

2021 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2203

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

SB 2203
2/9/2021

relating to surcharges paid by employers for employees who receive unemployment insurance benefits
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Chair Klein opened the hearing at 2:15 p.m. All members were present. Senators Klein, Larsen, Kreun, Veda, Burckhard, and Marcellais.

Discussion Topics:

- Negative payers
- Insurance companies
- Construction companies

Senator J. Roers introduced the bill, testified in favor, and submitted testimony #6135 [14:15].

Susan Shearer, President of Construction Company in Harvey testified in opposition and submitted testimony #6150 [14:48].

Russ Hanson, Associated General Contractors of ND testified in opposition and submitted testimony #6149 [15:00].

Justin Dever, MDU Resources Group testified in opposition and submitted testimony #6099 [15:07].

Art Thompson, Executive Director of Concrete Council testified in opposition and submitted testimony #6121 [15:12].

Mike Krumwiede, American Council of Engineering Companies of ND testified in opposition and submitted testimony #6047 [15:20].

Bill Kalenek, Association of Plumbing and Heating Contractors testified in opposition [15:22].

Brady Pelton, Director of Government Affairs for ND Petroleum Council testified in opposition [15:23].

Arik Spencer, greater North Dakota Chamber testified in opposition and submitted testimony #6144 [15:22].

Darren Brostrom, Job Service testified neutral and submitted testimony #6153 [15:28].
Additional written testimony: 6001, 6110, and 6118, 6151.

Chair Klein ended the hearing at 3:36 p.m.

Isabella Grotberg, Committee Clerk



Date: Monday, February 8, 4:25 PM

Senator Roers,

Following are the breakdowns as we did in the 2019 session testimony. Note that the overall negative balance for these employers has actually gone down, I was somewhat surprised.

- 31 employers are negative by between \$1 million and \$20 million
- 27 employers are negative by between \$500,000 and \$999,999.99
- 197 employers are negative by between \$100,000 and \$499,999.99
- 1,716 employers are negative by between \$0.01 and \$99,999.99

The total negative balance for these 1,971 employers is \$189 million. This is \$42 million less than balance during 2019 testimony, which would have been 2018 data due to timing.

Darren Brostrom

Deputy Director



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February 9, 2021

Senate Industry Business & Labor Committee

Good Afternoon Chairman Klein and Committee Members.

Thank you for this opportunity to testify on Senate Bill 2203.

My name is Susan Shearer, I am the President of a small family-owned construction company located in Harvey. I am also an active board member of the AGC of ND and a member of the ND Unemployment Advisory Council. As such, my testimony today will be both as a member of the UI Advisory Council and as a ND negative balance small business owner.

My company, Harvey Sand & Gravel, Inc. was established in 1960 by my parents, so we have a long and successful presence in the State of ND.

We currently employ 4 full time employees and up to 25 seasonal employees. Our “seasonal employees” and their retention is at the core of this discussion.

This bill as written will penalize a majority of the heavy highway, industrial contractors and other seasonal employers in the State of North Dakota. Unemployment benefits are a necessary evil for our business as we work in an industry where Mother Nature limits the period of time in which we can be productive.

Just to give you an idea of how this “surcharge” will affect my company, Harvey Sand & Gravel, Inc. had \$373,363.00 in taxable wages in 2018. I paid \$43,321.15 for unemployment taxes. According to calculations based on the “cumulative” formula in this bill, Harvey Sand & Gravel will be assessed an additional \$18,133.38. This is a 42% increase in my unemployment tax responsibility. Please note, these are 2018 numbers. My increase may be a little less today since my payroll, as well my income, in 2020 was considerably less due to the COVID Pandemic. The past year has been very frustrating for many employers, not just in our industry, but across the board. It is very likely that this legislation will have a broader reach than originally intended. It may very well affect previous “positive balance” employers who have never had an unemployment claim who are now actually “negative balance” employers due to the shutdowns.

In April of 2019 the Senate IBL Committee issued correspondence to Job Service ND in reference to House Bill 1060 introduced in the 2018 session. This letter stated that they

“did not support this bill because, while this issue deserves further review and possible action, we do not believe a surcharge for negative balance employers was the correct action.” And yet, here we are. Senate Bill 2203 is the exact language as original House Bill 1060.

Also, at the request of this Committee, the Advisory Council was tasked to “examine any disparities among rates and their relationship to the solvency target of the Unemployment Insurance Fund, analyze rate structures across the country to ensure our rates remain competitive, and look at potential ways to incentivize positive balance ratepayers

Our Committee met several times over the interim and took public input on this issue. Numerous individuals and groups, including GNDC, AGC of ND, ND Lignite Council, and ND Petroleum Council testified in opposition to any change in the current unemployment rate structure. There was no outside testimony in favor of change.

UI Advisory Council by a 5-2 vote, recommended no change to the current UI system at the conclusion of the study.

Copies of the Unemployment Advisory Councils recommendations and UI’s review is attached to my testimony.

I request the committee to please issue a “do not pass” recommendation on this bill and I am happy to answer any questions you have.

Thank you.

Testimony SB 2203
Senate Industry Business & Labor Committee
February 9, 2021

Mr. Chairman and members of the Senate Industry Business & Labor committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400-member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to present this testimony in opposition to SB 2203. We believe this legislation is unnecessary and does not accomplish what it is intended.

This is not the first time a legislative policy proposal similar to this has been presented. I have been with the AGC of ND since 2005 and my recollection this is the 4th proposal presented to the Legislature attempting to implement an Unemployment Insurance surcharge. The Legislature rejected the other three and our hope is SB 2203 follows the same path.

The Unemployment Trust fund currently does not need the resources (thanks to the Emergency Commission/Budget Section allocation of CARES funds to Unemployment Insurance). The current reserve target is approximately \$239 million, and the fund is well over that amount and the exact amount can be verified by Job Service. When the exact same language was introduced in 2019 (HB 1060) pre-pandemic, the reserve fund was well above the targeted levels then too.

SB 2203 is not needed as the current system works as intended. North Dakota negative balance employers pay the top rate in the nation (see state comparison attachment). They are heavier users of the fund, so they pay a higher rate. The UI system is set to adjust premiums in a manner to reward the positive balance employers when the UI Reserve Funds are at adequate levels (see the percentage to dollars comparison rates for 2019 & 2020/2021). The rates were

adjusted after 2019 and note the positive balance employers received a significant premium decrease while the negative balance employers had a minor premium increase.

While we believe the current system works well – and fairly. It hasn't always been so stable. As the Unemployment Insurance system was studied by the UI Advisory Council last interim, a legislator requested Legislative Council provide a history of UI legislation (see final handout). Highlighted are several pieces of legislation over the past few decades to take a fund in a deficit and transform it to where it is today.

I provided that historical information as there is commonly a perception that negative balance employers do not pay their "fair share" and legislation like SB 2203 is proposed to address a perceived problem. The information provided and legislative history, in our minds, illustrates there is no problem and the legislation before you is not necessary.

Our membership has both positive and negative balance employers. While the Advisory Committee was conducting its study during the interim – we surveyed our members to inquire if they recommended changes – we did not receive one response requesting a change.

