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.

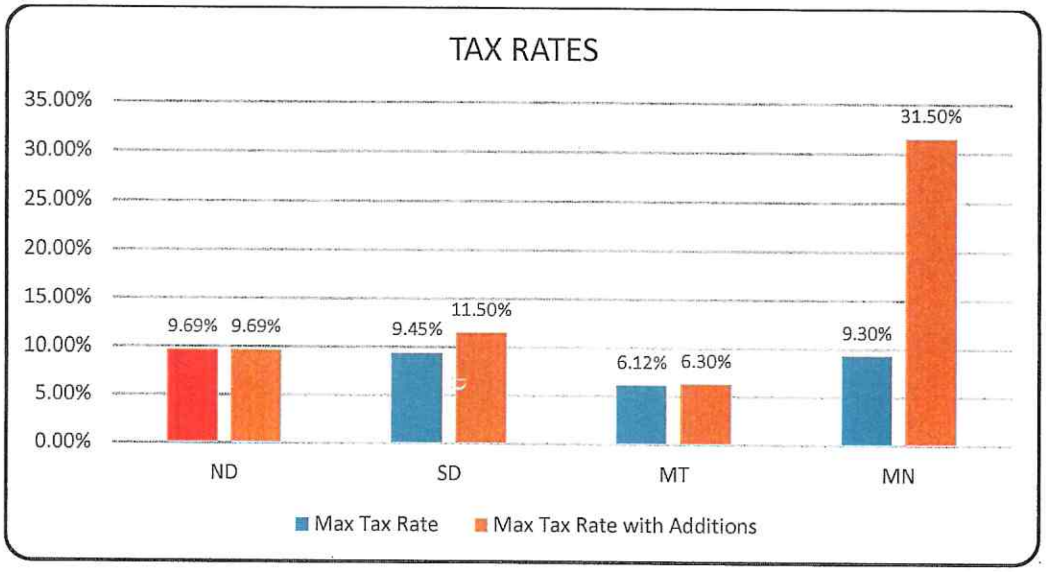
The majority of states pay UI benefits with funds collected through employer taxes. Only Alaska, New Jersey, and Pennsylvania levy UI taxes on employees. In Alaska and New Jersey, the taxable wage base applicable to employees is the same taxable wage base applicable to employers. In Pennsylvania, the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

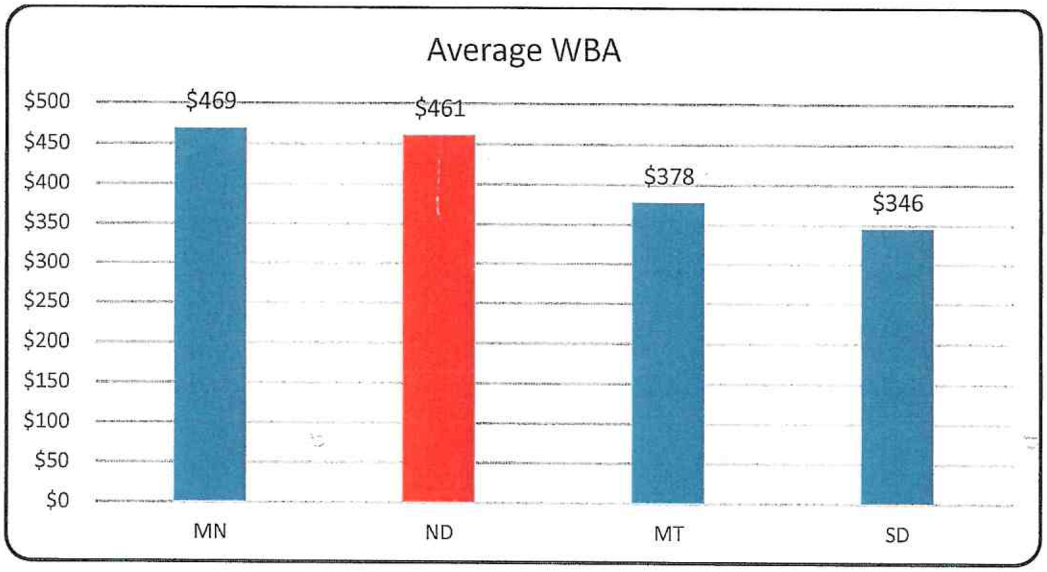
Comparison of Key Data Points with Border States

- Tax Rates



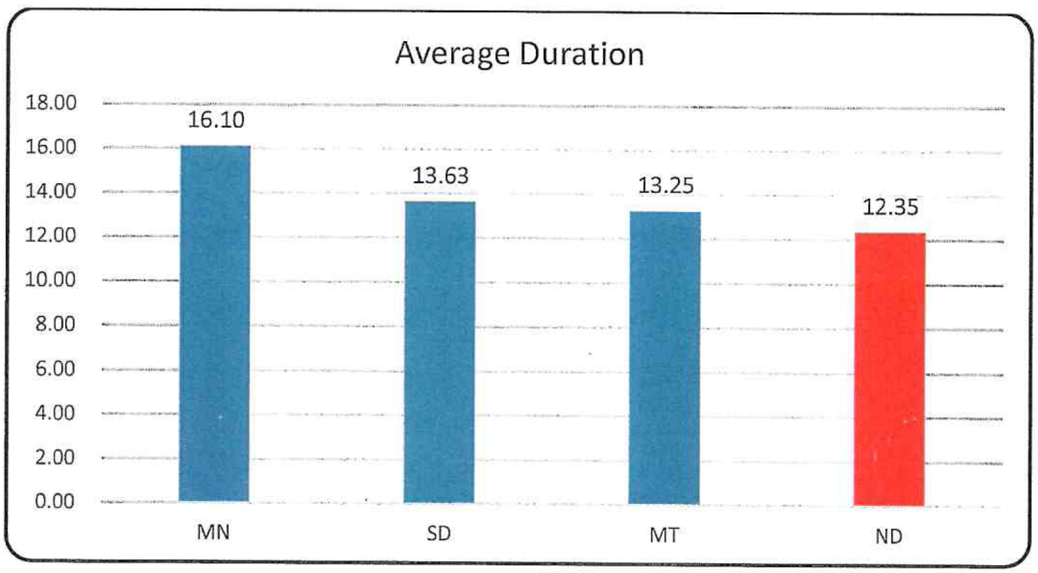
- North Dakota
  - Rate range without adjustments: 0.08% to 9.69%
  - No surcharges, fees, or additional taxes
- South Dakota
  - Rate range without adjustments: 0% to 9.45%
  - Rate adjustment percentage (solvency tax): 0.19% to 1.5% when in effect.
  - Investment fee (research and economic development 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



