

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1432

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1432  
January 26, 2011  
13480

☐ Conference Committee

Committee Clerk Signature

*Ellen Lu Tang*

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

Relating to electronic transmissions of documents by job service ND; and to unemployment compensation employer classifications and employee benefits

**Minutes:**

**Chairman Keiser:** Opens the hearing on HB 1432.

**Tim Koppleman~District 13-West Fargo:** Deals in 3 various ways with job service. The first thing is it does is deals with the issues of classification of construction employers. On page 1, the changes are aimed with dealing with that. You see other changes at the bottom of page 4, that change has to do with someone who leaves your employment, often time of their own choosing, they work for a company that is this job attached category, you as an employer in a look back period are still held responsible in your premiums for part of what happens when that person is laid off from a job attached employer later. That language attempts to fix that. On top of page 5 this was intended to be an "or" and look at business days not calendar days. Another way to deal with it is electronic notification. If you don't reply in a quick turnaround, it will cost you money.

**Chairman Keiser:** Is there an amendment that will be forth coming?

**Tim Koppleman:** Yes, there is one for the bottom of page 4 to clarify that. I would recommend one for on page 5 to make that an either/or option.

**Chairman Keiser:** We can hold off?

**Tim Koppleman:** Yes.

**Chairman Keiser:** Further questions? Anyone else here to testify in support of HB 1432?

**Ben Koppleman~Small Business Person:** In the first section, when the construction and non construction split, they used the 2 digit coding process to determine who construction was and who wasn't. That was a broad stroke of the brush. What this bill would do for those people that in that lower risk construction group, this would shorten their probationary period from 3 to 2 years and it would provide them with their own probationary rate. I think the rate is around 10% for the first 3 years of any new construction company. With this proposal, there is a range to fix that from taking them out of the construction entirely or

putting them in a lower risk construction category. In order to achieve that we would be going to a 4 digit code, I'm referring to the national system that Job Services already uses to classify businesses. On the second section on the bottom of page 4, the intent is not achieved. As it is printed, it would take me off the hook, if job attachment is used. Our goal is not to harm employers that use job attachment, but merely have other employers pay for it. The amendment that we would offer would also protect the fund. The entire base period should be charged to the employer that is using the job attachment and Darren Brostrom's amendment does that. The last piece, I would agree, to amend that to say "or". Also, if the committee determines that this is not reasonable, to have this happen immediately to become law, then to have an effective date to when that would be reasonable.

**Chairman Keiser:** Committee likes business days.

**Chairman Keiser:** Anyone else here to testify in support, in opposition of HB 1432?

**Darren Brostrom~Director of Unemployment Insurance with Job Service North Dakota:** (see attached testimony).

**Chairman Keiser:** Any questions on section one. How does the unemployment insurance generally work? We have new members and old members that need to be refreshed.

**Darren Brostrom:** The question primarily relates to .4 within the testimony and that is with tax rates. When we set tax rates every year, what we look at is the amount of benefits that we are going to pay each year. In order to account for that benefit payments we have to look at where our income is. We look at several factors; we look at where our current trust fund is at, the overall wages paid in the state and the taxable wage base. What we would have to do is determine what level of taxes would get us to the income level needed to pay for the benefits each year. In addition keeping us and moving towards or at the target balance unemployment trust fund. The trust fund itself is modeled in statue on how we have to move towards that target. Typically we have a 5 year period and we do that in order to minimize the fluctuations in rates. The legislature has put a lot of thought into setting its program up and the tax rate, in such a way to minimize these fluctuations and really assisted the employers of the state. A lot of other states have gone broke and we have set up a system that has kept us solvent, it's a verily good system.

**Representative N Johnson:** How has the low unemployed impacted the Job Service for the past year?

**Darren Brostrom:** We do have low unemployment in North Dakota. We are lucky to have that. We have had an extensive in the number of claimants that have gone through our system. The basis for that is many employers have taken the route of rather than laying off, they reduce hours. In those situations, an individual may become eligible to utilize the unemployment insurance system if the hours are cut to a level to qualify them. Another impacting factor is the BLS (Bureau of Labor Statics) calculates the unemployment rate by their survey once a month. It's a multitude of things to increase that volume.

**Chairman Keiser:** Has the cost gone up, down or static.

**Darren Brostrom:** 2010 has declined from 2009 where our claims were. 2008 is where we saw the impact of the national economy upon North Dakota. 2009 was a rough year. 2010 has been declining.

**Chairman Keiser:** That is good news, but with the assumption with our low rate of unemployment, we must be doing better and the case is we've have been actually increasing payments relative to some of those previous periods.

**Vice Chairman Kasper:** In this area of construction that this bill covers, what type of a trend have you seen over the past years that haven't been complied as far as their claims into the fund?

**Darren Brostrom:** As far as trends, the construction industry has been doing well. There are around 52 categories within the construction category. Pieces are doing well, other pieces, even in good economic times; they will utilize the system because of the seasonal nature of their work.

**Vice Chairman Kasper:** I want to focus on the builders for this bill.

**Darren Brostrom:** They have been a positive area in tax rates in building a positive balance.

**Representative Amerman:** We have covered a lot on the employer side, so on the employee side of the job attached, what ramifications does this bill present. Do I fall back where I call every week or how is the employee affected by this bill?

