

FISCAL NOTE
Requested by Legislative Council
02/01/2019

Amendment to: HB 1060

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$10,000,000	\$0	\$20,000,000
Expenditures	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Institutes a surcharge to be paid by employers whose employees have received unemployment insurance benefits at a rate exceeding the level of contributions paid into the system by the employer. Fiscal impact is the collection of the surcharge.

- 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.*

Section 1 provides the fiscal impact. The surcharge imposed would result in affected negative balance employers paying an additional amount into the Unemployment Insurance Trust Fund to account for the difference between their employees receipt of benefits and the contributions made by the employer. Employers whose cumulative benefits divided by cumulative contributions = 100-149% will be assessed a surcharge of 3% of their negative balance. Employers whose cumulative benefits divided by cumulative contributions = 150-199% will be assessed a surcharge of 7% of their negative balance. Employers whose cumulative benefits divided by cumulative contributions >= 200% will be assessed a surcharge of 10% of their negative balance.

The surcharge does not create a fiscal impact that would result in the state of North Dakota or Job Service receiving any additional funds that could be utilized for administrative or other purposes. As defined within the bill, the funds received as a result of the surcharge would be placed into the Unemployment Insurance Trust Fund. Funds within the Unemployment Insurance Trust Fund can only be used for the payment of Unemployment Insurance benefits to eligible unemployed workers. Additionally, when placed into the Trust Fund, the surcharge amount is to be credited to the employers account in the same manner as tax contributions, which ultimately could create a more favorable reserve ratio and lower the tax rate for the employer in subsequent years.

A fiscal impact will also occur, but is not as immediately measurable in that as negative balance employers pay surcharges, the Trust Fund balance will be positively impacted. This positive impact is projected to provide for a lower overall tax rate for all of the state's employers. Initial estimates indicate that overall tax rates would drop 10% with the implementation of the surcharge.

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.*

The revenue amounts listed are the surcharge amounts that will be collected from employers based upon the difference between the employers contributions and benefits paid to the employees of the employer.

- 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 expenditure amounts reflect the cost of system changes and administrative costs associated with the changes associated with the bill.

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No appropriation is requested. Revenue would be deposited into the Unemployment Insurance Trust Fund and utilized only for payment of benefits to unemployed workers.

Name: Darren Brostrom

Agency: Job Service North Dakota

Telephone: 701-328-2843

Date Prepared: 02/01/2019

FISCAL NOTE
Requested by Legislative Council
12/26/2018

Bill/Resolution No.: HB 1060

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$2,900,000	\$0	\$5,800,000
Expenditures	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
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Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Institutes a surcharge to be paid by employers whose employees have received unemployment insurance benefits at a rate exceeding the level of contributions paid into the system by the employer. Fiscal impact is the collection of the surcharge.

- 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.*

Section 1 provides the fiscal impact. The surcharge imposed would result in affected negative balance employers paying an additional amount into the Unemployment Insurance Trust Fund to account for the difference between their employees receipt of benefits and the contributions made by the employer. Employers whose employees have received benefits in excess of 150% of the contributions paid by the employer will be charged a 10% surcharge on the difference between benefits and contributions paid above the 150% level.

The surcharge does not create a fiscal impact that would result in the state of North Dakota or Job Service receiving any additional funds that could be utilized for administrative or other purposes. As defined within the bill, the funds received as a result of the surcharge would be placed into the Unemployment Insurance Trust Fund. Funds within the Unemployment Insurance Trust Fund can only be used for the payment of Unemployment Insurance benefits to eligible unemployed workers. Additionally, when placed into the Trust Fund, the surcharge amount is to be credited to the employers account in the same manner as tax contributions, which ultimately could create a more favorable reserve ratio and lower the tax rate for the employer in subsequent years.

A fiscal impact will also occur, but is not as immediately measurable in that as negative balance employers pay surcharges, the Trust Fund balance will be positively impacted. This positive impact is projected to provide for a lower overall tax rate for all of the state's employers. Initial estimates indicate that overall tax rates would drop 10% with the implementation of the surcharge.

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No appropriation is requested. Revenue would be deposited into the Unemployment Insurance Trust Fund and utilized only for payment of benefits to unemployed workers.

Name: Darren Brostrom

Agency: Job Service North Dakota

Telephone: 701-328-2843

Date Prepared: 01/03/2019

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1060

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1060
1/9/2019
30625

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer.

Minutes:

Attachment 1, 2, 3, 4

Rep Roers Jones~District 46: Introduces HB1060. We are dealing with some issues that are affecting the unemployment fund. There are some who are using the unemployment insurance fund as a business model. They end up using on a continual basis more insurance benefits that they pay in. What we are looking at is creating a surcharge. Attachment 1

Darrin Brostrom~Deputy Director of Job Service: Attachment 2.

11:45

Rep Ruby: We looked at raising the negative balance employers for several sessions ago. Wouldn't it be easier to work with the formula, increase that to get more people in the positive balance?

Darrin Brostrom: Working within the formula is an option. We believe that the formula is solid as it is. One of the difficult thing when changing things within the formula, it's hard to carve out those that you can target with a surcharge. As far as calculating the surcharge, in this document, we would be required to send notice prior to February to every employer that is impacted by the surcharge. They would have until November 30 to pay that surcharge.

We wanted that employers had time to get those funds, but October is when we wanted to get that in place. If we have the funds by then, it can positively impact the tax rate schedule for next year. Ultimately, the primary goals with the surcharge, it positively impacts rates for all employers. It takes rates down.

Rep Ruby: Of the people in the lowest bracket, do you have an estimate for the next two years that would move to the positive balance?

Darrin Brostrom: I don't have an estimate to who would move, but if you look on page 4, the 1st line in my testimony, it talks about the industries that are impacted.

Rep Ruby: That is only for the negative balance?

Darrin Brostrom: Any employer can buy into any rate schedule they want to get their rate down.

Vice Chairman Lefor: Did you have a discussion on how you arrived at your figures because 2.9 million doesn't seem like a lot. Also, how long did it take you get to the 231 million?

Darrin Brostrom: The last question, since the existence of the program. The rate we did created an easy excel spreadsheet that looks at all of our data & we can run different scenarios for different situations. Look on page 6 & 7 at two different variables.

Rep Adams: If it started way back, how did we get in the 231 million dollars in the hole & that someone didn't go after them sooner?

Darrin Brostrom: You're right. Going after them, they have paid in accurately with the tax schedule. They are well within the law as it exists. It's a decision on how far you let that go.

Chairman Keiser: We had situation with a coal gasification plant where they effectively laid off 2,000 people within a week. They all went on unemployment & we didn't reserve for that. That almost destroyed the fund. For a single large project like that, we have it covered now. It's tough to bond for the oil field employers because of the price of oil. This bill may be the vehicle to adjust that. This is a new problem we have. Now, they are coming back & they are paying the higher interest rate & it's going to fill the fund. It's going to get better faster now unless something bad happens.