The final point is SB 2203 issues a surcharge to any business that may have had a bad year and had to layoff employees. One of our positive balance employers, when seeing SB 2203, did a 10-year review. They have a small annual premium base (\$4,000). One year they had to terminate an employee – who drew \$10,000 in benefits. Had this legislation been law, the business would have been assessed a \$1000 surcharge for action necessary for their business. That is a 25% tax increase. While this is a singular example, we have to believe many other businesses would similarly impacted.

Thanks for the opportunity to comment on SB 2203. We respectfully request the committee issue a Do Not Pass Recommendation. If the committee has questions, I am happy to try to address them.

Comparison of State Unemployment Insurance Tax Rates - 2020

State	Wages Subject to Tax	Minimum Rate	Maximum Rate	New Employer Rate	Wages x Min. Rate	Wages x Max. Rate	Compared to ND
AL	\$8,000	0.65%	6.80%	2.70%	\$52.00	\$544.00	-\$3,128.51
AK	\$41,500	1.00%	5.40%	1.09%	\$415.00	\$2,241.00	-\$1,431.51
AZ	\$7,000	0.05%	12.85%	2.00%	\$3.50	\$899.50	-\$2,773.01
AR	\$7,000	0.10%	6.20%	3.40%	\$7.00	\$434.00	-\$3,238.51
CA	\$7,000	1.50%	6.20%	3.40%	\$105.00	\$434.00	-\$3,238.51
CO	\$13,600	0.58%	7.40%	1.70%	\$78.88	\$1,006.40	-\$2,666.11
CT	\$15,000	0.50%	5.40%	3.20%	\$75.00	\$810.00	-\$2,862.51
DE	\$16,500	0.10%	8.00%	1.60%	\$16.50	\$1,320.00	-\$2,352.51
DC	\$9,000	1.60%	7.00%	2.70%	\$144.00	\$630.00	-\$3,042.51
FL	\$7,000	0.10%	5.40%	2.70%	\$7.00	\$378.00	-\$3,294.51
GA	\$9,500	0.04%	7.56%	2.70%	\$3.80	\$718.20	-\$2,954.31
HI	\$48,100	0.00%	5.60%	2.40%	\$0.00	\$2,693.60	-\$978.91
ID	\$41,600	0.25%	5.40%	0.97%	\$102.90	\$2,246.40	-\$1,426.11
IL	\$12,740	0.20%	6.40%	3.13%	\$25.48	\$815.36	-\$2,857.15
IN	\$9,500	0.50%	7.40%	2.50%	\$47.50	\$703.00	-\$2,969.51
IA	\$31,600	0.00%	7.50%	1.00%	\$0.00	\$2,370.00	-\$1,302.51
KS	\$14,000	0.00%	7.10%	2.70%	\$0.00	\$994.00	-\$2,678.51
KY	\$10,800	0.30%	9.00%	2.70%	\$32.40	\$972.00	-\$2,700.51
LA	\$7,700	0.09%	6.00%	IndAvg%	\$6.93	\$462.00	-\$3,210.51
ME	\$12,000	0.06%	5.46%	1.86%	\$7.20	\$655.20	-\$3,017.31
MD	\$8,500	0.30%	7.50%	2.60%	\$25.50	\$637.50	-\$3,035.01
MA	\$15,000	0.94%	14.37%	2.42%	\$141.00	\$2,155.50	-\$1,517.01
MI	\$9,000	0.00%	6.30%	2.70%	\$0.00	\$567.00	-\$3,105.51
MN	\$35,000	0.10%	9.00%	IndAvg%	\$35.00	\$3,150.00	-\$522.51
MS	\$14,000	0.00%	5.40%	1.00%	\$0.00	\$756.00	-\$2,916.51
MO	\$11,500	0.00%	5.40%	2.38%	\$0.00	\$621.00	-\$3,051.51
MT	\$34,100	0.00%	6.12%	IndAvg%	\$0.00	\$2,086.92	-\$1,585.59
NE	\$9,000	0.00%	5.40%	1.25%	\$0.00	\$486.00	-\$3,186.51
NV	\$32,500	0.25%	5.40%	2.95%	\$81.25	\$1,755.00	-\$1,917.51
NH	\$14,000	0.10%	7.50%	1.70%	\$14.00	\$1,050.00	-\$2,622.51
NJ	\$35,300	0.40%	5.40%	2.80%	\$141.20	\$1,906.20	-\$1,766.31
NM	\$25,800	0.33%	5.40%	IndAvg%	\$85.14	\$1,393.20	-\$2,279.31
NY	\$11,600	0.00%	6.90%	2.50%	\$0.00	\$800.40	-\$2,872.11
NC	\$25,200	0.06%	5.76%	1.00%	\$15.12	\$1,451.52	-\$2,220.99
ND	\$37,900	0.08%	9.69%	1.02%	\$30.32	\$3,672.51	\$0.00
OH	\$9,000	0.30%	9.40%	2.70%	\$27.00	\$846.00	-\$2,826.51
OK	\$18,700	0.10%	5.50%	1.50%	\$18.70	\$1,028.50	-\$2,644.01
OR	\$42,100	0.70%	5.40%	2.10%	\$294.70	\$2,273.40	-\$1,399.11
PA	\$10,000	1.29%	9.93%	3.69%	\$129.05	\$993.33	-\$2,679.18
PR	\$7,000	1.20%	5.40%	2.80%	\$84.00	\$378.00	-\$3,294.51
RI	\$24,000	0.90%	9.40%	1.27%	\$216.00	\$2,256.00	-\$1,416.51
SC	\$14,000	0.00%	5.40%	0.81%	\$0.00	\$756.00	-\$2,916.51
SD	\$15,000	0.00%	9.30%	1.20%	\$0.00	\$1,395.00	-\$2,277.51
TN	\$7,000	0.01%	10.00%	2.70%	\$0.70	\$700.00	-\$2,972.51
TX	\$9,000	0.00%	6.00%	2.70%	\$0.00	\$540.00	-\$3,132.51

Comparison of State Unemployment Insurance Tax Rates - 2020

State	Wages Subject to Tax	Minimum Rate	Maximum Rate	New Employer Rate	Wages x Min. Rate	Wages x Max. Rate	Compared to ND
UT	\$36,600	0.00%	7.00%	IndAvg%	\$0.00	\$2,562.00	-\$1,110.51
VT	\$16,100	0.80%	6.50%	1.00%	\$128.80	\$1,046.50	-\$2,626.01
VA	\$8,000	0.11%	6.20%	2.50%	\$8.80	\$496.00	-\$3,176.51
VI	\$28,900	2.50%	2.50%	2.00%	\$722.50	\$722.50	-\$2,950.01
WA	\$52,700	0.00%	5.40%	IndAvg%	\$0.00	\$2,845.80	-\$826.71
WV	\$12,000	1.50%	7.50%	2.70%	\$180.00	\$900.00	-\$2,772.51
WI	\$14,000	0.00%	10.70%	2.50%	\$0.00	\$1,498.00	-\$2,174.51
WY	\$26,400	0.00%	8.50%	IndAvg%	\$0.00	\$2,244.00	-\$1,428.51

Source: U.S. Department of Labor, Employment and Training Administration, January 2020.

