

**FIRST ENGROSSMENT
with Senate Amendments**Fifty-sixth
Legislative Assembly
of North Dakota**ENGROSSED HOUSE BILL NO. 1135**

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to amend and reenact sections 52-04-05, 52-04-06, and 52-04-09 of the
2 North Dakota Century Code, relating to the required level of the unemployment compensation
3 trust fund reserve and employer contribution rates.

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

5 **SECTION 1. AMENDMENT.** Section 52-04-05 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **52-04-05. (Effective through December 31, 2000) Determination of rates.**

8 1. For each calendar year, the bureau shall estimate the amount of income needed to
9 pay benefits and maintain a balance in the unemployment compensation fund, that
10 as of October 1, 1989, is equal to twenty-five percent of the average annual
11 amount of benefits paid. On each October first after October 1, 1989, the amount
12 of the trust fund reserve must be sixty percent of the average annual amount of
13 benefits paid. The average annual amount of benefits paid must be computed by
14 dividing the total amount of benefits paid and projected to be paid during the
15 previous thirty-six months by three. On October 1, 1999, the required amount of
16 the trust fund reserve becomes a targeted amount as determined under this
17 subsection. The solvency target is an average high cost multiple of one. The
18 average high cost multiple is the number of years the bureau could pay
19 unemployment compensation, based on the reserve ratio, if the bureau paid the
20 compensation at a rate equivalent to the average benefit cost rate in the one
21 calendar year during the preceding twenty calendar years and the two calendar
22 years during the preceding ten calendar years in which the benefit cost rates were
23 the highest. "Reserve ratio" means the ratio determined by dividing the balance in
24 the trust fund reserve at the end of the calendar year by the total covered wages in

1 the state for that year. "Benefit cost rate" means the rate determined by dividing
2 the unemployment compensation benefits paid during a calendar year by the total
3 covered wages in the state for that year. The computation of the reserve ratio and
4 benefit cost rate must exclude the wages and unemployment compensation paid
5 by employers covered under section 3309 of the Internal Revenue Code of 1986,
6 as amended, [26 U.S.C. 3309]. Progress towards achieving the targeted amount
7 of the trust fund reserve is measured by reducing any difference between one and
8 the average high cost multiple of the state by an amount that is at least fourteen
9 percent of this difference. If the trust fund reserve reaches or exceeds the targeted
10 amount and if the calendar year annual average insured unemployment rate is
11 above three percent and has increased one hundred ten percent of the average of
12 the preceding two calendar years, a tax rate will be set to provide for fifty percent
13 of the additional revenue needed for the trust fund to be derived from tax rate
14 increases and the remaining fifty percent becomes a drawdown against the trust
15 fund reserve. When the trust fund reserve is being rebuilt, rates will not be
16 lowered until the target level is reached.

17 2. Rates must be determined as follows:

- 18 a. The income required for the calendar year must be divided by the estimated
19 taxable wages for the calendar year. The result rounded to the next higher
20 one one-hundredth of one percent is the average required rate.
- 21 b. ~~The minimum rate for each calendar year is the average required rate,~~
22 ~~multiplied by one-fourth, rounded to the nearest one-tenth of one percent. If~~
23 the positive employer maximum rate is at least one percent, the positive
24 employer minimum rate is the positive employer maximum rate minus
25 nine-tenths of one percent. If the positive employer maximum rate is less
26 than one percent, the range for the positive employer minimum rate must be
27 at least one-tenth of one percent and must be less than two-tenths of one
28 percent (the minimum of one-tenth of one percent plus the increment of
29 one-tenth of one percent), with the positive employer minimum rate equal to
30 the positive employer maximum rate minus a multiple of the increment
31 one-tenth of one percent as provided in subsection 2 of section 52-04-06 to