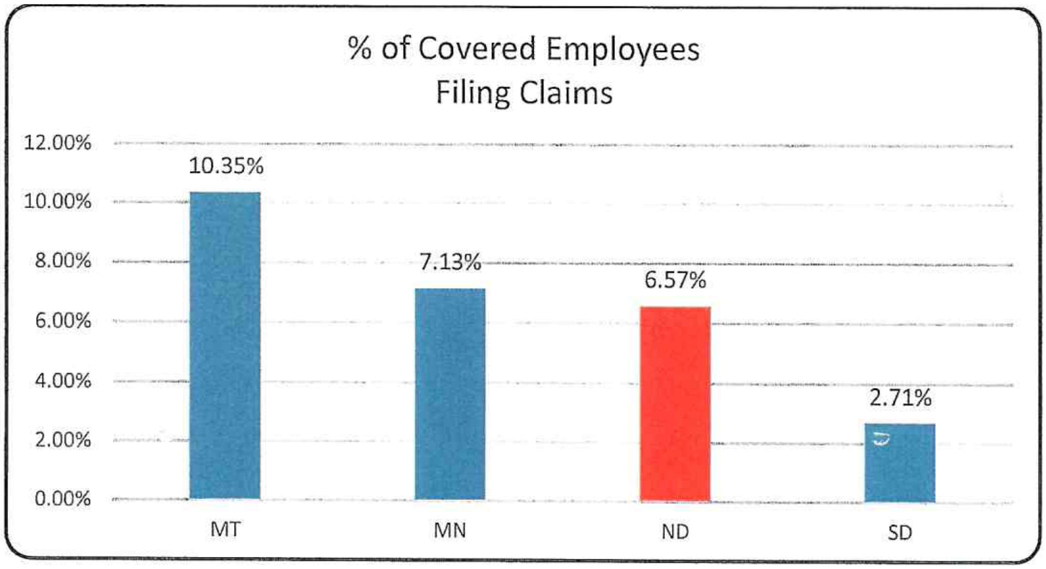
  - North Dakota: $43 to $640
  - South Dakota: $28 to $414
  - Montana: $163 to $552
  - Minnesota: $28 to $462 or $28 to $740 depending upon high quarter or entire base period (not sure how this works completely)

- Duration Range



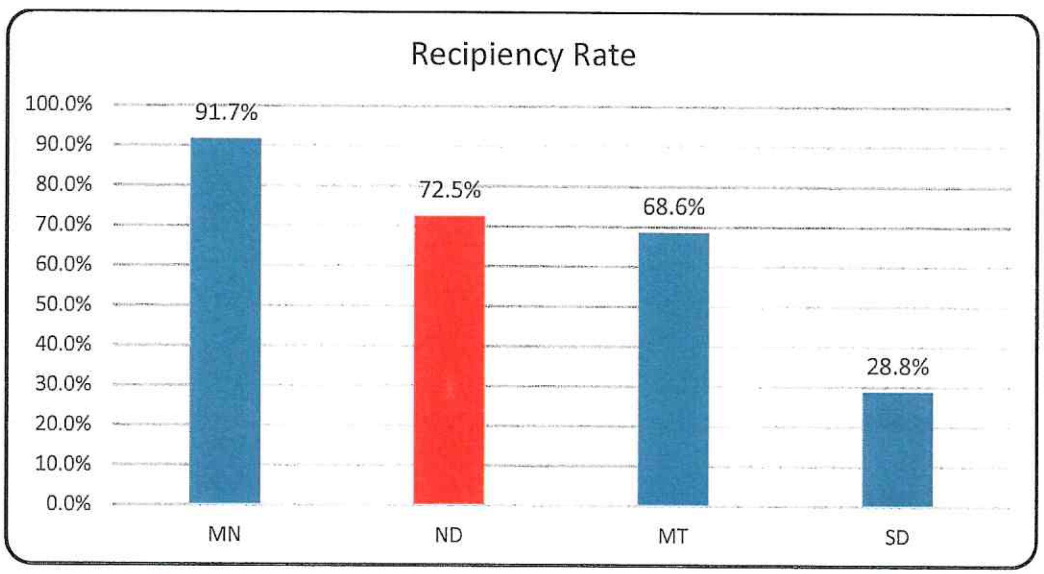
  - North Dakota: 12 to 26 weeks
  - South Dakota: 15 to 26 weeks
  - Montana: 8 to 28 weeks
  - Minnesota: 11 to 26 weeks

- Percent of Covered Workers Filing Claims



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

- Recipiency 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.