<https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2020.pdf>

2019 Taxable Wage Base: \$ 36,400.00

Positive Tax Rate

1.34%	\$	487.76
1.12%	\$	407.68
0.93%	\$	338.52
0.77%	\$	280.28
0.65%	\$	236.60
0.54%	\$	196.56
0.44%	\$	160.16
0.34%	\$	123.76
0.25%	\$	91.00
0.15%	\$	54.60

31% less than national average

Negative Tax Rate

9.75%	\$	3,549.00
9.35%	\$	3,403.40
8.95%	\$	3,257.80
8.55%	\$	3,112.20
8.15%	\$	2,966.60
7.75%	\$	2,821.00
7.35%	\$	2,675.40
6.95%	\$	2,529.80
6.55%	\$	2,384.20
6.15%	\$	2,238.60

Amongst highest in the nation

2020 Taxable Wage \$ 37,900.00

Positive Tax Rate

1.13%	\$	428.27
0.94%	\$	356.26
0.78%	\$	295.62
0.66%	\$	250.14
0.54%	\$	204.66
0.45%	\$	170.55
0.36%	\$	136.44
0.27%	\$	102.33
0.18%	\$	68.22
0.08%	\$	30.32

Less than National Average - in 2019 it was 31% below - this is likely higher than that amount

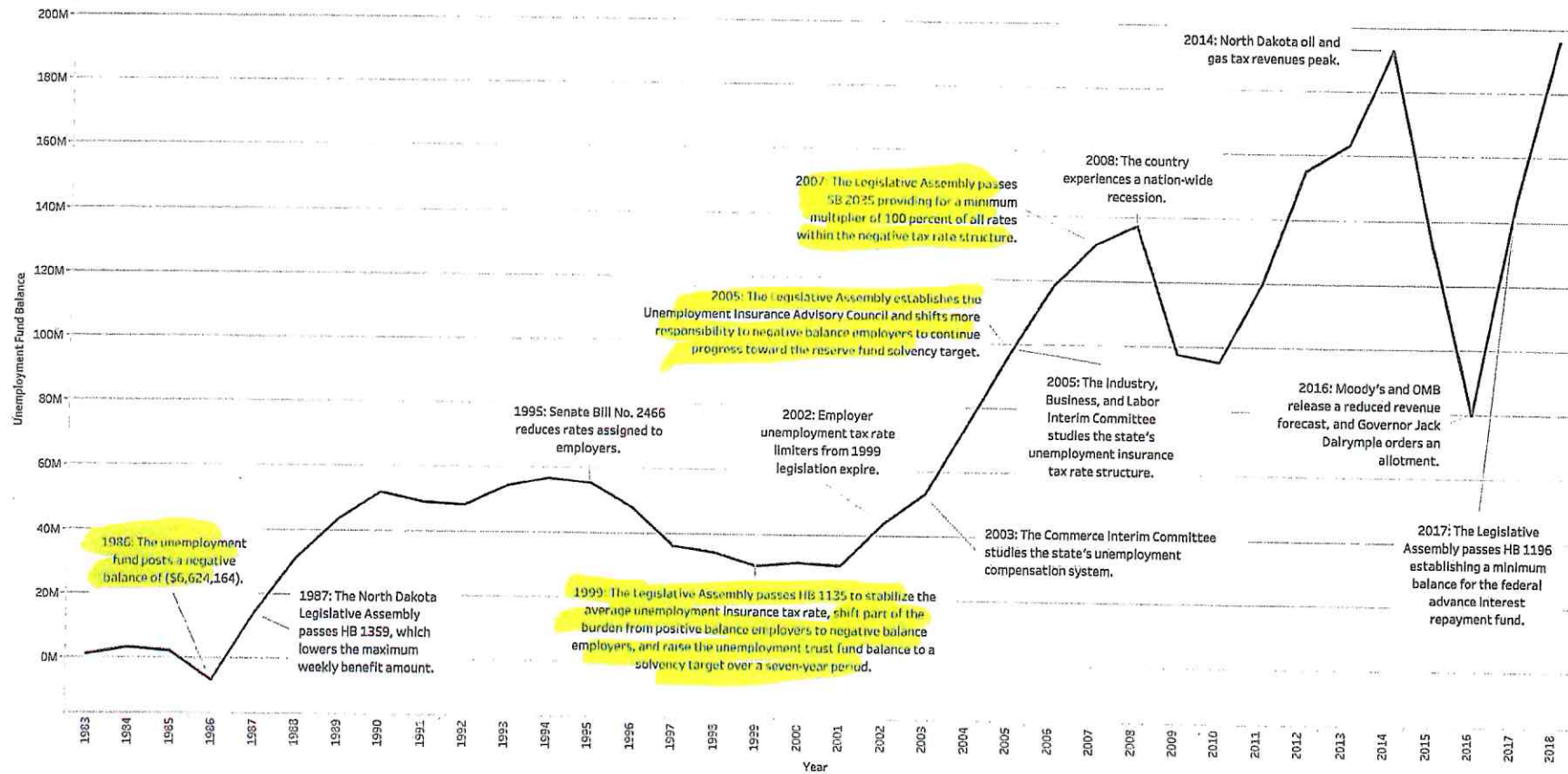
Negative Tax Rate

9.69%	\$	3,672.51
9.29%	\$	3,520.91
8.89%	\$	3,369.31
8.49%	\$	3,217.71
8.09%	\$	3,066.11
7.69%	\$	2,914.51
7.29%	\$	2,762.91
6.89%	\$	2,611.31
6.49%	\$	2,459.71
6.09%	\$	2,308.11

Amongst highest in the nation

Table 1

North Dakota Unemployment Fund Balance: 1983-2018



TESTIMONY IN OPPOSITION TO SENATE BILL 2203
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
FEBRUARY 9, 2021

JUSTIN DEVER - SENIOR PUBLIC AFFAIRS SPECIALIST, MDU RESOURCES GROUP, INC.

Good morning, Mr. Chairman and members of the committee. My name is Justin Dever and I am testifying today on behalf of MDU Resources Group. MDU Resources presence in North Dakota includes Montana-Dakota Utilities Co., WBI Energy, Knife River Corporation, and MDU Construction Service Group.

Knife River Corporation has a long history in North Dakota, having formed in the state in 1917 and joined MDU in 1945. It is one of the largest construction materials and contracting companies in the United States operating in 15 states. During construction season, Knife River employs about 225 people in North Dakota.

SB 2203 would unduly punish employers in the state that are impacted by the weather. Knife River Corporation would like nothing more than to operate year-round in North Dakota, but our winter is not always conducive to outdoor construction projects.

We understand that employers making more use of the program should pay more for unemployment insurance. That is why we agree with the current system which has some employers paying as much as \$3,731 per employee, while others pay as little as \$30.80 per employee. In fact, North Dakota has the highest maximum unemployment insurance tax rate in the nation, along with the greatest difference between the maximum and minimum rates.

North Dakota's legislature has supported a fair business climate that has benefited the citizens of the state. I'm asking you to continue this practice by rejecting this tax increase and recommending a "Do Not Pass" on SB 2203.