- 1 fall within the range described above. Within the table of rate schedules for
2 each calendar year, a rate schedule may not be used if it would generate less
3 income than any rate schedule preceding it on the table of rate schedules.
4 The negative employer minimum rate is the positive employer maximum rate
5 plus five and one-tenth percent.
- 6 c. ~~The maximum rate for each calendar year is the average required rate,~~
7 ~~multiplied by three, rounded to the nearest one-tenth of one percent. The~~
8 ~~positive employer maximum rate must be set so that all the rates combined~~
9 ~~generate the average required rate. The negative employer maximum rate is~~
10 ~~the negative employer minimum rate plus three and six-tenths percent.~~
11 However, the maximum rate must be at least five and four-tenths percent.
- 12 3. a. Except as otherwise provided in this subsection, an employer's rate may not
13 be less than the ~~maximum~~ negative employer minimum rate for a calendar
14 year unless the employer's account has been chargeable with benefits
15 throughout the thirty-six-consecutive-calendar-month period ending on
16 September thirtieth of the preceding calendar year. If an employer in
17 construction services has not been subject to the law as required, that
18 employer qualifies for a reduced rate if the account has been chargeable with
19 benefits throughout the twenty-four-consecutive-calendar-month period
20 ending September thirtieth of the preceding calendar year. ~~However, an~~
21 ~~employer in construction services must be assigned the maximum rate or~~
22 ~~seven percent, whichever is greater, for any year if, as of the computation~~
23 ~~date, the cumulative benefits charged to the employer's account equal or~~
24 ~~exceed the cumulative contributions paid on or before October thirty first with~~
25 ~~respect to wages paid by that employer before October first of that year. An~~
26 employer identified as belonging to industry group number 161, highway and
27 street construction, except elevated highways, provided in the standard
28 industrial classification manual, must be assigned a ~~maximum rate or eight~~
29 ~~and one-half percent, whichever is greater, within the negative employer rate~~
30 ranges with an additional one and one-half percent added to the rate for any
31 year if, as of the computation date, the cumulative benefits charged to the

1 employer's account equal or exceed the cumulative contributions paid on or
2 before October thirty-first of that year. If an employer in nonconstruction
3 services has not been subject to the law as required, the employer in
4 nonconstruction services qualifies for a reduced rate if the account has been
5 chargeable with benefits throughout the twelve-consecutive-calendar-month
6 period ending September thirtieth of the preceding calendar year.

7 b. An employer that does not qualify under subdivision a is subject to a rate
8 determined as follows:

9 (1) For each calendar year new employers must be assigned a rate that is
10 one hundred fifty percent of ~~two and two-tenths percent~~ the positive
11 employer maximum rate or a rate of one percent, whichever is greater,
12 unless the employer is classified in construction services. However, an
13 employer must be assigned ~~the maximum rate~~ within the negative
14 employer rate ranges for any year if, as of the computation date, the
15 cumulative benefits charged to that employer's account equal or
16 exceed the cumulative contributions paid on or before October
17 thirty-first with respect to wages paid by that employer before October
18 first of that year.

19 (2) New employers in construction services must be assigned ~~a rate of~~
20 ~~seven percent or the maximum rate, whichever is greater~~ the negative
21 employer maximum rate.

22 (3) Assignment by the bureau of an employer's industrial classification for
23 the purposes of this section must be the two digit major group provided
24 in the standard industrial classification manual, in accordance with
25 established classification practices found in the standard industrial
26 classification manual issued by the executive office of the president,
27 office of management and budget.

28 4. An employer who has ceased to be liable for contributions shall continue its
29 established experience rating account if it again becomes liable within three years
30 from the date that it ceased to be liable. Such employer's rate, however, must be
31 determined in accordance with subsection 3.

