Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1450

Introduced by

Representatives Severson, Dosch

A BILL for an Act to create and enact a new subdivision to subsection 15 of section 52-01-01, a new subdivision to subsection 17 of section 51-01-01, and a new section to chapter 52-04 of the North Dakota Century Code, relating to definitions for unemployment compensation purposes and financing of benefits paid to employees of Indian tribes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 15 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employer" includes an Indian tribe for which service in employment as defined under the North Dakota unemployment compensation law is performed.

SECTION 2. A new subdivision to subsection 17 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act, provided the service is excluded from "employment" as defined in Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of the Federal Unemployment Tax Act, and is not otherwise excluded from employment under the North Dakota unemployment compensation law. For purposes of this subdivision, the exclusions from employment in subdivision h is applicable to services performed in the employ of an Indian tribe.

SECTION 3. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

Financing benefits paid to employees of Indian tribes.

1. Benefits based on service in employment with an Indian tribe are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the North Dakota unemployment compensation law.
2. a. Indian tribes or tribal units subdivisions, subsidiaries, or business enterprises wholly owned by the Indian tribe, subject to the North Dakota unemployment compensation law, shall pay contributions under the same terms and conditions as all other subject employers, unless it elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.
   b. Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in sections 52-04-18 and 52-04-19.1. Indian tribes may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.
   c. Indian tribes or tribal units must be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.
   d. At the discretion of the bureau, an Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions must, within thirty days after the effective date of its election, execute and file with the bureau a surety bond approved by the bureau.
3. a. Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill causes the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection 2, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
   b. An Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision a, is entitled

to have the option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

c. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the bureau have been exhausted, causes services performed for the tribe to not be treated as employment for purposes of subsection 17 of section 52-01-01.

d. The bureau may determine that an Indian tribe that loses coverage under subdivision c may have services performed for the tribe again included as employment, for purposes of subsection 17 of section 52-01-01 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

e. The bureau will notify the United States internal revenue service and the United States department of labor of a termination or reinstatement of coverage made under subdivisions c and d.

4. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed timeframe:

a. Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;

b. Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

c. May cause the Indian tribe to be excepted from the definition of employer, as provided in subsection 15 of section 52-01-01, and services in the employ of the Indian tribe, as provided in subsection 17 of section 52-01-01, to be excepted from employment.

5. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government must be financed in their entirety by the Indian tribe.

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective to December 21, 2000.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.