Mr. Chairman and members of the committee, thank you for allowing me to visit with you today. That concludes my testimony and I am happy to entertain any questions.

SB 2203
Senate Industry Business and Labor
February 9, 2021

Good Afternoon Chairman Klein and Members of the Committee,

For the record, my name is Art Thompson, and I am the Executive Director of the North Dakota Concrete Council.

Our association represents ready-mixed concrete and concrete product manufacturing and distribution companies along with their raw material suppliers. In addition, we represent the ND Chapter of the American Concrete Pavement Association, which includes concrete contractors. On average, the production and placement of concrete in North Dakota provides over \$500 million in annual economic impact. Unlike more specialized industries, our members are in every corner of the state and range from those with multi-state operations to family-owned local businesses. We employ thousands of hard-working men and women who take pride in building safe, long-lasting and resilient housing, schools, infrastructure and more throughout the state.

I am here today to ask you to vote NO on Senate Bill 2203.

- Our members, who employ a seasonal workforce, already pay the highest rates in the nation for unemployment insurance.
- Higher rates have the potential to put North Dakota businesses at a competitive disadvantage with out-of-state employers.
- Our members do not benefit when our employees are laid off. Limited or no workforce means significantly decreased or no revenues for our business. Further, our workforce would prefer to work 12-months per year. However, in with our climate that is not feasible. We do not “choose” to shut down for some of the winter months. Mother Nature “chooses” for us.
- A two-year interim study reviewed this issue at length. Their findings, by a 5-2 vote, showed the current system is working as is. The committee recommended no changes.
- At a time when North Dakota businesses are struggling to recover from the pandemic and are struggling to continue to provide gainful employment for North Dakota’s workforce, now is not the time to assess a proven unnecessary increase to North Dakota’s Unemployment Insurance tax rates.

SB 2203 is not good policy. It is not needed and should be defeated.

Thank you for your time and consideration.



Senate Industry, Business, and Labor

Testimony Opposed to SB 2203

Chairman Klein and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of SB 2203. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 29 member firms and nearly 1500 employees.

Engineering companies in North Dakota believe the current rate system already seems to be working due to the very low rates that are below the national average and the fact that the reserve fund is well over it's current target.

ACEC member firms do employ seasonal workforces in the form of field technicians. This bill could result in a large surcharge just for having to utilize a seasonal workforce. And we all know how important seasonal workforce is to the state of North Dakota.

This bill also provides for another wrinkle which is positive rate employers could end up paying this surcharge even more often because it's based on using 150% of the previous years contributions. In lot's of cases that could be a fee that is assessed to small business just for having to lay off one person.

Overall, SB 2203 feels like a large tax increase on businesses in North Dakota in the form of an unemployment surcharge.

For these reasons we ask for a DO NOT PASS recommendation on SB 2203 and I'm happy to answer any questions as I am able.



**Greater North Dakota Chamber
SB 2203
Senate Industry, Business, and Labor Committee
February 9, 2021**

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee, my name is Arik Spencer, President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization. Affiliated with the US Chamber of Commerce and the National Association of Manufacturers, we stand in opposition to Senate Bill 2203.

SB 2203 seeks to add a ten percent surcharge to businesses whose employees received fifty percent more than the employer paid into the Unemployment Insurance Trust Fund in any given year. While this proposal will reduce premiums for some employers, HB 2203 will negatively impact businesses already going through a difficult time. Since the beginning of the pandemic, businesses in various industries have had to make the difficult decision to lay off workers. According to the US Bureau of Labor Statistics, even now, as business restrictions are being further eased, North Dakota's unemployment rate is nearly double from the previous year. Just last May, North Dakota's unemployment rate was over 9%.

North Dakota businesses are not yet out of the woods. Our state's economy has not returned to pre-pandemic levels and given the uncertain future of employers in the hospitality, retail, personal service, and energy industries, now is not the time to add the burden of a surcharge. Today the Unemployment Insurance Trust Fund remains strong (due to the Emergency Commission/Budget Section allocation of CARES funds to Unemployment Insurance). The Unemployment Insurance Advisory Board has recommended that lawmakers should not alter North Dakota's unemployment insurance program. North Dakota prides itself on being business-friendly, SB 2203 is not friendly to any business enduring a difficult time.

Mr. Chairman, members of the Senate Industry, Business, and Labor Committee, thank you for the opportunity to comment. I urge you to reject SB 2203, and I would be happy to respond to any questions.

**Information relating to SB 2203
Prepared for Senate IB&L Committee
Senator Jerry Klein, Chairman
February 9, 2021**

Job Service has a neutral position on SB 2203

How would the proposed surcharge work?

- Utilizing the employer's specific contribution and benefit data, employers meeting the surcharge criteria would receive notice of the surcharge in January of each year
 - Surcharge criteria – If the previous year benefits paid from an employer's account are higher than the previous year tax contributions made by the employer by more than 150%, the employer will be assessed surcharge
 - Surcharge calculation
 - Previous year benefits paid that are higher than 150% of previous year tax contributions made are assessed a 10% surcharge on the amount exceeding 150%
 - Employers will receive notice of their specific surcharge amount in January of each year
 - Employers will have until October 31st of the assessed year to make payment of the surcharge

Example of surcharge calculations:

- Employer X paid \$50,000 in unemployment insurance taxes in the preceding year
- The employer's employees or past employees have drawn \$85,000 in unemployment insurance benefits in the preceding year. This equates to 170% of the contribution amount ($\$85,000 / \$50,000 = 170\%$)
- This employer meets the >150% criteria for a surcharge assessment
- Surcharge for the year is \$85,000 minus \$75,000 (\$50,000 multiplied by 150% = \$75,000) = \$10,000 multiplied by 10% = \$1,000 surcharge.

The following table shows the surcharge impact by industry:

1 Year Contributions and 1 Year Benefits (Bill As Written)

Industry	Employers receiving surcharge	Employers with no surcharge	Total Surcharge by industry	Largest Single Employer Surcharge	Average Surcharge per Employee for Employers receiving surcharge
Agriculture	123	843	\$59,207.69	\$7,985.53	\$66.21
Oil, Gas, Mining	108	540	\$183,845.96	\$20,355.99	\$28.97
Utilities	6	62	\$2,411.65	\$1,274.77	\$9.37
Construction	793	2,611	\$619,791.19	\$28,373.51	\$109.71
Manufacturing	94	615	\$153,031.97	\$35,166.98	\$31.60
Wholesale	222	1,904	\$77,466.60	\$12,147.53	\$26.46
Retail	118	1,844	\$49,689.78	\$4,314.53	\$19.33
Transportation & Warehousing	145	1,353	\$62,999.49	\$6,281.72	\$25.33
Information	39	262	\$12,437.37	\$2,019.45	\$44.37
Finance & Insurance	68	1,197	\$23,960.69	\$7,655.29	\$20.63
Real Estate	71	871	\$31,277.56	\$4,671.40	\$29.22
Professional Services	300	2,440	\$78,743.00	\$6,954.41	\$39.21
Management	7	90	\$692.56	\$543.02	\$20.03
Administration	223	1,296	\$67,244.83	\$3,713.02	\$28.17
Education	16	172	\$1,329.52	\$627.72	\$26.72
Healthcare	94	1,693	\$20,229.95	\$1,487.88	\$21.13
Arts	43	357	\$8,290.70	\$953.52	\$19.08
Accommodation	126	1,655	\$24,130.10	\$1,707.18	\$13.97
Other Services	103	1,726	\$19,619.57	\$1,801.95	\$27.98
State Government	4	9	\$2,140.60	\$1,132.53	\$139.61
Local Government	21	229	\$24,827.34	\$7,298.98	\$19.14
Total	2,724	21,769	\$1,523,368.12	\$35,166.98	\$39.98

There are a couple of items that JSND would suggest for clarity and ease of administration. JSND would actively assist in the drafting of any amended language:

Items to address for clarity:

- Date of notice mailing.
- Language replacing cumulative with "preceding fiscal year" to provide clarity on the timeframe utilized for calculations. This would also coincide with the timeframe used for yearly tax rate calculations.