Darrin Brostrom: You are absolutely right.

Rep Richter: Seasonal employers pay a higher percentage into the fund, is that correct?

Darrin Brostrom: That's correct, if it's their first year of being seasonal, they wouldn't.

Rep Richter: The seasonal employers are also typically paying out more than they are paying in?

Darrin Brostrom: That's correct.

Rep Ruby: We need not to overreact & let the formula work. How many employers who have defaulted in the last five years? If we go too aggressive, we could more defaults.

Darrin Brostrom: That's a good point. Where we see that are regular defaulters. Also, out of state employers are our largest. It's difficult to say.

Rep P Anderson: How many of our negative employers are out of state?

Darrin Brostrom: It's not as large as it was. During the oil boom, about 65% of our claims came from out of that. Now that's about 30%. As far as employers, I would guess 15%.

28:45

Chairman Keiser: Shouldn't we construct a system that is equable to everyone? Surcharge is one option; could we do a bond?

Darrin Brostrom: A bond is a little tougher. Anything we do we have to be conformed with the federal law.

Chairman Keiser: We could have three options. Buy your way in or we can have the surcharge. Should we have all folks pay in or just give a grace period to a company that goes in for the first year & only the first year?

Darrin Brostrom: My personal opinion that we should not assess immediately to all negative employers because there are situations that you can go into the negative. There is an equity thing for them as well. The intent of this was to look at those that have cumulatively gone negative. I wouldn't be opposed for a situation that all employers pay a surcharge. We should look at a grace period. I haven't given a lot of thought.

Rep Richter: Gives a scenario of a cold winter in the oil field. It's the first time it's ever happened to them? Will it happen to them?

Darrin Brostrom: There are a few scenarios to that. It could or it could not. I encourage you to look at the documents that I passed out.

Rep C Johnson: With the new surcharge formula, it gets added to the trust fund balance. That is going to affect the previous formula. The two formulas have to work together to get the rates of the future, is that going to work?

Darrin Brostrom: What the surcharge would do is the surcharge receipts would come in & go into the trust fund. That would be used in the next year's calculation of tax rates. It doesn't have to work in conjunction with the previous formula.

Rep Schauer: I do like a grace period. Have you looked at a third year kicks in?

Darrin Brostrom: This is a new idea, but we could certainly look at it.

Rep Adams: If I'm paying back & one million dollars behind, I'm paying back my surcharge & a past due bill. Why would you recalculate a better rate the next year until I get my million dollars paid back?

Darrin Brostrom: We felt it that is was good to count it towards the employers. So the employer is basically trying to get themselves out of the hole. We could write it that it goes into the trust fund & it impact the pool & not the individual account. That's an option as well.

37:20

Rep Adams: It's my thought was that it would go into the pool & get everybody square again. Then he's back in the positive again or is that not a good idea?

Darrin Brostrom: Most of the employers that are going to get a surcharge, this surcharge is not enough to get out.

Rep Ruby: As the pool gets bigger, that affects all of the rates. Even the worst negative balance rate will slightly go down. Her point is why would you lower it, keep them at the highest rate. That would be counter to the regular chart, which is more complicated.

Darrin Brostrom: I would agree, that would start changing our formula, it's doable but a lot more complicated.

Rep C Johnson: The grace period for the first time negative balance employer, is that something that you could adjust with administrative rules or legislation to do that?

Darrin Brostrom: I think we can build it in the bill if we needed to.

Vice Chairman Lefor: Do you think there could be another positive effect from some of these employers utilizing the fund as an insurance policy for seasonal employees not working? Have you seen anything like that & would they do things differently if they are forced to pay more?

Darrin Brostrom: I'm not in a position as to whether that would encourage someone to improve their business practices. The vast majority of employers are playing by the rules.

41:35

Rep M Nelson: What is the max rate that an employer would pay out?

Darrin Brostrom: It's 9.75% of 364.

Rep Adams: Is that per employee?

Darrin Brostrom: Yes per employee.

Chairman Keiser: Further questions? Anyone here to testify in support, opposition?

44:45

Russ Hanson~Associated General Contractors of ND: Attachment 3.

48:40

Rep Kasper: You said that the construction protection risk program went into effect in 2001?

Russ Russ Hanson: No, since 2001, the value of 50 million or higher in place.

Rep Kasper: So, the construction bond has been available since 2001?

Russ Hanson: Has been required at the 50 million dollar or more level.

Rep Kasper: If that's the case, that was 17 years ago, how did these employers get such a negative balance?

Russ Hanson: That would be a policy decision that would make. I don't know the number in general terms. I'm pretty sure Job Service could give the information.

Chairman Keiser: You would want to do that in the aggregate verses in the total amount.

Russ Hanson: You are right.

Rep Kasper: What is a cost of a bond for 50 million in general terms?

Russ Hanson: I can get that cost to you.

Rep Ruby: When are the bonds accessed? Wouldn't the contractors that are building large negative balance, are they accessing any of the bonds.

Russ Hanson: I believe you're correct. They don't have to bond if the project is above the 50 million or higher.

Arik Spencer~President & CEO of the Greater ND Chamber, also represent the State Manufacturing Association: There needs to be a high level of collaboration for the negative & positive balance employer. As far as that, it's hasn't happened as we talk about this bill.

Rep Kasper: Is this bill a surprise to you?

Arik Spencer: Yes, by & large that's the case.

Rep Kasper: Do you think you & other organizations are ready to collaborate now or lets get rid of the bill?

Arik Spencer: I think we should collaborate.

Chairman Keiser: We are going to put together a subcommittee.

Brady Pelton~Government Affairs Director of ND Petroleum Council: Attachment 4.

59:15

Rep P Anderson: Of the 500 companies that you represent, some are negative & some are positive?

Brady Pelton: That's correct.

Rep P Anderson: So your positive companies are ok with the recording the negative?

Brady Pelton: As the system as a whole, it's understood that it's part of business that you pay a premium & that's the way the system works.

Rep Schauer: What is your answer to those whose aren't paying what their supposed to pay?

Brady Pelton: It's understood it's the process.

Chairman Keiser: We appreciate all your industry does.

Brady Pelton: Thank you & the Petroleum Council is happy to be at the table.

Chairman Keiser: Anyone else here to testify in the opposition, neutral. Closes the hearing. Appoints a subcommittee, Rep C Johnson, Rep Ruby, Rep M Nelson, Rep Keiser & Rep Adams.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1060
1/14/2019
30741

☒ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer.

Minutes:

Rep C Johnson: Opens the subcommittee on HB 1060. Committee members present were Rep Keiser, Rep D Ruby, Rep M Nelson, Rep Adams.

