\$2,306,889	\$439,916	\$2,746,805	0.00	\$20,990 0.9%	\$0 0.0%	\$20,990 0.8%

Other Sections in Department of Labor and Human Rights - Budget No. 406

Burgum Executive Budget Recommendation
(Changes to Dalrymple Budget in Bold)

House Version

No other sections for this agency

February 7 2017

HB 1007 / HB 1067

Attachment A

Department of Labor and Human Rights - Budget No. 406
House Bill No. 1007
Base Level Funding Changes

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073	15.00	\$2,347,241	\$437,832	\$2,785,073	0.00	\$0	\$0	\$0
2017-19 Ongoing Funding Changes												
Base payroll changes		\$4,987	\$2,084	\$7,071		\$4,987	\$2,084	\$7,071				\$0
Salary increase - Performance				0				0				0
Health insurance increase		40,068		40,068		40,068		40,068				0
Employee portion of health insurance		(20,990)		(20,990)				0		20,990		20,990
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)	(1.00)	(52,998)		(52,998)				0
Adjusts operating expenses		(32,409)		(32,409)		(32,409)		(32,409)				0
Total ongoing funding changes	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)	0.00	\$20,990	\$0	\$20,990
One-time funding items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)	0.00	\$20,990	\$0	\$20,990
2017-19 Total Funding	14.00	\$2,285,899	\$439,916	\$2,725,815	14.00	\$2,306,889	\$439,916	\$2,746,805	0.00	\$20,990 0.9%	\$0 0.0%	\$20,990 0.8%

Other Sections in Department of Labor and Human Rights - Budget No. 406

Burgum Executive Budget Recommendation
(Changes to Dalrymple Budget in Bold)

House Version

No other sections for this agency

February 7, 2017

HB 1007 / HB 1067

Attachment B

17.0492.01001
Title.Prepared by the Legislative Council staff for
House Appropriations - Government
Operations Division Committee
February 6, 2017

Fiscal No. 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1007

Page 1, replace lines 12 through 17 with:

"Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
Total general fund	\$2,347,241	(\$40,352)	\$2,306,889
Full-time equivalent positions	15.00	(1.00)	14.00"

"SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$40,068 for increases in employee health insurance premiums from \$1,130 to \$1,249 per month.

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$2,423,746	(\$5,859)	\$2,417,887
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$38,268)	\$2,746,805
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
General fund	\$2,347,241	(\$40,352)	\$2,306,889
FTE	15.00	(1.00)	14.00

Department No. 406 - Labor Commissioner - Detail of House Changes

	Adds Funding for Base Payroll Changes ¹	Adds Funding for Health Insurance Increases ²	Removes FTE Position ³	Adjusts Funding for Operating Expenses ⁴	Total House Changes
Salaries and wages	\$7,071	\$40,068	(\$52,998)		(\$5,859)
Operating expenses				<u>(32,409)</u>	<u>(32,409)</u>
Total all funds	\$7,071	\$40,068	(\$52,998)	(\$32,409)	(\$38,268)
Less estimated income	<u>2,084</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,084</u>
General fund	\$4,987	\$40,068	(\$52,998)	(\$32,409)	(\$40,352)
FTE	0.00	0.00	(1.00)	0.00	(1.00)

¹ Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

² Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

³ One administrative assistant FTE position is removed. As a result of the 2015-17 biennium budget reductions, the department removed funding of \$42,794 for this FTE position for a total reduction of \$95,792.

⁴ Funding for operating expenses is reduced by \$32,409 to provide total operating expenses funding of \$328,918.

This amendment also adds a section detailing the amount of funding provided to the agency for employee health insurance premium increases.

Department 406 - Department of Labor and Human Rights
House Bill No. 1007

Dalrymple Executive Budget Comparison to Prior Biennium Appropriations

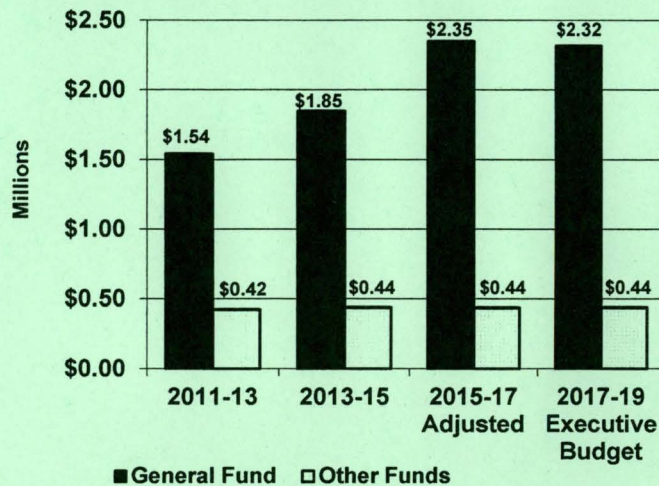
	FTE Positions	General Fund	Other Funds	Total
2017-19 Dalrymple Executive Budget	14.00	\$2,316,868	\$439,916	\$2,756,784
2015-17 Adjusted Legislative Appropriations ¹	15.00	2,347,241	437,832	2,785,073
Increase (Decrease)	(1.00)	(\$30,373)	\$2,084	(\$28,289)

¹The 2015-17 biennium agency appropriation amounts reflect general fund budget reductions made in August 2016.

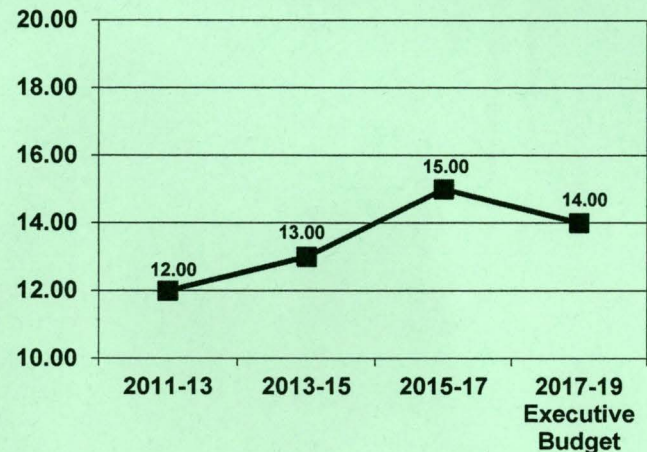
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2017-19 Dalrymple Executive Budget	\$2,316,868	\$0	\$2,316,868
2015-17 Adjusted Legislative Appropriations	2,347,241	0	2,347,241
Increase (Decrease)	(\$30,373)	\$0	(\$30,373)

Agency Funding



FTE Positions



Dalrymple Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2017-19 Dalrymple Executive Budget	\$2,316,868	\$439,916	\$2,756,784
2017-19 Base Level	2,347,241	437,832	2,785,073
Increase (Decrease)	(\$30,373)	\$2,084	(\$28,289)

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

Dalrymple and Burgum Executive Budget Highlights
(With First House Changes in Bold)

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$9,979 is for salary increases and \$40,068 is for health insurance increases. (The Burgum budget removed funding for salary increases and provided for employees to pay for a portion of health insurance.) The House removed funding for the salary increases.	\$50,047		\$50,047
2. Adjusts salaries, including the removal of funding for 1 FTE administrative assistant position	(\$52,998)		(\$52,998)
3. Adjusts operating expenses	(\$34,409)		(\$32,409)

Other Sections in House Bill No. 1007

Health insurance increase - Section 2 identifies the amount included in the agency appropriations relating to increases in employee health insurance premiums from \$1,130 to \$1,249 per month.

Continuing Appropriations

There are no continuing appropriations for this agency.