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Industry, Business and Labor Committee
February 9, 2021**

Mr. Chairman and members of the committee,

Thank you for the opportunity to submit testimony on Senate Bill No. 2203. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU opposes SB 2203, which would create a surcharge for employers with negative unemployment insurance balances. The legislation would have a disproportionate impact on seasonal employers, including farms, ranches and agricultural supply cooperatives.

Many farmers and ranchers rely on seasonal labor during the busy spring planting and harvest seasons. In addition to their own workforce needs, farmers increasingly depend on their farm supply cooperatives for custom fertilizer and pesticide applications. Seasonal workers at agricultural supply cooperatives are, in turn, critical to North Dakota's agricultural sector.

This surcharge proposal comes at a time when farmers and ranchers are facing unique workforce challenges. The COVID-19 pandemic disrupted farmers' and ranchers' access to H-2A workers. While the future remains uncertain, it is likely that more producers will fill their workforce needs with domestic workers in 2021. Altering unemployment insurance tax rates could constrain their ability to do so.

North Dakota's unemployment system is working. Positive balance employers already pay rates below the national average, and negative balance employers pay the highest premiums in the nation. Furthermore, unemployment insurance tax rates are based upon an employer's usage of the system. The current formula allows North Dakota to provide the fourth highest weekly benefit amount in the country, providing a critical safety net for working people.

We urge a "Do Not Pass" on SB 2203. Thank you for your consideration.





February 9, 2021

Chairman Klein and Senate Industry, Business and Labor Committee Members,

On behalf of the 250 members of the Lignite Energy Council, we are writing in opposition of SB2203. The current unemployment insurance tax structure does not need to be fixed because the historical track record proves that the system is working. As the committee deliberates SB2203, which proposes an additional tax for those employers choosing to job attach temporarily laid off workers and/or a mechanism for increasing taxes paid by negative balance employers, we believe that is important to consider the harmful effects these changes will have on the business climate in our state.

Currently, North Dakota's negative balance employers are paying the highest unemployment insurance tax rates in the nation. North Dakota has the highest maximum unemployment insurance taxes at \$3,672.51 per employee per year which is \$522 greater than the next highest state, which is Minnesota at \$3,150 per employee, and \$2,402 more than the national average maximum rate of \$1,270. North Dakota charges significantly more than neighboring states, with \$2,278 more than South Dakota and \$1,586 more than Montana. Any increase to the tax rate will negatively impact North Dakota's business climate at a time when we need new additional investment in the state to create more job opportunities for North Dakotans.

Employers pay unemployment insurance tax rates based upon their usage of the system, with heavier users paying significantly more per employee than light users. Any increase to unemployment insurance tax rates is not in line with North Dakota's goal of having a competitive tax and regulatory environment for businesses and would be coming at a time that businesses are trying to make their way past the COVID-19 pandemic.

Thank you for your consideration,

Jonathan Fortner
Vice President of Government Relations and External Affairs
Lignite Energy Council

Testimony by Scott K. Olin
On behalf of
Dickinson Ready Mix Co.
to the
Senate Industry, Business and Labor Committee
Hearing on Senate Bill 2203
February 9, 2021

Good morning Mr. Chairman and Committee members. My name is Scott Olin, and I am the President and General Manager of Dickinson Ready Mix Co., a concrete and concrete products supplier with plants located throughout southwestern North Dakota. Thank you for the opportunity to provide my input on SB 2203. I urge your opposition to SB 2203 which proposes a surcharge on negative balance employers for employees who receive unemployment insurance benefits.

My opposition to this bill is based on two specific questions: is it necessary to change the UI Program; and is this the best timing to impose a surcharge on businesses in the state.

Regarding the first question, negative balance employers in ND are mostly those who are forced to seasonally lay off employees because of North Dakota's harsh winter climate. Negative balance employers have no control over the impact on their operations from the ND climate, but they have to deal with it. The Unemployment Insurance tax rate structure already compensates for the higher benefit to premium ratio for negative balance, seasonal employers. Negative balance rates in North Dakota are already amongst the highest in the nation ranging between 6.09% - 9.69% which translates to a maximum annual per employee payment of \$3,731. Positive balance tax rates are amongst the lowest in the nation, and well below the national average at .08% to 1.13% with an annual per employee payment as low as \$31 per employee. I think it is fair to say Negative balance employers pay their fair share.

The target balance for the North Dakota Unemployment Insurance Reserve is currently \$240 million and the balance is around \$260 million so there is not a shortfall in the reserve that needs to be covered. Further, at times when the level of funds has dropped precipitously, the reserve has recovered in a relatively short time, which I think indicates the program in place now is working.

Also, an interim legislative committee studied the current UI rate structure for two years and voted against making any changes to the current structure. When you look at all these points collectively, I don't believe there are any indications that it is necessary to make changes to the UI Program at this time.

Regarding the second question, my company has weathered many ups and downs in the construction industry in this state for 71 years, as have other companies. The last few years have been particularly challenging because of the short construction season and uncertainty in the agricultural market which impacts our business, coupled with a shortage of qualified drivers/workers in construction the last few years, the downturn in the energy industry and the impacts of COVID 19. The result of all that is companies in construction, as well as other industries in the state, that are just hanging on so I don't feel that this would be the best time to implement a UI surcharge on North Dakota employers.

My company is a negative balance employer, but we have worked to improve our Reserve Ratio and our UI Tax Rate. We are currently still a negative balance employer but our negative

reserve for all years has decreased to under \$50,000 and our reserve for the last 6 years and our benefits to premium ratio are now positive. I feel that the proposed surcharge would penalize our company for taking steps to reduce our negative balance because as our premium rates and our premium base decline, my company will be more susceptible to the imposition of the surcharge. With the smaller premium base, laying off only a few employees would result in DRM reaching the threshold for imposition of the surcharge. I don't believe the legislative intent is to penalize those companies that decrease their negative balance.

Please vote NO on SB 2203

Thank You

Respectfully,

Scott K. Olin

scott.olin@dickinsonreadymix.com

701-290-6979

Eric Boren

Chairperson, ND Unemployment Advisory Committee

802 Washington Ave.

Devils Lake, ND 58301

The Honorable Jerry Klein

Chairperson, IBL Committee

ND Senate

Mr. Klein,

I am submitting (report attached) our committees report over the interim that was assigned to us by your committee to study the current status of the ND Unemployment Insurance program.

