

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1260**

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1260  
1/20/2021

<b>Wage &amp; salary moratorium on state or local officials &amp; employees if certain temporary restrictions on businesses are imposed</b>
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(9:35) Chairman Lefor opened the hearing.

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	A
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

## Discussion Topics:

- North Dakota businesses

Rick Becker~District: Introduced the bill. Attachment # 4664.

Shaun Sipma~Mayor of Minot. Attachment #1808.

Stephanie Dassinger~Deputy Director & Attorney-ND League of Cities. Attachment #1843.

Chad Peterson~Chairman-Cass County Commission-ND League of Cities.  
Attachment #1372

Chairman Lefor closes the hearing.

(10:12) End time.

*Ellen LeTang, Committee Clerk*

Introduced by

Representatives Becker, Kasper, B. Koppelman, Rohr, Steiner

Senators Anderson, Heitkamp

1 A BILL for an Act to create and enact a new section to chapter 54-06 of the North Dakota  
2 Century Code, relating to a wage and salary moratorium on state or local officials if certain  
3 temporary restrictions on businesses are imposed.

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

5 **SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Salary moratorium.**

8 1. If any action, executive order, mandate, or other legal action is imposed which  
9 temporarily requires reduced hours of business, reduced capacity of patrons, or  
10 closure of any business, or which is reasonably likely to cause reduced business or  
11 reduced income to the business, a moratorium on all wage and salary payments from  
12 the state or the city in which the action occurred to the following individuals becomes  
13 effective immediately:

14 a. If the action is imposed by a state agency, entity, or official, the moratorium  
15 applies to the governor and every member of the legislative assembly.

16 b. If the action is imposed by a city agency, entity, or official, the moratorium applies  
17 to every commissioner of the respective city and the mayor or city manager.

18 2. A moratorium on an individual's wages or salary under this section must be in effect  
19 for the entire duration of the imposed action. The individual may not recoup the lost  
20 wages or salary at any time, and the lost wages or salary may not be compensated or  
21 offset by bonuses, other pay, or salary increases.

22 3. This section does not apply if the state or local action, order, or mandate:

23 a. Was imposed as a result of the business violating health or safety rules or  
24 regulations; or

- 1            b. Was to approve public road<sup>or infrastructure</sup> construction or maintenance., or
- c. Was imposed due to a natural disaster.

House Industry, Business, and Labor  
Chairman – Representative Mike Lefor  
January 20, 2021

**Testimony**

**By: Shaun Sipma**  
**Mayor, City of Minot**  
[shaun.sipma@minotnd.org](mailto:shaun.sipma@minotnd.org)  
**701.721.6839**

**HB 1260**

Good morning Chairman and Committee members. My name is Shaun Sipma, and I am the Mayor of Minot. I am representing Minot today in opposition to House Bill 1260.

HB 1260 is triggered by emergency declaration at the state or local level. I will be focusing on the impacts at a local level.

At the local city level, the bill would sanction a moratorium on a select group of employees who are NOT employed by the State of North Dakota. In our opinion, this would be a significant overreach of power by the state and create a substantial void in necessary leadership during emergency situations.

Essentially, what this short bill does is force an employee to work without pay. As the language read, it applies a pay moratorium not only to elected officials, but also the “head of every department and agency” of a city with a salary greater than \$125,000 per year.

In Minot there are only a handful of employees that would actually be affected by this; however, these employees are the ones who are most essential during an emergency. The proposed legislation would punish this select group of unelected city employees for decisions and policies of the elected officials to whom they report.

The bill would also create legal liability for contracted employees. A moratorium on pay for a contracted employee would lead to a breach of contract claim, thus putting communities in a legal predicament that likely would lead to even more financial loss to taxpayers.

I invite you to give substantial consideration to the following question as you consider this bill: Would losing your more tenured, seasoned, and valuable employees in the most critical of times be prudent because a state law forbid you from paying them in a time of crisis?

You should also note that not one single elected Mayor in North Dakota makes even half the salary threshold highlighted in this bill. For complete transparency, the Mayor of Minot’s annual salary is \$18,000.