Deficiency Appropriation

There is no deficiency appropriation for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

House Bill No. 1246 - Relates to the filing of employment discrimination grievances with the Department of Labor and Human Rights and the federal Equal Employment Opportunity Commission.

Department of Labor and Human Rights - Budget No. 406
House Bill No. 1007
Base Level Funding Changes

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073	15.00	\$2,347,241	\$437,832	\$2,785,073
2017-19 Ongoing Funding Changes								
Base payroll changes		\$4,987	\$2,084	\$7,071		\$4,987	\$2,084	\$7,071
Salary increase - Performance				0				0
Health insurance increase		40,068		40,068		40,068		40,068
Employee portion of health insurance		(20,990)		(20,990)				0
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)	(1.00)	(52,998)		(52,998)
Adjusts operating expenses		(32,409)		(32,409)		(32,409)		(32,409)
Total ongoing funding changes	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)
One-time funding items								
No one-time funding items				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$61,342)	\$2,084	(\$59,258)	(1.00)	(\$40,352)	\$2,084	(\$38,268)
2017-19 Total Funding	14.00	\$2,285,899	\$439,916	\$2,725,815	14.00	\$2,306,889	\$439,916	\$2,746,805

Other Sections in Department of Labor and Human Rights - Budget No. 406

	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				House Version			
Health insurance increase					Section 2 identifies the funding increase for health insurance premium increases included in the agency's appropriation.			

Department 406 - Department of Labor and Human Rights

Appropriations Comparisons to the Original and Adjusted Base Budgets

General Fund Appropriations Adjustments (As a result of the August 2016 General Fund Budget Reductions)

	Ongoing	One-Time	Total
2015-17 original general fund appropriations	\$2,435,626	\$76,135	\$2,511,761
General fund reductions	(88,385)	(76,135)	(164,520)
Adjusted 2015-17 appropriations	\$2,347,241	\$0	\$2,347,241
Dalrymple Executive Budget changes	(30,373)	0	(30,373)
2017-19 Dalrymple Executive Budget	\$2,316,868	\$0	\$2,316,868

Summary of August 2016 General Fund Budget Reductions

	Ongoing	One-Time	Total
Reduced salaries and wages, including overtime	(\$22,794)	(\$20,000)	(\$42,794)
Reduced operating expenses, including funding for information technology paper file storage	(65,591)	(56,135)	(121,726)
Total reductions	(\$88,385)	(\$76,135)	(\$164,520)
Percentage reduction to ongoing and one-time general fund appropriations	3.63%	100.00%	6.55%

2017-19 Dalrymple Executive Budget Changes to the Original and Adjusted Base Budgets

	Changes to Original Budget	Budget Reduction Adjustments	Changes to Adjusted Budget
Adds funding for recommended salary and benefit increases	\$50,047	\$0	\$50,047
Base payroll changes	4,987	0	4,987
Adjusts salaries and wages, including the removal of 1 FTE administrative assistant position	(75,792)	22,794	(52,998)
Adjusts operating expenses	(98,000)	65,591	(32,409)
Total	(\$118,758)	\$88,385	(\$30,373)

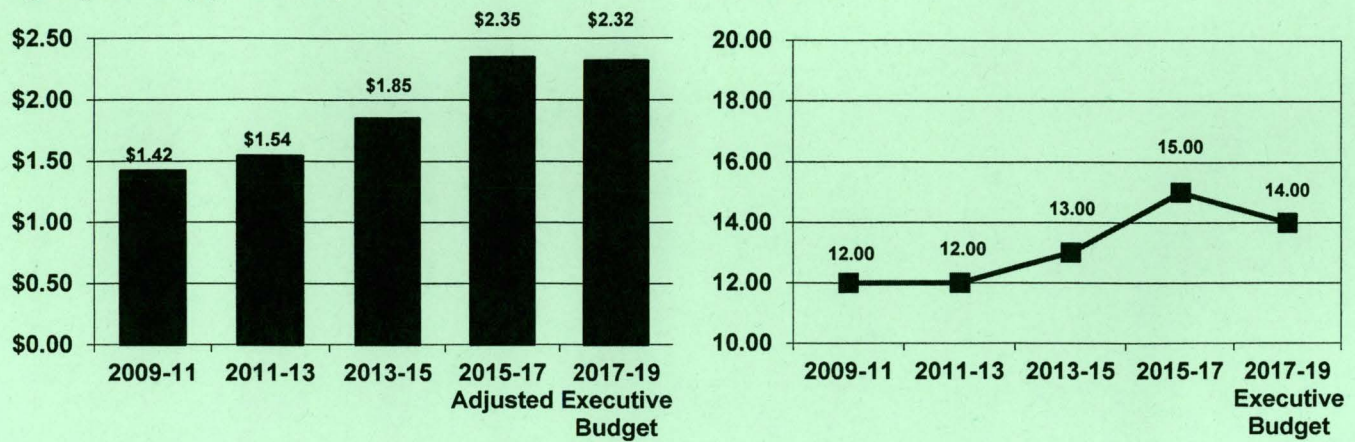
Department 406 - Department of Labor and Human Rights

Historical Appropriations Information

Ongoing General Fund Appropriations Since 2009-11

Agency Funding (in Millions)

FTE Positions



Ongoing General Fund Appropriations

	2009-11	2011-13	2013-15	2015-17 Adjusted	2017-19 Dalrymple Executive Budget
Ongoing general fund appropriations	\$1,421,583	\$1,540,125	\$1,847,425	\$2,347,241	\$2,316,868
Increase (decrease) from previous biennium	N/A	\$118,542	\$307,300	\$499,816	(\$30,373)
Percentage increase (decrease) from previous biennium	N/A	8.3%	20.0%	27.1%	(1.3%)
Cumulative percentage increase (decrease) from 2009-11 biennium	N/A	8.3%	30.0%	65.1%	63.0%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2011-13 Biennium

No major changes

2013-15 Biennium

- Added funding for 1 FTE compliance investigator position \$91,150

2015-17 Biennium

- Added funding for 2 FTE compliance investigator positions and related funding \$364,109

2017-19 Biennium (Dalrymple and Burgum Executive Budget Recommendations)

- Adjusts salaries, including the removal of funding for 1 FTE administrative assistant position (\$52,998)

HB 1007

3-2-17

#1



DEPARTMENT OF LABOR AND HUMAN RIGHTS

Testimony on HB 1007

PREPARED FOR THE SENATE APPROPRIATIONS COMMITTEE –
MARCH 2, 2017

MICHELLE KOMMER, LABOR COMMISSIONER

Cover page

#1

Testimony on HB 1007

Prepared for the Senate Appropriations Committee

March 2nd, 2017

I. Introduction

Good afternoon Chairman Holmberg and members of the committee, my name is Michelle Kommer and I am the Commissioner of Labor for the North Dakota Department of Labor & Human Rights.

II. Who We Are and What We Do

a. Our Responsibilities

I would like to begin with an overview of the scope of the Department's responsibilities. The Department has three primary areas of responsibility. See Slide 2 in handout accompanying testimony.

- i. First, the Department establishes and enforces laws and regulations relating to the wages and working conditions of employees in North Dakota. This is our Wage and Hour Division. The Wage and Hour Division enforces minimum wage and overtime laws and regulations (N.D.C.C. ch. 34-06). In addition, the Division enforces North Dakota's laws and regulations dealing with equal pay for men and women, child labor, labor unions, employment agencies, and wage collection (N.D.C.C. chs. 34-06.1, 34-07, 34-12, 34-13, and 34-14). The Wage and Hour Division receives and investigates claims of unpaid wages or overtime, failure to pay minimum wage, misclassification of employees, and other general complaints that North Dakota's labor laws are not being followed. The Division also reviews requests to issue youth employment certificates for 14 and 15-year old workers. See Slide 3 in handout accompanying testimony.
- ii. Second, the Department administers and enforces North Dakota's human rights and housing laws. This is our Human Rights Division. The Human Rights Division administers and enforces the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws,

(N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and works to prevent discrimination through education about the rights and responsibilities provided under North Dakota's human rights and housing laws. Finally, the Human Rights Division handles complaints of retaliation under North Dakota's "whistleblower" law (N.D.C.C. § 34-01-20) and Public Employee Relations Act (N.D.C.C. § 34-11.1-04.1).

In addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination, the Department's Human Rights Division also investigates cases for the United States Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC). See Slide 4 in handout accompanying testimony.

- iii. Finally, the Department has a statutory responsibility to educate the public. According to North Dakota Century Code, the Commissioner of Labor is required to "improve working conditions and living conditions of employees and advance their opportunities for profitable employment", to "...foster, promote, and develop welfare of both wage earners and industries in N.D.", and "...promote friendly and cooperative relations between employers and employees." To do this, the Department broadens awareness of wage and hour issues and human rights protections through public education and outreach, working with groups representing human rights, business, labor, professional, and non-profit organizations. The Department provides speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations,

government agencies, and other community groups. The Department conducted 62 presentations and 3 conventions (booth) for a total of 65 educational events during the first eighteen months of this biennium (7/1/15 – 12/31/16). See Slide 5 in handout accompanying testimony.

b. Our Team.

- i. During the 2015-17 biennium, the Department of Labor's team included 15 FTE's, inclusive of the Commissioner, the Human Rights Director, ten investigators, two administrative employees, and one vacant administrative position¹. See Slide 6 in handout accompanying testimony. As you will hear in the budget discussion to follow, one FTE has been eliminated from the Department's proposed 2017-19 budget. For reasons to be further discussed, it is imperative to retain the remaining 14 FTE's in the 2017-19 biennium budget.

c. Our Work.

- i. Today, the Department is contacted by aggrieved employees by phone, mail, email, fax, and in person. In the first eighteen months of this biennium, the Department has received **16,034** contacts from citizens via one of these mechanisms. See Slide 7 in handout accompanying testimony. The Department's website contains basic information to guide citizens in understanding the Department's role, their rights, the relevant statutes and regulations, and how and under what circumstances to file a claim with the Department. The website also contains links to printable (but not submit-able) forms, thus the forms required to interact with the Department must be word-processed or hand-written, printed, and transmitted to the department in

¹ The Administrative Assistant position that was vacated in March of 2016 was not replaced in anticipation of budget cuts. See "Budget Request" section below for additional detail.

person, or via mail, fax or email. Once received, our investigators interface with claimants and responding parties in person or via phone, fax, mail and email. Investigations are paper-intense, with a significant volume of documentation exchanged between the parties in paper form, as our system remains paper-based.² In contrast, a review of the processes used by peer agencies in other states, as well as the federal system indicates that the majority of states (28) have transitioned to at least partially automated systems to better serve stakeholders by improving process efficiency and decreasing the time spent per investigation.

III. Our Challenge.

- a. Claims acceleration. For the past five years, the Department has experienced unprecedented activity, consistent with the growth of the labor force and labor market activity in western North Dakota. Wage and employment discrimination claims began to accelerate rapidly during FY12³. By FY13, wage claims had more than doubled compared to the average of the prior eight years (FY05 – FY12)⁴. Employment discrimination claims increased by 16% in that same timeframe⁵, and continued to increase another 22% through 2015⁶. See Slide 9 in handout accompanying testimony.
- b. Investigator caseload. At the time of the claims acceleration in 2012, our average investigator caseload was 26. At this case level, the Department was able to close claims within timeframes set forth

² The one-time budget of \$56,000 for the "paperless project" was cut from the 2015-17 budget during 2016 reductions.

³ The Department also receives claims relating to housing discrimination, which represented an average of 3% of total claims from FY15-16, as well as discrimination in public services, public accommodations, and credit. This "other" claim volume is comparatively small, representing an average of 6% of total claims opened in FY15 – FY16.

⁴ The average of wage claims received FY-5 – 12 was 336 claims, while 764 wage claims were received in 2013 alone.

⁵ The average of employment claims received FY-5 – 12 was 198 claims, while 231 employment claims were received in 2013 (16.41% increase).

⁶ Employment discrimination claims increased from 231 in FY2013 to 298 in FY2015

by regulation, rule, and internal policy.⁷ After FY2012, the investigator caseload increased significantly, more than tripling from FY 2012 to FY 2016. See Slide 10 in handout accompanying testimony.

- c. Average time to close a case. Beginning in 2012 the Department experienced an increase in time to close cases, relating to the increase in cases, as well as staff turnover connected to the intensified workload – the Department lost and replaced eight investigators from 2013 to 2016. See Slide 11 in handout accompanying testimony.
- d. Backlog. Although we have seen a recent decrease in claims activity⁸, we continue to contend with backlog that accumulated during the past five years, while making efforts to reduce the average time a claim is open, and investigator caseload⁹. See Slide 12 in handout accompanying testimony.
- e. Progress! Despite the intense workloads of the past several years, the team has made strides recently, having reduced the pending caseload from 613 in June 2016, to 469 as of February 28th, 2017. In order to continue this early trend, it is imperative our team remain intact.

IV. 2017-19 Goals

- a. Team infrastructure. Our investigative team increased by two during 2015, allowing us to “put a finger in the dike” of our claims volume, but the intense volume continued, and staff turnover connected to the intense workload affected our ability to significantly reduce claims backlog, average days open, and

⁷ Housing discrimination claims must be closed within 100 days per our cooperative agreement with the U.S. Department of Housing and Urban Development; Per N.D.A.C. §46-04-01-08.8 the Department endeavors to conclude human rights investigations within 180 days; Per internal guidelines the Department's goal is to resolve wage claims within 90 days.

⁸ Wage and employment claims opened in FY13 = 995, FY14=966 , FY15=937, FY16=777, and FY17=514 (annualized). Housing, public service and accommodation claims are not included in these numbers.

⁹ The average investigator caseload was 26 in FY12, as compared to 61 in FY16.

investigator caseload. During the next biennium we will continue to identify levers to maximize the investigative team, including streamlining investigative procedures and developing reference documents.

- b. Process efficiencies. Today the Department's work processes are manual. Examples include claim-filing by paper, paper-based investigations and files, and limited access to performance data. As mentioned, 28 states and the Equal Employment Opportunity Commission (EEOC) have automated the claims filing process to some extent. In the next two years we will work toward streamlining our work processes to prepare for better financial times which will afford us the opportunity to responsibly leverage technology.
- c. Proactive education. Proactively educating employees and employers regarding common issues will serve to improve employer practices, hence, reduce incoming claims. This may include improved website resources (overall organization, FAQ's, revised forms, etc.), outbound education (conferences, seminars, etc.), and other educational materials.

- V. **Budget Request.** The House version of the Department's budget includes \$2,746,805 of total funding. Of this, 16% (\$439,916) is federal funding received from the EEOC and HUD through our work-sharing agreements. Of the total funding, 88% is salaries and wages, and 12% is operating expenses.

The information requested by Chairman Holmberg follows here:

A listing of the proposed budget reductions identified by your department to meet the Governor's 90% budget request guideline.