**Darren Brostrom:** Section one, I addressed initially, relating to the rate categories, really would not impact employees. If you moved section 2, there could be an impact on employees simply by choices made by employers as to whether or not they chose to attach an employee to them. If there are costs associated with attaching an employee, they may not choose not to do that. I would be hard pressed to tell you whether how they would make that decision.

**Chairman Keiser:** Further questions on section 1?

**Darren Brostrom:** (continues reading testimony starting on page 4, section 2).

**Chairman Keiser:** Questions from the committee on section 2?

**Representative Ruby:** The part where you talk about the employee leaving the employer where the base period is involved and go to an employer where it's not where that first month is not part of the base period, would it be where the bill was written the benefits would still be based on what was paid on that base period, it wouldn't necessity be charged to that employer.

**Darren Brostrom:** The way the system works right now, once a claim is filed by an individual, the base period is established. The employers within that base period become immediately liable for charges that would be associated with that claim. The way the

scenario works is that if they worked for employer A and employer A was the only one who contributed to their base period. Now they left employer A and go to work for employer B for a month, then were laid off, employer B has paid them during the 2 months, but those 2 months are not in the base period of that claim, that individual originally filed. The individual would file their claim for unemployment insurance and because that base wages from employer A are what's making up that claim, employer A is charged for those benefits. Now if the individual quits employment with employer A, and employer A told us they quit, we would not charge them and those benefits would be charged to the pool. The intent of the bill would be employer A would be relieved any charges and employer B, because they are the ones that laid him off now and they are creating a job attached status, they should be charged all benefits. That's the intent of the bill.

**Representative Ruby:** You did kind of clarify.

**Representative M Nelson:** You mentions that this would cause problems because that a lot of them are already at the maximum rate, does it seem to you that we have a sub group of employers who have decided to make a business model that relies on the pool to pay out more out in benefits so their employees and maximum 10% that would be paying in?

**Darren Brostrom:** That's hard for me comment on. It would work out that way, but I wouldn't want to imply that someone did that. Some employers have become extremely negative in paying out in benefits and there isn't any movement in the other direction in sight.

**Chairman Keiser:** My frustration is going backwards and picking up the claim. Based on your salaries, so you are paying into the fund, while that employee is there, they are your liability. As you were describing the situation of employer A & B, if you terminate with employer A and employer A is exempt from paying claims in the future, I don't think that's quite accurate, is it?

**Darren Brostrom:** If that was said, I was mistaken. I was intending to discuss a quit situation. If an individual quits employment with an employer, typically, they are not allowed benefits, however North Dakota allow them to requalify for benefits if they get laid off by subsequent employer for a non disqualifying reason. Those situations the employer that the quit originally occurred from, would not be charged benefits. They have to tell us because we don't know that he quit and we would not charge them for those benefits.

**Chairman Keiser:** Second question, the reason it would cost all other participants in the fund is those negative employers in the construction industry that are at the maximum level. By reducing the cost of other people in the employment fund and they have to make up the amount of money to handle the claims in that segment, you can't increase the amount to the maximum folks if they are utilizing this system. So, the cost has to be transfer to the general fund and that costs us \$294?

**Darren Brostrom:** The costs that were noted in the fiscal note relate to the charges of programming our system of these changes.

**Chairman Keiser:** How much would transfer out?

**Darren Brostrom:** We calculated that number for section 1. Section 2, because of the question on the intent and because of the large numbers associated there, I don't have a number to give you now to what the overall costs would be. I believe it would be significant. I would run the numbers off for you.

**Chairman Keiser:** We did put some limitation on job attached. What did we do with job attached?

**Darren Brostrom:** There is not any restriction on the percentages of job attached. There has been a lot of conversation of how to handle a job attachment but ultimately the only real change that was made was insuring that employers are very clear in their assignment of job attachment.

**Chairman Keiser:** How do you make it clear?

**Darren Brostrom:** We changed our employer notices to be such that it was clear to the employer that the employee told us this was the situation and they are returning to work for you. The result of this, they wouldn't have to look for work and all benefits will be charged accordingly. In that sense employers then have to respond back to us and tell us that yes this is a true statement. Previously, the notices were not as clear of the ramifications of this choice in what the employee told us. There is a lot of clarification language occurred.

**Darren Brostrom:** (continues reading testimony starting on page 6, section 3).

**Representative M Nelson:** Mr Koppleman said that there was a 14 days federal requirement for the employee to get benefits, is that 14 business days?

**Darren Brostrom:** It is calendar days.

**Representative Ruby:** Back to section 2, why is the base period based on the first 4 of the last 5 quarters?

**Darren Brostrom:** I believe that stemmed from the earlier years of the program. Prior to some of the electron methods that are available to us now, the wage information needed to actually set up a claim for an individual wasn't available to the agency. In order to insure that all the information needed to set up a claim appropriately without really extending the time frame placing the burden on employers or the agency, it was determined that the first 4 of the last 5 completed calendar quarters should be that determination. It's been a national standard.