I understand this proposed bill is a reaction to the events of COVID-19 in 2020. But consider this: during the 2011 flood that devastated Minot, the emergency conditions in our city lasted 4-5 months. We had many businesses that had to be closed due to the flood, and if the proposed legislation had been law then, it would have stopped all pay for the majority of department

directors and the City Manager for months. I cannot think of a worse time to have your department leads distracted or sidelined with financial concerns.

During the 2011 flood, travel was restricted in Minot with our major north/south roads closed. Our city was split in two. Many businesses were closed or isolated to patrons on one side of town.

Our current public works director was assistant public works director at the time of the flood. He was working 12-18+ hours per day, 7 days per week. To expect that someone in that position will provide that level of service, unpaid, is not reasonable.

Putting a political subdivision in a position where its highest paid employees are unpaid during states of emergency is simply dangerous. They may choose not to work, setting the political subdivision up to fail in a crisis.

I understand this is an effort to pressure elected officials from taking action in an emergency that could have adverse impacts on the financial condition of its businesses and citizens. However, this bill would actually result in an adverse effect on the community itself—on its ability to respond to an emergency when targeted employees with the highest level of capability quit because they are not getting paid.

Finally, you should carefully consider what labor laws might be triggered when an employee is expected to step up in a time of crisis without pay.

Please consider a “do not pass” recommendation on this bill. Thank you for your time and your consideration.

January 20, 2021

House Industry, Business and Labor Committee

HB 1260

Rep. Mike Lefor, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. I am the deputy director and attorney for the League.

The North Dakota League of Cities appears in opposition to HB 1260. The League is sensitive to the difficulties North Dakota businesses have faced during the COVID-19 pandemic; however, HB 1260 is likely unlawful, and the broadness of the language raises many unanswered questions.

### Legality

In reviewing HB 1260, questions arose about whether this bill is constitutional. The equal protection clause found in the Fourteenth Amendment of the United States Constitution must be examined. The equal protection clause requires that laws treat similarly situated people the same, unless a good reason exists for doing otherwise. Under HB 1260, individuals making \$125,000 a year would not be paid, whereas individuals making \$124,999 would be paid. I cannot come up with a reason that would meet constitutional muster for treating these two groups of people differently.

Article 1, Section 18 of the North Dakota Constitution provides, “No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.” This clause is commonly referred to as the “contracts clause.” It is likely that the city employees who would not be paid under this bill have employment contracts with the city. This bill would impair those contract obligations which likely renders the bill unconstitutional.

Finally, generally, the law requires that employers compensate employees for time that they are working. Cities would be faced with an impossible choice of choosing between violating this bill, if it were to become law, or violating employment law that requires paying employees.

Serious questions exist about whether this bill would hold up to constitutional or legal scrutiny.

### Broadness of Language and Questions about Application

HB 1260, as written, is very broad. It applies to “any action, executive order, mandate, or other legal action” by the state or a political subdivision that would result in a business having:

- Reduced hours;
- Reduced patrons; or
- Closure.

The bill also applies to any government conduct that is “reasonably likely to cause reduced business or reduced income to the business.” The only exceptions are if the closure is related to

a business violating health or safety rules or if the action were to approve road construction or maintenance.

Under the bill, if the city does any of the above-mentioned things, city elected officials, city department heads and city employees being paid over \$125,000 are not paid for the duration of the action. Based on the broadness of that language, several questions arose about when the salary for these city officials would be required to be suspended.

For example, if there is an active shooter situation in part of the city and the police are required to barricade off that portion of the city, do the city officials subject to this section not receive pay during the time that the barricade is in place?

If a blizzard occurs and due to unsafe road conditions, the city recommends that there be no travel in the city, would this bill apply?

If a city decided to maintain a 1 am bar closing time in lieu of moving to a 2 am bar closing time, does that trigger the salary moratorium?

If a city puts its flood wall up or closes a bridge due to flooding, does the salary moratorium apply?

If a city has a lawful protest that escalates into a riot and the city institutes an emergency curfew, will that trigger the requirement not to pay certain city officials?