*Between January and August 2016 the Department's budget was reduced by **\$164,520 in total**. Reductions included the following:*

- \$20,000 one-time reduction in overtime wages which was budgeted to reduce case backlog
- \$56,135 one-time reduction for "paperless" project which would have converted the Department's paper-based system to images

- \$22,794 in salaries & wages relating to staff turnover and vacancies
- \$5,000+ reduction in related expenses (office supplies, IT equipment, etc.)
- \$20,000 reduction in travel expenses which was budgeted to provide required HUD training to investigators (required before an investigator can staff a housing claim)
- \$10,000 reduction in professional development relating to staff training
- \$30,000+ reduction in other operational expenses (supplies, postage, printing, facilities, etc.)

A comparison of the optional adjustment requests made by your department to those included in the executive recommendation.

None.

A summary of changes recommended by Governor Burgum and those made by the House.

Governor Burgum recommended that employees pay a portion of the health insurance premium (\$20,990). This recommendation was not adopted by the House. No other changes were made by the House.

An itemized listing of any changes your department is asking the committee to make to your budget.

None.

VI. Conclusion

In the past five years, the department seen remarkable growth in claims, leading to a significant increase in case backlog, time to resolve, and investigator caseload. While claims have decreased overall in the most recent years, and the Department has made significant strides during this biennium, the claims backlog and intense investigator caseloads persist. The budget presented for your consideration has been reduced to the extent possible without the risk of reversing this early but positive trend.

Thank you and I am happy to answer any questions you may have.



1

Department Scope



Wage & Hour Division

- Minimum Wage & Overtime, Equal Pay, Child Labor, Labor Unions, Employment Agencies, Wage Collection



Human Rights Division

- Discrimination in employment, housing, public services, public accommodations, and credit transactions.



Education & Awareness

- Broaden awareness of wage and hour issues and human rights protections through public education and outreach.

2

Wage & Hour Division



Minimum Wage & Overtime, *N.D.C.C. ch. 34-06*



Equal Pay, *N.D.C.C. ch. 34-06.1*



Child Labor, *N.D.C.C. ch. 34-07*



Labor Union, *N.D.C.C. ch. 34-12*



Employment Agency, *N.D.C.C. ch. 34-13*



Wage Collection, *N.D.C.C. ch. 34-14*

3

Human Rights Division

Discrimination Claims



Human Rights Act, *N.D.C.C. ch. 14-02.4*



ND Housing Discrimination Act,
N.D.C.C. ch. 14-02.5

Retaliation Claims



ND "Whistleblower" law, *N.D.C.C. ch. 34-01-20*



ND Public Employee Relations Act,
N.D.C.C. ch. 34-11.1-04.1

4

Education & Awareness

7/1/15 – 12/31/16

Discrimination - Housing	17
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Discrimination - General	37
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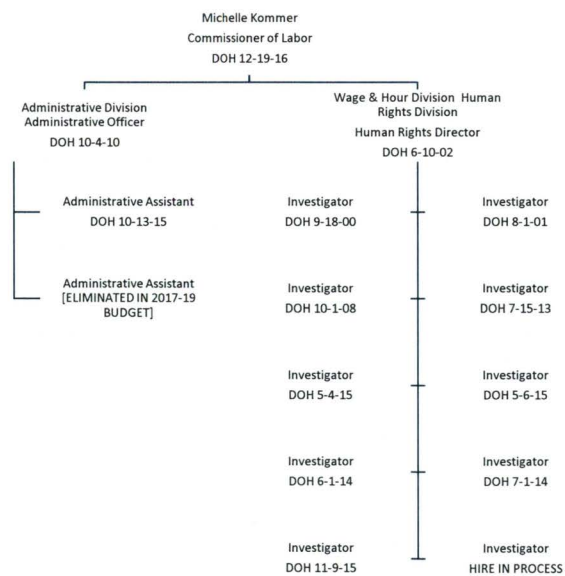
Various	8
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Convention Booths	3
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65

5

Our Team



6

Our Work



- 16,034 contacts from citizens 7/1/15 – 12/31/16

• Paper-based processes

- ❑ "Paperless" project cut from budget in 2016
- ❑ The majority of states have automated claims processes

7

Our Challenge

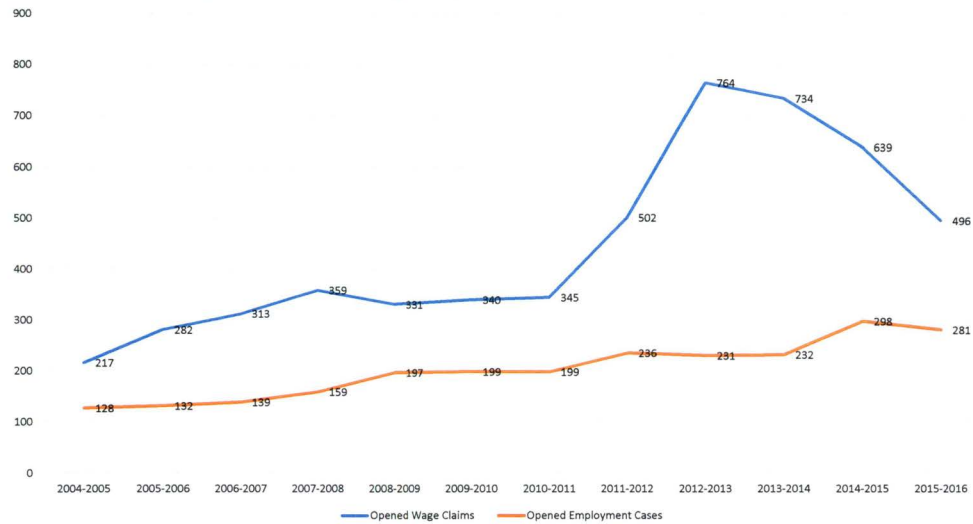
- Claims acceleration
 - By 2013, wage claims had more than doubled from the average of the prior 8 years; employment claims increased 16% during the same time, and continued to increase another 22% through 2015.
- As a result, claims backlog, caseload per investigator, and average days open are significant.

Fiscal Year	ND Labor force
2004-2005	354,877
2005-2006	360,660
2006-2007	367,035
2007-2008	372,304
2008-2009	367,708
2009-2010	378,402
2010-2011	388,123
2011-2012	397,248
2012-2013	406,721
2013-2014	415,807
2014-2015	413,738
2015-2016	419,430



