NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday, August 24, 2005
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Karen K. Krebsbach, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Karen K. Krebsbach, Duaine C. Espegard, Duane Mutch, Dave Nething; Representatives Bill Amerman, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Pat Galvin, Nancy Johnson, Jim Kasper, George J. Keiser, Scot Kelsh, Dan J. Ruby, Don Vigesaa

Members absent: Senators Tony Grindberg, Joel C. Heitkamp; Representatives Tracy Boe, Glen Froseth

Others present: See attached appendix

Chairman Krebsbach welcomed the committee members and reviewed each of the studies and responsibilities assigned to the committee. She said the committee will meet as often as is needed and she is looking forward to working with the members of the committee.

Chairman Krebsbach called on Mr. John D. Olsrud, Director, Legislative Council, who reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

SHARED WORK DEMONSTRATION PROJECT STUDY

Chairman Krebsbach called on committee counsel to review a memorandum entitled *Job Service Shared Work Demonstration Project - Background Memorandum*.

Chairman Krebsbach called on Mr. Larry Anderson, Job Service North Dakota, for comments regarding the committee's study of the Job Service North Dakota shared work demonstration project. Mr. Anderson submitted written testimony, a summary of the shared work program implementation plan, and a draft of a shared work model contract, copies of which are on file in the Legislative Council office.

Mr. Anderson said Job Service North Dakota was appropriated $20,000 from the general fund and $20,000 in private matching funds to implement a shared work demonstration project from January 1, 2006, through June 30, 2007. He said the demonstration project is to be run with one employer that employs at least 75 employees. The purpose of the shared work program, he said, is to allow an employer to reduce the hours of work of a number of employees rather than completely lay off a lesser number of employees and to allow those employees to draw an employment insurance benefit to partially offset the loss of wages due to the reduction in hours. He said representatives of Job Service have met with an employer that is interested in participating in the shared work program.

In response to a question from Representative Amerman, Mr. Anderson said representatives of labor organizations have been involved in the discussion regarding the participation in the shared work program.

In response to a question from Representative Keiser, Mr. Anderson said if a participant in the shared work program laid off employees beyond those identified for participation in the program, the layoffs would be included in the employer's experience rating.

In response to a question from Representative Keiser, Ms. Maren Daley, Job Service North Dakota, said it is possible that a negative balance employer could become a positive balance employer while participating in the shared work program. She said the shared work program layoffs are reimbursable and do not affect the experience rating of the employer. She said Job Service is seeking to design a shared work program that does not negatively affect other employers. She said the program will help in designing the new computer system for Job Service so that a shared work program could be implemented under the new computer system in a fair and equitable manner.

Representative Keiser said the intent of the legislation providing for a shared work demonstration project was to create a program that allows for retention of employees without a negative impact on the unemployment compensation fund. He said if the benefits paid under the program do not affect the experience rating of the employer, other employers are subsidizing the program.

In response to a question from Representative Amerman, Mr. Anderson said the business that has expressed interest in participating in the shared work program has experienced economic success recently. However, he said, because business is cyclical, the company anticipates needing to lay off employees. He said the program will allow the company to reduce hours and keep employees in a tight labor market.

In response to a question from Senator Nething, Mr. Anderson said Job Service is still negotiating with the interested company. Although Job Service does not have a backup company with which to negotiate, he said, if the company with which Job Service is negotiating does not participate in the program, Job Service will promote the opportunity to participate throughout the business community.

In response to a question from Senator Krebsbach, Mr. Anderson said the company with which Job Service is negotiating had expressed interest in participating in the shared work program that was created by the 2001 Legislative Assembly. He said the company has a business location in Kansas which has a shared work program.

JOB SERVICE REEMPLOYMENT PROCESSES STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a memorandum entitled *Job Service North Dakota Reemployment Processes - Background Memorandum*.