**Representative Ruby:** I was thinking that could drop off a certain segment of that first employer, maybe we would have less notifications that would go out just from dropping that extra quarter.

**Darren Brostrom:** The research we have done was focused on the impact of using that most recent quarter which is called an ultimate base period nationwide at this point, would

have on bringing in more people into the system. It didn't focus on what would be dropped off. I don't have an actual number for you.

**Representative Amerman:** What effects will it have on job attached employees?

**Darren Brostrom:** I think that question you should ask industry, I'm not sure of the business model or the funding available for employers of whether or not they would make a choice not to job attach someone. The bill itself does not impact the individual employee. Section 3 could, as far as when they would get paid. The first 2 sections, it's not intended to impact employees, there could be an outlying effect by employers making a choice not to attach them, again an industry question.

**Chairman Keiser:** Section 4, going to electronic, I recognize that is going to cost on the front end but it will be cost effective in the end. We should do it now.

**Darren Brostrom:** It is in our plans to move in that direction. The basis for our proposal to this right now it doesn't provide any relief. Basically it says you shall create this and you are going to have it. We don't have the funding or staff for it. We have a variety of projects in place, both federal and some state that are funded by the federal government and along with that comes some time frames in which we have to expend those funds. We have some competing priorities there. We do want to move in that direction and due to federal stimulus funds, that where we are going to be with employees. That is where our opposition is, we don't have the funds or people to make it happen right now.

**Chairman Keiser:** What kind of fee did we proposed for the job attached route?

**Darren Brostrom:** As far as the exact dollar amount, I'm fuzzy. I think throughout the conversations, it was 25 to 100 for an individual.

**Chairman Keiser:** What those dollars collected, they would have gone into the construction category in terms of relief for those people that weren't using job attached at much.

**Darren Brostrom:** Those would have gone into the overall trust fund, which ultimately need to be to impact and insure those would raise other employer's tax rates.

**Chairman Keiser:** Anyone else here to speak in opposition to HB 1432?

**Russ Hanson~Associated General Contractors of North Dakota:** We would urge your caution and stand opposed to this bill as it is. A couple of questions that were raised, the fee you were talking about was 100 dollars, I think. Representative Amerman had a question about the job attachment. From our perspective, representing the employers, the factors of this bill, I don't believe would change their thought process of who they would attach. The employers will attach who they believe they need to come back. The biggest area of concern is by altering the section 1 and having that ramification of splitting that out of costing potentially all employers, higher rates and having the construction industry responsible for that is an area of concern.

**Chairman Keiser:** Would your industry be as opposed to assessing a fee for job attachment if it only applied to those firms that were at the maximum rate in that classification?

**Russ Hanson:** Yes, I believe they would be fearful. Job attached is a hot button and depending where you are at in the system, you are for or against it and it one of those opinions that are not swayed very easily.

**Chairman Keiser:** When we tried to do it, we applied it to every job attached position. I guess in a sense that was as indefensible as other people requesting the shifting of costs. But certainly those people who are maxing, it seems a less defensible argument on your part, we will see.

**Russ Hanson:** You may have a point; our position may be the same.

**Chairman Keiser:** Anyone else here to testify in opposition to HB 1432?

**Tom Balswoth~Representing Bill Shalhoob:** In 2007, HB 1409 which was a bill put forth by the chairman, it was a mirror bill to a bill in the senate side that came out interim committee. It was a fee 100 dollars per return to employer status employee, 50% of that fee paid under this section would be considered an unemployment contribution for that particular employer and the other 50% went to the federal advanced interest repayment fund. We have some significant concern as written and have some concerns if amended. The main concern in section 1 is why just for the construction industry. I think this should apply to all industries across the board if you go from 2 to 4 digit code. That was our main question, when we sat down and started discussing this particular legislation, why are we just focusing on just that, if we're are going to do an universal change in the system, let's study it over the interim and find out what the full impact is. Section two as we found out in 2007, the time on job attached is very similar to the time for those people who are not job attached. As well as these people who are job attached, are highly specialized groups and industries. Road construction are not putting flaggers on job attach status. The issue is if somebody takes from someone from a particular industry that, they are all in the same group anyway. Most of these individuals are on the highest class rate and we no revenue to pick that up on the other side. This is insurance and you have winners and losers and in the fund, it washes out in the end. If you are an employer who is hiring someone away from a different employer, that person is actually quitting you and going to work for this other employer, therefore it goes back to the entire fund as part of that process. So it would protect the entire fund but the money has to be picked up from somewhere and that is why businesses have concerns with this bill. It's not just going to impact that construction segment; it's going to impact everyone who pays into the system. After 2007, with the changes in the fee structure was designed, a lot of positive balance, employers were very satisfied with how the new rate structure treated positive and negative balanced employers. That particular employer in order for their account to be charged had to make the decision to fire that individual. That is consequences to every action and that's one that is there. Sections three, when you have someone leave your place of employment, as a business person, you know that notice is coming. You need to watch out for it regardless of whether he quit or was fired. I cannot imagine paying a claimant based on their word



without hearing back with confirmation from the employer and then going back to that unemployed individual and asking for the money back after they have purchased groceries. Job Service is working towards this; we are also mindful that Job Service is federal funded agency and has had significant cuts over the years. That issue scares us but most employers are willing to understand that and work with that.

