

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1085

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to amend and reenact section 52-04-06.1 of the North Dakota Century Code,
2 relating to impact project incremental bonds under the unemployment compensation system.

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

4 **SECTION 1. AMENDMENT.** Section 52-04-06.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **52-04-06.1. ~~Incremental bond for impact projects~~ Construction project risk**
7 **projection.**

8 1. Any person, firm, corporation, or limited liability company and every general
9 contractor ~~which will employ or contract for the employment of or which is~~
10 ~~employing, directly or indirectly through agents, independent contractors or~~
11 ~~subcontractors on any project in North Dakota~~ this state with an estimated
12 construction cost of at least ~~twenty-five~~ fifty million dollars ~~including physical~~
13 ~~construction and site preparation but excluding design and engineering, a majority~~
14 ~~of which is planned to be completed or discontinued within a period of seven~~
15 ~~years, and which will require the employment of at least two hundred fifty people is~~
16 subject to this section. ~~Each employing unit working on~~ The general or prime
17 contractor, or the owner in those situations in which there is no general or prime
18 contractor, of a project which that meets the criteria specified under this section
19 shall ~~pay post~~ the bond or irrevocable letter of credit required in subsection 2
20 before commencement of construction work on the project and shall report
21 annually, within thirty days of the anniversary date the project becomes subject to
22 this section, to the bureau any change in ~~contract bids within the state as may~~
23 ~~have been determined under subsection 2~~ the construction costs of projects
24 subject to this section.

2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall ~~estimate the total job insurance contributions which the employing units will make under the North Dakota Unemployment Compensation Law based on the average estimated number of covered employees during the course of the project. The bureau shall also estimate the total benefits which will be required at the completion of the project, assuming that fifty percent of covered employees will claim benefits following completion or discontinuance of the project. If estimated benefits exceed estimated contributions, the bureau shall assess and collect from each employing unit an additional amount of one half percent times the successful bid amount on the project awarded to each employing unit but not to exceed one half percent times the total amount allowed under all bids accepted under the project. The amount is in addition to any other contribution required under the law and must be treated as incremental bond payments to ensure payment for all benefits ultimately claimed. The payments are not contributions until the ultimate determination of liability is made under subsection 3. The bureau shall amend the amount assessed under this subsection in accordance with any increases in contract bids reported by an employing unit under subsection 1. Any employing unit failing to comply with this subsection may be enjoined by the bureau from engaging or continuing in business until all required payments are made~~ require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state

1 within the jurisdiction in which the contractor or owner is found, located, or
2 transacts business to obtain an order to compel the general or prime contractor or
3 owner to post the required bond or irrevocable letter of credit required under this
4 subsection. Any failure to obey an order of the court may be punished by the court
5 as a contempt of court.

- 6 3. ~~The amounts collected from each employing unit under this section must be~~
7 ~~credited to individual interest bearing incremental bond trust accounts established~~
8 ~~by the bureau at the Bank of North Dakota. Eighteen~~ The amount of bond or
9 irrevocable letter of credit must be the difference between the estimated benefits
10 paid and estimated contributions. The estimation of contributions expected must
11 be made as follows: multiply the current year's negative employer minimum rate or
12 six percent, whichever is greater, times the current year's taxable wage base times
13 the estimated number of employees on the project, using figures from project
14 plans, times the number of years between the start date and the estimated
15 completion date of the project. The estimation of benefits paid must be made as
16 follows: the ratio of benefits charged to contributions paid in the most recent three
17 fiscal years by employers in the construction industry multiplied by the estimated
18 contributions.

- 19 4. ~~Thirty months after the completion or discontinuance of the project or eighteen~~
20 ~~months after the employing unit completes its phase of the work, the bureau shall~~
21 ~~determine the total benefits paid to employees of the employing unit or units and if,~~
22 If the total amount paid to the employees of the unit or units exceeds the total
23 amount of contributions collected from the units under the North Dakota
24 Unemployment Compensation Law exceeds total, the general or prime contractor
25 or the owner shall pay the total amount of benefits paid to the employees of the
26 ~~units, the difference plus accrued interest must be refunded to the appropriate unit~~
27 ~~or units but not exceeding the amount paid under this subsection plus accrued~~
28 ~~interest. The amount not refunded must be credited to the unemployment~~
29 ~~compensation fund which exceeded the total amount of contributions collected~~
30 from the unit of units. If the general or prime contractor or the owner does not pay
31 the payment requirement, job service North Dakota shall collect the payment from

1 the surety company that executed the surety bond or bank that issued the
2 irrevocable letter of credit.

3 4. ~~Upon completion of the contract requiring a bond in excess of one thousand two~~
4 ~~hundred fifty dollars, a contractor may receive a credit of ten percent of the total~~
5 ~~bond for every twenty percent of the total wages which were paid to individuals~~
6 ~~who at the time of hire were North Dakota residents. Upon completion of the~~
7 ~~contract requiring a bond of one thousand two hundred fifty dollars or less, a~~
8 ~~contractor may receive a credit of ten percent of the total bond for every ten~~
9 ~~percent of the total wages which were paid to individuals who at the time of hire~~
10 ~~were North Dakota residents. For the purposes of this subsection, a person may~~
11 ~~be considered a resident provided the person has earned in covered employment~~
12 ~~in North Dakota as defined in title 52, the sum of two thousand dollars during the~~
13 ~~past four completed calendar quarters preceding the date of employment or can~~
14 ~~provide evidence of having resided in the state during the past four completed~~
15 ~~calendar quarters preceding the date of employment.~~

16 5. ~~Any employing unit, whether contractor, subcontractor, or otherwise, which in turn~~
17 ~~subcontracts a portion of its contract, may upon application to the bureau and~~
18 ~~proof of such subcontract receive an adjustment on its bond in direct proportion to~~
19 ~~the amount of such subcontract.~~

20 6. ~~Failure of any employing unit, whether contractor, subcontractor, or otherwise, to~~
21 ~~inform the bureau of the issuance of a subcontract or if any subcontractor fails to~~
22 ~~pay the bond required under this section shall cause the contractor to be liable for~~
23 ~~payment of the subcontractor bond and any unpaid subcontractor contributions~~
24 ~~due on the projects.~~

25 7. 5. ~~For the purposes of this section, a project includes all entities which~~ that ~~employ or~~
26 ~~contract for the employment of, or is employing directly or indirectly through~~
27 ~~agents, independent contractors, or subcontractors, regardless of the number of~~
28 ~~employees that any particular employing unit may have to perform services on a~~
29 ~~project, if the overall project involves the employment of at least two hundred fifty~~
30 ~~persons in the aggregate. In this situation, each~~ Each ~~employing unit, whether~~

contractor, subcontractor, or otherwise, involved in the project is subject to this section.

~~8- 6. The bureau is authorized to adopt necessary rules for the effective administration and enforcement of this section~~ Each employing unit having employees working on a project subject to this section shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.

~~9- 7. This section applies to projects begun after June 30, 1987. A project must be deemed to have commenced under this section at the time that work begins under the first contract that has been let for any phase or type of work on the project for which bids are let after August 1, 2001.~~

8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.

9. This section does not apply to any project in which the state is the owner or contractor.