

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/22/2017**

Amendment to: SB 2311

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$60,000	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

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

Bank of North Dakota is required to provide an \$8 million Letter of Credit in order to cover unemployment insurance liability in connection with an airport construction project in N.W. ND. Fiscal impact is connected to a one-time fee collection with issuance of the Letter of Credit.

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

The Letter of Credit one-time fee collection of \$60,000 is anticipated to occur during the 2017-19 biennium. This amount is determined by taking the \$8 million Letter of Credit requirement times 3/4% of one percent which equals \$60,000.

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

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

The Letter of Credit one-time fee collection of \$60,000 in revenue is anticipated to occur during the 2017-19 biennium. This amount is determined by taking the \$8 million letter of credit requirement times 3/4% of one percent which equals \$60,000.

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

N/A

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

N/A

**Name:** Kelvin Hullet

**Agency:** Bank of North Dakota

**Telephone:** 701-328-5689

**Date Prepared:** 03/22/2017

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/16/2017**

Amendment to: SB 2311

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$11,565	\$0	\$49,151	\$0	\$41,634
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

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

The bill allows cities and counties to assign liability for unemployment insurance large construction projects to up to 5 general or prime contractors. Other project owners are limited to one bond assignment. Fiscal costs are associated with the administration of the additional bonding procedures.

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

Each of the three sections of the bill affect the fiscal impact of the bill. Section 1 provides the primary basis for the fiscal impact. The impact within this section is that it provides for an expansion of bonding from one to five general or prime contractors. This expansion requires additional administrative activities related to the additional bonding. Section 2 provides for a retroactive period that does not increase the overall fiscal impact but provides for a fiscal impact beginning in the 2015-2017 biennium. Section 3 provides for an emergency clause that further clarifies that administrative activities surrounding this bill will begin within the 2015-2017 biennium. Section 3 does not increase the overall fiscal impact, but provides for immediate expenditures.

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

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

No additional revenues will be received as a result of this bill.

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

All expenditures noted will come from the federal funds appropriated to Job Service by the United States Department of Labor, Job Service receives no state general fund or other state funds to administer the Unemployment Insurance Program. As a result, all expenditures are noted as "Other Funds". The expenditures result from the additional administrative activities related to the additional bonding provided for within the bill. By

expanding the bonding to up to five general or prime contractors, 144 hours of additional Job Service administrative work will occur for each city/county construction project exceeding \$50 million in costs. There is an assumption that approximately two of these types of projects will occur each year. In order to calculate the costs, each activity associated with bonding was reviewed and the hours associated with each activity was calculated to the hour. These hours were then multiplied by the hourly rate of staff working on these activities. The 2015-2017 biennium expenditures also include 80 hours for process and procedure development, implementation, and training/education of staff and political subdivision staff. It should be noted that Job Service will not receive any additional funding for these activities. As a result, the additional administrative time associated with this bill will likely provide a negative impact on other facets of the administration of the Unemployment Insurance program. Job Service will work to prioritize work and reduce any impacts, but without additional staff or funds to administer the expansion provided for within the bill, staff will be pulled from other activities to administer the bonding requirements. The impact is expected to be in the timeliness of services provided and the availability of staff to assist employers with other activities.

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

As a federally funded program, the Unemployment Insurance program will not receive any additional appropriation related to the administration of this expansion of the large construction project bonding program.

**Name:** Darren Brostrom

**Agency:** Job Service North Dakota

**Telephone:** 701-328-2843

**Date Prepared:** 02/17/2017



**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2311**

# 2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2311  
2/1/2017  
Job Number 28417

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

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

Relating to job services of North Dakota construction project risk protection bonds

## Minutes:

Attachments 1-3

**Chairman Klein:** Called the committee back to order.

**Senator Bekkedahl:** Written testimony, see attachment #1. (:45-5:30)

**Chairman Klein:** What we are doing here is trying to position ourselves in case something happens with a huge project. We have all this unemployment and the fund right now is being hurt by the effects of the slowdown in western North Dakota. That is why we do this bond, correct?

**Senator Bekkedahl:** That is my understanding. The construction industry in North Dakota is notorious for building in good weather and not building during bad weather. So you have a lot of layoff potentials going on in this industry. This is an extra risk protection bond because if the fund is in trouble because there isn't enough to pay for the layoffs that could occur, that is where the bond comes into play.

**Russ Hanson, Associated General Contractors of North Dakota:** This issue is one we hear about every now and again, particularly to contractors that are new to the area. I think this law is somewhat unique to North Dakota. I handed out a sheet on how this process actually works. He goes over the handout. Handout, see attachment #2. (8:05-10:55)

**Bill Wocken, North Dakota League of Cities:** I don't have a lot of new information regarding this bond and I've certainly never experienced it myself. In looking at the projects that are happening throughout the state we know there are many major projects out there. They are difficult projects to finance as is and adding this risk bond to that burden is a problem for the cities. So we would ask you to support this with a do pass recommendation. We believe the exemption given to the state is logically extended to the political subdivisions. (11:30-12:20)

**Senator Casper:** Would we be putting more risk on the backs of business owners across the state to pay in more because we are exempting political subdivisions from paying in?

**Bill Wocken:** I believe that the contractors will still be carrying the bond. I guess I am looking at this and wondering if there is a duplication here. We feel that the contractors have control of the employees therefore they would be in the best place to take care of the bond.

**Chairman Klein:** Somebody is going to have to pony up the cash and we are always shifting whether it is private entrepreneurship or government or the taxpayers. I also see the point that we don't want to have duplication here either. Is that your thought, you guys want to be off the hook because someone is paying it anyway?

**Bill Wocken:** That's in essence the issue that we have but this has never come up in the city of Bismarck.

**Chairman Klein:** Called for opposition.

**Mark Butland, Associate Director of Unemployment Insurance with Job Service of North Dakota:** Written testimony, see attachment #3. (14:00-23:24)

**Senator Casper:** Where does the fifty-million-dollar threshold number come from?

**Mark Butland:** It was changed in 2007, it was twenty-five million and it was felt that the bonding process wasn't sufficient and so they moved it up to fifty-million.

**Senator Casper:** If this isn't an issue with exempting the state why is it an issue exempting the political subdivisions?

**Mark Butland:** As I stated in my testimony, the trust fund is ultimately the responsibility of the state and if the trust fund would have to be bailed out or had to borrow from the feds, it would be the state who would have to decide what to do.

**Chairman Klein:** There are concerns that we may have to pony up some money just to make those guys solid, is that correct?

**Mark Butland:** That is correct.

**Chairman Klein:** And your suggestion here is political subdivisions will be looking for the full faith and credit.

**Senator Roers:** If this bill goes through then you are unprotected?

**Mark Butland:** If this bill was to go through in its current form from what I am seeing here if you exempt the political subdivision there are not subject to this section whatsoever and neither would the generals or prime contractors.

**Senator Roers:** In your experience contracts that are less than fifty-million, what kind of default rates have you experienced or negatives?



**Mark Butland:** I don't have anything that would be a default. Certain industries tend to end up in what we would call the negative rate schedule, where over a lifetime we have paid out more than we collected from them.

**Darren Bronstrom, Director of Unemployment Insurance for Job Service of North Dakota:** To our balance currently, the trust fund is at 54 million dollars. We are at that time of year where we are expending dollars for benefits. He addressed the employers in the state that are considered negative balance employers because they are not covered by a bond. He said overtime they have paid out more in benefits to their past employees than they paid in in taxes. The bond itself, helps us particularly with out of state employers. It is very difficult for us to collect. The bond does not cover nearly enough to keep the fund whole but it is a little bit of protection. He said this would have to be amended to the point that they could define political subdivisions and tighten that down and to also clarify if political subdivisions are exempted that we would still be able to go after one of the contractors. (36:20-40:51)

**Chairman Klein:** We are putting full faith and credit into the state of North Dakota and now we are reaching out to the political subdivisions because that fund has to stay by federal law, we need to reach a particular level also don't we?

**Darren Bronstrom:** Our target mirrors somewhat federal law and so the money we need to have in our fund to pay benefits is really based somewhat on the federal model and tweaked for North Dakota because we are so low right now it will exempt us from getting interest free dollars from the feds if we did have to borrow.

**Chairman Klein:** Asked if Job Service and the proponents of this bill could work this out.

**Senator Bekkedahl:** I appreciate the testimony by Job Service but I am disappointed that I didn't get the opportunity to talk with Mr. Butland. I did reach out to them and regarding the issue that they brought up, Legislative Council drafted the bill with the information they had from them.

**Chairman Klein:** Closed the hearing.

# 2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2311  
2/15/2017  
Job Number 28395

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

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

Relating to job services of North Dakota construction project protection bonds

## Minutes:

Attachments 1-3

**Chairman Klein:** We are going to reopen 2311. Committee we will take an opportunity to listen to the amendments.

**Senator Bekkedahl:** I am going to give you for discussion the changes I tried to make. The original bill hearing was on February 1<sup>st</sup> in here. Originally, what I was attempting to do is addressing the construction project risk bonds requirements in state statute. He reviewed that information and shared his concerns. He said he was trying to make the risk proportionate and said he is now trying to find middle ground with job service. Attachment, #1. Also passed out was amendment # 17.0987.02003, #2 and the Christmas tree version of the amendment, #3. (1:50-6:50)

**Senator Roers:** Why would they not be able to proratedly access the responsibility when that is the way it is done in everyday business.

**Senator Bekkedahl:** I would agree with you because the way that they are going to get the information to even calculate the risk protection bond and calculate the exposure afterwards is by getting the number of employees that were employed in the job project. So they will get that at some point. I think it is a matter of them tracking it. If you have just one prime contractor and one big number, that is what they are trying to do.