Chairman Krebsbach called on Mr. Anderson for comments regarding Job Service reemployment processes. Mr. Anderson submitted written testimony, a copy of which is on file in the Legislative Council office. He said of the approximately 17,000 individuals who file for unemployment insurance benefits, about 10,000 are classified as job-attached and the remainder are required to participate in reemployment services. He said Job Service favors a viable means of reducing the number of job-attached claimants, structured in such a way that the agency can adequately serve the additional number of claimants who would need reemployment services. He said Job Service did not support the method or timing for reducing job-attached claimants as proposed by House Bill No. 1198 during the last legislative session. He said that bill would have had a significant impact on the agency's operating budget due to the increase in reemployment services.

Mr. Anderson said Job Service would like to work with this committee to provide testimony from employers regarding improved managing of available workforce through the claim filing process. He said the Unemployment Insurance Advisory Council will examine alternative methods of managing job attachment and work with this committee to determine the proper level and methods for providing reemployment services, the best method of limiting the aggregate number of job-attached claimants, and the means of funding any additional costs that might be incurred by implementation of those methods. He said Job Service will provide the committee with analysis and data regarding job-attached claimants and other claimants and benefits paid to claimants. He said through this study a more acceptable method of addressing job-attached claimants can be devised which would meet the needs of businesses by insuring the availability and return of skilled employees while addressing the overall needs for an available workforce to meet growth needs for all businesses. He said the solution must be financially sustainable and supportable and provide for low-cost options to administer.

In response to a question from Senator Nething, Mr. Anderson said Job Service provides reemployment services to claimants who are not attached to jobs. He said North Dakota has one of the lowest average duration of benefits for unattached claimants. However, he said, if Job Service is required to increase the number of claimants to which reemployment services are provided, there may be a reduction in the effectiveness of the reemployment programs. He said there are very likely a number of employees that are classified as job-attached who are not legitimately job-attached and who should receive reemployment services. He said Job Service and the committee need to determine the appropriate level of job-attached claimants.

In response to a question from Representative Keiser, Mr. Anderson said the determination of whether a claimant is job-attached is made by the claimant. He said the job-attached status of claimants results in positive balance employers subsidizing the negative balance employers to a certain extent.

In response to a question from Representative Kasper, Mr. Anderson said Job Service is required by various federal programs to collect customer satisfaction data from businesses and claimants. He said the agency will provide statistical data regarding customer satisfaction to the committee at a future meeting.

In response to a question from Representative Amerman, Mr. Anderson said job-attached claimants may use the reemployment services of Job Service. He said Job Service has a computer system that is open for use to anyone.

In response to a question from Representative Ruby, Mr. Anderson said 100 percent of an employer's employees could claim job-attached status.

In response to a question from Representative Dosch, Mr. Anderson said a claimant classified as job-attached is not required to actively seek work while unemployed. He said Job Service will present information to the committee regarding whether most job-attached employees are from negative balance employers.

In response to a question from Representative Galvin, Mr. Anderson said the limitation on the premiums of negative balance employers was a policy decision which has been frequently discussed. He said the cap was instituted to assure that the tax rate assigned to certain industries would not be too burdensome.

In response to a question from Representative Vigesaa, Mr. Anderson said the benefit duration of job-attached claimants is less than 11 weeks. He said Job Service will provide further information to the committee regarding the benefit duration of job-attached claimants at a future meeting.

In response to a question from Representative Kasper, Mr. Anderson said although employers can generally pass on to consumers the cost of unemployment insurance, some businesses may not be able to compete with out-of-state businesses if tax rates are not capped.

In response to a question from Representative Johnson, Mr. Anderson said Job Service will provide the committee with information regarding other states' practices with respect to job-attached claimants and positive and negative balance employers.

In response to a question from Senator Krebsbach, Mr. Anderson said due to a decrease in federal funds Job Service has reduced the number of full-time equivalent positions from 116 to about 90.7. He said the agency is engaged in a strategic planning process for managing resources and providing services.

Representative Keiser encouraged Job Service to seek comment from positive balance employers that are subsidizing the negative balance employers that have job-attached employees. He requested representatives of Job Service to provide information regarding negative balance employers that have left the state and which have left a significant negative impact on the unemployment insurance fund.

UNEMPLOYMENT INSURANCE TAX RATE STRUCTURE STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a memorandum entitled *Unemployment Insurance Tax Rate Structure - Background Memorandum*.