Summary of the subcommittee:

- * All negatives should have some sort of surcharge.
- * If negative for 3 or more years, it should be graduated.
- * Fund is not created to be a business model.
- * Need to stop employers who continue to climb deeper into the negative.
- * Potentially one grace period every 5 or 10 years.
- * Wipe all negatives clean right now for negatives. The goal is to stop increasing negatives.
- * Second surcharge based upon 4 or 5 years of continuously increasing their negative position.
 - ~ Addresses the pattern of growing negative.
 - ~ This would be a "second" surcharge or a graduated surcharge.
- * 3 year increasing deficit then surcharge applies

Draft language bases upon:

- * 2 year grace period of consecutive being negative.
 - ~ If negative for last 5 years, the grace period is over.
- * If possible a surcharge for going deeper (second surcharge)
 - ~ Once hit positive, grace period starts over.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1060
1/22/2019
31248

☒ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer.

Minutes:

Attachment 1, 2

Rep C Johnson: Opens the subcommittee hearing on HB 1060. Committee members present were Rep Keiser, Rep D Ruby, Rep M Nelson, Rep Adams.

Conclusion of the subcommittee work:

~It will be a hog house.

~Shows a percentage for a surcharge for negative balance employers. Divided up into three sections depending on how large their negative balance is.

- 100% to 149% will be a 3% surcharge.
- 150% to 199% will be a 7% surcharge.
- Over 200% will be a 10% surcharge.

~Section 2, shows an effect date beginning after December 31, 2019, give employers a chance to review their surcharges & get business affairs in compliance.

~No grace period.

~Collect 10 million from surcharges.

~Two choices are they are in the just barely in the negative. Pay a surcharge or buy their way back into to positive.

House Industry, Business and Labor Committee
HB 1060
Jan 22, 2019
Page 2

Darren Brostrom: Attachment 1 & 2.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1060
1/30/2019
31847

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing on HB 1060. I asked Rep C Johnson to review the bill & Darren Brostrom could provide any comment or answer questions. He's our expert in revenue.

Rep C Johnson: Attachment 1. Goes over the hog house amendment.

Chairman Keiser: This is a significant adjustment. The subcommittee made some critical policy decisions. It was legal to be in the negative position. This bill draws a line in the sand. This is much simpler & easier to do. We don't want business to go out of business. We are running it backwards. This achieves what the bill sponsor was looking for to try & turn that motivation to be negative.

4:40

Rep D Ruby: Does this make sure that the rate is based on the historical usage but the surcharge is going prospective.

Darren Brostrom~Deputy Director of Job Service: Any surcharge payments will be put into the individual employer's account. That would impact their tax rates going forward positively.

Rep D Ruby: The historical rate is set (inaudible). That is still going to stay in the rate class as it is. The surcharge now, will that be from the date of this going forward a positive. Are they going to get a surcharge or would there only be a surcharge if they remain negative from here on out?

Darren Brostrom: A surcharge would be assessed if they are negative on December 31, 2019. If they were negative on December 31, 2018, they would get it in 2019.

Rep D Ruby: Historically, way negative but 2018 they weren't negative.

Chairman Keiser: These are the surcharge of the negative portion of 2019 or on the collective negative.

Darren Brostrom: It's on the cumulative amount. So, they were negative for 20 years but this year, they are not, they will not get the surcharge this year.

Rep Richter: Historically positive, but have a bad year in 2019, it's cumulative, they don't get the surcharge. Does cumulatively, there's still positive?

Darren Brostrom: Yes, if they were cumulatively positive, you can have a bad year.

Chairman Keiser: We are going after the historical negative pattern. It's simple & we can explain it to employers. We can market it in advance.

Darren Brostrom: If there is a desire for an educational period, Job Service would commit.

Rep D Ruby: You don't believe that the time going into effect from August 1, would be enough time to get the education out by the end of this year?

Darren Brostrom: We could & would get that out.

Chairman Keiser: We have this amendment before us, what are your wishes?

Rep D Ruby: Moves the amendment.

Rep Bosch: Second.

Chairman Keiser: Further questions?

Voice vote ~ Motion carried.

Vice Chairman Lefor: Moves a Do Pass as Amended.

Rep Bosch: Second

Roll call was taken for a Do Pass as Amended on HB 1060 with 12 yes, 0 no, 2 absent & Rep C Johnson is the carrier.

January 30, 2019

DA 1/30/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1060

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06 of the North Dakota Century Code, relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, if the amount of cumulative benefits charged to an employer's account exceeds the amount of cumulative contributions made by the employer by January thirty-first of each calendar year, the bureau shall assess a surcharge amount to the employer as follows:

<u>Cumulative benefits divided by cumulative contributions</u>	<u>Surcharge percentage</u>
<u>100 to 149 percent</u>	<u>3 percent</u>
<u>150 to 199 percent</u>	<u>7 percent</u>
<u>200 percent and greater</u>	<u>10 percent</u>

SECTION 2. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

The surcharge amount must equal the surcharge percentage multiplied by the cumulative benefits charged to the employer's account in excess of the cumulative contributions paid by the employer as of December thirty-first of the most recent completed calendar year. The employer shall pay the assessment amount by October thirty-first of the year in which the surcharge is assessed. The assessment must be placed in the unemployment insurance trust fund and credited to the employer's account. Payments may not be used as credit in the payment of contributions. If an employer makes a voluntary contribution as provided under section 52-04-06 which would reduce or eliminate the assessed surcharge, the surcharge assessment must be recalculated and provided to the employer. Surcharges unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from the due date. The interest collected must be paid into the federal advance interest repayment fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2019."

Renumber accordingly

Date: Jan 30, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1060

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description:

19.0468.01002 title .03000

Recommendation

☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐

Motion Made by Rep Ruby Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment

voice vote - motion carried

Date: Jan 30, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1060

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description: _____

Recommendation

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐ _____

Motion Made by Rep Lefor Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	x	
Vice Chairman Lefor	x		Rep Richter	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Schauer	Ab	
Rep Kasper	Ab		Rep Adams	x	
Rep Laning	x		Rep P Anderson	x	
Rep Louser	x		Rep M Nelson	x	

Total (Yes) 12 No 0

Absent 2

Floor
Assignment Rep Johnson

REPORT OF STANDING COMMITTEE

HB 1060: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1060 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 52-04-06 of the North Dakota Century Code, relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

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<u>Cumulative benefits divided by cumulative contributions</u>	<u>Surcharge percentage</u>
<u>100 to 149 percent</u>	<u>3 percent</u>
<u>150 to 199 percent</u>	<u>7 percent</u>
<u>200 percent and greater</u>	<u>10 percent</u>

SECTION 2. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

The surcharge amount must equal the surcharge percentage multiplied by the cumulative benefits charged to the employer's account in excess of the cumulative contributions paid by the employer as of December thirty-first of the most recent completed calendar year. The employer shall pay the assessment amount by October thirty-first of the year in which the surcharge is assessed. The assessment must be placed in the unemployment insurance trust fund and credited to the employer's account. Payments may not be used as credit in the payment of contributions. If an employer makes a voluntary contribution as provided under section 52-04-06 which would reduce or eliminate the assessed surcharge, the surcharge assessment must be recalculated and provided to the employer. Surcharges unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from the due date. The interest collected must be paid into the federal advance interest repayment fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2019."