**Chairman Keiser: Anyone else here to testify in opposition, neutral of HB 1432?**

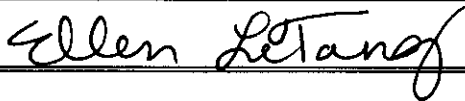
# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1432  
February 1, 2011  
13770

☐ Conference Committee

Committee Clerk Signature



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

Electronic transmission of documents by Job Service North Dakota and to unemployment compensation employer classifications & employee benefits.

## **Minutes:**

**Chairman Keiser:** Opens the work session on HB 1432.

**Representative Clark:** (Inaudible).

**Chairman Keiser:** There is a fiscal note goes, 5 hundred thousand expenditure for them to change the computer system to go from a 2 digit to 4 digit.

**Representative Clark:** For the 4 digit code there is different rates.

**Chairman Keiser:** That is correct.

**Representative Clark:** Some people would gain and some would lose if this bill is adopted.

**Representative Ruby:** Does worker's comp use those 4 digits codes for assessing the different rates, classifications and risks for each occupation?

**Chairman Keiser:** I don't know the answer.

**Representative Clark:** I have the idea that they are not using the 4 digit system.

**Chairman Keiser:** The construction industry is tough with positive and negative balance employers. Negative balance employers have taken more out of the fund and they have paid in. The positive balance employers have paid more into the fund than they have taken out. Keep in mind that each employer is treated as a separate account and in effect is creating a reserve for themselves. It's not all bad to overpay, it can lead to lower premiums in the future based on your reserve. A negative balance employer does not want to be negative and there is a tendency on the part of policy makers, including myself, to say lets penalize the negative employers until you stop and consider the situations. In the construction industry where the problem we have a maximum rate that negative balance

employer can pay or otherwise you will put them out of business. Well, housing construction has to be so good for so long that maybe it's time to break them out and treat them separately rather than say you are part of construction. Now, having said that, there are positive balance folks in the construction industry and they can get down to a rate that is very similar to the rate paid by a non-construction industry. If their surplus is adequate in their account and they have no turnover in the past 10 years, doesn't mean they are going to pay a 13% premium, but can they get as low as an office that has no turnover, probably not. This bill is asking for 2 things, one is was a change of breaking out to the 4 digit system thereby creating a different system. The second thing was the electronic transfer if applicable. The department said that they would like to do both of them; they don't have the money for the electronic transfer and don't have the money for the 4 digit code. Unless we want to put in an appropriation for 500 thousand dollars in the bill, it doesn't make much sense to pass the bill. If you want the concept, we should amend it, put the appropriation in it and make sure the money is there. Those are your choices and they are not always good. Again, North Dakota Job Service is unique. It's a federally funded program for administrative costs and it is a state employer funded for benefits. What this bill does is taxed the administrative of the program and there are no additional federal dollars for this.

**Representative Vigesaa:** I looked at the testimony from Darren Brostrom, it is believed that the intent of the bill is felt that the proposed language the bill does not provide the intended results. In addition, the fiscal note and the other employers will have to pick up the tab for this.

**Chairman Keiser:** We are not saving any money in the fund. It's a reallocation of dollars, but is the reallocation more fair? That is the question.

**Representative N Johnson:** Moves a Do Not Pass on HB 1432.

**Representative Gruchalla:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was taken for a Do Not Pass on HB 1432 with 12 yeas, 1 nay, 1 absent and Representative Clark is the carrier.**

# FISCAL NOTE

Requested by Legislative Council  
01/19/2011

Bill/Resolution No.: HB 1432

**1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$499,554	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

Sec 1 changes the way new construction employer tax rates are set, and requires a new rate category. Sec 2 changes the way employers who utilize job attachments are charged for benefits paid. Sec 3 requires communication with employers electronically rather than via mail if the employer so chooses.

**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.*

Sec 1 requires mainframe changes for new employer tax rate setting, \$74,400. Sec 2 requires changes to the mainframe based employer charging system, \$228,480. Sec 3 requires electronic notifications and would require changes to our internet system, doc. management system, and the mainframe, \$196,674.

**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.*

None

**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.*

The expenditures relate primarily to programming changes required to the Job Service mainframe based tax and benefit system. Additionally, changes to systems hosted and managed by ITD, such as our internet based tax system and our electronic document management system would require programming changes to be completed by ITD. No additional FTE would be required.

**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 is also included in the executive budget or relates to a continuing appropriation.*

No appropriation for these changes was requested, however, no current funding exists to complete any of the above noted changes. Additional federal funds to pay the associated programming expenses does not exist and cannot be expected.

<b>Name:</b>	Darren Brostrom	<b>Agency:</b>	Job Service North Dakota
<b>Phone Number:</b>	701-328-2843	<b>Date Prepared:</b>	01/24/2011

Date: Feb 1 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1432

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Johnson Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	Ab				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 12 No 1

Absent 1

Floor Assignment Representative Clark

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

**REPORT OF STANDING COMMITTEE**

**HB 1432: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1432 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1432



**House Bill 1432**  
Testimony of Darren Brostrom  
Job Service North Dakota  
Before the  
House Committee on  
Industry, Business and Labor  
Representative George Keiser, Chair  
January 26, 2011

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today to provide information as to the impact of House Bill 1432 on the unemployment insurance system and the employers of the state.