**Senator Roers:** What do the five contracts do for you as the city of Williston as it relates to reducing this risk.

**Senator Bekkedahl:** By FAA standards we have to have multiple contracts segregated in very small distinct entities, that is how they fund our grants and that is how they do business in order to get the reimbursements. What we talked about with our consulting engineers is that we are going to try and take the five largest employment contracts we have out there and assume this risk into them as five primes, the small ancillary contracts the city will pick



up the risk protection bond and assume those liabilities for them. That is how we are going to try and manage this.

**Senator Burckhard:** So this Christmas tree version looks like a hog house right and is it going to be that hard to get five general contractors to share the risk?

**Senator Bekkedahl:** They think we can manage that.

**Senator Roers:** I think that is a tall order to ask each of these contractors to bond the entire risk when they have a proportionate amount of exposure. How would you calculate the risk that you would be taking on for the other four?

**Senator Bekkedahl:** Those are exactly the questions I have for job service. I am trying to accommodate job service as much as I can in this process and not make it difficult for them because we have other concerns with the fund. The language is such in here that the city of Williston or any large political subdivision in our same circumstances still has the option to do the risk bond ourselves and assume that risk ourselves and get the contracts we need but we can attempt to do it this way. It doesn't lock us out of what is currently in law and that has been my fall back.

**Cheri Giesen, Executive Director of Job Service of North Dakota:** Previously we came in here with concerns to the trust fund and this amendment takes care of that concern. (15:45-16:58)

**Senator Roers:** My understanding is you are not able to disseminate the responsibility of coverage down to five primes, why?

**Cheri Giesen:** Currently right now when we have a prime it takes 53 hours to administer one contract. When you multiply that by five, now it will take 200 hours. These are federal funds and we would have to take the money from somewhere else to be able to get this done.

**Chairman Klein:** The money for administration comes from the federal government and the money you pay out for unemployment comes from the employers?

**Cheri Giesen:** The unemployment trust fund.

**Chairman Klein:** So when you are suggesting you need to spend more money for administration that would be federal dollars that you don't have because they keep cutting that and that is your concern?

**Cheri Giesen:** That is exactly correct.

**Darren Bronstrom, Director of Unemployment Insurance for Job Service of North Dakota:** What we did is calculate each portion of the activities that have to take place on each bond. We broke it down amongst field assignments, liability worksheets, notices of determination, notice reminders, bond approvals. There is a lot to it as far as how we manage this and how we have to follow up on the bonds. We also have to have the AG's office review everything and we pay them for their time. (20:50-23:19)

**Chairman Klein:** Which contractor would accept those sort of conditions?

**Darren Bronstrom:** That is a question I don't think we could answer on how a contractor would respond to it. I can say that when we spoke with some of the folks working on that particular project they indicated that two of the vertical structures made up of about half of the staffing. I would guess that there would be one or two general primes that would be building those buildings. They would probably take on most of the burden for the bond. If you know how the project is laying out and you want it to be as fair as possible you would probably use the information provided by your overall manager and break up the bonding amongst five generals that would handle each of those bonds and they would have subs underneath them.

**Senator Roers:** It seems unreasonable that you would distribute that initial responsibility out equally when there could be a huge disparity between the guy who does the runway and the guy who does the lights. Why wouldn't you not be able to access that based on a contract value or an anticipated payroll value, which is what I believe you do today?

**Darren Bronstrom:** As far as what we do today, we don't base it on payroll. To get into the bonding process we look at the construction cost. The bond itself is going to be based on the number of individuals and so it isn't an actual payroll number that helps us come up with the bond amount. We have to make some assumptions and that assumption is, a maximum benefit amount in a twelve-week duration, multiplied by fifty percent. I think how you would have to manage that would be to choose your larger contractors and we couldn't define that but the project owner could.

**Chairman Klein:** We are protecting the fund and anytime you adjust that you are sticking your neck out there aren't you?

**Darren Bronstrom:** You are absolutely right and I mentioned that it is completely at the bodies acceptance of risk level.

**Chairman Klein:** It isn't that we are trying to rain on the Williston airport project but our concern here is a fund. What are we at today?

**Darren Bronstrom:** Today we are at 58 million.

**Chairman Klein:** This is our heaviest payout period, which we are in now?

**Darren Bronstrom:** Yesterday we payed 4.5 million dollars for one day in benefits.

**Chairman Klein:** By adding this amendment the exposure is limited. You feel comfortable that we are covering ourselves?

**Darren Bronstrom:** The way that this is written it protects the employers of North Dakota and the trust fund and it also protects Williston. It does create a situation where Williston or whoever it may be will have to manage it appropriately as far as of the assigning of the bond.



**Chairman Klein:** Just so I am clear again, when this project starts everybody is paying their unemployment factor into you. It doesn't matter if they are below those five folks, those five majors but at the end of the day when the project is over with and there is a problem and we have some major hits on the fund, this will give you the opportunity to only come back to those five major employers?

**Darren Bronstrom:** Throughout the entire process, everyone that is liable for unemployment insurance is going to pay at the rate that they have and if you have out of state companies coming in and they are considered a construction company, they are going to pay this year's rate. So they are going to pay those benefits the whole time.

**Chairman Klein:** You worked out this out and this is the compromise?

**Darren Bronstrom:** Yes, and it can be spread out across five, it is an equal share and not proportional.

**Chairman Klein:** Closed the meeting.



# 2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2311  
2/15/2017  
Job Number 28417

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

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

Relating to job services of North Dakota construction project protection bonds

## Minutes:

Attachments 0

**Chairman Klein:** Called the committee back to order. We saw the amendments this morning and we have something Job Service and Senator Bekkedahl can agree with. I think this may need more work but we should give them the opportunity to work out some more of the details.

Senator Poolman moved to adopt the amendment, 17.0987.02003.

Senator Casper seconded the motion.

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

Senator Poolman moved a do pass as amended.

Senator Casper seconded the motion.

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

Senator Roers will carry the bill.

February 13, 2017

Done  
2/15/17  
LSD

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06.1 of the North Dakota Century Code, relating to job service North Dakota construction project risk protection bonds; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1.** Two new subsections to section 52-04-06.1 of the North Dakota Century Code are created and enacted as follows:

If a political subdivision is the owner or contractor of a project subject to this section, the political subdivision may either post the required bond or irrevocable letter of credit or assign the responsibility of posting the bond or irrevocable letter of credit to the general or prime contractor. If a project has more than one general or prime contractor, the political subdivision may assign the responsibility of posting the bond to a maximum of five general or prime contractors in equal shares of the entire bonding liability regardless of the amount or type of work assigned to each general or prime contractor. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of each employing unit or units. If the total amount of benefits paid to employees of the employing unit or units exceeds the total amount of contributions collected from the units under the North Dakota unemployment compensation law, each general or prime contractor required to post a bond for the project shall pay an equal share of the amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If a general or prime contractor required to provide a bond for the project does not pay its required equal share, job service North Dakota shall collect the payment from the surety company that executed the surety bond or the bank that issued the irrevocable letter of credit. The general or prime contractors required to post a bond for the project are liable for an equal share of any amount of benefits paid to employees of the general or prime contractors working on the project which exceed the amount of contributions collected from employers that worked on the project and which is not covered by the amount of the bonds or irrevocable letters of credit.

For purposes of this section, "political subdivision" means any county or city.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to any project, to which a political subdivision is the owner or contractor, commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit may have been due after January 1, 2017.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2020



**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2311**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0987.02003

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 Senator Poolman                            Seconded By Senator Casper

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total    (Yes) 7                            No 0

Absent 0

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

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

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2311**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0987.02003

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 Senator Poolman    Seconded By Senator Casper

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7    No 0

Absent 0

Floor Assignment Senator Roers

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

**REPORT OF STANDING COMMITTEE**

**SB 2311: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2311 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06.1 of the North Dakota Century Code, relating to job service North Dakota construction project risk protection bonds; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1.** Two new subsections to section 52-04-06.1 of the North Dakota Century Code are created and enacted as follows:

If a political subdivision is the owner or contractor of a project subject to this section, the political subdivision may either post the required bond or irrevocable letter of credit or assign the responsibility of posting the bond or irrevocable letter of credit to the general or prime contractor. If a project has more than one general or prime contractor, the political subdivision may assign the responsibility of posting the bond to a maximum of five general or prime contractors in equal shares of the entire bonding liability regardless of the amount or type of work assigned to each general or prime contractor. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of each employing unit or units. If the total amount of benefits paid to employees of the employing unit or units exceeds the total amount of contributions collected from the units under the North Dakota unemployment compensation law, each general or prime contractor required to post a bond for the project shall pay an equal share of the amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If a general or prime contractor required to provide a bond for the project does not pay its required equal share, job service North Dakota shall collect the payment from the surety company that executed the surety bond or the bank that issued the irrevocable letter of credit. The general or prime contractors required to post a bond for the project are liable for an equal share of any amount of benefits paid to employees of the general or prime contractors working on the project which exceed the amount of contributions collected from employers that worked on the project and which is not covered by the amount of the bonds or irrevocable letters of credit.

For purposes of this section, "political subdivision" means any county or city.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to any project, to which a political subdivision is the owner or contractor, commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit may have been due after January 1, 2017.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2311**



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2311  
3/13/2017  
Job #29126

- Subcommittee  
 Conference Committee



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

Job Service North Dakota construction project risk protection.

## Minutes:

Attachments 1-5

**Chairman Keiser:** Opens the hearing of SB 2311.

**Sen Bekkedahl, Sponsor ~ District 1:** Attachment 1—original bill. Introduces the bill. This came to our attention when the City of Williston was doing a \$250 million airport project. The City of Williston would be responsible for a risk protection bond before starting construction. The risk protection bond does two things:

1. It puts a bond in place before construction starts on a large project over \$50 million.
2. Quit operations within a seven-year time frame.