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1060

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1060
3/12/2019
Job #33577

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

Minutes:

Att. #1-12

Chairman Klein: Opened the hearing on HB 1060. All members were present.

Representative Roers-Jones, District 46: I would like to draw your attention to the original bill (**see attachment #1**). The intent with the original bill was to offset some users. There are many businesses that rely on to keep their employees. For context, in North Dakota there are 30 lifetime employers that have lifetime negative balances. It's something we want to resolve. There are certain actors that are being subsidized by the. I will draw your attention to the bill as was passed out by the house. If you are in the group where your cumulative uses were at 100, then your surcharge will be at. The problem will be, the cumulative nature of this is going to create some very large surcharges. It also creates a lot of difficulty to compete across state lines. After having conversations with Michele Kommer, it would be our recommendation that the committee go back to the original version. We think that that is going to be something that we have help produce. It's not punitive or retroactive.

Vice Chairman Vedaa: Is the fund losing money? I look at this as a huge insurance company, in my days of selling insurance, you have individuals who sell claims. We aren't rewarding people that aren't using it. I've been paying it for 16 years and I've maybe had two people use it for a couple months, I think I should be rewarded. The whole idea of insurance is to spread that risk out. Why isn't there a percentage out there collecting a little more as the year goes by instead of all of a sudden, hey we need to start grabbing 10% from everybody. Can you tell me how this came about?

Representative Roers-Jones: The fund is solvent, basically because the rates that are collected from everybody are collecting in an amount to ensure that the fund remains solvent and that there is a cushion there. The rates are re-evaluated based on the amount that's held in the fund. They do go down when there are fewer claims and obviously they would go up when there is a lower balance in the fund. The department of labor, I'm not sure if any of

them were out of the office today with meetings. There are premium decreases that happen as there is less being drawn on the fund. We want to make sure there aren't some players in the field who are benefitting to a greater extent because they are paying in less and getting out more.

Chairman Klein: Maybe we'll have a lesson about how we developed, because currently we are rewarded for having less claims, but as the rates go up they raise quite a way as we go to the negative folks. Your analogy is correct we have the healthy ones and the sick ones. And that's how insurance works.

Vice Chairman Vedaa: If its solvent, we're going to come back with these 10% surcharges, what are we gonna do with the money as it comes in? Do you know what they plan to do with it?

Representative Roers-jones: If you look at the one page I handed out, it talks about the surcharge being paid in. It says on line twelve there the employer shall pay the assessment by October 31st of each year. The assessment must be placed in the trust fund and credited to the employer. But the date that was selected for paying into the fund is a timeliness factor because it allows the group to recalculate the insurance premiums for the following year. So those amounts would be paid in and it would allow for the rates as a pool for the whole to be dropped.

Vice Chairman Vedaa: We understand that this is going to bring everyone's rates down because the surcharge is going to take care of the people that are on the other end is the point.

Representative Roers-Jones: That is the idea.

Senator Roers: You're telling me that these people are eventually going to be brought up to speed so they are basically going to pay a comparable amount to what they take out is that the long-term plan? And then this one person that is delinquent and has drawn out many millions of dollars more is that a state person or a non-state person?

Representative Roers-Jones: The idea behind the original bill is that this would offset some of the negative balances but it would not bring everyone up an even playing field. The idea behind the amended version is that at some point those people would come up to an even amount. The charges that they would end up paying over time would be significantly higher than what was originally proposed. The challenge with that is when we have businesses that continue to use this fund as a business model, they're continuing to draw more than they pay in. We want to kind of punish those employers but this is still insurance. And that's what its intended to be. It's not intended to be that you have to pay for every dime that you use. This would be something that would offset some of those users but not make the fund whole. I don't know who any of the users are.

Chairman Klein: So we could say relatively certain that the bill we're looking at had no hearing?

Representative Roers-Jones: I would say that that could be true.

Chairman Klein: Your bill had a hearing and then the subcommittee made a bunch of changes?

Representative Roers-Jones: Yes, I don't recall there being a lot of opposition the first round but I'm not sure that will be the case today.

Senator Burckhard: What are some examples of the kinds of businesses that receive more benefits than they pay in for?

Representative Roers-Jones: Generally seasonal work is higher. I have statistics from 2018 that lists a number of industries and says whether or not employers would be effected by the surcharge. Looking at Ag, of 878 employers that did not have surcharge, there were 57 that did. Utilities out of 3330 employees that did not have a surcharge there were 335 that did. Of all of those industries the only three that would not have some employers that would have a surcharge were utilities, management, and education.

Vice Chairman Vedaa: Everybody get their bill from job service, are people penalized when their employees use this now? Is there a point where that just stops and they don't charge them anymore?

Representative Roers-Jones: There are different thresholds as far as the premiums you pay in based on your usage in the past, and I don't know what those thresholds are. But what we're talking about here is the people who have reached the maximum threshold that they can pay in they're paying in the maximum amount and then they're still using more above and beyond that.

Senator Roers: Do you anticipate coming with an amendment and putting this back?

Chairman Klein: We're back and forth here, I for one, would suggest amending it back to the original will result in a conference committee. The sponsor of the amendments also happens to be the chairman of the other committee. We're dealing with engrossed house bill 1060, we'll ask those folks in the crowd whether or not they want that or not.

Senator Kreun: What was the original reasoning or formula that put us into this? This has been going on for a long time, there's got to be a reason for that. Maybe one industry produces more than other industries but those industries also don't take out really anything either and that's why this is set up this way. Did you do the research to find out why those formulas were put in place in the first place?

Representative Roers-Jones: There is a threshold that has to be held in this account and the premiums have been managed to make sure that the threshold is maintained. When the threshold reaches a certain level, what has happened is that certain employers have recognized that they are able to game the system, there are a handful of people that are putting this into their business model. The objective is to take those consistent and make them pay for what they're taking out.

Chairman Klein: 2005, Representative Berg was here, and the fund was in dire straits and we moved the negative balance folks up substantially to counter what we're hearing today. But as we continue on we see bad actions that have taken place. The idea there was a formula that was worked out to try to stabilize the fund. There was kind of a deal made, we worked it through with the help of the industry.

Senator Piepkorn: For addressing my dilemma, we're talking about this bill, so that will help me. The total negative balance is in the hundreds of millions of dollars, so how many employers over how long has it been to lead to this balance?

Representative Roers-Jones: I can't tell you how much time, but I can tell you that the total negative balance is more than \$231M, of that 3937 employers are between \$100,000 negative balance, 270 are negative between \$100,000-500,000, 43 are negative between \$500,000-\$1M and 34 are negative more than \$1M, with one case being more than \$19M.