First, let me say, the current leadership and teams at ND Job Service are the most professional and complete as I have ever seen in both government and public business. They do an amazing job with the limited funding they get. And an extra shout out for what they did and accomplished over the last 8 months. They truly are an amazing group. We are lucky to have them.

Our committee met a number of times over the interim and in the end we had a vote on the report submitted and the vote was 5 in favor and 2 against to leave the program as is. The majority felt it is doing what it is supposed to and no changes are needed currently. Especially now during this pandemic. The major issue we discussed was the job attached provision. Even though there are some disparities in the program, the majority of the committee felt they were justified and just fine as being done.

I will offer to come and present the report to your committee if you so wish and would answer any and all questions you or your committee has.

Thank you for your time.

Respectfully submitted,

Eric P. Boren

Chairperson

North Dakota Unemployment Insurance Tax Rate Review

The intent of this document is to provide a high-level review of the Unemployment Insurance (UI) tax rate structure, provide a comparison with aspects of border state UI program details, and to identify potential changes to the North Dakota system based upon North Dakota needs.

Purpose of UI

The primary objective of the UI program is to provide a partial replacement of an individual's wages lost during periods of temporary unemployment. The UI program pays weekly benefits, up to a maximum of 26 weeks, to individuals who meet the state's UI law requirements. Job Service North Dakota (JSND), through local offices, helps unemployed individuals with reemployment.

Federal/State Partnership

The Social Security Act of 1935 included a provision that established a cooperative federal-state economic stabilization program. This provision created a national program of wage replacement for workers during periods of short-term unemployment. ND Century Code guides North Dakota's participation in the federal-state UI program. Terms of the cooperative agreement require individual states to design their own systems following the federally established guidelines.

Funding of UI Program

The UI program is financed by employers through the payment of two separate taxes. The state unemployment tax is used entirely to pay benefits to unemployed workers. The federal unemployment tax, filed annually with the Internal Revenue Service, is used to finance the federal and state administration portion of the program and to pay the federal share of extended benefits. It also provides a pool of money from which states may borrow if their UI trust funds become insolvent. 26 states also recognize the limited funding provided for program administration and provide funding to their state UI programs either via general fund appropriations or surcharges/fees/taxes upon employers that assist in administering the program.

When a state's laws conform to federal laws, employers that have paid the required state unemployment taxes are entitled to receive a credit on their federal unemployment tax. This credit reduces the federal tax from 6.2% to 0.8% of taxable wages paid for each employee.

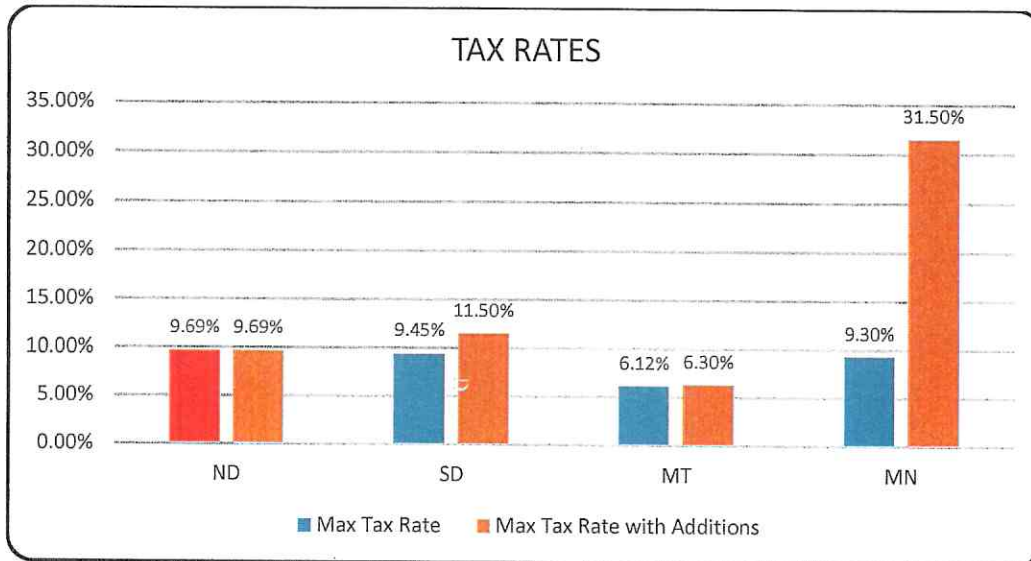
The majority of states pay UI benefits with funds collected through employer taxes. Only Alaska, New Jersey, and Pennsylvania levy UI taxes on employees. In Alaska and New Jersey, the taxable wage base applicable to employees is the same taxable wage base applicable to employers. In Pennsylvania, the taxable wage base applicable to employees is the total gross covered wages paid for employment.

Tax Rates

All liable North Dakota employers are assigned an unemployment insurance tax rate based on their experience with unemployment. This experience is judged in relationship to other employers and is measured by the state's experience-rating system called the reserve ratio system.

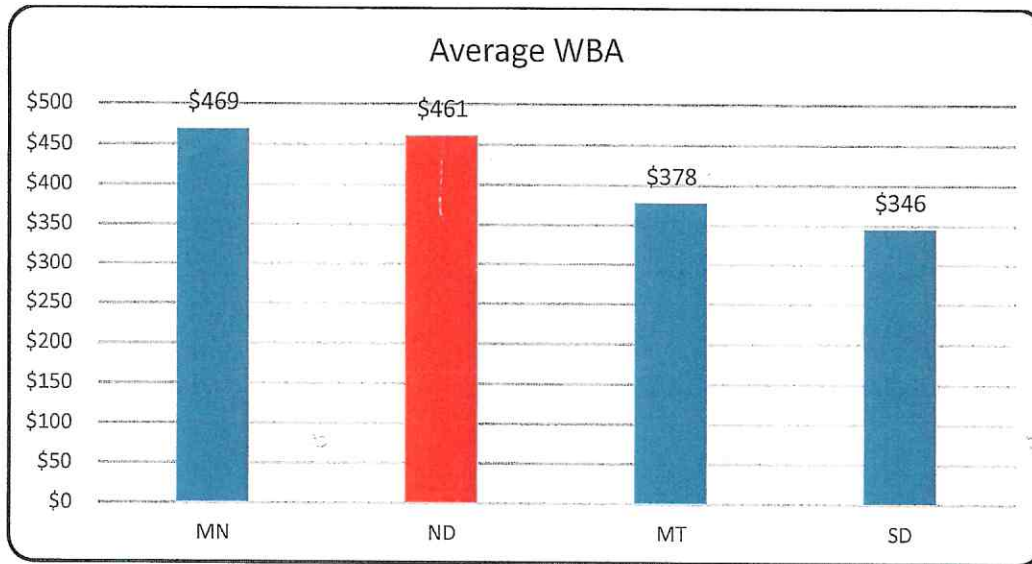
Comparison of Key Data Points with Border States