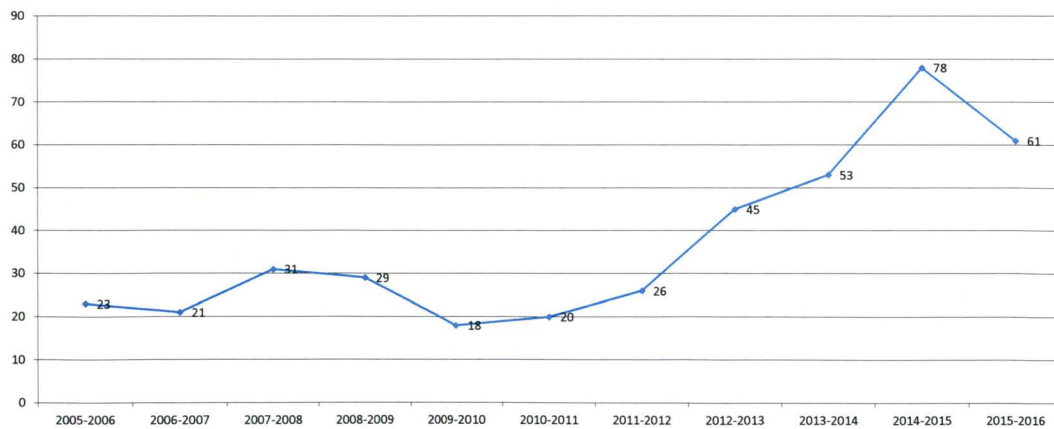
8

Wage and Employment Claims Opened



9

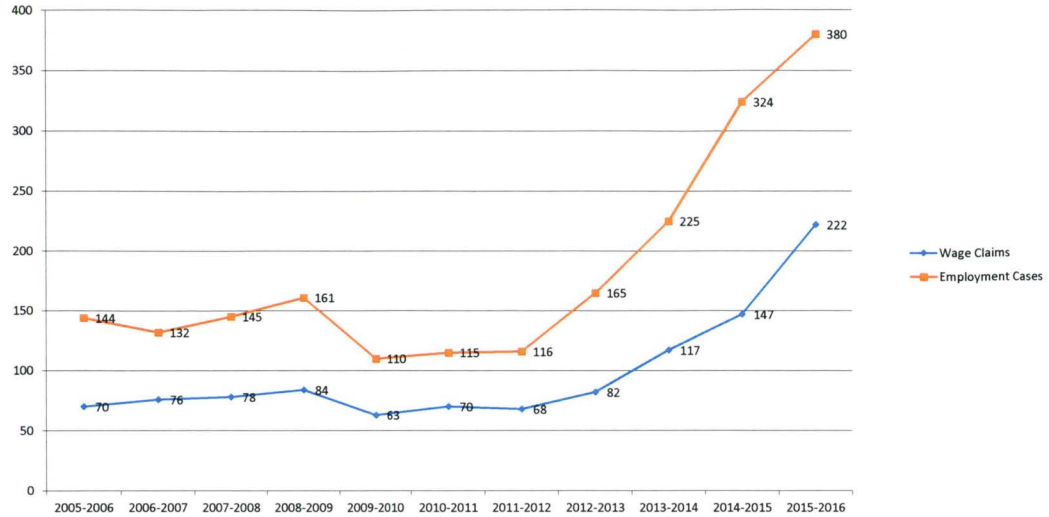
Average Investigator Caseload



10

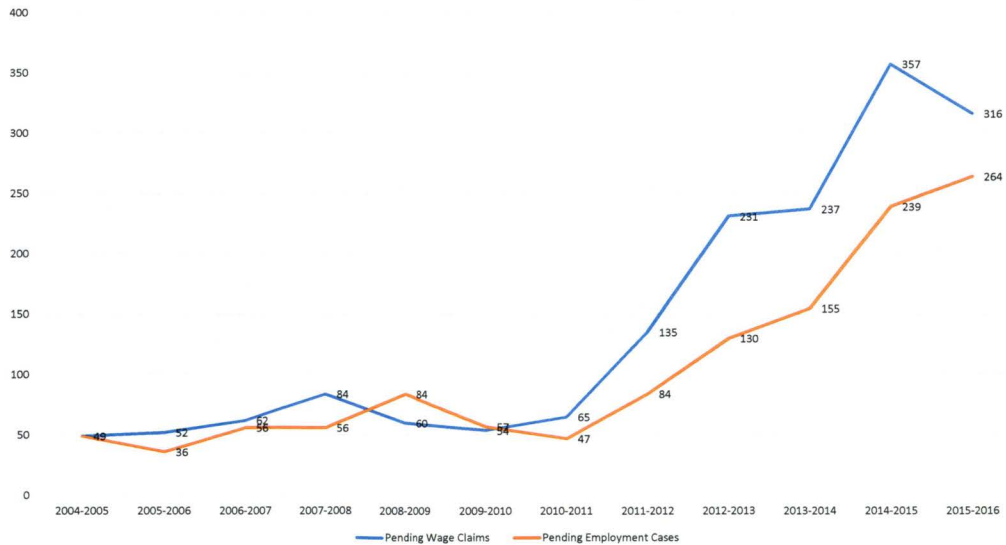
12

Average Days To Close



11

Cases Pending



12

Progress!



Total pending cases have been reduced:

- 613 at 6/30/16...
- ...469 at 2/28/17

13

2017-19 Goals

1. Team infrastructure
2. Process efficiencies
3. Proactive education

14

14

2017-19 Budget

\$2,746,805

- 16% federally funded
- Total funding:
 - 88% = salaries & wages
 - 12% = operating expenses

15

THANK YOU



15

Doug Burgum
Governor

Michelle Kommer
Commissioner



3-27-17 HB1007 #1
State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

March 26, 2017

Chairman Holmberg and Members of the Senate Appropriations Committee,

Thank you for considering my request to make a statutory modification through my appropriations bill. As you know, I am new to my role as Labor Commissioner (12/19/16), and have focused most of my early attention on getting to know my budget and my team, and obtaining a high-level understanding of our challenges and opportunities. As mentioned in the appropriations hearing, our biggest current challenge is our complaints backlog, and I'm eager to dig in to identify opportunities to achieve efficiencies in our system.

While I've not been able to dive deeply into our statute or administrative rules for this purpose, I am aware of a statutory change that would reduce our workload and conserve state and taxpayer resources without compromising the rights of our citizens, and thus, I am hoping the committee would consider a change to our appropriations bill to address this, since it is too late in the session to address this in another way.

From 2014 to 2016, nearly 20% of our "other human rights" complaints were filed against correctional facilities. While this does not represent a significant number of complaints compared to employment and housing discrimination complaints¹, these complaints are typically more resource-intense than other complaints due to their unique nature, and require the resources of both the Labor Department and correctional facility staff to coordinate cooperation and availability of claimants, witnesses, etc.

Examples of these complaints follow:

I have been given less food than other inmates who are not in my protected class. ND1407-027PS

I received a disciplinary sanction and a lock down for using f-word; however, inmate [NAME, not of the same protected class] received only two days of lock down for making threats to me. ND1407-027PS

The toilet in my cell was not working properly, and I complained to the correctional staff; however, the Respondent did not fix it within a reasonable time [compared to repairs made for inmates not from the same protected class]. ND1407-034PS

¹ From 2014 to 2016, 67 "other human rights" complaints were filed – these include allegations of discrimination in public service, public accommodation, and credit transactions. Of these, 18% (12) were filed against correctional facilities. During this same timeframe, there were 656 employment discrimination complaints, and 103 housing discrimination complaints filed.

1
P 2

I received a money order for \$60.00 from [NAME]. Due to medical bills 60% was removed from my account leaving \$24.00. On July 2, 2015, I destroyed a TV that was already broken and the Respondent removed the \$24.00 left in my account. ND1601-005PS

Importantly, inmates already have access to alternative matters of redress for these types of complaints inside the correctional system, so the ability for the Department to decline review of these complaints (or have the discretion to decline review) does not leave the inmate without protection, but rather encourages use of a more efficient means to review these complaints.

There are two ways to accomplish this. Either option would conserve valuable state and taxpayer resources. First, *similar to federal law and the law of the majority of states*, the statute could exclude inmates of our correctional systems from filing complaints in the first place. This would be accomplished by carving out correctional systems from the definition of "public service" as follows:

N.D.C.C. 14-02.4-02. Definitions

15. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision hereof, or a public corporation, with the exception of a correctional facility as defined in N.D.C.C. 12-44.1-01 (3), the penitentiary and affiliated facilities as defined in N.D.C.C. 12-47-01, and the youth correctional center as defined in N.D.C.C. 12-46-01.

Alternatively, a statutory change that does not prevent the inmate from filing a complaint, but allows the Department to close a complaint without investigation, where it is apparent that no probable cause would be found.

N.D.C.C. 14-02.4-23. Complaints – Probable Cause – Administrative hearing.

2. *Unless the complaint is resolved through informal negotiations, conciliation, or is otherwise administratively closed, the department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint. The department may determine no probable cause exists to believe a discriminatory practice has occurred based upon the written response submitted to the department in answer to a complaint. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint, the department shall promptly dismiss all or a portion of the complaint.*

Thank you for considering this request. I'm available to provide information at your convenience.