Senator Piepkorn: So that could be 10,15,20 years that this has built up?

Representative Roers-Jones: I don't know for sure.

Darren Brostom, Unemployment Insurance Negative Balance Surcharges: see attachment #2 for testimony in support of the bill.

Chairman Klein: You want to address that \$19M negative balance employer?

Darren: I can't release the names but it is an instate employer and they are over \$19M

Chairman Klein: Is there a loophole that this company was able to find or how did this happen?

Darren: No one has broken any laws. I don't think anyone has been unethical. The system is designed as an insurance system. One of the problems that we run into, is we do have a maximum tax rate which is 9.7% of \$36,400 which is the wage base. One you hit that maximum you're not going to pay any further taxes, however, the gap between what you would get in taxes, does not come close to covering the potential benefits that are paid to your employees. Normal circumstances, you dip into the negative, you're gonna have a higher rate, we're going to collect that back over the period of multiple years more than likely.

Senator Piepkorn: About how many years has this negative balance built up?

Darren: I'm not sure, it would have been from the beginning of the program until the present. So if the program began in 1939, it would be an accumulation of those benefits. We don't have records that far back.

Senator Piepkorn: Just wondering if it was a legitimate amount over the last 40 years or if it just happened in the last five years.

Darren: I think the 40 years would be closer.

Senator Roers: Wouldn't you look at the negative accounts going forward and just deal with that?

Darren: The bill looks at the cumulative reserve of that employer so how much they are over or under zero. There was limited conversation within the subcommittee on creating a zero point, you know a starting point going forward. That creates some technical difficulties. It's a route that could be pursued.

Chairman Klein: Did you work with industry to get here? Obviously these people wouldn't be here in opposition if you had? How did we get here and did they have any input?

Darren: The conversations that occurred did so in the subcommittee.

Vice Chairman Vedaa: What does an individual have to make per week to collect \$595 a week for 26 weeks, do you know?

Darren: It would be around \$40,000 a year.

Vice Chairman Vedaa: If I'm thinking of how to abuse the system, I would pay my employees at that dollar figure you're telling me and I would just lay them off and say you're gonna collect this, is that what people are doing when we talk about them abusing the system?

Darren: I would want to eliminate the idea that someone is gaming the system. There are implications to receiving benefits that being higher tax rates.

Chairman Klein: How many weeks do you have to work and how do you have to arrive at \$595, you have to have a certain amount of time and wages?

Darren: You have to have wages in 2 ½ quarters and you have to earn at least \$2500 in those two quarters. As far as gaming the system, if you have short periods of wages, the system designed so that it automatically lowers the number of weeks that you can draw, and if it gets too low, you aren't eligible for benefits. So someone really couldn't game the system in the way mentioned earlier. The system does look at those things; it takes a ratio of your wages and the more level your wages are, if you consistently make \$10,000 a quarter, you could get the highest benefit amount. But if you make a range of earnings throughout those quarters, you would think that you get higher benefits for a long period of time, but you're not going to. Your ratio is gonna result in a lower number of weeks. And that's really prevalent with our seasonal employers. If you talk with anyone, they would tell you the average number of weeks their employees get for benefits is probably sixteen weeks' maximum.

Senator Kreun: Is there a maximum amount that each owner pays for a rate of an individual worker?

Darren: Yes, there is 9.45%. 64% of our employers pay .15%

Senator Kreun: Is it typical in like the construction industry that they pay \$3500 a year per employee?

Darren: That would be a good assumption. As long as the employee is making \$36,400 or more per year.

Senator Kreun: In this formula, what from my understanding, Minnesota and South Dakota pay considerably less. Is that formula adjusted differently? What would make the difference in such a wide variety. What makes the difference in their dollar amount that they are paying?

Darren: The difference comes down to how the programs are designed and the benefits that are provided to their employees. Using SD as an example, where our weekly maximum amount is \$595 per week, theirs is in the two-hundreds. So when a person goes on unemployment insurance, they will probably get half of what North Dakota employees get. That was one of the things being looked at as well, hat things besides a surcharge impact the dollars that are paid? Some of that is how we handle job attachment. We are much more lenient with that than other states, our weekly benefit amount is the fifth highest in the nation. If you don't have that it can negatively impact your employees.

Senator Kreun: There are only two that aren't in the negative. Even retail is 182,000. How do we maintain a balance if we're always in the negatives?

Darren: The numbers on the tables here represent the negative balance employers. There would be separate tables with the positive balance employers and in that case you would see numbers that would raise the amount for the industry as a whole. If you look at construction, it lists \$118M in the hole, if you added them all together its \$231. So if you took all the other positive construction employers that number would be closer to the positive level?

Senator Kreun: Can we get a list of the positive employers as well?

Darren: Yes.

Russ Hanson, Associated General Contractors of North Dakota: see attachment #3 for testimony in opposition to the bill.

Chairman Klein: SD maximum is \$1402 and North Dakota we're \$2100 more than SD collects on their maximum rate? Is that correct?

Russ: Correct.

Chairman Klein: I'm just comparing to a state that has similar maybe weather conditions. So we do tap our employers considerably more.

Susan Shearer, President, Harvey Sand and Gravel, Board member, AGC of North Dakota, North Dakota Unemployment Advisory Council: see attachment #4 for testimony in opposition to the bill.

Chairman Klein: We may have used the word gaming flipantly.

Susan: Yeah, well I'm offended.

Chairman Klein: We're trying to figure out how this works and if there is abuse, but I don't think we're making the assumption that everyone here is gaming the system.

Susan: When I look at the men and women that I work with every day to make sure that the roads we drive on are safe, and do it with so much pride because their mom and dad started a business in this state and I'm a second generation but I look at some companies that are 100 years old. That's four or five generations of families that have stuck it out in this environmentally unfriendly place, knowing that it's such a need. We love this state and we want to be a part of it. And we add to the payrolls of the people that live here. \$20 an hour is a minimum. You're looking at \$20-40 per hour wages. They're taking \$70,000 dollars a year that's coming back into this state.

Senator Kreun: In your testimony here, the \$373,000 is that gross in wages?

Susan: That's my taxable wages, my gross wages was probably closer to \$500,000 probably. That's based on that \$36,000 cap.

Senator Kreun: So you pay \$43,200 on that amount? And according to your calculations its \$18,333 additional dollars? So that would come to \$61,454?

Susan: If you do your math right, then yes that would be correct.

Senator Kreun: That's 16.5%, that's not 9% or whatever, I just wanted to clarify that. I sympathize with you.

Susan: Things are considerably better but we're not bad actors. It's almost who we are, I have big shoes to fill. So you need to understand, in a lot of us this is who we are we really don't know anything else and we love it but the last few years haven't made it very fun.

Senator Kreun: This is not to reduce and diminish our employees, we pay a good salary, our employers are very cognizant of what we need to do to get the job done.