- Tax Rates



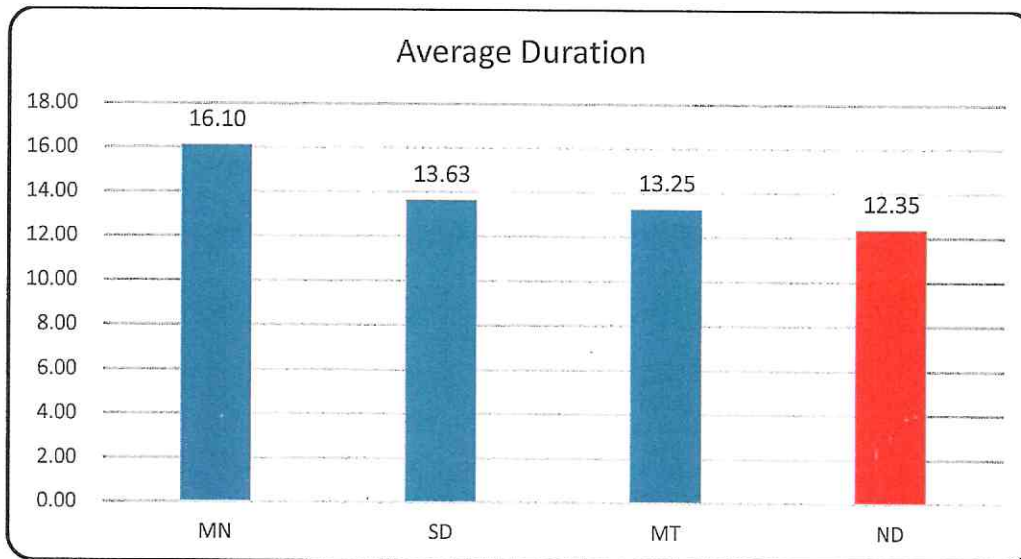
- North Dakota
 - Rate range without adjustments: 0.08% to 9.69%
 - No surcharges, fees, or additional taxes
- South Dakota
 - Rate range without adjustments: 0% to 9.45%
 - Rate adjustment percentage (solvency tax): 0.19% to 1.5% when in effect.
 - Investment fee (research and economic development tax): 0% to 0.53% for rated employers and 0.55% for new employers
 - Administrative fee (for program administration): 0.02%
 - Potential Maximum: 11.5%
- Montana
 - Rate range without adjustments: 0% to 6.12%
 - Administrative tax (for program administration): 0.13% or 0.18% depending upon the employer rate class
 - Potential Maximum: 6.3%
- Minnesota
 - Rate range without adjustments: 0.1% to 9.3%
 - Rate adjustment percentage (solvency tax): 0% to 14%
 - Falling Trust Fund Adjustment (solvency tax): 0.1% when in effect
 - Workforce Development Assessment: 0.1%
 - Special Assessment of up to 8% of taxes
 - Potential Maximum: 9.5% + up to 14% and up to 8% (unsure of triggers and % calculation) = 31.5%

- WBA Range



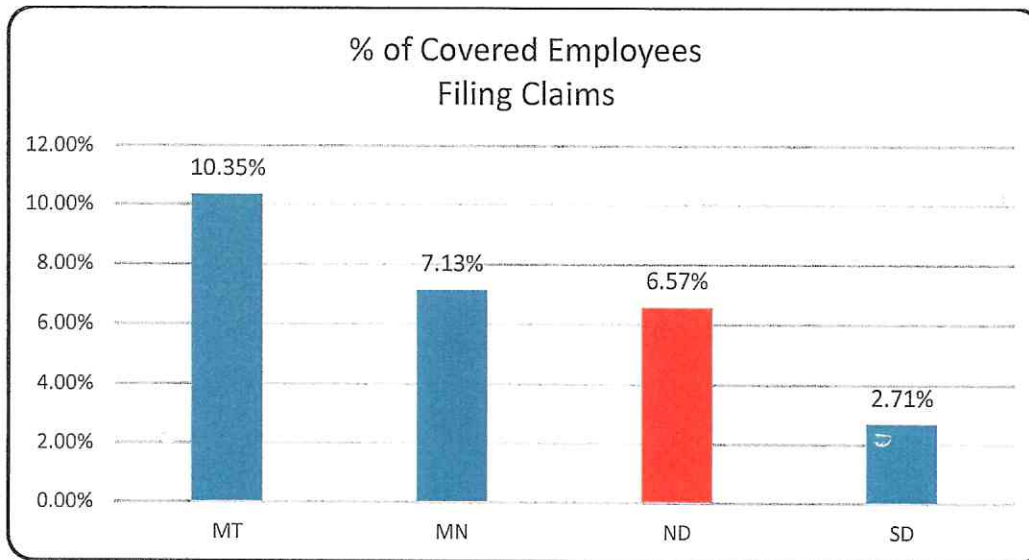
- North Dakota: \$43 to \$640
- South Dakota: \$28 to \$414
- Montana: \$163 to \$552
- Minnesota: \$28 to \$462 or \$28 to \$740 depending upon high quarter or entire base period (not sure how this works completely)

- Duration Range



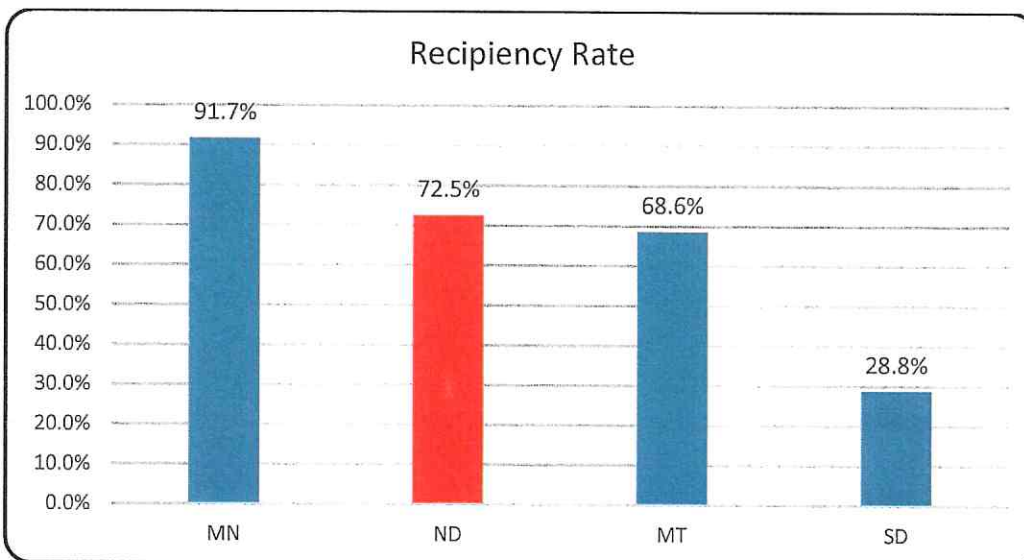
- North Dakota: 12 to 26 weeks
- South Dakota: 15 to 26 weeks
- Montana: 8 to 28 weeks
- Minnesota: 11 to 26 weeks

- Percent of Covered Workers Filing Claims



- North Dakota: 6.57%
- South Dakota: 2.71%
- Montana: 10.35%
- Minnesota: 7.13%

- Reciprocity Rate (covered unemployed in regular programs as a percentage of the total unemployed)



- North Dakota: 72.5%
- South Dakota: 28.8%
- Montana: 68.6%
- Minnesota: 91.7%

North Dakota Current Tax Rate Structure

Employers are placed into two rate categories; Positive balance employers and negative balance employers.