House Bill 1432 encompasses three different and significant changes to the unemployment insurance system. Section 1 impacts how new employer tax rates are determined. Section 2 relates to how benefits paid are charged to employers in the case of individuals attached to, or returning to work for, an employer. Section 3 requires electronic communication capability between Job Service and employers interacting with the unemployment insurance system. While Job Service elects to take a neutral position on Section 1 and Section 2 of the bill, we are opposed to Section 3.

**Section 1**

Section 1 of House Bill 1432 addresses the way in which new employer construction rates are assigned. The rate setting determination process for new construction employers is an item that has been previously debated by the

legislature, most recently in the 2005 legislative session. At that time, the bill under consideration failed to pass.

As a result, an interim study was conducted with participation from the North Dakota Association of Builders, the Job Service Labor Market Information Center, and the Unemployment Insurance unit of Job Service North Dakota.

The results of the study were presented to the interim committee in July 2006 and the interim committee's recommendation was that existing statute was sound, and that no change was recommended.

We understand that the intent of Section 1 is to create a more equitable environment for some new construction employers that may not historically utilize the unemployment insurance system as extensively as other construction employer types. Passage of House Bill 1432 would result in new employers within the construction industry being assigned rates based upon their specific four-digit NAICS (North American Industry Classification System) code. Using this methodology, the overall experience of the industry type will determine whether they would be placed within the negative balance or positive balance employer groups.

The bill essentially creates a high and low initial rate for new construction employers. What this means is that new residential builders may be assigned the maximum positive rate while new non-residential builders may be assigned the maximum negative rate. The rate assignment would be based upon the history of all the employers falling into these employer categories.

Research into this bill identified that by coding employers by the first four digits of their NAICS code rather than the current two-digit coding, some employer types within the construction category would be identified as positive employers. However, under the current rate assignment methodology, any employer classified as new construction would receive the new employer construction rate.

The new employer construction rate is currently the maximum negative employer rate, and this rate would remain assigned to the employer until, at rate computation time, the employer had been covered for at least ten quarters. After this timeframe, the employer receives a rate assignment based upon their individual experience with the unemployment insurance system. If the employer has cumulatively paid more in taxes than has been paid in benefits to claimants for whom they have been determined chargeable for benefits, the employer would receive a tax rate based upon the positive employer rate schedule; otherwise they receive a tax rate based on the negative employer rate schedule.

While a change in rate assignment methodology may reflect what appears to be a more equitable way to assign new employer construction rates, there are several items to consider when deliberating House Bill 1432.

1. The construction industry as a whole is one that has historically utilized the unemployment insurance program extensively, and has been one that has been volatile over the years.
2. The construction industry is an industry that is fairly easy to enter and exit quickly, raising the risk of employers coming into the state during boom times, only to leave quickly when the economy declines. This is reflected within the new residential home builder category. Although the home

builder category falls into the overall positive category for rated employers, it is also the category with the highest amount of unpaid taxes, owing more than 15% of all monies past due to Job Service.

3. The current methodology assists in-state construction employers compete for jobs. By providing lower rates for new construction employers, out-of-state construction employers, who are new employers with no history in the state, could actually pay lower rates since they would not have the benefit payout history that affects North Dakota's experience-rated employers.
4. A change to the new employer rate assignment process will lower the income received from new construction employers. At the same time, the level of benefit payments will remain constant. What this means is that all employers, both positive and negative, will see a tax rate increase after implementation of the change as proposed. In calculating what this new model would mean for unemployment insurance tax rates, we identified that the average tax rate in North Dakota would need to move from the current average of 1.35% to 1.38%. This change equates to \$1.8 million less in income that must be made up through tax rate increases across the entire rate range in order to cover the benefits paid throughout the year.

There is a fiscal note associated with this change in employer tax rating. The cost to implement this particular portion of the bill is estimated to be \$74,400.

## **Section 2**

Section 2 of House Bill 1432 is intended to provide charging relief to base-period employers based upon the job attached status of the claimant. In cases where an individual is separated from employment with a base-period employer, then goes

to work for another employer and is subsequently laid off but is designated as returning to that employer, the original base-period employer would not be charged for the benefits paid due to the job attached status designated by the subsequent employer.

While it is believed that we understand the intent of the bill, it is felt that the proposed language of the bill drafted by Legislative Council does not provide the intended results. Time constraints did not allow for an in-depth collaboration between Legislative Council, the bill sponsors, and Job Service, and as a result, some language cleanup would be appropriate. Job Service welcomes the opportunity to participate in this process to achieve the appropriate language necessary to meet the intent of the bill.

The language proposed has two items that would appear to need clarification. First, the bill provides that in order for non-charging to occur, the subsequent employer must have contributed wages to the base-period of the claimant. While this scenario can certainly occur, a subsequent employer will often not have provided any base-period wages for the claim in question. In these situations, the original base-period employer would continue to be charged for benefits paid.