Susan: We as employers need unemployment. The fact that it's going into a trust fund I think is even a bigger issue for me, because it just lies there and does nothing.

Brady Pelton, North Dakota Petroleum Council: See attachment #5 for testimony in opposition to the bill.

Chairman Klein: Last session we would point to your industry as being the problem. Tell us about.

Brady: With any kind of industry especially construction, you're going to see that weather has an effect on employment. The oil and gas has taken advantage and balanced out. We're consistent to a point. The industry has stabilized.

Steve Farden, Farden Construction: I work in the construction business, we've owned our business since the '30s. We're from north of Minot. We have 100+ employees. In the middle

of oil fields. We've been servicing the oil and gas field. We're very proud that 99% or better are North Dakota raised. When the downturn came up, we laid our employees off that winter, oil and gas were not drilling that year so the workload was not there. We would have had a surcharge of \$37,000 when we were down to about 30-40 employees working in the local sand and gravel business. That would have hit us at a time when we could least afford it. We were carrying a positive balance before that. Now that the oil and gas industry has turned to building during the summer months. We do not work in the winter except for emergencies. So we are still carrying a negative balance but it hits us when we can least afford it. We've taken over Kemper construction in the water and sewer industry. They employ about 10-20 employees, they are highly compensated, very good employees doing what they do in our areas. They are very valuable to our areas. We feel that is an asset to our state to have high quality in-state employees that are here. We wish we could employ them more. We're glad to have the people that work for us, we feel that is the greatest asset to our business.

Chairman Klein: Did you have an opinion on the original 1060?

Steve: It would have still us just as hard because we are heavy users of it.

Justin Dever, MDU Resources Group, Inc.: see attachment #6 for testimony in opposition to the bill.

Chairman Klein: You feel this way about the original 1060 as well?

Justin: Yes.

Don Larson, National federation of Independent Business: see attachment #7 for testimony in opposition to the bill.

Mike Krumwiede, American Council of Engineering Companies: see attachment #8 for testimony in opposition to the bill.

Mike Gerhart, North Dakota Motor Carriers Association: see attachment #9 for testimony in opposition to the bill.

Art Thompson, North Dakota Concrete Council: See attachment #10 for testimony in opposition to the bill.

Art also submitted testimony on behalf of Scott Olin, Dickinson Ready Mix: see attachment #11 for testimony in opposition to the bill.

Arik Spencer, Greater North Dakota Chamber: see attachment #12 for testimony in opposition to the bill.

Senator Roers: You represent how many businesses in North Dakota?

Arik: Over 1000.

Senator Roers: What do you say to those with a non-negative balance?

Arik: When we visit about this in our policy committee, no one advocates for it because even if it lowers rates for the positive balance employers they know the impact it would have on negative balance employers and they can't support that. The vast majority of the associations I've worked for over the years have been positive balance employers. Over the years I've never had someone say to me that they are upset about their worker's comp rates. I would say for the most part it's been a nonissue.

Senator Roers: The vast majority of your employers know that there is a negative balance out there?

Arik: I can't say that they all do, but we've certainly talked about it in communications to our membership.

Senator Roers: I've never known that there is such a large hole in our system so I'd be shocked to know that they did know about it. It does seem unusual that such a large deficit is existing and no one has brought it to our attention, because it does affect somebody.

Arik: Certainly, positive balance employers could benefit if negative balance employers were charged more but the thought of taking the cumulative balance over the entire time of a company's existence, is not an easy one to swallow.

Senator Roers: But the OG bill doesn't take the accumulative balance, so it seems you would be in support of that bill if that were true?

Arik: As we visited with our members, they were not in support of the original bill because if there would be a financial crisis that happened in any industry group, whether commodity based or not, they don't want to be subject to an extra 10% surcharge when they can likely least afford it.

Chairman Klein: That was the original bill?

Arik: If you go 150% negative, you could be assessed a surcharge in the original bill. When we look at the forecast we heard about yesterday, looks much better, but there is a small recession projected for 2020. If that recession is more severe than we anticipate or there is an industry sector that is hit harder, we'd hate to see them fall into that 150% negative balance and then be hard hit when they can likely least afford it.

Senator Roers: So you're saying if it were to take more time then would you support it, so that we could make it fair for all employers?

Arik: We can look at any proposal, all I would say is if job services wants to look at it, we encourage them to work with us on it. But all I can say is that the two bills that were proposed, we're opposed to them.

Chairman Klein: What I heard you say is you want to work with job services to try and resolve this in a collaborative group.

Senator Kreun: What would happen if we did nothing? What would happen to the workforce? Where are we going to wind up?

Arik: I would imagine the formula would work as it was intended to and you'd see a slight rate change next year based on the average weekly wage for North Dakotans and the health of the fund. It's going to go up or down based on that. It went up rather dramatically when the oil prices went down drastically.

Chairman Klein: So what we've heard is we're in a position now where we're funded to the reserve level that we need to be? So everyone's rates could be slightly reduced because the formula is working the way it's supposed to.

Arik: Correct.

Senator Kreun: My original question, what was set up for the formula that is now in place? So what we're saying, if we do nothing the formula will continue to bring forth a positive balance in our reserves, we raise the rates just a bit, the design was to take these higher paid portions and blending it, what Vice Chairman Vedaa is saying it's kind of an insurance policy. I think this formula was designed to do exactly what it's doing, nobody made a mistake here. Some people pay more, some pay less but this is doing what it should do. Maintain the formula, pay a good wage on our unemployment so we can keep our balances, both on the positive and negative end so we have our workers available to us when we need them.

Senator Roers: To expand on what Senator Kreun said, like all insurance policies if you have an area within the insurance coverage that repeatedly has more claims than the other areas, you end up charging more for that coverage. That's what we're seeing here we're seeing an industry that has repeatedly had more claims than money they put into the pool, and therefore somebody else has to make it up and that's the rest of us. As it relates to competition, we likewise have to compete against the Minnesota companies, and as our rates go up, we become less competitive. The reverse is true as well.

Chairman Klein: Historically the debate was attaching those workers, they were leaving. That was the discussion back in '05, we needed to job attach those folks somehow and those companies were willing to pay that cause those rates went up a lot. And as I recall, that was the discussion because we were losing all these good workers because that wasn't the good years in North Dakota. We were losing hundreds of workers and young people and this was an attempt to try to keep those people here so that we had a workforce and that was a negotiated thing that took a long time. I don't think industry was so excited about it but it was something they worked together in cooperation to get to where we are today.

Chairman Klein: closed the hearing on HB 1060.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1060
3/20/2019
Job #34019

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

Minutes:

None.

Chairman Klein: I think the consensus is we need to push job services to more actively use their advisory board and how we can better improve the fund and still, we as a committee are going to write job services a letter that says use your advisory board and we'll be watching.