- Two rate categories
 - Positive
 - Cumulative taxes exceed benefits paid over the life of the account
 - Negative
 - Cumulative benefits paid exceed taxes over the life of the account
 - Ten individual rates within each rate category
 - Positive
 - 60% of positive wages get lowest rate
 - Remaining 9 rates contain equal amount of wages
 - Negative
 - Gap between maximum positive rate and minimum negative rate is approximately 5%
 - Each of the 10 rates in the negative category contain equal amount of wages
- Current Rate Range
 - Positive
 - 0.08% - 17,971 employers
 - 0.18% - 896 employers
 - 0.27% - 930 employers
 - 0.36% - 453 employers
 - 0.45% - 483 employers
 - 0.54% - 531 employers
 - 0.66% - 433 employers
 - 0.78% - 482 employers
 - 0.94% - 765 employers
 - 1.13% - 1154 employers
 - Negative
 - 6.09% - 202 employers
 - 6.49% - 123 employers
 - 6.89% - 139 employers
 - 7.29% - 250 employers
 - 7.69% - 149 employers
 - 8.09% - 131 employers
 - 8.49% - 269 employers
 - 8.89% - 153 employers
 - 9.29% - 314 employers
 - 9.69% - 630 employers

Presuming that rates set to a level high enough to address consistent benefit payouts going forward are not tenable, a variety of items need to be considered for any potential changes to the UI system.

There are two primary ways to address equity concerns relating to negative balance employers and the impact of negative balance employers on positive balance employer rates.

1. Generate more income from negative balance employers
2. Reduce benefit expenditures

Both options provided above raise challenges and, in some cases, will result in unintended consequences. Challenges relating to each of these options are noted below:

- Generate more income from negative balance employers
 - The difficulty here is the level of rate increase necessary is extreme depending upon the goal. If the goal is to provide an incremental change, the options grow. However, if the goal is to recoup all, or the majority, of benefit payments made, the rate levels necessary are close to 30% of taxable wages.
 - Increases in negative balance rates bring an assumption that positive rates will decrease. This would be true if the negative rate increase was high enough to cover in large part the benefits paid out by negative balance employers. If the increase in rates is not at a level high enough to cover these costs, the ability to adjust the positive rate schedule substantially is limited. This is in large part because most state employers fall into the lowest positive schedule rate. Even though this rate is very low, the volume of employers within this rate means that this rate produces a high percentage of positive balance income.
 - Assessing a fee or surcharge upon negative balance employers
 - To make a significant difference, any fee/surcharge would need to be high.
 - If the fee is a job attachment fee, the impact of potential "nuisance" work searches must be considered. Many normally job attached workers who may be required to search for work may inundate employers with contacts for work for which they are not qualified.
- Reduce benefit payment by reducing duration
 - The primary reason that benefit payments provide an option for impacting negative balance rates is the generous benefit payments provided by North Dakota.
 - The difficulty here is the negative financial impact upon the workers of the state.
 - The most common ways to lower benefit payments would be to reduce available claim durations and/or reduce the level of the weekly benefit amount (WBA). Both of these changes would require a statutory change.
 - It should be noted that reducing the level of benefits either through duration or WBA adjustments can financially impact the funding provided by the USDOL to the state. The USDOL has placed clauses in many of the program funding agreements that prohibit changes to state UI law that negatively impact items such as WBA and duration. The clauses primarily impact programs associated with events such as disaster funding or special program funding.
 - For perspective on how duration varies between industry types, the following chart shows the duration levels of the primary 23 industry types.

Whether accurate or not, appearances lead reviewers to conclude that the South Dakota UI system is targeted more towards business than workers. This conclusion is drawn by some of the differences in key data points such as benefit payments, average WBA, and program participation. South Dakota, although similar in size to North Dakota, has approximately half the claims that North Dakota receives in a year. At the same time, the average WBA is \$115 less per week for each of these claimants. As a result, the program ultimately pays out between a quarter and a third of the benefit payments that North Dakota pays per year. This results in a much lower need for tax revenue. Items such as weather and statewide industries could play a role in how the program is designed, but it ultimately comes down to the direction the state desires to approach unemployment, both seasonal and permanent layoffs.

In comparing state data points, Montana and North Dakota are much more similar than any other surrounding state. Even so, there are some significant differences. Although the max negative rate is lower than North Dakota's maximum, the average tax rate in Montana is the highest of any of the border states. Montana also socializes a higher percentage of charges than North Dakota does. This could account for the higher average tax rate they have in place. Two other differences are the higher percentage of workers filing claims in Montana and the significantly lower percentage of those claimants that exhaust their claims.

Minnesota is probably the least effective comparison with North Dakota. However, there are some distinct similarities, such as average weekly wage and average WBA.

Taking the various data points into consideration, there are a variety of factors that heavily influence the position of the UI program in North Dakota. These data points, when taken together, provide an understanding of how the UI program is utilized, and potentially even how it has been viewed by past policy makers. The UI program has seemingly been recognized as not only a strong benefit for the unemployed of the state, but also as a tool for economic stability and an employee retention tool for the employers of the state. The weather extremes of North Dakota provide for an environment requiring a strong UI program to ensure that a trained workforce remains within the state. Frequent debate as to the value of the UI program and the various components of the program having occurred over many years within the legislature, it appears that while incremental changes have garnered interest, significant program and philosophical changes have not been easily made or necessarily desired. This may be due to a limited understanding of the program or acceptance of what many consider to be very low rates for most employers, leading to very limited complaints about costs from North Dakota employers.

The basic key to any future potential changes to the UI program, whether achieved through benefit changes or tax rate adjustments, is that a clear direction from state policy makers is necessary. Any changes made will have impacts upon the workers and employers of the state with perceived winners and losers. In an insurance environment, it is impossible to get away from the need to charge the system users according to the risk they pose and the level of program utilization seen by the workers of each employer. This will always lead to some inequities. The key question to answer is what level of subsidization is acceptable, if any, to maintain a trained pool of workers, and what value is placed upon maintaining these workers and employers within each community.

If changes are desired, they should be focused on specific goals. A wholesale change of the UI tax rate setting process or a reduction in worker benefit do not seem realistic. However, incremental changes, such as changing gaps between rates or targeted surcharges at appropriate levels should be discussed. Both of these items can provide varying levels of change depending on the desires of policy makers in order to shift more of the tax burden to negative balance employers while providing the flexibility to generate the level of increased income desired.

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

SB 2203
2/10/2021

relating to surcharges paid by employers for employees who receive unemployment insurance benefits
--

Chair Klein opened the meeting at 9:15 a.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Unemployment
- Employment benefits

Senator Kreun moved a DO NOT PASS [9:16].

Senator Burckhard seconded the motion [9:16].

[9:16]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Kreun will carry the bill [9:17].

Chair Klein ended the meeting at 9:17 a.m.

Isabella Grotberg, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2203: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2203 was placed on the Eleventh order on the calendar.