The second item relates to which employers should be charged for benefits paid. Under the current language of the bill, there is no designation of which employers should be charged for benefits paid, therefore benefits would be charged to the entire pool of employers participating in the unemployment insurance program. Because of the large number of job-attached seasonal workers within North Dakota, these charges could be significant, ultimately impacting the tax rates of all North Dakota employers.

It should also be noted that even if amended to accomplish the intent of the bill sponsor, benefits paid that are associated with job-attached claimants would likely be charged in large part to the heaviest users of the job-attached designation – large construction employers. Because many of these employers already pay at the maximum negative rate, the charging allocation would bring less income into the fund, thus necessitating the spreading of the revenue shortfall across all employers through the rate setting process. This was in part the reason for considering a “job attached fee” as noted within the interim study completed after the 2005 legislative session. In 2007, legislation was introduced to implement a job-attached fee, but failed to pass. Instead, changes were made to the tax rate setting process to provide for a more equitable tax rate model. This is the tax rate model that is currently in place.

There is a fiscal note associated with this change in employer charging. The cost to implement this particular portion of the bill is estimated to be \$228,480.

### **Section 3**

Section 3 of House Bill 1432 would require Job Service to develop procedures to allow employers to elect to receive communications from Job Service electronically. While this functionality is consistent with the technology and communication plans of Job Service, the work associated with implementing this mandate is not something that is easily completed, and comes with a significant cost, both monetarily and with Job Service staff resources.

The intent of this bill is to allow for a quick and convenient communication methodology between Job Service and the employers of the state who choose to

utilize this methodology. For example, notification to an employer of a claim being filed where they are a base period or separating employer would be provided in the form of an email or text message. Enhancements to our existing Internet-based employer system would allow employers to log in to their account and reply electronically to the notice. In order to determine the costs associated with this change, we requested that ITD provide a cost estimate for this project. The cost estimate provided by ITD amounted to \$110,154. In addition to the changes programmed by ITD, changes to our mainframe system would also be required. The estimate for this work amounted to \$86,520. Ultimately, the total cost of this project is estimated to be \$196,674.

As noted previously, Job Service is opposed to the change associated with Section 3 of House Bill 1432, but we have concerns with all three Sections of the bill. The primary concern associated with the changes identified within the bill, both of which relate to Job Service resources. Job Service is a federally funded agency, and does not receive any state general fund dollars for the administration of the unemployment insurance program. Over the last decade, Job Service has experienced decreasing federal funding and has had to reduce our workforce by 133 employees. This has severely stretched the ability of the agency to take on additional projects and has virtually eliminated the opportunity for Job Service to fund any additional projects or staffing.

Although the US Department of Labor periodically funds specific state IT projects when they are deemed a federal priority, such as SUTA dumping, fraud and overpayment detection, or the changes associated with the Unemployment Insurance Modernization initiative, they do not fund state law changes. As a

result of this, a state general fund appropriation would be needed to complete the changes associated with each portion of this bill.

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



# Fiscal Note Information Relating to HB 1432:

## Section 1: Construction NAICS Experience Rate

### *Summary*

*The following describes the scope of work and provides a cost estimate for incorporating new employer rates based upon industry code (first 4-digits of NAICS code) and the reserve of each industry.*

### *Assumptions:*

- New employers would no longer be referred to as construction and non-construction. Rather, they will be referred to as "new negative reserve by industry employers" and "new positive reserve by industry employers".
- New construction employers were considered to be new until they reached 12 quarters of liability. The "new negative reserve by industry employers" would be considered new until they reached 12 quarters of liability.
- New non-construction employers were considered to be new until they reached 8 quarters of liability. The "new positive reserve by industry employers" would be considered new until they reached 8 quarters of liability.
- All employers will be used to determine if the industry has a positive or negative reserve by accumulating contributions and benefits for each 4-digit NAICS code.
- A pre-defined rate will be provided from LMI for the "new positive reserve by industry employers". This rate will be added to the control card where the other rate information is stored.
- The "new negative reserve by industry employers" will still be assigned the maximum rate.
- The rate notices will change.
- The rate schedule will change.
- The process of assigning new employer rates will change since we need to accumulate the contributions and benefits of all employers by 4-digit NAICS code.
- Supporting experience rate listings will need to be modified to use the new terminology and remove the construction terminology.
- The experience rate projection program will need to be modified for the rates by industry.
- UIEASY web services will need to be modified to send appropriate rate information.

### *Scope of work to be done:*

- Analysis – 24 Hours
- Design – 24 Hours
- Coding and Unit Testing – 200 Hours
  - Rate Assignment Programs (JTA31, JTA33, new program, control card changes) – 56 Hours
  - Rate Notice Program (JTA43) - 40 Hours
  - Rate Schedule – 32 Hours

- Program (JTA31) – 16 Hours
  - Overlay (Operations) – 16 Hours
  - Supporting experience rate listings (JTA41, JTA42, etc...) – 40 Hours
  - Rate projection program – 16 Hours
  - Web Services (WT617/WT626) – 8 Hours
  - Update documentation – 8 Hours
  - System Testing – 24 Hours
- Total Programmer/Analyst Hours - 272**

This estimate includes project management, business analysis, programming, test coordination, and implementation but does not include the users' time for user acceptance testing.