The risk protection bond is so that if something goes wrong on the project and people are laid off and the premiums that were paid by the construction companies involved in the project do not fully cover the cost to the fund, the bond is pulled in and helps to cover the cost.

When you take out the risk protection bond, you also assume some liabilities post-completion of the project. In that time frame after the project is over, if the workers are laid off and then they deplete the fund beyond the premium base paid in they then come back to the City of Williston if the bond isn't sufficient.

My primary purpose here is the cost of the bond. The secondary issue is the City of Williston has no direct contact or connection to the employees but will have the liability. So once the project is over, if the companies don't get employment and the workers go on unemployment compensation, the City of Williston will be responsible for paying.

Section 1, line 7, "this section does not apply to any project in which the state or a political subdivision is the owner or contractor." Job Service said we can't do that.

The funding for this project comes from the FAA (Federal Aviation Administration). We qualify for up to 90% of compensation for eligible projects. That means they are only going to give 53% of the cost. So we have to do the rest through the state and the city. It is now



a \$232 million project. The way the FAA does grants, we have to break it down into smaller contracts. Because of that, none of our contracts will be over the \$50 million threshold. Job Service interprets it as the total project is what we would be responsible for.

(6:30)

Attachment 2

We agree to the Job Service amendments.

(10:48)

**Rep Ruby:** This gives the political subdivision the ability to either post the required bond or revocable letter of credit or sign it. Do you envision in any place, if they have that ability, that they will post it themselves?

**Sen Bekkedahl:** The intent is that we would assign as much of the employee risk as we could back to those contractors. We are told there will be 792 jobs at peak working on the airport project. The terminal may have up to 300 of those in its construction phase. We were going to assign proportionally those 300 jobs to that contractor. Job Service said they can't do it that way. They just have 20%. The assignment issue is big when they do it equally at 20%.

**Rep Ruby:** If the goal is to save some money, don't you think the companies are just going to put that back into their bid?

**Sen Bekkedahl:** Absolutely. I can't speak to the history if this has ever been used.

**Rep Ruby:** The concern I had with the five prime bidders/contractors. What if there was eight, three would be absolved from any liability?

**Sen Bekkedahl:** That is why we wanted to do it proportionally rather than equal.

**Rep Ruby:** The definition of political subdivisions, did Job Service explain why it is only county or city? What if a park district was putting up a hockey arena?

**Sen Bekkedahl:** We originally had in the bill to follow the state's definition of political subdivision. Job Service said they needed to limit the work load to a couple of subdivisions. Give that question to Job Service.

**Rep Ruby:** The question about the retroactive application, it shows that if it is a political subdivision project that commences by June 1, the bond or letter of credit may have been due after January 1, 2017. Did you get an explanation of why there is a difference?

**Sen Bekkedahl:** There is an emergency clause because construction season is starting soon. Job Service told us that if we didn't have the bond in place 30 days before, they would shut down the project.

**Chairman Keiser:** Is the letter of credit tool available to political subdivisions?

**Sen Bekkedahl:** The Bank of ND is willing to work with us to give us an irrevocable letter of credit.

**Chairman Keiser:** You have the protection clause. You didn't put in your RFP (Request for Proposal) or your bid specs that they were required to provide this bond. Is that true?

**Sen Bekkedahl:** That is true because they have all been small projects so far.

**Chairman Keiser:** You said Williston will pay, will that be by an amendment to the bid?

**Sen Bekkedahl:** It would be through a change order. Future contractors need to plan that into their bid.

**Chairman Keiser:** Why not pick the largest contractor and tell them to get it and the city will pay for it?

**Sen Bekkedahl:** That may be what we will do. As long as that is alright with Job Service.

**Chairman Keiser:** That seems like the reasonable approach.

**Sen Bekkedahl:** We can deal with the bond costs. The concern is the fact that the City of Williston has no connection to these employees but yet we have that risk for months after the project has ended where we would have to pay the Job Service fund to make it whole.

(19:20)

**Chairman Keiser:** They will be the city's cost through the premium for the bond one way or the other.

**Sen Bekkedahl:** I have been told there were cases where the bond was not sufficient.

**Chairman Keiser:** This goes back to the Great Plains Coal Gasification issue. We built a major facility with 2200 employees. At the end of construction, the contractor terminated them. They never paid in premiums based on that. The fund took a huge hit. We put into law that for large projects we are going to have a bond and provide coverage if the bond is inadequate so that other employers are not hurt.

(20:54)

**Bill Wocken ~ ND League of Cities:** Attachment 3.

(22:30)

**Chairman Keiser:** In this scenario, has the FAA changed their rules?

**Bill Wocken:** I'm not sure what the financial features of the project were.

**Chairman Keiser:** Why don't we make the FAA the general contractor.

**Bill Wocken:** I'm not sure. We do know that the city will pay the cost of the bond.



**Opposition:**

**Russ Hanson ~ Associated General Contractors:** Attachment 4.

This is the process of how the program has worked since 2001. Since 2007 the threshold has been \$50 million. I highlighted the obligation of payment amounts. That is what the contractors are concerned with.

The amendment on lines 12-14, with the across the board assignment regardless of the amount of work. We want to bring that concern to your attention. A contractor may have a small portion of the job and yet be assigned up to 20% of the bond.

**Rep Ruby:** Guess what companies would build up the fund again?

**Russ Hanson:** You are right. Their rates would be increased drastically.

**Chairman Keiser:** The rate increase was significant for all employers after the Great Plains project.

**Bill Kalanek ~Dakotas Chapter of the National Electrical Contractors Association and the Association of Plumbing, Heating, and Mechanical Contractors:**

I echo comments made by Russ Hanson. We have the same concerns regarding proportionality of the assignment of liability.

**Chairman Keiser:** It seems we are making it difficult. What is your position on taking the largest contract, having them purchase it for everyone and have the City of Williston pay the premium for the bond and have the City of Williston maintain that excess liability should it exceed the value of the bond?

**Bill Kalanek:** I would have to run that past the organizations I am representing.

**Phil Kramer ~ Vice President of Operations for Lunseth Plumbing & Heating Company, Grand Forks:** We work as subcontractors. We also work as prime contractors for private and public works throughout the State of ND. We don't like the lack of proportionality or the assignment of the liability for the bond for the unemployment compensation. Contractors have available bonding capacity to bond projects for performance and payment bonds and bid bonds, etc. That is based upon their financial wherewithal, the size of the company, the projects completed, and their history. I could probably bond \$20 to 25 million. But if I have to provide additional bonding capacity or funding, my bonding company would say you have only \$5 million in the project but we have to guarantee \$20 million. What we are seeing is push back from our bonding companies. We have to provide 20% of the project with more coverage. How will I know what that total coverage will be before I bid that project? We see some issues. As a tax payer, I don't want to see us getting hung. The proportionality, we like that.

**Rep C Johnson:** What type of employees do you have?

**Phil Kramer:** Ours are all full time. We don't contract labor.

**Neutral:**

**Cheri Giesen ~ Executive Director of Job Service ND: Attachment 5.**

We testified on the original bill that it would not give the protection of large projects, if you had all political subdivisions that were exempting a lot of projects throughout the state. That was why we testified against the original bill—the liability to the trust fund.

With the Williston Airport project, we felt breaking the project up was setting a terrible precedent. When we look at 25 contractors to a project, that is not doable for us. Five contractors are what we felt we could administer. I know that proportional would probably be the best. A lot of the tracking can't be automated. Administratively proportional is a terrible burden.

Giving it to the largest contractor and the city can take part of it, is an option. Most projects have a general contractor. The FAA is a special situation where they are not allowing the general contractor.

(39:20)

**Rep Laning:** My understanding, all of the employers would be still be paying their normal Job Service premiums as the project progresses. This kicks in only during the 30 months following the end of the project. Then if the unemployment claims exceed what has been paid in, that's when this starts?

**Cheri Giesen:** That's correct.

**Rep Becker:** The workload aspect of the pro-rata share, you are talking about the workload based on keeping track of what each is doing so you know what their final pro-rata share is. Is that correct?

**Cheri Giesen:** I will let Darren Brostrom answer.

**Rep Ruby:** The discussion with the bond and the original bill, the contractors were talking about the bond or a letter of credit requiring a relationship with the bonding company. If they don't feel comfortable because they are taking on extra, isn't there a way if the city or county would be required to carry the liability, they could insure that? Cities and counties get by with insuring it by their tax bases. Is that a possibility?

**Cheri Giesen:** I'm not sure.

**Rep Louser:** Rep Ruby pointed out the state is exempt. Could you give us a history of claims on the med school at UND?

**Cheri Giesen:** We may be bound to confidentiality.

**Chairman Keiser:** The FAA prohibits a general prime.

**Rep Kasper:** How many projects are this size annually in North Dakota that this bill pertains to?



**Cheri Giesen:** To date we have 118 projects that have been reviewed. Five have been completed.

**Rep Kasper:** I'm asking average annual number of projects in ND.

**Cheri Giesen:** Darren can talk about that.

**Chairman Keiser:** This is unique because the FAA says that you can't have a prime or general. You can have a series of general contractors but not a prime. The other projects that you have reviewed all had general contractors.

**Cheri Giesen:** That's correct.

**Darren Brostrom ~ Director of Unemployment Insurance with Job Service:**

The number of projects affected on a yearly basis--we are picking up around 5-10 a year. That will increase because things are getting more expensive. We changed the bond threshold in 2007 to \$50 million. Each project will be affected specifically. The dollar amount is used to get into the bonding requirement. The number of staff that work on the project is what determines the bond. That is where the risk comes from.

**Rep Kasper:** It appears this is unique because of the FAA requirement. Because of the FAA requirement you don't have automation to be able to handle the issue. How many projects like this on average happen in North Dakota where you don't have other solutions? You are coming with a bill that is putting the onus on the contractors involved.