Chairman Krebsbach called on Ms. Beth Zander, Job Service North Dakota, for comments regarding the committee's study of the unemployment insurance tax rate structure. Ms. Zander submitted written testimony, a copy of which is on file in the Legislative Council office. She said House Bill No. 1425 (2005), which failed to pass, would have assigned unemployment insurance tax rates for new employers classified as new homebuilders. She said that bill would have specifically identified five North American industry classification system codes for new homebuilders.

Ms. Zander said unemployment insurance was created to serve as a first line of defense against the effects of unemployment, to help cushion the impact of economic downturns, and to bring economic stability to communities, states, and the nation by providing temporary income support for laid-off workers. She said individual accounts are established to track contributions paid and benefits charged to the employers to build a history on which future rates are based. She said tax rates are assigned based on a reserve ratio concept, which recognizes a specified history for each employer. She said Job Service calculates each employer's ratio of most recent six-year contributions paid, minus most recent six-year benefits charged, to the employer's most recent three-year average annual taxable payroll. She said tax rates are assigned based on each employer's position in the distribution of reserve ratios. An employer's lifetime reserves, she said, based on contributions paid, less benefits charged, positions the employer in the negative or positive balance rate schedule. She said the construction industry has historically experienced a high volume of layoffs due to the seasonal nature of work and the industry sensitivity to economic fluctuations. Thus, she said, the employers in the construction industry often have a negative lifetime ratio or a low-reserve ratio, which results in higher tax rates. She said in the early 1990s, construction employers expressed concern that new employers could have an advantage over experience-rated employers in the construction industry because the rates assigned to new employers could be lower than those with experience ratings. As a result, she said, new nonconstruction employers were assigned a rate at the top of the positive rate schedule and new construction employers were assigned the maximum negative employer rate.

Ms. Zander said state law also provides for rate assignments by identifying the method of classifying the industry of employers. She said the North American industry classification system is used to identify the industry of each employer. She said the classification system involves a six-digit code that can be used for high-level industrial classification or can be refined into various specific industries.

Ms. Zander said Job Service can provide the committee with information regarding a review of other states' methods of addressing similar rate assignments, statistical analyses of historical data of homebuilders' experience, statistical analyses of cyclical seasonal effects on homebuilders' experience, statistical analyses of economic fluctuations and the effects on homebuilders' experience, projections on the impact of changes to the tax rating system on the trust fund and other employers, and other factors affecting the policy decision of determining tax rates.

Chairman Krebsbach called on Ms. Doreen Riedman, North Dakota Association of Builders, for comments regarding the committee's study of the unemployment insurance tax rate structure. Ms. Riedman said the Association of Builders supported House Bill No. 1425. She said homebuilders fall into two of the three main areas of the construction industry. She said homebuilding has become a year-round industry and is not affected by the seasonality of the third area of the construction area--highway construction. She said creating a new classification for homebuilders would lesson the negative impact on the homebuilding industry.

Ms. Daley said Job Service will attempt to determine the impact to the unemployment insurance fund of changing rates for homebuilders.

In response to a question from Senator Krebsbach, Ms. Daley said cyclical risks must be considered and Job Service will need to look at a significant amount of history of the industry to identify fluctuations in the homebuilding industry. She said another factor to consider is the potential length of the current cycle of low unemployment in the homebuilding industry. She said representatives of Job Service could communicate with representatives of the Department of Commerce to try to determine whether the new employer rate for homebuilders is too punitive to businesses interested in starting in the homebuilding industry.

STANDARD OF LOSS RATIO FOR HEALTH INSURERS STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a memorandum entitled *Standard of Loss Ratio for Health Insurers - Background Memorandum*.