Programmer/Analyst - 272 Hours

Project Manager – 136 Hours

Test Coordinator – 204 Hours

Release Manager – 8 Hours

Cost: 620 hours x \$100.00/hour + 20% contingency = **\$74,400**

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## **Section 2: Job Attached/Base Period Charging**

### *Summary:*

*The following describes a scope of work and provides a cost estimate for incorporating job attached charging.*

### *Assumptions:*

- We will need to store the job attached employer and effective dates in a new dataset and refer to this new dataset for all charging activity.
- Job attached charges will need to be turned on and off during a claim meaning we will need effective dates where we may charge the job attached employer for part of the claim and not other parts of the claim.
- Job attached charges will need to be able to be adjusted in the case where an employer responds to the notice of claim and said the employee is not job attached even though the employee has been paid and charged already. These charges would need to be adjusted.
- The new IVR system will be in place prior to development of this project.

*Scope of work to be done:*

- Analysis – 120 Hours
- Design – 120 Hours
- Coding and Unit Testing – 432 Hours
  - UI ICE changes – 12 Hours
    - Job attached indicator and effective date
  - Web service changes – 32 Hours
    - Job attached indicator and effective date
  - IVR changes – 32 Hours
    - Job attached indicator and effective date
  - Adjustment Program – 100 Hours
  - Changes to Chargeback routines for new effective date procedures – 160 Hours
  - Database changes – 80 Hours
    - New dataset to store job attached employer and effective dates
    - Programming to support this new dataset
  - Purge – 16 Hours
- System Testing – 160 Hours

**Total Programmer/Analyst Hours - 832**

This estimate includes project management and test coordination in addition to programming and analysis but does not include the users' time for involvement in user acceptance testing.

Programmer/Analyst – 832 Hours

Project Manager – 416 Hours

Test Coordinator – 624 Hours

Release Manager – 32 Hours

Cost: 1904 hours x \$100.00/hour + 20% contingency = **\$228,480**

### **Section 3: Email Notification to Employers to View documents on-line**

*Summary:*

*The following describes a scope of work and provides a cost estimate for incorporating electronic viewing of employer documents on-line and email notifications of when documents are available to view on-line.*

*Assumptions:*

- That we can retrieve documents/information from Filenet similar to the RES project.

- Employers will set up their email addresses and consent to electronic notifications via UI EASY.
- Employers will be able to view documents on-line using UI EASY, but not respond to JSND on-line.
- Past Due report notices will need to be added to FileNet for the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> quarters. Currently, we only put 3<sup>rd</sup> quarter into FileNet.
- Contribution and Wage Reports will be added to FileNet using Wapapello.
- Most documents are not system generated. Therefore, only ten programs will need to be modified to accommodate stopping the printing of the document.
- The notice of claims program will need to send data to Access for processing similar to how the fact finding letters are to work for RES.

*Scope of work to be done:*

- Analysis – 24 Hours
- Design – 24 Hours
- Coding and Unit Testing – Hours
  - Web service changes (WT401) – 24 Hours
    - Send email addresses to mainframe
    - E-notice indicator on mainframe
    - E-reminder indicator on mainframe
    - Info back to UI Easy
    - WSDL change
  - Database changes – 4 Hours
  - Screen Changes (JT401, JT610, JT611) – 40 Hours
  - Change notice programs (JBD14, JTQ38, JTA43, JHQ14, JHQ16, JTM01, JTD18, JTQ09, JTQ22, JTQ30) – 64 Hours
    - Don't print/mail notices that are "sent" electronically – 44 hours
    - EOM changes – alternate print file - send 2 print files to EOM, one for filenet and one for printing and filenet. – 20 hours
  - Change notice of claims program for Access interface – 16 hours.
  - Purge – 40 Hours
    - UI EASY – 8 hours
    - Mainframe – 32 hours
- System Testing – 32 Hours

**Total Programmer/Analyst Hours - 268**

This estimate includes project management and test coordination in addition to programming and analysis but does not include the users' time for involvement in user acceptance testing.

Programmer/Analyst - 268 Hours

Project Manager – 134 Hours

Test Coordinator – 201 Hours

Release Manager – 24 Hours

Cost: 627 + UI Easy hours x \$100.00/hour + 20% contingency = **\$75,240**

## **Email Notification to Employers to respond to documents on-line**

### *Summary:*

*The following describes a scope of work and provides a cost estimate for incorporating responses to Notice of Claim and Fact Finding on-line and email notifications of when documents are available to respond to on-line.*

### *Assumptions:*

- This estimate would be in addition to the estimate for "email notification to Employers to view documents online".
- This estimate is only for allowing Employers to respond to the notice of claim and fact finding. It cannot stand alone. It must have the "email notification to Employers to view documents online" in order to function. The two estimates should be added together if responding online is desired.
- The majority of work will be done in UIEASY and Access.