Senator Kreun: I think that's a great idea. Senator Roers and I did go up to job service and visit with them, we have more info that will be a factor, it's been a while since we've actually examined this. We want to take a good look at what we're doing to see if its fair, its takes some amount of time that we don't have right now, I think the advisory committee reactivated and put some teeth in the letter.

Senator Roers: Does this advisory board have the ability to make a bill?

Russ Hanson, Associated General Contractors: The advisory council, if there is a consensus of tweaks, they can ask for an agency bill. But if there are stakeholders I would recommend it go through a legislator.

Senator Roers: I just wanted that on record.

Senator Burckhard: Moved a Do Not Pass.

Vice Chairman Vedaa: Seconded.

Senator Piepkorn: What did you say about the letter?

Chairman Klein: Well if we send a letter, we'd all sign off on it, the idea being that we as a committee understand there are concerns and we want them to do something and we don't

want a legislative committee when they have an adequate ability to do something on their own. And everybody will have a say in the letter and we will make sure it gets around so everyone has what they want said in the letter.

Senator Piepkorn: And the job service board is pretty representative of the stakeholders, right?

Vice Chairman Vedaa: There is a stakeholder board, so you've got a negative balance employer, a positive balance employer, a negative under 25 on there, a positive over 25, and a unionized employer.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Roers will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1060
4/2/2019
Job #34450

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

Minutes:

Att. #1

(recording starts at 1:24:00, at the end of Public Hearing on HB 1157.)

Chairman Klein: I've got the letter that we are sending to job service and I want everyone to take a look at it and see if we need to tweak it at all to determine. I'd like everybody to take a look at this letter and if this meets everybody's thoughts as to how to address this, we'll all sign it and send it to Job Service. See attachment #1 for the letter referred to.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1060
4/3/2019
Job #34469

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on HB 1060.

Chairman Klein: The letter for Job Services, is there any wordsmithing that anyone wants to do? I personally think it looks good. I'm ready to let it fly but I'd like it on somebody's stationary, I could put it on mine I guess. I want everybody to sign it, I want to get that sent to them, I want to get that discussion started so they can start working on developing those times, it's necessary to have those meetings.

Senator Roers: There is a bunch of wordsmithing I could do, but at the end of the day it doesn't change much. My question is why are they reporting back to the interim government finance committee? Why was that committee chosen?

Chairman Klein: I'm thinking that's the committee that hears a lot of the intergovernmental issues, we don't have an IBL committee anymore, so somebody has to take the report.

Senator Roers: What are they gonna do with it? Does this body have the authority to say, go do it?

Chairman Klein: Well they are gonna have to come up with a report, that report is gonna have to be given to the government finance committee. That committee at legislative management, will report that this is the findings we have on the issues asked for, and that then is in the record and then we take it from there in the next session, implement the changes and that would be our job.

Senator Kreun: Look at what all the findings are.

Chairman Klein: And they may develop legislation from it. We don't know that they will or will not. But what the report will say, as we do on a lot of interim committees, we dig in and find out, and see what we can do. As like on any bill, they work on numbers and try to craft something and then once again, we look at it again.

Senator Roers: So the interim committee is going to take it to the interim governor of finance, they are going to then bring it back to the legislature and it's going to get assigned to a committee, more than likely this one.

Chairman Klein: Legislative management would hear it and it'd have to be in IBL. But that report would be given at the legislative management meeting, held a week or two after the election of 2020.

Senator Roers: We may not all be here.

Chairman Klein: That's right but that doesn't mean we can't show up at the committee hearings and voice our opinions. The public is more than appreciated as we learned here. When members of the public have an issue it shows the grassroots of what happens in North Dakota.

Senator Kreun: It has to go to some committee. The issue that we want to make sure is that report gets back to IBL, because we're the ones that are asking for it. The good part is it doesn't go to through a complete interim committee. They don't do the study, the study is being done by Job Service and the industry, it just has to go to a committee, to get a report, so that the report comes to IBL. Can we put an add it in there that after the report is given to that interim committee, that the report is then forwarded to the existing IBL committee for digestion?

Chairman Klein: We could add that but who else would get that report? If it says unemployment, I know its gonna end up here. But I know what you're saying. Let me chat with those folks and see if they want to tweak that at all

Senator Roers: The unemployment insurance advisory council, does anybody know, are they charged with the authority to make decisions? Do they even need to come back to the committee and bring it back to IBL or are they charged with the ability to make decisions as they go on?

Chairman Klein: If that was the case they would have changed things already, like we heard in this electrical board thing there's only so many things they can do and as we establish the rules and the laws, they have to abide by them and we as a legislature.

Senator Kreun: Their just an advisory board, they don't make any decisions.

Senator Roers: Yeah I kind of answered my own question when I read the word advisory.

Chairman Klein: This isn't like we have to pass it.

Senator Kreun: That would just be my concern that we get it back to this committee.

Chairman Klein: We did not support the bill and we are the ones that asked for further action so I imagine it would come back to us.

Senator Roers: I did highlight the word possible on the very first paragraph, the second to the last line, it said to further review and possible action or do we want to say to further review and create an action plan, rather than possible action. Possible just kind of leaves you with the opportunity to do something or not.

Chairman Klein: I would suggest if they do nothing we're gonna fix it.

Senator Roers: Okay, I like that.

Chairman Klein: We have send this on to them. Let me talk to them and then we'll move that forward and we'll maybe just informally, and we'll have somebody work on that. And you will see it because I want you all to sign it.

Senator Kreun: This will be better than if we made it into a study. We'll get straighter information and it doesn't cost as much money.

Chairman Klein: Senator O. Larson votes no on basically every study because he says why should we spend money on something that they should be doing anyways.

Senator Roers: It will be interesting to see how this advisory council engages the industries as a whole, because that could be a huge group of people, all of the impacted industries and businesses. If they do that, that's going to be one big meeting.

Senator Kreun: Well that will be good, this is gonna take a while.

Chairman Klein: adjourned the meeting.

See attachment #1 for final version of letter sent to Job Services.

Date: 3/20
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1060

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Burckhard Seconded By Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Roers

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

REPORT OF STANDING COMMITTEE

HB 1060, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1060 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1060

Information relating to HB 1060
Unemployment Insurance Negative Balance Surcharges
Prepared for House IB&L Committee
Representative George Keiser, Chairman
January 9, 2019

What is the problem that HB 1060 attempts to solve?

A concern by some with negative balance employers over the years has been that they were impacting positive balance employer tax rates without paying "their fair share". Many positive balance employers feel they are subsidizing negative balance employers. Some subsidization has been accepted, however, the level of subsidization can be a point of disagreement. This is especially true in a job rich environment where employers are having difficulty hiring staff.

Ideally, managing UI benefit payments should be and is a facet of an employer's strategic planning and business model. Unfortunately, an incentive to manage UI costs does not exist for a portion of the employer base. Employers who extensively utilize the UI system often move to the maximum negative tax rate and never move from that level. These employers grow their negative balance each year, some into the millions of dollars. They pay the maximum tax rate, but the rates are not high enough to cover the costs of benefits paid to their staff. This ultimately impacts tax rates for all employers.