**Darren Brostrom:** This is the first project. Our hope is that this doesn't get utilized by other political subdivisions.

**Rep Kasper:** This is the first project of its kind. For this one project you designed a bill that is treating contractors unfairly and putting them in a difficult position because you say your department cannot handle doing this manually. Is that what you are saying?

**Darren Brostrom:** We asked to amend this bill. We raised our concern with exempting political subdivisions primarily due to the protections. We amended the bill to be feasible for administration.

**Rep Kasper:** For you, the public sector. Not the private sector.

**Darren Brostrom:** Yes.

**Rep Ruby:** I thought this was for any kind of project.

**Darren Brostrom:** This can be any city or county can choose to assign the bonding to up to five contractors. Other than that it is the same as our other construction bonding language.

**Rep Ruby:** This isn't limited to just FAA required projects?

**Darren Brostrom:** No.

**Rep Ruby:** Was the airport built in Minot under this requirement? If so, was the bond ever called in because of layoffs?

**Darren Brostrom:** I don't think the Minot airport was one that was required. The Williston airport was a new airport and funded differently. Minot didn't hit the \$50 million threshold.

**Rep Ruby:** Do you envision the City of Williston to insure that amount with the tax base.

**Darren Brostrom:** I think it would take legislation. I do believe it would be feasible.

**Rep Becker:** My question was the increase in work load if we look at pro-rata. It sounded as though it was because there is a lot of work keeping track how much each contractor was contributing to the work load. Is that true?

(52:26)

**Darren Brostrom:** It is true. We tried to figure how to make the proportional work. We spoke with the project manager. They told us subcontractors will work under multiple general contractors. One individual could fall under multiple bonding requirements. How do we keep track of that? We don't bill on individual basis. We bill on employer basis. Up front for the bond is difficult. In the back for the liability is even more difficult. The way it is set up now each contractor that carries a bond adds in about 35 hours of additional work to our staff.

**Rep Kasper:** If this bill did not pass, you have the capability to track and provide a fair method of determining liability in the future. It is just going to take more work.

**Darren Brostrom:** If this bill didn't pass, we would handle the bonding as it is now. The owner or one general contractor would take it. It wouldn't add any additional work to us.

**Rep Kasper:** You could still do that even in light of the FAA circumstance.

**Darren Brostrom:** Yes. The FAA problems are more on Williston than they are for us. What is problematic for us is that in reality we are designing this bill to help Williston to get out of an FAA requirement.

**Rep Kasper:** However, this has tentacles to impact other projects in the future even if FAA is not involved.

**Darren Brostrom:** Yes. It will impact any project that is city or county.

**Chairman Keiser:** (Calls Senator Bekkedahl back to the podium) Would you object if we amended this bill to simply say the Bank of ND shall give you a letter of credit. No interest or fees can be charged up until when you actually implement that letter of credit. The rate would be 2%. We don't change the rest of the law. Political subdivisions have the taxing authority to pay it. It will cost a lot less than a bond. You don't need to use it unless the expenses go over the income.

**Sen Bekkedahl:** The FAA doesn't require us to have one prime contract. They will only reimburse us on smaller contract sizes. Rep Ruby's comment to put this on the tax obligation to pay it makes the most sense to me. But I don't know how you would do that in statute. I favor any hog house amendment.

**Chairman Keiser:** Closed the hearing. Rep Ruby is carrying the bill.

**Chairman Keiser:** Appointed a subcommittee with Rep Ruby, Rep Kasper & Rep Lefor.



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2311—Committee Work  
3/15/2017—a.m.  
Job #29204

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Job Service North Dakota construction project risk protection.

### Minutes:

Attachment 1

**Todd Steinwand, Chief Business Development Officer, Bank of North Dakota:**  
(Attachment 1) Proposed Amendment

**Rep Lefor:** Have you discussed this with Senator Bekkedahl?

**Chairman Keiser:** I have. He is aware.

**Rep Ruby;** Do you normally do letters of credit?

**Todd Steinwand:** Yes. We do lots of letters of credit to back public deposits that independent financial institutions do to meet statutory requirements. We do letters of credit for the public finance authority. These are common instruments for the bank.

**Rep Ruby:** Do you normally do a one-time fee?

**Todd Steinwand:** The normal practice is to charge a fee every year. In discussing this with Rep Keiser we are willing to do a one-time fee up front for the five-year term.

**Rep Kasper:** You are trying to be accommodating and undercut the market. In HB 1436 you were going the other way.

**Todd Steinwand:** I would say no. On HB 1436, there is a difference between a letter of credit and a loan. If we have a line of credit out there, that has a chance of being advanced on, we look at pricing that is extremely competitive. In order to match funds, we have to borrow from the Federal Home Loan Bank. We are trying to put a spread in there to make it reasonable for us.

**Rep Becker:** When you do a recurring annual fee, what is the fee typically?



**Todd Steinwand:** Most banks would charge would between 1½ and 2%. We charge a fee of 1% of the bonded amount.

**Chairman Keiser:** We will continue this afternoon with the amendments.

# 2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2311—Committee Work  
3/15/2017—p.m.  
Job #29265

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Job Service North Dakota construction project risk protection.

### Minutes:

Attachments #1 and 2

**Rep Ruby:** The line of credit is for the full amount that they would be required to do at the  $\frac{3}{4}$  of 1% for no longer than 5 years. If at the end of that, if benefits paid out exceed the amount of the premiums paid, then they are responsible. So they could call on the letter of credit for that amount. Now they would have to pay back the letter of credit and some interest. This is for one city and one instance.

Between the two amendments (Attachments 1 and 2), if the language is right on the second amendment, it is the second version that would be preferable.

**Rep Boschee:** Why are we going from a letter of credit to a loan?

**Rep Ruby:** A letter of credit is a loan. It's just language. The banks have to keep that as a liability on their books. There is no interest paid on it unless it is called on. The letter of credit does come with a fee. It is around \$60,000 just for the fee.

**Chairman Keiser:** That is the initiation for the letter of credit. Are you referring to amendment # .03003?

**Rep Ruby:** That one says the loan must be used to buy the bond. I didn't think that was the intent.

**Chairman Keiser:** It was not the intent. Vice Chairman Sukut will check with the bill sponsor and with the city to see which of the options their legal and accounting people would prefer. One is an outright letter of credit that would be the amount needed for the bond which is \$8 million. They would have to pay an initiation fee to establish it to reserve those dollars. That would be the \$60,000. The letter of credit would have a lot of documentation to support it. There would be a built-in payback and interest rate. On one option we set the interest rate at 2%. The bank didn't like that. The second option is to give them a loan to go buy the bond.

**Rep Lefor:** We need to run this by Senator Bekkedahl.

**Vice Chairman Sukut:** He wants the letter of credit that would cover the end of this deal. There are 30 months where the city could be responsible for the difference between the premiums and what is actually paid. That is what Senator Bekkedahl is most interested in.

**Rep Ruby:** Some of the issues, if there is a short fall, it's not good to have a bond called on. It would affect their credit rating which already is not good. That doesn't look good in the book. A letter of credit would be better.

**Chairman Keiser:** The beauty of a bond is they underwrite the risk and it's a fixed payment. With a letter of credit, you can establish a schedule for pay out. The bottom line is you are going to pay it out. I don't like to rewrite unemployment compensation law for one case.

**Chairman Keiser:** Rep Ruby will work with Senator Bekkedahl and we will take it up next week.



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2311—Committee Work  
3/21/2017  
Job #29501

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Job Service North Dakota construction project risk protection.

### Minutes:

Attachments 1

**Vice Chairman Sukut:** This has to do with requirements for Job Service with unemployment. The law currently states that if the project is over \$50 million there has to be a bond placed either by the general contractor or the prime contractor. If there is no general contractor, the liability falls on the owner. In the case of the Williston Airport there will be 15 to 20 different contractors. There is no prime or general contractor. The responsibility of the bonding falls back on the city. The state is exempt. Sen Bekkedahl was trying to get the political subdivisions exempt also.

This is a hog house amendment. (Attachment 1) There will be probably 750 to 800 different employees under all of the contracts. The city in the end will be responsible for any overage which is the premiums paid vs. what ends up being paid out in unemployment. Job Service admits that with construction business there is never enough premium to cover the unemployment. So the city is on the hook for the differences. So there is a bond required up front. Job Service has a formula that they use to come up with a projected overage. That overage has to be covered by a bond or a letter of credit. According to Senator Bekkedahl that has been handled. This liability runs for 30 months after the project is completed. At the end of 30 months if there is still more overage not covered by the initial bond or letter of credit, the city is still on the hook. This gives a letter of credit to the city to cover that overage 30 months after the project is completed. The term is not to exceed five years. The project is scheduled to be completed at the end of 2019. When it comes to bonding, the city is maxed out.

**Rep Kasper:** If the city is bonded to the max, they have a letter of credit to pay it up. But the city is responsible to pay back the letter of credit. What is the estimated worst case scenario they could be looking at to have the payback?

**Chairman Keiser:** \$8 million.

**Rep Kasper:** Do they have money in taxing authority to absorb another \$8 million?

**Vice Chairman Sukut:** We hope so. Right now the bond issues are backed up with sales tax revenues and the oil revenues. In four or five years a lot of the new real estate taxes will finally start,

**Rep Louser:** Is Williston providing the available tax abatement for new construction? Is there a two-year tax abatement for new construction up to \$150,000 in value?

**Vice Chairman Sukut:** I don't think that's there, but I can't verify that.

**Rep Beadle:** In a situation with 15 to 20 different contractors, would this be a situation where the RFP wasn't able to adjust out all the costs to the political subdivision that would have been covered otherwise with a single prime contractor?