### *Scope of work to be done:*

- Analysis – 8 Hours
- Design – 8 Hours
- Coding and Unit Testing – 16 Hours
- System Testing – 8 Hours

**Total Programmer/Analyst Hours - 40**

This estimate includes project management and test coordination in addition to programming and analysis but does not include the users' time for involvement in user acceptance testing.

Programmer/Analyst – 40 Hours

Project Manager – 20 Hours

Test Coordinator – 30 Hours

Release Manager – 4 Hours

Cost: 94 hours x \$100.00/hour + 20% contingency = **\$11,280**



## Software Development Division Budget Estimate

To:	Date Issued: 01/21/2011	Prior Est. Date:
Amy Shawver-Morman	From: Della Thorsness	
Job Service North Dakota	Prepared By: Mary Gilles	
Project Description:		
UI EASY – Electronic Correspondence		
WMS Work Order Number: 170601	WMS Service Request: 1319420	

ITD is recommending your agency budget **\$110,154** for this project. This amount includes an estimated **\$100,140** based on requirements we received during the interview process plus an additional **\$10,014** for scope changes. The additional **10%** is based on ITD's experience with scope changes in projects this size. Including this additional amount will give your agency the flexibility to cover typical scope changes, and remain within your budgeted amount. A more accurate estimate will be prepared once this project has started and the analysis phase is completed. The cost to complete the analysis phase is estimated to be approximately **\$19,571**.

### What you get for your money from ITD

ITD estimates this project to take **5 months**. This timeframe is a projected timeframe based on typical project staffing levels. The actual timeframe will be determined during the Planning Phase and will be based on the availability of customer and ITD resources at that time.

Should you decide to proceed with this project, please approve the cost estimate via the online Work Management System. Upon your approval, you will be prompted to submit a service request under the existing work order. All ITD services relating to this project will be billed to your department monthly at actual cost.

At the start of the project ITD will review any estimate over 90 days old. If necessary a revised estimate will be issued.

**ITD Request Number: 170601**

**Project: 1319420**

### **Project Description**

This estimate is for enhancements to the Unemployment Insurance Employer Account Systems application (UI EASY) to provide additional processing for to allow Employers to respond online to Notice of Claim and Fact Finding documents. The documents are created using a MS Access System, they are stored in FileNet.

### **Assumptions**

The one-time costs (development) of the routines are based on the following assumptions:

- This cost estimate is based on a blended hourly rate of \$100 due to the unknown availability of ITD Software Development staff at the time this estimate was issued. If only ITD Software Development staff work on the project, billing will be at normal ITD Software Development 11-13 biennium rates.
- ITD will assign a project manager to the project.
- The application's data will be stored in the Oracle Relational Database Management System (RDBMS).
- The application will secure user access to functionality using Microsoft Active Directory accounts/groups and/or IBM Tivoli Directory Server (TDS) (State of North Dakota Login ID).
- All application data will be transmitted securely using a SSL certificate.
- The application will be load tested to ensure the application performs under stress and does not cause any server performance issues.
- JSND is responsible for securing any needed approvals from the owning agency for any data access needs, interfaces, waivers, etc. that may be necessary for this project.
- JSND staff will produce any necessary Help documents/user manuals, implementing the documents as HTML web page(s) available from JSND's web site.
- JSND staff will provide any necessary training documents or training sessions for application users.
- The application will have usability testing conducted by ITD along with the JSND staff. The results, of this testing, will be applied to the application which may require additional usability testing.
- JSND will be using ClearCase version control, with a shared area for the UI EASY and UI ICE source code.
- JSND will be responsible for making any necessary changes to the mainframe application, including changes to existing web services or creation of new web services.
- The Notice of Claim and Fact Finding documents are generated from a MS Access Adjudication System, using an Oracle database. Any modifications to the Access System will be the responsibility of JSND.

### **Determining Costs**

The cost estimate includes the following processes:

Process	Description
View Fact Finding Letters	Allows Employer to view Fact Finding Letters.
Complete Fact Finding Letters	Allows Employer to respond to Fact Finding Letters. Completed documents will be stored in FileNet.
View Notice of Claim	Allows Employer to view Notice of Claim.
Complete Notice of Claim	Allows Employer to respond to Notice of Claim. Completed documents will be stored in FileNet.
Maintain Response Parameters	Allows user to maintain parameters used to control the response processing.
Workflow - create stored procedures	WorkFlow processing - Stored Procedure to update access database when response is received.
Audit Trail	Add/Modify audit trail entries.
New workflow and subscription for indicating response has been received.	New workflow and subscription to call a stored procedure that will update an Oracle table for the short names for the response documents, to indicate that response has been received.

### **One-Time Cost for System Development**

The cost for development is estimated to be \$ 110,154. This amount includes an estimated \$100,140 based on requirements and an additional \$ 10,014 for scope changes. The additional 10% is based on ITD's experience with scope changes in projects this size. Including this additional amount will give your agency the flexibility to cover typical scope changes, and remain within your budgeted amount. A more accurate estimate will be prepared once this project has started and the analysis phase is completed.

### **On-Going Monthly Costs**

On-going monthly costs are estimated as follows:

ITD Systems/Programming

Used as necessary.

Application Server

No change to the current application server charge.

Application Server costs cover the hosting of the application as well as monitoring the servers and applications for availability.