Michelle Kommer
Labor Commissioner

Doug Burgum
Governor

Michelle Kommer
Commissioner



HB 1007 3-27-17
State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

March 23, 2017

Chairman Holmberg and Members of the Senate Appropriations Committee,

Thank you for considering my request to make a statutory modification through my appropriations bill. As you know, I am new to my role as Labor Commissioner (12/19/16), and have focused most of my early attention on getting to know my budget and my team, and obtaining a high-level understanding of our challenges and opportunities. As mentioned in the appropriations hearing, our biggest current challenge is our claims backlog, and I'm eager to dig in to identify opportunities to achieve efficiencies in our system.

While I've not been able to dive deeply into our statute or administrative rules for this purpose, I am aware of a statutory change that would reduce our workload and conserve state resources, while continuing to serve the interests of aggrieved employees, and would be consistent with the practices of other states in the processing of wage claims. I am hoping the committee would consider a change to our appropriations bill to address this, since it is too late in the session to address this in another way.

Today, we accept wage claims for any amount. In the process of researching each of the 49 other states' wage claims practices, I have learned that in order to ensure the most prudent use of state resources and tax payer dollars *while* protecting the rights of employees, many states limit the dollar amount of wage claim filings (e.g. only allow claims to be filed for amounts between \$50 and \$10,000).

This could be accomplished with a simple statutory change:

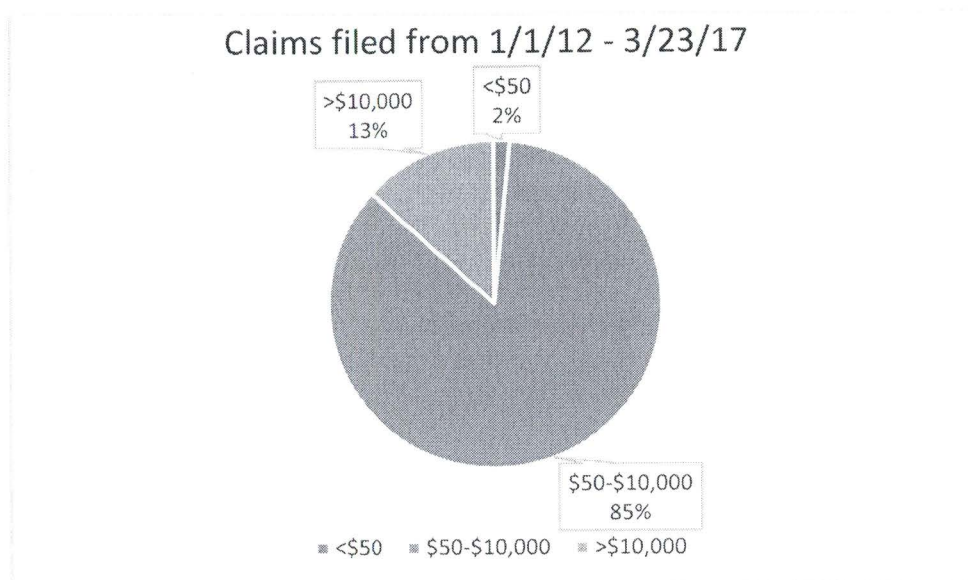
N.D.C.C. § 34-14-09. Employees' remedies - Limitation on wages collectible.

An employee may file a claim for wages due under this chapter or under chapter 34-06 with the department for amounts between \$50 and \$10,000 not later than two years from the date the wages are due. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. Whenever the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With

the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.

#2
P2

Based on wage claim data from 2012 to present, the impact of this change, while not dramatic, helps achieve a reasonable balance between protecting the rights of employees and the responsible use of state resources.



Thank you for considering this request. I'm available to provide information at your convenience.

Michelle Kommer
Labor Commissioner

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1007

Page 1, line 2, after "rights" insert "and to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages"

Page 1, replace lines 12 through 16 with:

"Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	361,327	(32,409)	328,918
Total all funds	\$2,785,073	(\$41,171)	\$2,743,902
Less estimated income	437,832	2,084	439,916
Total general fund	\$2,347,241	(\$43,255)	\$2,303,986"

Page 1, line 19, replace "\$40,068" with "\$37,165 from the general fund"

Page 1, line 20, replace "\$1,249" with "\$1,241"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-15. Public services - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to ~~a person~~ an individual access to the use of and benefit thereof, or to give adverse or unequal treatment to a ~~person~~ an individual in connection therewith because of the ~~person's individual's~~ race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
2. Subsection 1 does not apply to:
 - a. An individual committed to the legal and physical custody of the department of corrections and rehabilitation; or
 - b. An individual confined in a correctional facility, as defined in section 12-44.1-01.

SECTION 4. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within two years from the date the wages are due and the amount of the wages claimed due is at least two hundred dollars.~~ For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever~~ If the department denies the claim for wages due because the

#1
P2
amount claimed is less than two hundred dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1

2. If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. ~~With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee."~~

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1007 - Labor Commissioner - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$2,423,746	\$2,417,887	(\$2,903)	\$2,414,984
Operating expenses	361,327	328,918		328,918
Total all funds	\$2,785,073	\$2,746,805	(\$2,903)	\$2,743,902
Less estimated income	437,832	439,916	0	439,916
General fund	\$2,347,241	\$2,306,889	(\$2,903)	\$2,303,986
FTE	15.00	14.00	0.00	14.00

Department No. 406 - Labor Commissioner - Detail of Senate Changes

	Adjusts Funding for Health Insurance Increases ¹	Total Senate Changes
Salaries and wages	(\$2,903)	(\$2,903)
Operating expenses		
Total all funds	(\$2,903)	(\$2,903)
Less estimated income	0	0
General fund	(\$2,903)	(\$2,903)
FTE	0.00	0.00

¹ Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month. Section 2 of the bill is also adjusted to reflect the revised premium rate.

This amendment also:

- Amends North Dakota Century Code Section 14-02.4-15 to preclude correctional system inmates from filing complaints with the Department of Labor and Human Rights.
- Amends Section 34-14-09 to provide that an employee may file a wage complaint with the department for disputes of \$200 or more. The department is to refer an employee to the appropriate small claims court if the wage dispute is under \$200.

#1
P3

April 11, 2017

HB1007

Attachment A

Department of Labor and Human Rights - Budget No. 406
House Bill No. 1007
Base Level Funding Changes

	House Version				Senate Version				Senate Changes to House Version Increase (Decrease) - House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2017-19 Biennium Base Level	15.00	\$2,347,241	\$437,832	\$2,785,073	15.00	\$2,347,241	\$437,832	\$2,785,073	0.00	\$0	\$0	\$0
2017-19 Ongoing Funding Changes												
Base payroll changes		\$4,987	\$2,084	\$7,071		\$4,987	\$2,084	\$7,071				\$0
Health insurance increase		40,068		40,068		37,165		37,165		(2,903)		(2,903)
Adjusts salaries, including the removal of funding for 1 FTE position	(1.00)	(52,998)		(52,998)	(1.00)	(52,998)		(52,998)				0
Adjusts operating expenses		(32,409)		(32,409)		(32,409)		(32,409)				0
Total ongoing funding changes	(1.00)	(\$40,352)	\$2,084	(\$38,268)	(1.00)	(\$43,255)	\$2,084	(\$41,171)	0.00	(\$2,903)	\$0	(\$2,903)
One-time funding items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(1.00)	(\$40,352)	\$2,084	(\$38,268)	(1.00)	(\$43,255)	\$2,084	(\$41,171)	0.00	(\$2,903)	\$0	(\$2,903)
2017-19 Total Funding	14.00	\$2,306,889	\$439,916	\$2,746,805	14.00	\$2,303,986	\$439,916	\$2,743,902	0.00	(\$2,903)	\$0	(\$2,903)

Other Sections in Department of Labor and Human Rights - Budget No. 406

	House Version	Senate Version
Health insurance increase	Section 2 identifies the funding increase for health insurance premium increases included in the agency's appropriation.	Section 2 identifies the funding increase for health insurance premium increases included in the agency's appropriation.
Discriminatory practices		Section 3 amends Section 14-02.4-15 to preclude correctional system inmates from filing complains with the Department of Labor and Human Rights.
Claims for wages		Section 4 amends Section 34-14-09 to provide that an employee may file a wage complaint with the Department of Labor and Human Rights for disputes of \$200 or more. The department is to refer an employee to the appropriate small claims court if the wage dispute is under \$200.