**Chairman Keiser:** They are the single prime contractor because the FAA prevented the single prime. The Bank of ND worked with us and gave a good rate. The terms of repayment can be worked out in the letter of credit. It's a one-case problem. There won't be the unemployment like we had with the Great Plains situation. The risk is smaller as these will be more North Dakota workers who can find employment again. It's a great compromise you have worked out.

**Rep Kasper:** What was the cost of the airport? I recall it as a \$235 million project. Is part paid by the city, federal and state? What is the breakdown?

**Vice Chairman Sukut:** The state is in for about \$60 million (1/4). The federal government is in for about \$135 million (1/2). The city is in for about \$52 million (1/4).

**Rep Lefor:** They are hamstrung by federal regulations. There is a risk but I think it is worth taking.

**Rep Lefor:** Moves Rep Sukut's amendment.

**Vice Chairman Sukut:** Second.

**Voice Vote taken.** Motion carried.

**Rep Lefor:** Moved Do Pass as amended.

**Vice Chairman Sukut:** Second.

**Rep Lefor:** I hope the committee will follow the Do Pass motion. This is something that the state bears some risk for the benefits the state receives in oil revenue.

**Vice Chairman Sukut:** People have asked me what value this project has. For the City of Williston this is the most important thing left for us to do. This is something for the next 50 years.

**A Roll Call vote was taken: Yes 12, No 0, Absent 2.**

**Do Pass as amended carries.**

**Representative Ruby will carry the bill.**



3/21/17DP

17.0987.03005  
Title.04000

Adopted by the Industry, Business and Labor  
Committee

March 21, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a Bank of North Dakota letter of credit.

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

**SECTION 1. BANK OF NORTH DAKOTA - LETTER OF CREDIT - AIRPORT CONSTRUCTION.** The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota, and any other requirements under section 52-04-06.1."

Renumber accordingly

Date: 3/21/17

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2311

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: Hoghouse Sukut amendment

**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 Lefor    Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

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

Absent \_\_\_\_\_

Floor Assignment    Voice vote ~ Motion carried



Date: 3/21/17

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2311

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ 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 Rep Lefor    Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	Ab		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	Ab	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 12    No 0

Absent 2

Floor Assignment Rep. Ruby

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

**REPORT OF STANDING COMMITTEE**

**SB 2311, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2311 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a Bank of North Dakota letter of credit.

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

**SECTION 1. BANK OF NORTH DAKOTA - LETTER OF CREDIT - AIRPORT CONSTRUCTION.** The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota, and any other requirements under section 52-04-06.1."

Renumber accordingly

**2017 CONFERENCE COMMITTEE**

**SB 2311**



# 2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2311  
4/4/2017  
Job Number 29913

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

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

Relating to job services of North Dakota construction project risk protection bonds

## Minutes:

No Attachments

**Chairman Roers:** Called the committee to order. Would one of the House members care to comment on the House response and your feelings?

**Representative Ruby:** The House initially allowed for the city to require five of the contractors to bond for the project. We thought that was problematic because other contractors could be there and they wouldn't be responsible for the bonding. The city really had no control over a lot of that and that was their concern. They also thought as it was broken up into different projects that it wasn't a project big enough to qualify but Job Service believes that it was one project, so it was under the fifty-million-dollar requirement. FFA doesn't allow them to do it as one project. So that is why it was broke up and having one primary general contractor. I am familiar with one area that municipalities can use, basically their tax base as a way to guarantee or to hold an insurance fund. That didn't seem to work as well in this area, there is potentially going to be some liability at the end of the project if the benefits payed out for unemployment are higher than the premiums payed in. What we did was amend it to allow them to purchase a letter of credit from the Bank of North Dakota and the estimate I believe was a \$60,000 cost because it is no more than  $\frac{3}{4}$  of one percent and for that they could receive a letter of credit rather than the bond. That would protect the fund from being adversely affected if that situation happened. The city would have that to fall back on that credit and they would have to pay that back with interest. This seemed to be the most effective and least costly option for them to secure this bonding requirement.

**Chairman Roers:** Thank you for the explanation. I did ask some of the parties affected here to come and comment and give their thoughts about this different strategy. We do have Job Service and the Bank of North Dakota here. Would either one of you two groups like to comment?

**Darren Brostrom, Director of Unemployment Insurance at Job Service of North Dakota:** The bill as it is now amended, we have no concerns with. We feel that it provides

the protections necessary to both all of the employers in North Dakota as well as the trust fund. We can't speak for the city but for the protections we feel they are there.

**Kelvin Hullet, Market Manager for Economic Development and Government Programs at the Bank of North Dakota:** We have been involved as this amendment has moved through. We support the amendment fully. We have actually have had contact with a city that is building an airport about moving forward on this particular issue. We talked with them yesterday and we have things in process.

**Chairman Roers:** The one thing that stuck out to me is this fee is  $\frac{3}{4}$  of a percent. However, the bond has the potential to run over four years, I believe.

**Kelvin Hullet:** Yes, as part of the mission of the Bank of North Dakota, if you were to go into the private sector this would be a letter of credit that would probably require a two percent fee and it would be required every year. Since this was within the mission of the bank to assist local subdivisions and make sure that we are helping to get things done, what we looked at and what we have done with a couple of other projects is done the  $\frac{3}{4}$  of one percent of whatever the letter of credit is. Then we just do it one time. In this instance based on some of the numbers that were provided to us, we anticipate it will be around \$60,000 and that will be for the full five years of the letter of credit.

**Chairman Roers:** I just asked that question because exactly what you have said, we have experienced in the private industry. I thought this is not only  $\frac{3}{4}$  of a percent, a really good bargain but a onetime fee is a super bargain.

**Representative Ruby:** In my experience we have a letter of credit for one of my companies and it is an ongoing, automatic renewal one but basically it is one percent every year but it is not nearly this size. That was one of my questions, that this is just one time. This is really a decent deal and obviously the Bank of North Dakota has their mission as slightly different then a private bank but on the other hand it is pretty much guaranteed for them. They not only are going to get that fee but there is some interest in that that would take place if it was called on and needed, they would receive that too. It certainly is not going to be a risk or a loss to the bank. It protects the fund and really helps that city.

**Chairman Roers:** I totally agree with you and I just wish we could be in their mission. I commented when this bill went out of our committee, I expressed concerns about the four or five contractors that you were going to somehow access this responsibility without having any idea of what their contractual amounts of those contractors were. It had problems and I think this is a great solution. Any other comments from the committee? Would I hear a motion please?

**Senator Campbell** moved to accede to House amendments.

**Senator Marcellais** seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-0

**Senator Roers will carry the bill for the Senate.**

Senate Industry, Business and Labor Committee

SB2311

April 4, 2017

Page 3

**Senator Ruby will carry the bill for the House.**



**2017 SENATE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2311 as (re) engrossed

**Senate Industry, Business and Committee**

- Action Taken**     **SENATE accede to House Amendments**  
 **SENATE accede to House Amendments and further amend**  
 **HOUSE recede from House amendments**  
 **HOUSE recede from House amendments and amend as follows**
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Campbell                      Seconded by: Senator Marcellais

Senators	4/4		Yes	No		Representatives	4/4		Yes	No
Chairman Roers			x			Representative Ruby			x	
Senator Campbell			x			Representative Louser			x	
Senator Marcellais			x			Representative Boschee			x	
Total Senate Vote			3			Total Rep. Vote			3	

Vote Count            Yes: 6                      No: 0                      Absent: 0

Senate Carrier Senator Roers                      House Carrier Representative Ruby

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

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

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2311, as engrossed:** Your conference committee (Sens. Roers, Campbell, Marcellais and Reps. D. Ruby, Louser, Boschee) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 954 and place SB 2311 on the Seventh order.

Engrossed SB 2311 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2311



Senate Industry, Business, and Labor Committee  
Honorable Jerry Klein, Chairman  
SB 2311 Testimony  
Brad Bekkedahl, District 1 Senator

February 1, 2017

Chairman Klein and Committee Members,

Senate Bill 2311 contains language added to statute to correct an issue of Job Service construction project risk protection bond requirements. NDCC 52-04-06.1 deals with potential unemployment fund risk exposure for projects over \$50 million in cost and expected to be completed or discontinued within a 7 year time period. Subsection 1 states "the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project that meets the criteria specified under this section shall post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project.....". It should be noted that in subsection 9, the statute states "this section does not apply to any project in which the state is the owner or contractor". This subsection will be addressed again after some explanation of the history of the issue before us.

The issue that predicated this bill consideration was contact made to the city of Williston by ND Job Service staff in Bismarck. They informed city staff that since our new airport project was estimated to cost \$250 million in press articles they had seen, that as owner of the project the city would have to comply with statute and post the unemployment risk protection bond. I will leave full explanation of the fund and how the risk protection bond operates to ND Job Service staff in attendance. After Job Service staff explained the bond requirement, our city staff informed Job Service that no one contractor builds every component of a new airport. Each component has a general or prime contractor, and no one component exceeds the \$50 million threshold. Job Service staff indicated they interpret it as one project, and since there would be multiple general contractors involved, the city as owner was responsible for the bond. We unsuccessfully made the point that the city, which has no control over employees under the project contracts, should not be responsible for this insurance bond, and that we would, by contract, require each general or prime contractor on every component project to purchase the appropriate risk protection bond. Job Service staff responded that non-compliance by the city by failing to post the bond at least 30 days prior to construction commencement would require shutting down the project.

In my attempt to understand the existing statute and possible intent, it was my impression that since the state exempts itself from this provision, it must have felt Political Subdivisions would never have to comply as their projects would generally never exceed the \$50 million threshold or have multiple prime contractors involved. This is where subsection 9, with the addition of "or a political subdivision" made the most sense to me to correct what was omitted or not needed in the original statute. You will also see the emergency clause in Section 3 and the retroactive application in Section 2 of this bill. These are in place to assure current projects planned to commence when weather permits this spring do not suffer delays waiting for the normal legislation implementation date of August 1<sup>st</sup>.