During an imminent flood event, if a city enacts limited curfews and blocks transport roads, in order to expediently deliver sandbags, is the salary moratorium triggered?

If a tornado destroys part of a city, and entry to that part of the city must be limited for emergency response, would this law apply?

The majority, if not all, of the times a city acts in a way described in this bill, those actions are triggered by things beyond the city's control such as emergency weather conditions or emergencies caused by bad actors. In those situations, where a city is reacting to an emergency, it is counter-intuitive to require that those people, likely in leadership roles or who have the most time/experience with the city, not be paid. During an emergency, it is not uncommon for those people to be putting in 12-18 hour days and, if the emergency event occurs over an extended period of time, those city officials may be working seven days a week. To create a situation where those city officials may be tempted not to come to work because the city is not allowed to pay them is a disservice to each city's residents.

The final question I raise is whether this bill would create a financial disincentive for city officials that assist with handling these emergency/weather related incidences to advise against



taking certain actions that are in the public's best interest but would result in that city official not getting paid.

As a result of the questionable legality and the many unanswered questions as to the application of this bill the North Dakota League of Cities respectfully requests a Do Not Pass recommendation on HB 1260.

Testimony to the  
**House Industry, Business and Labor Committee**  
January 20, 2020  
Chairman Chad Peterson, Cass County Commission

**Regarding: House Bill 1260**

Chairman Lefor and committee members, my name is Chad Peterson and I am Chairman of the Cass County Commission and serve on the North Dakota County Commissioners Association Board of Directors. I'm here to request a **DO NOT PASS** of HB 1260 regarding relating to a wage and salary moratorium on state or local officials and employees if certain temporary restrictions on businesses are imposed. As you're aware, local governments have any number of responsibilities that would potentially limit the productivity of a business and this bill would set us all up to fail.

The law is so broadly written it would prevent public officials and staff from getting paid if we were to modify a drain or culvert and one business, like a farm, would have to divert from the shortest possible route to a field because of this disruption.

Additionally, there is no shortage of examples that would be out of anyone's control. An example would be affecting our neighbors operations during a response to a natural disaster like a flood. In the name of public safety our actions limit business operations to some degree or another in almost every natural disaster.

Further, every level of local government has ongoing activities that could never be accounted for. An example would be the upgrades we are doing in Cass for our 911 system. There will be a place and time where we will be restricting one or more businesses as we modify our technical infrastructure or erect one of our additional signal towers that are required to provide the connectivity our citizens expect and deserve.

The real answer to this, and concerns like it, is the local electorate needs to elect the people that represent them and rely on their good judgment to make the right choices.

Again, I urge a **DO NOT PASS** of HB 1260 regarding relating to a wage and salary moratorium on state or local officials and employees if certain temporary restrictions on businesses are imposed.

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1260  
1/26/2021

<b>Wage &amp; salary moratorium on state or local officials &amp; employees if certain temporary restrictions on businesses are imposed</b>
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(4:10) Chairman Lefor calls the work session to order.

<b>Representatives</b>	<b>Attendance</b>
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

## Discussion Topics:

- Amendment 21.0598.05002 & striking words "or country".

Representative Louser-Amendment #21.0598.05002. Attachment #3601

Representative D. Ruby moved amendment and further amended striking words "or county"

Representative Stemen seconded the motion

Voice Vote. Motion carried.

Representative Adams moved Do Not Pass as amended

Representative Schauer seconded the motion

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	N
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call vote. Motion carries 13-1-0. Representative Hagert is the carrier.

(4:25) End time.