Chairman Krebsbach called on Mr. Michael L. Fix, Insurance Department, for comments regarding the committee's study of standard of loss ratio. Mr. Fix submitted written testimony, a copy of which is on file in the Legislative Council office. He said the current statutory provisions for minimum loss ratios for health insurers has been in effect since 1993. Thus, he said, the question has arisen as to whether it is time to look at the standards and the need for flexibility and whether the standards should be set by rule or by statute. He said North Dakota Century Code Section 26.1-36-37.2 provides for minimum loss ratios of 75 percent for group health insurance policies and 65 percent for individual health insurance policies for policies that provide hospital, surgical, medical, or major medical benefits. He said those percentages are minimums and have the effect of requiring that a minimum percentage of the premiums will be paid as benefits. He said the percentages are over the lifetime of the policy, which may cover a period of 20 to 30 years.

Mr. Fix said for smaller premium health insurance products, a fixed minimum loss ratio requirement does not provide sufficient margin to cover expenses and provide profits unless the company has a large number of policies over which to spread fixed overhead costs. He said for larger premium health insurance products, a fixed minimum loss ratio requirement provides adequate margin to cover expenses and provide profits. He said companies with significant numbers of policies are able to be successful and competitive with fixed minimum loss ratio requirements for both larger and smaller premium health insurance policies. However, he said, a fixed minimum loss ratio requirement for all premium sizes can discourage companies from offering lower premium plans of health insurers in the state and could increase a number of uninsured or underinsured individuals. In addition, he said, new companies are hesitant to enter the market in North Dakota with current minimum loss ratio requirements. He said current minimum loss ratio requirements in other states tend to be slightly lower than North Dakota's requirements depending on the type of health insurance benefits provided. In addition, he said, minimum loss ratio requirements are reduced on a formula basis, for lower premium health insurance plans, and increased on a formula basis for higher premium health insurance plans. He said in some states the minimum loss ratio requirement is reduced by a flat amount for lower premium plans. He said 28 states have adopted minimum loss ratio requirements of that type, mostly by administrative rule.

Mr. Fix said the advantage for determining minimum loss ratio requirements by rule lies in the ability to adapt to changes in the products being offered in the health insurance market on a timely basis. He said any proposed administrative rule is subject to the established requirements regarding notice, public hearing, and review by the Attorney General's office and by the Administrative Rules Committee.

In response to a question from Senator Nething, Mr. Fix said he will provide the committee with a list of states that have adopted the newer standard of loss ratio requirements and which states have set the standards by rule or by statute.

Senator Nething said although the Administrative Rules Committee would review standard of loss ratio rules proposed by the Insurance Commissioner, the members of the Administrative Rules Committee may not have the background knowledge with respect to the subject that members of the appropriate standing committees have. He said he believes the standard of loss ratio requirement should be established by the Legislative Assembly.

In response to a question from Representative Kasper, Mr. Fix said loss ratio is calculated across the state and on a national basis.

In response to a question from Representative Keiser, Mr. Fix said Montana has no minimum loss ratio standard.

In response to a question from Senator Espegard, Mr. Fix said he will attempt to provide the committee with some information regarding loss ratios in states with populations similar to North Dakota.

PUBLIC IMPROVEMENT CONTRACTS STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a memorandum entitled *Public Improvement Contracts - Background Memorandum*.

Chairman Krebsbach called on Ms. Bonnie Staiger, AIA North Dakota, for comments regarding the committee's study of public improvement contracts. Ms. Staiger submitted written testimony, a copy of which is on file in the Legislative Council office. She said she is also acting as the spokesperson for the American Council of Engineering Companies of North Dakota, the North Dakota Association of Builders, North Dakota Society of Professional Engineers, the Associated General Contractors of North Dakota, the National Electrical Contractors Association, and the North Dakota Plumbing, Heating, and Mechanical Contractors Association. She said representatives of each of those organizations have agreed to participate in discussions to attempt to find a solution to the various issues presented in the study. She said the various industries have been confronted with many of these issues for a number of years and the various organizations are proposing to work together to define the issues, including pros and cons, identify any deal breakers among the organizations, establish position papers disclosing the comfort zone among the participants, and prepare potential bill drafts for consideration by the committee.

Mr. Jerry Backes, American Council of Engineering Companies of North Dakota, said the various industry groups need to work together to solve some of the problems that have been ongoing for several years. Because of the large scope of the study, he said, it is important that the interested groups bring a solution to the committee.