Thank you for your attention and consideration of SB 2311 today, and I will stand now for questions the Committee may have.



[Home](#) » [Unemployment for Business](#)

## Comply with Construction Project Risk Protection

The construction project risk protection provision of North Dakota Century Code (NDCC 52-04-06.1) requires the general or prime contractor, or the owner, of a major construction project to post a surety bond or irrevocable letter of credit with Job Service North Dakota before work on a project begins.

### Purpose of the Construction Project Risk Protection Provision

This surety bond or irrevocable letter of credit is intended to guarantee the cost to cover benefits paid to employees who worked on the projects. It is in addition to required payment of all unemployment contributions/taxes due for employees on the project.

### Determination of project liability

A project is liable to the construction project risk protection provision if the project meets the following criteria:

- Bids are let after August 1, 2001, AND
- Construction costs are \$50 million or more, AND
- The project is planned to be completed or discontinued within a period of seven years.

### The amount of protection required

The amount of the surety bond or irrevocable letter of credit is calculated and determined by Job Service North Dakota as the difference between the estimated benefits paid to all employees of the project and estimated contributions collected from all employers on the project. The amount can be modified as project costs and total positions employed on the project warrants.

### Notification of contract award

Project owners and contractors on a liable project must notify Job Service North Dakota in writing, within 30 days of awarding a contract to any contractor. The notification must include:

1. AWARDING ENTITY'S name, address, company contact, contact's phone number, and North Dakota State Unemployment Insurance (NDSUI) account number.
2. CONTRACTOR'S name, address, company contact, contact's phone number, NDSUI account number, and Federal Employer Identification Number (FEIN).

### Reporting requirements and payroll recording

All entities must maintain separate payroll records for all employment on the project. Job Service North Dakota will establish for each entity a North Dakota State Unemployment Insurance (NDSUI) employer tax account for the project. Each employer must submit quarterly Employer's Contribution and Wage Reports for employment on the project. These reports must be separate from reports listing other employees working for that employer.

The general or prime contractor, or owner, is required to report to Job Service North Dakota annually, within thirty days of the anniversary of the project's date of liability to this provision, any change in the construction costs of projects subject to this section.

### Obligation of payment

Thirty months after the completion or discontinuance of the project, Job Service North Dakota will determine the total benefits paid to employees of all employers on the project. If the total amount paid to the employees exceeds the total amount of contributions collected from the (project) employers under the North Dakota Unemployment Compensation Law, the general or prime contractor, or owner, shall reimburse Job Service North Dakota for the benefits paid to the employees.



SB 2311 2/1/17 #2

Payment of this amount is due within 30 days after the notice is mailed. If payment of this amount is not paid within the time frame specified, Job Service North Dakota will redeem the surety bond or irrevocable letter of credit for payment. If the amount of the bond or letter of credit is not large enough to cover the cost of benefits paid, Job Service North Dakota will collect the additional amount due from the general or prime contractor, or owner.

If the party that posted the surety bond or irrevocable letter of credit fulfills the stated obligation by paying the additional cost of benefits to Job Service North Dakota, we will return the surety bond or irrevocable letter of credit.





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**Senate Bill 2311**

Testimony of Mark Butland  
Job Service North Dakota  
Before the  
Senate Committee On  
Industry, Business and Labor  
Senator Jerry Klein, Chair  
February 1, 2017

Mr. Chairman, members of the committee, for the record my name is Mark Butland, Associate Director of Unemployment Insurance with Job Service North Dakota. I am here today in opposition to Senate Bill 2311 as it is currently written.

Bonding for large construction projects has been a part of the unemployment insurance program since 2001 (HB 1085) and was subsequently modified in 2007. The primary reason for the construction risk bonding requirement is to protect the employers of North Dakota from increases in tax rates and to ultimately protect the Unemployment Insurance Trust fund.

Construction risk bonding is required when the construction costs of a project are \$50 million dollars or greater and the project is planned to be completed or discontinued within seven years. Design and engineering costs are excluded from the project cost when determining if the fifty million dollar threshold has been met. The bond must be held by the prime or general contractor. If there is no prime or general contractor the bond must be held by the owner of the project. The owner does have the option to deem a general contractor as the provider of the bond in the event more than one general or prime contractor is involved in the project.

A total of 118 projects have been reviewed to date, and of those, 21 were found to meet the requirements of the construction bonding process. Five of these projects have been completed.

The bond amount required is calculated by taking the minimum tax rate of the year the project began, multiplied by the taxable wage base of the year in which the project began, multiplied by the number of employees estimated to work on the project, multiplied by the number of years the project will be active. This calculation provides the estimated contributions that Job Service can expect to receive from the employers involved in the project.

The estimated benefits paid to workers on the project is calculated by multiplying the number of employees working on the project by the maximum weekly benefit amount from the year the project began, multiplied by twelve to represent the average duration of the receipt of benefits, multiplied by the number of years, rounded up, that the project will be active.

After calculating the estimated benefits paid and contributions received, the contribution amount is subtracted from the benefits paid amount and subsequently multiplied by fifty percent. The result is the amount of the bond.

A determination of the bond amount will be sent to the entity identified as the holder of the bond. The entity responsible for providing the bond can either obtain a bond for the amount or produce an irrevocable letter of credit in the amount of the bond. It is our understanding that the cost of obtaining these bonds averages between 2% and 7% of the total bond amount. Ultimately, the cost of the bond is dependent upon the credit rating of the entity applying for the bond.

We have seen many of the large construction projects completed with the use of out-of-state contractors who hire large numbers of employees for the sole purpose of working on the specific project. When their part of the project is complete, unless the employer has other work in which the project employees can be moved to, the employer may have no other alternative but to layoff these workers who then will most likely file a claim for unemployment benefits. The issue in these situations is that taxes paid through the duration of the project could be insufficient to cover the benefits paid to the individuals who worked on the project.



An example would be as follows: An out of state employer is hired to perform work on a large project and hires 50 new people in North Dakota to perform this work. The work will last approximately 9 months. Based on 2017 figures, the employer would pay taxes on the first \$35,100 of wages for each employee at the new construction rate of 11.43% for a maximum total of \$200,596.50. If at the end of their work on the project the employer has no other work for these workers and they file for unemployment benefits, the fund would be paying out \$31,500 each week in total to the 50 workers. The maximum duration for an unemployment claim is currently 26 weeks which makes for a maximum total potential benefit payout to these workers of \$819,000.00. The shortfall in contributions in this instance would be \$618,404.50 which, if not subject to the construction bonding process, would be borne by all employers in the unemployment system. The current bonding process requires the general contractor, prime contractor, or owner of the project to pay the difference to Job Service. As a last resort Job Service has the option to execute the bond.

To date we have had one instance where the bond holder was required to reimburse Job Service for excess benefits paid. The amount that the employer was required to reimburse was approximately one million dollars. We currently have one other situation where we expect that we will be forced to execute the bond to recover the difference between taxes received and benefits paid out.

While Job Service makes every attempt to collect these funds, it can be difficult to collect from out-of-state employers as we have very limited legal remedies available to us when it comes to dealing with out of state employers. Subsequently, the Trust Fund balance is negatively affected which ultimately leads to higher tax rates for all employers statewide.

As the construction bonding law is currently written, the bond provides risk protection for all employers participating in the unemployment system in the event the employers involved in the project do not pay the difference between taxes paid in and benefits paid out.

Currently, only the state is excluded from the requirement to obtain a bond under this statute. The basis for this exclusion is should the unemployment Trust Fund be negatively impacted to the point of requiring a "bail out", the state is the entity that would be required to



remedy any short fall. Senate Bill 2311 expands the exemption from the bonding requirement to include political subdivisions.

Now that I have provided you with the background and explained the potential risk to the unemployment Trust Fund the bonding process is designed to mitigate, I would like to clarify that Job Service North Dakota's primary concern with the bill as it is currently written is twofold, first being the increased risk to the Trust Fund by expanding the number of entities who would be exempted from the bonding process, and second, the term "political subdivision" is very broad. In fact, it is currently defined 15 times in Century Code, all somewhat differently. At this time, the term "political subdivision" is not specifically defined in chapter 52 of North Dakota Century Code.

Attached to your copy of my testimony is a document prepared by the North Dakota Legislative Council entitled "Use of Political Subdivisions and Other References For Units of Local Government" that provides the number of definitions and the various wordings of the term Political Subdivision. If the committee feels that providing additional exemptions from bonding is appropriate and Senate Bill 2311 were to proceed as currently written we request that an amendment be brought forth to provide for a definition of "political subdivision" within chapter 52 of North Dakota Century Code. Job Service North Dakota would actively participate as needed in the event a decision is made to amend the bill.

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

Respectfully submitted,

Mark Butland  
Associate Director of Unemployment Insurance, Job Service North Dakota

## USE OF POLITICAL SUBDIVISIONS AND OTHER REFERENCES FOR UNITS OF LOCAL GOVERNMENT

This memorandum was requested to review statutory usage of terms describing units of local government, such as political subdivision, municipality, taxing district, and similar references.

Because existence and powers of political subdivisions are limited to authority specifically provided by law, the Legislative Assembly has enacted a vast body of statutory provisions regulating and empowering political subdivisions. References to political subdivisions occur throughout the North Dakota Century Code and are used in a broad range of ways. Within the Century Code, words derived from the root "municipal" appear 1,196 times, the phrase "political subdivision" appears 844 times, "governmental unit" appears 58 times, "local government" appears 121 times, and "taxing district" appears 76 times. There are several other combinations of words and phrases used in statutes to describe political subdivisions.

The term "political subdivision" is defined in the Century Code 15 times. Included are the following:

**Section 2-04-01(5)**

"Political subdivision" means any county, city, park district, or township.