HB 1007

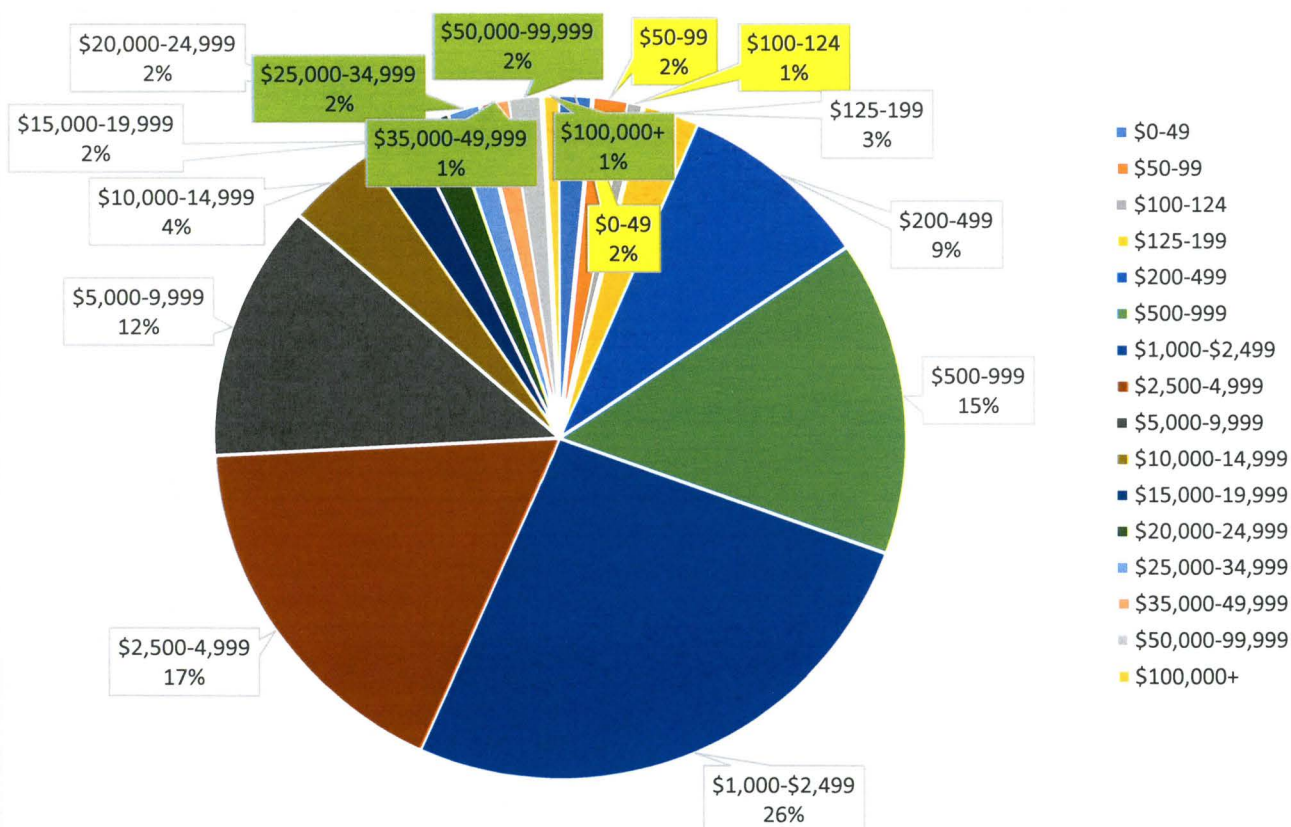
Conference Committee

April 11th, 2017

Wage Claim Floor/Ceiling

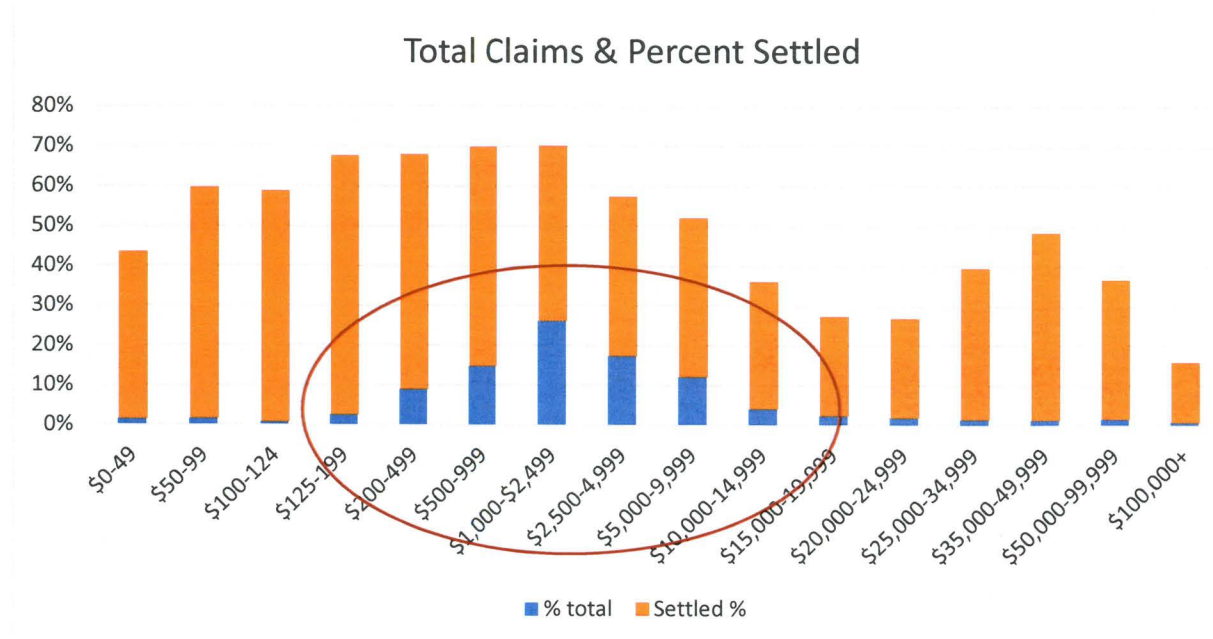
Currently the Department receives wage claims for any amount. The Department collects information from the claimant (employee) and respondent (employer), and conducts an investigation to determine if there is merit to the claim. Claims include failure to pay bonus, commissions, minimum wage, overtime, vacation, and wages, as well as the employer's unauthorized deductions.

Following is a chart which breaks down claims volume since 2012 by claim amount. The pie chart represents a total of 3,173 claims.