1 **(Effective after December 31, 2000) Determination of rates.**

2 1. For each calendar year, the bureau shall estimate the amount of income needed to
3 pay benefits and maintain a balance in the unemployment compensation fund, that
4 as of October 1, 1989, is equal to twenty-five percent of the average annual
5 amount of benefits paid. On each October first after October 1, 1989, the amount
6 of the trust fund reserve must be sixty percent of the average annual amount of
7 benefits paid. The average annual amount of benefits paid must be computed by
8 dividing the total amount of benefits paid and projected to be paid during the
9 previous thirty-six months by three. On October 1, 1999, the required amount of
10 the trust fund reserve becomes a targeted amount as determined under this
11 subsection. The solvency target is an average high cost multiple of one. The
12 average high cost multiple is the number of years the bureau could pay
13 unemployment compensation, based on the reserve ratio, if the bureau paid the
14 compensation at a rate equivalent to the average benefit cost rate in the one
15 calendar year during the preceding twenty calendar years and the two calendar
16 years during the preceding ten calendar years in which the benefit cost rates were
17 the highest. "Reserve ratio" means the ratio determined by dividing the balance in
18 the trust fund reserve at the end of the calendar year by the total covered wages in
19 the state for that year. "Benefit cost rate" means the rate determined by dividing
20 the unemployment compensation benefits paid during a calendar year by the total
21 covered wages in the state for that year. The computation of the reserve ratio and
22 benefit cost rate must exclude the wages and unemployment compensation paid
23 by employers covered under section 3309 of the Internal Revenue Code of 1986,
24 as amended, [26 U.S.C. 3309]. Progress towards achieving the targeted amount
25 of the trust fund reserve is measured by reducing any difference between one and
26 the average high cost multiple of the state by an amount that is at least fourteen
27 percent of this difference. If the trust fund reserve reaches or exceeds the targeted
28 amount and if the calendar year annual average insured unemployment rate is
29 above three percent and has increased one hundred ten percent of the average of
30 the preceding two calendar years, a tax rate will be set to provide for fifty percent
31 of the additional revenue needed for the trust fund to be derived from tax rate

1 increases and the remaining fifty percent becomes a drawdown against the trust
2 fund reserve. When the trust fund reserve is being rebuilt, rates will not be
3 lowered until the target level is reached.

4 2. Rates must be determined as follows:

5 a. The income required for the calendar year must be divided by the estimated
6 taxable wages for the calendar year. The result rounded to the next higher
7 one one-hundredth of one percent is the average required rate.

8 b. ~~The minimum rate for each calendar year is the average required rate,~~
9 ~~multiplied by one-fourth, rounded to the nearest one-tenth of one percent. If~~
10 ~~the positive employer maximum rate is at least one percent, the positive~~
11 ~~employer minimum rate is the positive employer maximum rate minus~~
12 ~~nine-tenths of one percent. If the positive employer maximum rate is less~~
13 ~~than one percent, the range for the positive employer minimum rate must be~~
14 ~~at least one-tenth of one percent and must be less than two-tenths of one~~
15 ~~percent (the minimum of one-tenth of one percent plus the increment of~~
16 ~~one-tenth of one percent), with the positive employer minimum rate equal to~~
17 ~~the positive employer maximum rate minus a multiple of the increment~~
18 ~~one-tenth of one percent as provided in subsection 2 of section 52-04-06 to~~
19 ~~fall within the range described above. Within the table of rate schedules for~~
20 ~~each calendar year, a rate schedule may not be used if it would generate less~~
21 ~~income than any rate schedule preceding it on the table of rate schedules.~~
22 The negative employer minimum rate is the positive employer maximum rate
23 plus five and one-tenth percent.

24 c. ~~The maximum rate for each calendar year is the average required rate,~~
25 ~~multiplied by three, rounded to the nearest one-tenth of one percent. The~~
26 ~~positive employer maximum rate must be set so that all the rates combined~~
27 ~~generate the average required rate. The negative employer maximum rate is~~
28 ~~the negative employer minimum rate plus three and six-tenths percent.~~

29 However, the maximum rate must be at least five and four-tenths percent.

30 3. a. Except as otherwise provided in this subsection, an employer's rate may not
31 be less than the ~~maximum~~ negative employer minimum rate for a calendar

1 year unless the employer's account has been chargeable with benefits
2 throughout the thirty-six-consecutive-calendar-month period ending on
3 September thirtieth of the preceding calendar year. If an employer in
4 construction services has not been subject to the law as required, that
5 employer qualifies for a reduced rate if the account has been chargeable with
6 benefits throughout the twenty-four-consecutive-calendar-month period
7 ending September thirtieth of the preceding calendar year. ~~However, an~~
8 ~~employer in construction services must be assigned the maximum rate of~~
9 ~~seven percent, whichever is greater, for any year if, as of the computation~~
10 ~~date, the cumulative benefits charged to the employer's account equal or~~
11 ~~exceed the cumulative contributions paid on or before October thirty first with~~
12 ~~respect to wages paid by that employer before October first of that year.~~ If an
13 employer in nonconstruction services has not been subject to the law as
14 required, the employer in nonconstruction services qualifies for a reduced rate
15 if the account has been chargeable with benefits throughout the
16 twelve-consecutive-calendar-month period ending September thirtieth of the
17 preceding calendar year.