**Section 6-09.4-03(5)**

"Political subdivision" means:

- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
- b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
  - (1) Operating any public water system that is subject to chapter 61-28.1.
  - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
- c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.
- d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
- e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].

**Section 11-37-01(3)**

"Political subdivision" means any county, city, or other unit of local government. The term includes a job development authority created under chapter 11-11.1 or 40-57.4.

**Section 21-02-01(1)**

"Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.

**Section 23-29-03(12)**

"Political subdivision" means a city, county, township, or solid waste management authority.

**Section 26.1-21-01(4)**

"Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.

**Section 26.1-22-01(5)**

"Political subdivision" means all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

**Section 37-19.1-01(6)**

"Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.

**Section 40-47-01.1(11)**

As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.



**Section 54-40.5-02(2)**

"Political subdivision" means a city, township, city park district, school district, or other unit of local government or special district or authority in this state.

**Section 54-60.1-01(6)**

"Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.

In many of the definitions, undefined phrases such as "unit of local government," "local governmental unit," "special district," or "governmental entity" are employed in an apparent attempt to expand coverage of the definition to include entities not specifically listed. In one instance, a reference is made to units of government created by statute, which creates uncertainty in whether entities created by voter approval would be included.

Because a chapter of statutory law may relate to one or more kind of political subdivision, there are numerous examples of definitions that are expansive or restrictive to include the political subdivisions to which the chapter of law applies. This is a convenient method for a drafter to avoid repeating a list of political subdivisions in the text of a chapter. However, when a term is defined in several different ways in several chapters, and the term is used in a chapter in which it is not defined, there is uncertainty as to which, if any, of the several definitions of the term should apply.

One of the terms most likely to create confusion is "municipality." For example:

**Section 2-06-01(9)**

"Municipality" means any county, city, town, park district, or public body of this state.

**Section 11-36-01(4)**

"Municipality" means any political subdivision of this state.

**Section 21-03-01(3)**

"Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.

**Section 40-01-01(4)** (This definition applies to all of Title 40.)

"Municipal corporation" or "municipality" includes all cities organized under the laws of this state, but shall not include any other political subdivision.

**Section 40-40-02(2)**

"Municipality" means any city or park district in this state.

**Section 40-57-02(1)**

"Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the public finance authority or any successor in interest to the public finance authority for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the public finance authority or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.

**Section 40-57.1-02(2)**

"Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.

**Section 40-58-01.1(16)**

"Municipality" means any incorporated city in the state.

**Section 57-02-01(9)**

"Municipality" or "taxing district" means a county, city, township, school district, water conservation and flood control district, Garrison Diversion Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes.



The definitions reviewed in this memorandum are contained in sections that limit application to the chapter, title, or section in which they appear. However, courts have referred to such definitions for assistance in interpreting provisions outside the applicable chapter, title, or section. The North Dakota Supreme Court has had many occasions to seek an appropriate definition for a word or phrase employed in a statute when no definition is provided. The court has said "[w]hen words or phrases are defined by statute, that definition may be relied upon in construing the meaning of those words or phrases in a similar statute." *Larson v. Baer*, 418 N.W.2d 282 (N.D. 1988).

The first chapter of the Century Code contains statutory provisions of general application, one of which is:

**1-01-09. Word defined by statute always has same meaning.**

Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears.

### CONCLUSION

There appears to be some potential for uncertainty in existing statutory definitions of terms referring to political subdivisions. Revision of Century Code usage of terms relating to political subdivisions would be a substantial undertaking. Because definitions of political subdivisions are tailored to apply within certain chapters but may also be applied in other chapters, careful review of hundreds of sections of law would be required.

My original change requested after JS Amendment SB2311 2/15/17 #1

17.0987.02001  
Title.

Prepared by the Legislative Council staff for  
Senator Bekkedahl  
February 13, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06.1 of the North Dakota Century Code, relating to job service North Dakota construction project risk protection bonds; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1.** Two new subsections to section 52-04-06.1 of the North Dakota Century Code are created and enacted as follows:

If a political subdivision is the owner or contractor of a project subject to this section, the political subdivision may either post the required bond or irrevocable letter of credit or assign the responsibility of posting the bond or irrevocable letter of credit to the general or prime contractor. If a project has more than one general or prime contractor, the political subdivision may assign the responsibility of posting the bond to multiple general or prime contractors in proportional shares of the entire bonding liability for the project based on the standards used to calculate the entire risk protection bond for the project, regardless of the amount or type of work assigned to each general or prime contractor. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of each employing unit or units. If the total amount of benefits paid to employees of the employing unit or units exceeds the total amount of contributions collected from the units under the North Dakota unemployment compensation law, each general or prime contractor required to post a bond for the project must pay a proportional share of the amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units based on the number of employees of the general or prime contractor that received benefits and the amount of benefits received by those employees which exceeded the total amount of contributions of the general or prime contractor. If a general or prime contractor required to provide a bond for the project does not pay their required proportional share, job service North Dakota shall collect the payment from the surety company that executed the surety bond or the bank that issued the irrevocable letter of credit. The general or prime contractors required to post a bond for the project are liable for a proportional share of any amount of benefits paid to employees of the general or prime contractor working on the project which exceed the amount of contributions collected from employers who worked on the project which is not covered by the amount of the bonds or irrevocable letters of credit.

For purposes of this section, "political subdivision" means any county or city.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to any project, to which a political subdivision is the owner or contractor, commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit may have been due after January 1, 2017.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



17.0987.02003  
Title.

Prepared by the Legislative Council staff for  
Senator Bekkedahl  
February 13, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06.1 of the North Dakota Century Code, relating to job service North Dakota construction project risk protection bonds; to provide for retroactive application; and to declare an emergency.

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For purposes of this section, "political subdivision" means any county or city.

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**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



17.0987.02003

Sixty-fifth  
Legislative Assembly  
of North Dakota

SENATE BILL NO. 2311

Introduced by

Senators Bekkedahl, Laffen, Sorvaag

Representative Streyle

1 A BILL for an Act to amend and reenact subsection 9 of section 52-04-06.1 of the North Dakota  
2 Century Code, relating to job service North Dakota construction project risk protection bonds; to  
3 provide for retroactive application; and to declare an emergency. for an Act to create and enact  
4 two new subsections to section 52-04-06.1 of the North Dakota Century Code, relating to job  
5 service North Dakota construction project risk protection bonds; to provide for retroactive  
6 application; and to declare an emergency.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 ~~SECTION 1. AMENDMENT.~~ Subsection 9 of section 52-04-06.1 of the North Dakota  
9 Century Code is amended and reenacted as follows: ~~\_\_\_\_\_~~

10 ~~9. This section does not apply to any project in which the state or a political subdivision is~~  
11 ~~the owner or contractor.~~

12 ~~SECTION 2. RETROACTIVE APPLICATION.~~ Section 1 of this Act applies retroactively to  
13 any project commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit  
14 may have been due after January 1, 2017. Job service North Dakota shall release any bond or  
15 letter of credit submitted by a political subdivision between January 1, 2017, and the effective  
16 date of this Act.

17 ~~SECTION 3. EMERGENCY.~~ This Act is declared to be an emergency measure.

18 **SECTION 1.** Two new subsections to section 52-04-06.1 of the North Dakota Century Code  
19 are created and enacted as follows:

20 If a political subdivision is the owner or contractor of a project subject to this section,  
21 the political subdivision may either post the required bond or irrevocable letter of  
22 credit, or assign the responsibility of posting the bond or irrevocable letter of credit to  
23 the general or prime contractor. If a project has more than one general or prime  
24 contractor, the political subdivision may assign the responsibility of posting the bond to



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a maximum of five general or prime contractors in equal shares of the entire bonding liability regardless of the amount or type of work assigned to each general or prime contractor. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of each employing unit or units. If the total amount of benefits paid to employees of the employing unit or units exceeds the total amount of contributions collected from the units under the North Dakota unemployment compensation law, each general or prime contractor required to post a bond for the project must pay an equal share of the amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If a general or prime contractor required to provide a bond for the project does not pay its required equal share, job service North Dakota shall collect the payment from the surety company that executed the surety bond or the bank that issued the irrevocable letter of credit. The general or prime contractors required to post a bond for the project are liable for an equal share of any amount of benefits paid to employees of the general or prime contractors working on the project which exceed the amount of contributions collected from employers that worked on the project and which is not covered by the amount of the bonds or irrevocable letters of credit.

For purposes of this section, "political subdivision" means any county or city.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to any project, to which a political subdivision is the owner or contractor, commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit may have been due after January 1, 2017.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

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3/13/17

Sixty-fifth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2311**

Introduced by

Senators Bekkedahl, Laffen, Sorvaag

Representative Streyle

1 A BILL for an Act to amend and reenact subsection 9 of section 52-04-06.1 of the North Dakota  
2 Century Code, relating to job service North Dakota construction project risk protection bonds; to  
3 provide for retroactive application; and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Subsection 9 of section 52-04-06.1 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 9. This section does not apply to any project in which the state or a political subdivision is  
8 the owner or contractor.

9 **SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to  
10 any project commenced by June 1, 2017, and for which a bond or an irrevocable letter of credit  
11 may have been due after January 1, 2017. Job service North Dakota shall release any bond or  
12 letter of credit submitted by a political subdivision between January 1, 2017, and the effective  
13 date of this Act.

14 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.



House Industry, Business, and Labor Committee  
Honorable Representative George Keiser, Chairman  
SB 2311 Testimony  
Brad Bekkedahl, District 1 Senator

March 13, 2017

Chairman Keiser and Committee Members,

Senate Bill 2311 originally contained language added to statute to correct an issue of Job Service construction project risk protection bond requirements. NDCC 52-04-06.1 deals with potential unemployment fund risk exposure for projects over \$50 million in cost and expected to be completed or discontinued within a 7 year time period. Subsection 1 states “the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project that meets the criteria specified under this section shall post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project.....”. It should be noted that in subsection 9, the statute states “this section does not apply to any project in which the state is the owner or contractor”. This subsection will be addressed again after some explanation of the history of the issue before us.