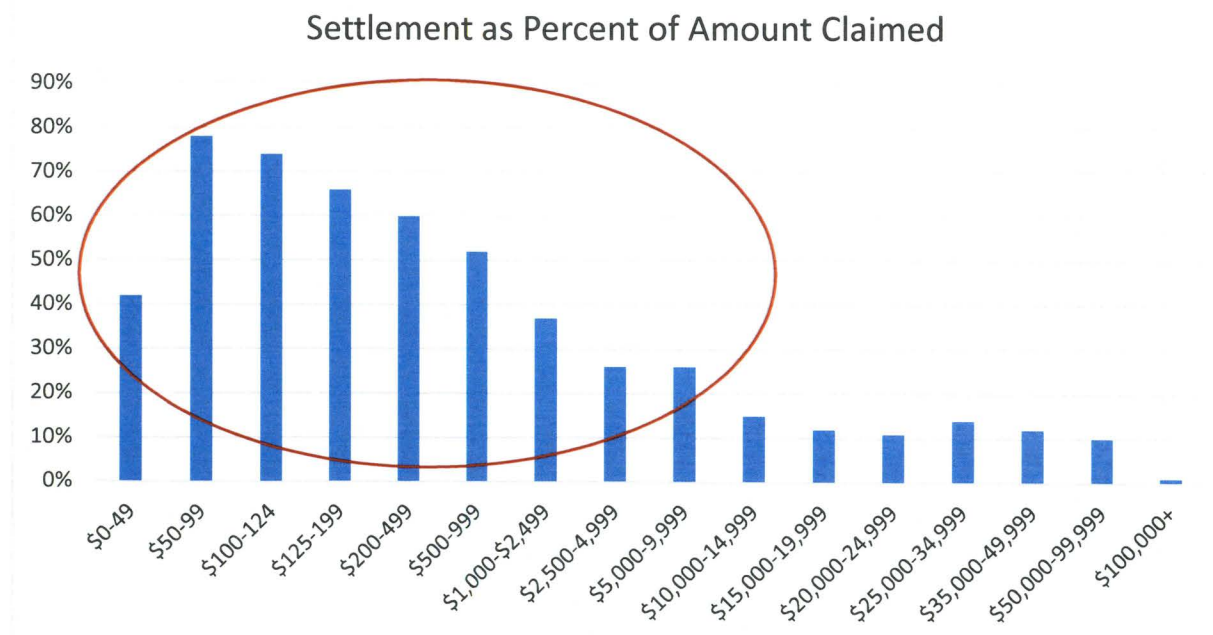


In addition to this chart which breaks down historical claims by amount, the following charts contain data to inform a decision regarding the most appropriate claim floor and ceiling for a wage claim.

The following chart includes the total claims filed and the percent of those claims which were settled.¹ You can identify a bell curve where settlement efforts are most effective.

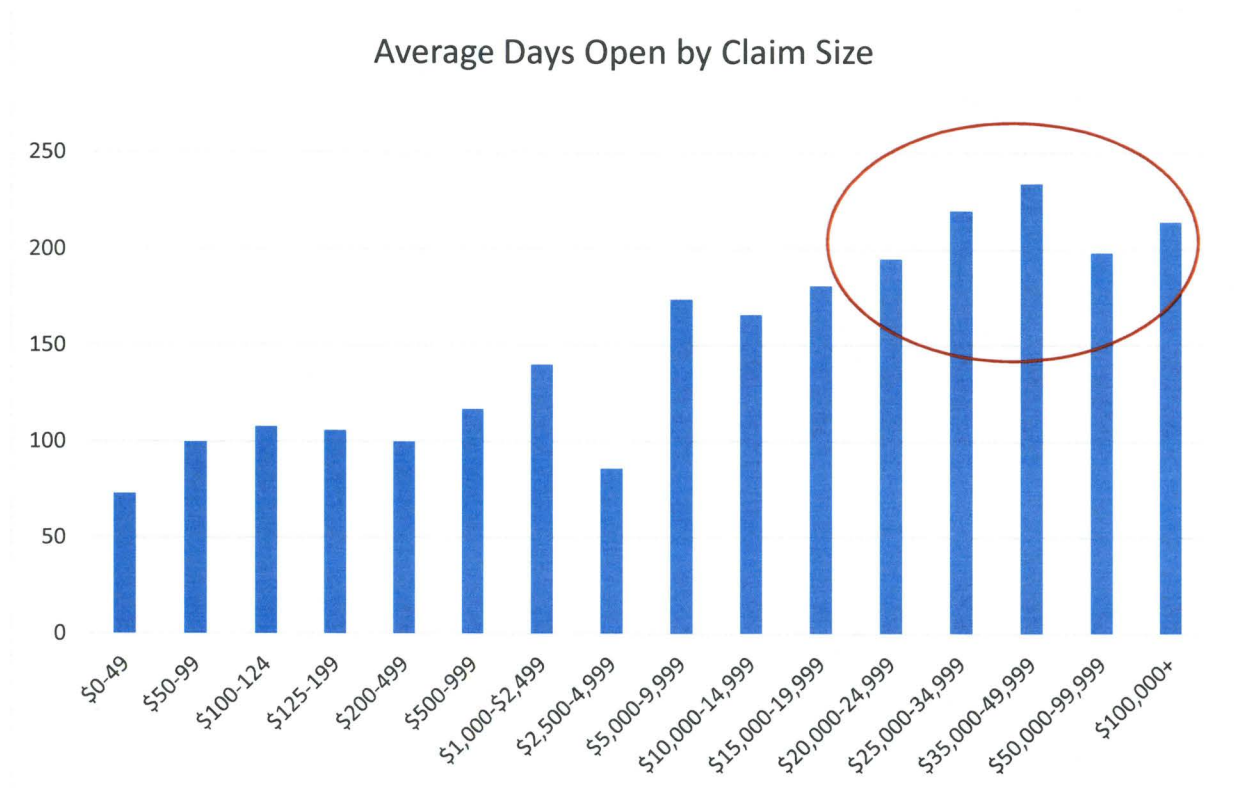


The next chart shows the percentage of settlement compared to the amount claimed. You can see from this chart that as the claim amount rises, settlement as a percentage of claim decreases.



¹ Employer does not admit wrongdoing when a claim is settled, and a settlement is not necessarily an indication of wrongdoing. The employer can settle at any time prior to, during, or at the conclusion of the investigation.

Finally, the following chart shows the average number of days a claim is open by claim size. This chart illustrates that the larger the claim, the more time is required to resolve it, as larger claims tend to include multiple, complex issues.



At the Senate appropriations hearing, a floor of \$50 and a ceiling of \$10,000 was proposed, based on claim volume, claim complexity, and resolution rates. On the pie chart above you can see that from 2012 to present, 2% of claims were below \$50, and 14% of claims were above \$10,000.

The bill passed on the Senate floor with a \$200 floor, representing 8% of historical claims (2012 to present), and no ceiling. A floor of \$200 represents 4 days of work – nearly a week – for a person making minimum wage ($\$200/7.25 = 27.58$ hours). The lack of ceiling diverts Department resources to resolving issues which the District Court may be better positioned to address, due to their complexity.

The information before you indicates there is a “zone of effectiveness” wherein the Department of Labor is able to efficiently resolve claims with strong settlement results.

For your consideration, as based on the data above, reasonable floor/ceiling ranges may be as follows:

\$50-125 TO \$10,000-25,000

The following chart illustrates the percentage of historical claims represented at each stratification:

Floor	Ceiling
\$50 (2%)	\$10,000 (14%)
\$100 (4%)	\$15,000 (10%)
\$125 (5%)	\$20,000 (8%)
	\$25,000 (6%)

The implementation of a floor and ceiling consistent within these ranges will make the best use of taxpayer resources by focusing the Department's efforts where there is the largest and most efficient return, while decreasing the Department's workload, creating a positive "circular reference", and allowing the Department to reduce its claim backlog, time to resolve a claim, and investigator caseload, all of which are at all-time highs.