18 b. An employer that does not qualify under subdivision a is subject to a rate
19 determined as follows:

20 (1) For each calendar year new employers must be assigned a rate that is
21 one hundred fifty percent of two and two-tenths percent the positive
22 employer maximum rate or a rate of one percent, whichever is greater,
23 unless the employer is classified in construction services. However, an
24 employer must be assigned ~~the maximum rate~~ within the negative
25 employer rate ranges for any year if, as of the computation date, the
26 cumulative benefits charged to that employer's account equal or
27 exceed the cumulative contributions paid on or before October
28 thirty-first with respect to wages paid by that employer before October
29 first of that year.

- 1 (2) New employers in construction services must be assigned ~~a rate of~~
2 seven percent or the maximum rate, whichever is greater the negative
3 employer maximum rate.
- 4 (3) Assignment by the bureau of an employer's industrial classification for
5 the purposes of this section must be the two digit major group provided
6 in the standard industrial classification manual, in accordance with
7 established classification practices found in the standard industrial
8 classification manual issued by the executive office of the president,
9 office of management and budget.
- 10 4. An employer who has ceased to be liable for contributions shall continue its
11 established experience rating account if it again becomes liable within three years
12 from the date that it ceased to be liable. Such employer's rate, however, must be
13 determined in accordance with subsection 3.

14 **SECTION 2. AMENDMENT.** Section 52-04-06 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **52-04-06. Variations in standard rate of contributions - How determined.**

- 17 1. ~~All employers eligible for an experience rate computation must be ranked in~~
18 ~~descending order by their reserve ratios.~~ An employer's reserve ratio is the
19 ~~percentage of the average annual payroll by which~~ difference between the
20 ~~cumulative six-year~~ contributions paid by that employer on or before October
21 thirty-first of any year, with respect to wages paid by that employer before October
22 first of that same year, ~~exceeds and~~ the ~~cumulative six-year~~ benefits charged to
23 that employer's account before October first of that year, divided by the average
24 annual payroll. Employers whose cumulative contributions exceed cumulative
25 benefits must be assigned within the positive employer rate groups. Employers
26 whose cumulative contributions are equal to or less than cumulative benefits must
27 be assigned within the negative employer rate groups.
- 28 2. ~~For each calendar year the bureau shall establish a schedule of rates, with the~~
29 ~~minimum rate determined under section 52-04-05 assigned to the first rate group.~~
30 ~~Each successive rate group must be assigned a rate equal to the previous group's~~
31 ~~rate plus two tenths of one percent.~~ The number of rate groups in the schedule

1 ~~must be the number required to provide for a rate group at each two tenths of one~~
2 ~~percent interval between the minimum rate and two and one fourth times the~~
3 ~~average required rate determined under section 52-04-05. For each calendar year~~
4 ~~the bureau shall establish a schedule of positive employer rate groups within the~~
5 ~~positive employer minimum rate and the positive employer maximum rate~~
6 ~~determined under section 52-04-05. Each successive rate group for positive~~
7 ~~employer rate groups must be assigned a rate equal to the previous group's rate~~
8 ~~plus one-tenth of one percent. The number of rate groups in the positive employer~~
9 ~~schedule must be the number required to provide for a rate group at each~~
10 ~~one-tenth of one percent interval between the positive employer minimum rate and~~
11 ~~the positive employer maximum rate determined under section 52-04-05. For each~~
12 ~~calendar year the bureau shall establish a schedule of negative employer rate~~
13 ~~groups with the negative employer minimum rate and the negative employer~~
14 ~~maximum rate determined under section 52-04-05. Each successive rate group~~
15 ~~for negative employer rate groups must be assigned a rate equal to the previous~~
16 ~~group's rate plus four-tenths of one percent. The number of rate groups in the~~
17 ~~negative employer schedule must be the number required to provide for a rate~~
18 ~~group at each four-tenths of one percent interval between the negative employer~~
19 ~~minimum rate and the negative employer maximum rate determined under section~~
20 ~~52-04-05.~~
21 3. ~~Employers must be assigned to the groups in the rate schedule in the rank order of~~
22 ~~their reserve ratios, as determined in subsection 1, with the highest reserve ratio~~
23 ~~employers assigned to the first rate group. Each successively ranked employer~~
24 ~~must be assigned to the groups in the rate schedule so that those employers~~
25 ~~reporting seventy eight percent of the eligible employer's prior year's taxable~~
26 ~~wages are equally distributed in those rate groups at or below the average rate~~
27 ~~required of employers eligible for experience rating or the minimum rate group,~~
28 ~~whichever is greater, and twenty two percent of those wages are equally~~
29 ~~distributed in the remaining rate groups. Positive employers must be assigned to~~
30 ~~the rate in the positive employer rate schedule in the rank order of their reserve~~
31 ~~ratios, as determined in subsection 1, with the highest reserve ratio positive~~