The issue that predicated this bill consideration was contact made to the city of Williston by ND Job Service staff in Bismarck. They informed city staff that since our new airport project was estimated to cost \$250 million in press articles they had seen, that as owner of the project the city would have to comply with statute and post the unemployment risk protection bond. I will leave full explanation of the fund and how the risk protection bond operates to ND Job Service staff in attendance. After Job Service staff explained the bond requirement, our city staff informed Job Service that no one contractor builds every component of a new airport, and that our FAA grant funding requires the project to be bid in separate contracts, so we could not have one prime contractor to comply with this statute. Each component has a general or prime contractor, and no one component exceeds the \$50 million threshold. Job Service staff indicated they interpret it as one project, and since there would be multiple general contractors involved, the city as owner was responsible for the bond. We unsuccessfully made the point that the city, which has no control over employees under the project contracts, should not be responsible for this insurance bond, and that we would, by contract, require each general or prime contractor on every component project to



purchase the appropriate risk protection bond and be responsible for fund obligations after the project completion. Job Service staff responded that non-compliance by the city by failing to post the bond at least 30 days prior to construction commencement could require shutting down the project.

In my attempt to understand the existing statute and possible intent, it was my impression that since the state exempts itself from this provision, it must have felt Political Subdivisions would never have to comply as their projects would generally never exceed the \$50 million threshold or have multiple prime contractors involved. This is where subsection 9, with the addition of “or a political subdivision” made the most sense to me to correct what was omitted or not needed in the original statute. You will also see the emergency clause in Section 3 and the retroactive application in Section 2 of this bill. These were in place to assure current projects planned to commence when weather permits this spring did not suffer delays waiting for the normal legislation implementation date of August 1<sup>st</sup>.

Job Service testified before the Senate IBL committee in opposition as the exemption sought could place an unmanageable administrative burden on their staff to implement without adding more staff to monitor. They also objected to the exemption of political subdivisions because it may cause financial distress to the already impacted reserve funds. The Senate IBL committee allowed the prime sponsor time to work with Job Service to create amendments that were acceptable to all parties involved. The bill you see today are the amendments prepared by Job Service and agreed to by myself as prime sponsor. While it does not completely sever the financial bond obligation for the City, nor does it separate the post project employee unemployment responsibility from the City, it does give us some flexibility versus none in how we deal with the contracts and assigning risk obligations for up to 5 prime contractors on the entire project. I therefore request your support for a Do Pass today.

Thank you for your attention and consideration of SB 2311 today, and I will stand now for questions the Committee may have, after which Job Service can provide further explanation, testimony, and support to the bill as amended.

Testimony in Support of Engrossed Senate Bill 2311

March 13, 2017

House Industry, Business and Labor Committee

Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Industry, Business and Labor Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in support of Engrossed Senate Bill 2311. As amended, the bill seeks to address project risk protection bonds for large projects being constructed by political subdivisions.

North Dakota Century Code Section 52-04-06.1 requires that on any construction project costing at least \$50 million over a period of seven years, the general contractor, or the project owner in the absence of a general contractor, shall bond for potential unemployment benefits that may be claimed by employees on the project. Several North Dakota cities are undertaking projects that fit within these criteria and for which the required bond will pose a substantial difficulty. The engrossed bill allows the political subdivision or, at the election of the political subdivision, up to five general contractors on the job to post this bond or irrevocable letters of credit.

As you will note the bill carries an emergency clause and is retroactive for projects owned by a political subdivision for which construction is begun by June 1, 2017 and for which a bond or irrevocable letter of credit was due after January 1, 2017.

The League of Cities feels that this section of law is a substantial and costly item for cities in the completion of large projects that typically are already difficult to finance. We think that contractors who deal with bonds on a continual basis may be able to provide the needed protection at a lower costs than cities. For these reasons the North Dakota League of Cities respectfully requests a DO PASS recommendation for Engrossed Senate Bill 2311.



[Home](#) » [Unemployment for Business](#)

## Comply with Construction Project Risk Protection

The construction project risk protection provision of North Dakota Century Code (NDCC 52-04-06.1) requires the general or prime contractor, or the owner, of a major construction project to post a surety bond or irrevocable letter of credit with Job Service North Dakota before work on a project begins.

### Purpose of the Construction Project Risk Protection Provision

This surety bond or irrevocable letter of credit is intended to guarantee the cost to cover benefits paid to employees who worked on the projects. It is in addition to required payment of all unemployment contributions/taxes due for employees on the project.

### Determination of project liability

A project is liable to the construction project risk protection provision if the project meets the following criteria:

- Bids are let after August 1, 2001, AND
- Construction costs are \$50 million or more, AND
- The project is planned to be completed or discontinued within a period of seven years.

### The amount of protection required

The amount of the surety bond or irrevocable letter of credit is calculated and determined by Job Service North Dakota as the difference between the estimated benefits paid to all employees of the project and estimated contributions collected from all employers on the project. The amount can be modified as project costs and total positions employed on the project warrants.

### Notification of contract award

Project owners and contractors on a liable project must notify Job Service North Dakota in writing, within 30 days of awarding a contract to any contractor. The notification must include:

1. AWARDING ENTITY'S name, address, company contact, contact's phone number, and North Dakota State Unemployment Insurance (NDSUI) account number.
2. CONTRACTOR'S name, address, company contact, contact's phone number, NDSUI account number, and Federal Employer Identification Number (FEIN).

### Reporting requirements and payroll recording

All entities must maintain separate payroll records for all employment on the project. Job Service North Dakota will establish for each entity a North Dakota State Unemployment Insurance (NDSUI) employer tax account for the project. Each employer must submit quarterly Employer's Contribution and Wage Reports for employment on the project. These reports must be separate from reports listing other employees working for that employer.

The general or prime contractor, or owner, is required to report to Job Service North Dakota annually, within thirty days of the anniversary of the project's date of liability to this provision, any change in the construction costs of projects subject to this section.

### Obligation of payment

Thirty months after the completion or discontinuance of the project, Job Service North Dakota will determine the total benefits paid to employees of all employers on the project. If the total amount paid to the employees exceeds the total amount of contributions collected from the (project) employers under the North Dakota Unemployment Compensation Law, the general or prime contractor, or owner, shall reimburse Job Service North Dakota for the benefits paid to the employees.



Payment of this amount is due within 30 days after the notice is mailed. If payment of this amount is not paid within the time frame specified, Job Service North Dakota will redeem the surety bond or irrevocable letter of credit for payment. If the amount of the bond or letter of credit is not large enough to cover the cost of benefits paid, Job Service North Dakota will collect the additional amount due from the general or prime contractor, or owner.

If the party that posted the surety bond or irrevocable letter of credit fulfills the stated obligation by paying the additional cost of benefits to Job Service North Dakota, we will return the surety bond or irrevocable letter of credit.

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3/13/17

PO Box 5507 • Bismarck, ND 58506-5507  
701-328-2825 (Phone) • 800-366-6888 (TTY) • 701-328-4000 (Fax)

**Senate Bill 2311**

Testimony of Cheri Giesen  
Before the  
House Committee On  
Industry, Business and Labor  
Representative Kaiser, Chair  
March 13, 2017

Mr. Chairman, members of the committee, for the record my name is Cheri Giesen, Executive Director of Job Service North Dakota. I am here today in a neutral capacity to provide information on Senate Bill 2311.

Bonding for large construction projects has been a part of the unemployment insurance program since 2001 and was subsequently modified in 2007. The primary reason for the construction risk bonding requirement is to protect the employers of North Dakota from increases in tax rates due to benefit payouts resulting from a large construction project.

SB 2311 continues to provide the employer protections that currently exist while providing some additional flexibility to cities or counties who may pursue large construction projects. The flexibility provided is that while current statute provides for one entity to serve as the bond holder, SB 2311 allows cities or counties to assign the bonding requirement to up to five general/prime contractors.

While allowing for up to five bond holders creates an increased workload, we believe that as SB 2311 is currently written, we can administer the requirement with existing resources.

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

Respectfully submitted,

C

*Cheri Giesen*  
Executive Director, Job Service North Dakota

3/15/17<sup>1</sup>

Proposed Amendments to Engrossed Senate Bill No. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "For an Act to provide for a Bank of North Dakota Letter of Credit"

Section 1. Bank of North Dakota-Loan-Airport Construction

The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota and any other requirements under section 52-04-06.1



3/15/17

Proposed Amendments to Engrossed Senate Bill No. 2311

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17.0987.03003  
Title.

Prepared by the Legislative Council staff for  
Representative Keiser  
March 14, 2017

2  
3/15/17  
p.m.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2311

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a Bank of North Dakota loan for airport projects."

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

**SECTION 1. BANK OF NORTH DAKOTA - LOAN - AIRPORT CONSTRUCTION.** The Bank of North Dakota may provide a loan to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The loan must be used to pay for the cost of the bond. The bank may provide the loan at an annual rate not to exceed two percent. Interest on the loan may not accrue until the bank implements the loan. The city obtaining the loan assumes all liability for the loan and the bonding requirements under section 52-04-06.1."

Renumber accordingly

3/21/17

Bill LC# 17.0987.03000

Prepared by Legislative Intern 8  
March 17, 2017

**PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2311**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a Bank of North Dakota Letter of Credit."

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

**SECTION 1. BANK OF NORTH DAKOTA – LETTER OF CREDIT – AIRPORT CONSTRUCTION.**

The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota and any other requirements under section 52-04-06.1."

Renumber accordingly