*Ellen LeTang, Committee Clerk*

January 26, 2021

GF  
1/26/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1260

- Page 1, line 2, remove the second "and"
  - Page 1, line 3, remove "employees"
  - Page 1, line 12, replace "political subdivision" with "city"
  - Page 1, line 15, remove "every statewide elected official; state department and agency head."
  - Page 1, remove lines 16 and 17
  - Page 1, line 18, replace "thousand dollars; and state legislator" with "the governor and every member of the legislative assembly"
  - Page 1, line 19, remove "or county"
  - Page 1, line 20, remove "elected official and head of every department and"
  - Page 1, line 21, replace "agency" with "commissioner"
  - Page 1, line 21, remove "or county and every city or county employee with a"
  - Page 1, line 22, replace "salary greater than one hundred twenty-five thousand dollars" with "and the mayor or city manager"
- Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1260: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1260 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, remove "employees"

Page 1, line 12, replace "political subdivision" with "city"

Page 1, line 15, remove "every statewide elected official; state department and agency head,"

Page 1, remove lines 16 and 17

Page 1, line 18, replace "thousand dollars; and state legislator" with "the governor and every member of the legislative assembly"

Page 1, line 19, remove "or county"

Page 1, line 20, remove "elected official and head of every department and"

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Page 1, line 22, replace "salary greater than one hundred twenty-five thousand dollars" with "and the mayor or city manager"

Renumber accordingly

21.0598.05002  
Title.

Prepared by the Legislative Council staff for  
Representative Louser  
January 26, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1260

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Page 1, line 20, remove "elected official and head of every department and"

Page 1, line 21, replace "agency" with "commissioner"

Page 1, line 21, replace "every" with "the mayor or city manager in the case of the"

Page 1, line 21, remove "or county employee with a"

Page 1, line 22, remove "salary greater than one hundred twenty-five thousand dollars"

Renumber accordingly

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1260  
2/9/2021

<b>Wage &amp; salary moratorium on state or local officials &amp; employees if certain temporary restrictions on businesses are imposed</b>
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(3:10) Chairman Lefor called the work session to order.

<b>Representatives</b>	<b>Attendance</b>
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

## Discussion Topics:

- Committee work.

Rep Louser moved to reconsider actions.

Rep Schauer second.

Voice vote Motion carried.

Rep Louser moved amendment 21.0598.05004. Also hand out attachment #4664.

Rep D Ruby second.

Voice vote Motion carried.

Rep Schauer moved a Do Not Pass as Amended.

Rep P Anderson second.



<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	A
Rep Scott Louser	N
Rep Nehring	N
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	N
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 10-3-1 & Rep Hagert is the carrier.

(3:17) End time.

*Ellen LeTang, Committee Clerk*

February 9, 2021

De 2/9/21  
1081

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1260

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- Page 1, line 21, remove "or county and every city or county employee with a"
- Page 1, line 22, replace "salary greater than one hundred twenty-five thousand dollars" with "and the mayor or city manager"
- Page 2, line 5, remove "or"
- Page 2, line 6, after "road" insert "or infrastructure"
- Page 2, line 6, after "maintenance" insert "; or"
- c. Was imposed due to a natural disaster"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1260: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1260 was placed on the Sixth order on the calendar.

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Page 2, line 6, after "maintenance" insert "; or"

c. Was imposed due to a natural disaster"

Renumber accordingly

21.0598.06000

FIRST ENGROSSMENT

Sixty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1260

Introduced by

Representatives Becker, Kasper, B. Koppelman, Rohr, Steiner

Senators Anderson, Heitkamp

1 A BILL for an Act to create and enact a new section to chapter 54-06 of the North Dakota  
2 Century Code, relating to a wage and salary moratorium on state or local officials if certain  
3 temporary restrictions on businesses are imposed.

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

5 **SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created  
6 and enacted as follows:

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9 temporarily requires reduced hours of business, reduced capacity of patrons, or  
10 closure of any business, or which is reasonably likely to cause reduced business or  
11 reduced income to the business, a moratorium on all wage and salary payments from  
12 the state or the city in which the action occurred to the following individuals becomes  
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18 2. A moratorium on an individual's wages or salary under this section must be in effect  
19 for the entire duration of the imposed action. The individual may not recoup the lost  
20 wages or salary at any time, and the lost wages or salary may not be compensated or  
21 offset by bonuses, other pay, or salary increases.

22 3. This section does not apply if the state or local action, order, or mandate:

23 a. Was imposed as a result of the business violating health or safety rules or  
24 regulations; or

- 1            b. Was to approve public road construction or maintenance., or  
              c. Was imposed due to a natural disaster.