1 employers assigned to the first positive employer rate. Each successively ranked
2 positive employer must be assigned to a rate within the positive employer rate
3 schedule so that each rate within the rate schedule is assigned the same
4 proportion of the positive employers prior year's taxable wages. Negative
5 employers must be assigned to the rate in the negative employer rate schedule in
6 the rank order of their reserve ratios, as determined in subsection 1, with the
7 highest reserve ratio negative employers assigned to the first negative employer
8 rate. Each successively ranked negative employer must be assigned to a rate
9 within the negative employer rate schedule so that each rate within the rate
10 schedule is assigned the same proportion of the negative employer's prior year's
11 taxable wages.

12 4. ~~The average rate of employers eligible for experience rating is determined as~~
13 ~~follows:~~
14 a. ~~The estimated amount of taxes to be paid each year by employers not eligible~~
15 ~~for experience rating must be subtracted from the total required income for~~
16 ~~the year determined under section 52-04-05.~~
17 b. ~~The remainder must be divided by the estimated taxable wages of those~~
18 ~~employers eligible for experience rating, with the result rounded to the nearest~~
19 ~~one-tenth of one percent.~~

20 5. After each year's rate schedule has been established, an employer may pay into
21 the fund an amount in excess of the contributions required to be paid under this
22 section. That amount must be credited to the employer's separate account. The
23 employer's rate must be recomputed with the amount included in the calculation
24 only if that amount was paid by April thirtieth of that year. Payments may not be
25 refunded or used as credit in the payment of contributions.

26 6. 5. In the bureau's determination of the projected income requirements for computing
27 contribution rates and taxable wage base, only the wages paid by, and the cost of
28 benefits attributable to, tax-rated employers may be taken into account.

29 7. 6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars
30 and at least three times its established average annual payroll, the tax rate for that
31 employer is the negative employer maximum rate of contribution in effect that year,

1 beginning the first day of the calendar quarter in which it occurred and for the
2 remainder of the calendar year.

3 **SECTION 3. AMENDMENT.** Section 52-04-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **52-04-09. Classification of employers to determine contributions - Regulations**
6 **governing.** An employer's rate for a calendar year must be determined on the basis of the
7 employer's experience with contribution payments and benefit charges as of October first of the
8 preceding year. If when such determination is to be made an employer has failed to file a
9 required report or filed an insufficient report, the bureau shall notify the employer thereof by
10 certified mail addressed to the employer's last known address. Unless the employer files the
11 report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for
12 the following calendar year may not be less than the negative employer maximum rate. For
13 employers identified as belonging to industry group number 161, highway and street
14 construction, except elevated highways, for the effective period set forth in section 52-04-05,
15 the employer's rate for the following calendar year may not be less than the negative employer
16 maximum rate plus one and one-half percent. If, at any time, an employer has failed to file a
17 required report or filed an insufficient report, the bureau may, at any time, estimate the wage
18 information required by the report on the basis of reasonably available evidence. The bureau
19 shall notify the employer of the estimate by certified mail addressed to the employer's last
20 known address. Unless the employer files the report or a sufficient report within fifteen days
21 after the mailing of the notice, the estimate becomes final for all purposes, except that if the
22 amount of estimated wages is less than the actual wages, the bureau may reconsider the
23 estimate.