Chairman Krebsbach said the proposal outlined by Ms. Staiger and Mr. Backes is an excellent method through which the best legislation is accomplished. She said the committee will take this study up at the third meeting of the committee so that the representatives of the various industries may have some time to address the issues.

Mr. Brant Malsam, American Council of Engineering Companies of North Dakota, said one of the major concerns of engineering companies and others in the construction industry is the difficulty in doing business with the state. He said the contract terms required by the state shift responsibility for all liability to the contractors and require contractors to indemnify the state for any costs incurred under the contract.

Chairman Krebsbach requested the Legislative Council staff to seek information regarding how other states address indemnification issues with respect to businesses doing state projects.

Senator Nething requested that a representative of the North Dakota Insurance Reserve Fund be invited to address the committee regarding the liability and indemnification issues.

PROFESSIONAL EMPLOYER ORGANIZATIONS STUDY

At the request of Chairman Krebsbach, committee counsel reviewed a memorandum entitled *Registration of Professional Employer Organizations - Background Memorandum*.

Chairman Krebsbach called on Mr. Arthur Geiger, Better Business Systems, for comments regarding the committee's study of registration of professional employer organizations. Mr. Geiger said he has been active in the professional employer organization industry for 15 years and has worked with other states on similar studies. He said he assisted in getting a good registration law adopted in Montana, which is his home state. Because of the complexity of the industry, he said, it is important to have quality assurance through licensing or registration and through fiscal responsibility requirements. He said he suggested the idea of studying registration during the last legislative session while discussing the State Unemployment Tax Act (SUTA) dumping bill because he realized there are significant misconceptions regarding the professional employer organization industry.

Mr. Geiger said the professional employer organization industry is growing. He said the National Association of Professional Employer Organizations has approximately 800 members. He said professional employer organizations employ over two million workers nationwide. He said registration of professional employer organizations recognizes the legitimacy of the industry and demonstrates that the organizations are quality businesses.

Mr. Geiger referred the committee to correspondence and documents submitted by the National Association of Professional Employer Organizations, copies of which are on file in the Legislative Council office.

In response to a question from Senator Krebsbach, Mr. Geiger said although he has no preference regarding registration or licensure of professional employer organizations, licensure generally has more strict controls. He said the Montana Legislature chose the licensing model. Because there has been minimal activity by professional employer organizations in South Dakota, he said, there has been no push for registration. He said the industry is growing in this state. He said his company has approximately 200 employees in its first year of business in North Dakota. He said there are two other employer organizations based in North Dakota--one in Fargo and one in Bismarck. In addition, he said, 13 professional employer organizations have some activity in the state, generally because the organizations have a business relationship with a company that has a national account such as a hotel or a restaurant. He said those 13 organizations may have only one or two clients each in this state.

Senator Nething requested the Legislative Council staff to include on the committee's agenda for a future meeting a review of the model registration act proposed by the National Association of Professional Employer Organizations. He suggested that representatives from Workforce Safety and Insurance, Job Service North Dakota, the Attorney General's office, and the Department of Commerce be invited to comment regarding the model legislation.

Representative Keiser said testimony during the last legislative session indicated that some businesses and professional employer organizations were involved in SUTA dumping through the use of professional employer organizations. He requested the Legislative Council staff to provide the committee with copies of laws from other states which regulate professional employer organizations.

Senator Krebsbach said that it appears that either the Secretary of State or the Labor Commissioner would be the appropriate official to register or license professional employer organizations.

In response to a question from Representative Ruby, Mr. Geiger said the model act specifically defines a professional employer organization and does not include regulation of other entities that may focus on payroll services or contract labor.

Chairman Krebsbach requested Mr. Geiger to work with the Legislative Council staff to prepare a bill draft based on the model act for consideration by the committee.

Chairman Krebsbach said the committee will address its study relating to the pharmacy benefits management industry at the next meeting of the committee.

There being no further business, Chairman Krebsbach adjourned the meeting at 2:10 p.m.

John Bjornson
Committee Counsel

John D. Olsrud
Director

ATTACH:1