For perspective, following is a breakdown of negative employer account balances:

- 34 employers have a lifetime negative balance of between \$1 million and \$20 million
- 43 employers are negative by between \$500,000 and \$1 million
- 270 employers are negative by between \$100,000 and \$500,000
- 3,937 employers are negative by between \$1 and \$100,000
- The total negative balance of these employers is over \$231 million

The trust fund is solvent, why a surcharge?

There are a couple of reasons to consider a surcharge.

- Equity between employers. Positive employers with little to no claims incur rate increases based upon the impact of employers utilizing the system extensively. This is accepted because it is an insurance model, but a determination of the level that should be covered by positive and negative employers should be made.
- Tax rates. Our current tax structure is good in that it reacted to almost devastating benefit payments resulting from the decline in oil prices in 2015-2016 and the fund did not go broke. The fund did drop to approximately \$26 million, which equated to approximately four weeks of benefits at the time. The fund was one month away from going broke. As noted, the statutory tax rate schedule did adjust accordingly. The result was that very large tax rate increases occurred. While a surcharge would not have eliminated the need for increases, the increases would not have been as steep.

19.0468.01001
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
January 4, 2019

Jan 9, 2019
Page 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1060

Page 1, line 8, replace "on January" with "before February"

Page 1, line 11, remove "in the"

Page 1, line 12, remove "preceding year"

Page 1, line 14, replace "employer" with "employer's account"

Page 1, line 14, after the underscored period insert "Payments may not be used as credit in the
payment of contributions."

Renumber accordingly

2019 Unemployment Insurance Tax Rate Schedules**2019 Taxable Wage Base is \$36,400**

(This amount is set annually and is 70% of a statewide average wage)

New Employer Rate	Positive Balance	Negative Balance
Non-Construction	1.21%	6.15%
Construction	9.75%	9.75%

New Employers are

Non-construction covered after June 30, 2017.

Construction covered after June 30, 2016.

Actual tax rates may differ from those shown on the tables due to the application of NDCC 52-04-05(6)(a) (rate reduction).

Positive Tax Rate Table

Reserve Ratio	Rate
+00.28% and less	01.34%
+00.29% to +00.99%	01.12%
+01.00% to +01.21%	00.93%
+01.22% to +01.37%	00.77%
+01.38% to +01.47%	00.65%
+01.48% to +01.54%	00.54%
+01.55% to +01.59%	00.44%
+01.60% to +01.66%	00.34%
+01.67% to +01.71%	00.25%
+01.72% and over	00.15%

Negative Tax Rate Table

Reserve Ratio	Rate
-28.55% and less	09.75%
-28.54% to -16.06%	09.35%
-16.05% to -12.70%	08.95%
-12.69% to -08.141%	08.55%
-08.13% to -06.16%	08.15%
-06.15% to -04.42%	07.75%
-04.41% to -01.99%	07.35%
-01.98% to -00.86%	06.95%
-00.85% to +01.02%	06.55%
+01.03% and over	06.15%

What would the surcharge do to tax rates?

The last several years have seen extreme swings in the otherwise very stable unemployment insurance tax rate environment. This occurred largely because of the decline in oil prices and subsequent layoffs.

Following is a breakdown of rate adjustments made to the minimum rate in 2016, 2017, and 2018. The minimum rate is used for example because statute requires that 60% of the state wages be paid at the minimum rate. In 2019, this equates to 17,379 employers or 64% of the statewide employers:

2016 - Minimum rate increased 180% - with surcharge, increase would have been 110%

2017 - Minimum rate increased 75% - with surcharge, increase would have been 43%

2018 - Minimum rate decreased 39% - with surcharge, decrease would have been 53%

Overall, in years where drastic economic changes do not occur, it is projected that tax rates would be approximately 10% lower per year if the proposed surcharge were in place.

Why not just adjust tax rate schedule?

To partially account for the issue without creating an onerous tax rate schedule that impacts all employers and creates a perceived poor business climate for employers looking to do business in North Dakota, a surcharge model outside the normal UI tax rate process provides a viable option. A surcharge allows a more precise way in which to address excessively negative employers individually without negatively impacting other employers.

A surcharge would allow for an overall reduction in tax rates for all employers because the funds collected via the surcharge would be deposited in the UI Trust Fund, positively impacting the overall balance.

Note: By law, funds in the UI Trust Fund can only be utilized for the payment of benefits. None of the surcharge dollars would be accessible to Job Service for administration or any other purpose. Additionally, the funds collected would be credited to the paying employer's account and will positively impact the employer's reserve ratio, potentially decreasing their individual tax rate in the future.

How would the proposed surcharge work?

The surcharge process would be as follows:

- Utilizing the employer's specific contribution and benefit data, employers meeting the surcharge criteria would receive notice of the surcharge in January of each year.
 - Surcharge criteria – If cumulative benefits paid from an employer's account are 150% or higher than cumulative tax contributions made by the employer, the employer will be assessed the surcharge.
 - Surcharge calculation – The surcharge will be 10% of the difference between cumulative benefits paid and 150% of cumulative contributions.
- Employers will have until October 31st of the assessed year to make payment of the surcharge. Receipt of the surcharge by JSND will allow the collected amount to be included in the tax rate setting process for the following year which will provide a positive impact on rates.

Example of surcharge calculations:

- Employer X has paid \$50,000 in unemployment insurance taxes over the lifetime of their time in business
- The employer's employees or past employees have drawn \$85,000 in unemployment insurance benefits over the lifetime of their time in business. This equates to 170% of the contribution amount ($\$85,000 / \$50,000 = 170\%$)
- This employer meets the $\geq 150\%$ criteria for a surcharge assessment
- Surcharge for the year is \$85,000 minus \$75,000 (150% of \$50,000) multiplied by 10%. $\$85,000 - \$75,000 = \$10,000 \times 10\% = \underline{\$1,000}$

What industries would be impacted by surcharges?

In 2019, there are:

- 24,426 positive balance employers, approximately 90% of employers
- 2,735 negative balance employers, approximately 10% of employers
- Of the 2,735 negative employers, it is estimated that around 1,200 would be assessed a surcharge. This equates to 4% of the total employers statewide being assessed a surcharge

The tables on the following pages show the actual impact upon industries. The tables utilize the actual data for all employers in 2016, 2017, and 2018.

2018	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	57	878	\$77,004	\$12,976	\$1,940
Mining/Oil & Gas	109	550	\$474,626	\$51,628	\$5,354
Utilities	0	61	\$0	\$0	\$0
Construction	335	3,329	\$1,509,892	\$268,452	\$7,346
Manufacturing	48	667	\$290,597	\$124,690	\$5,925
Wholesale	73	2,041	\$105,815	\$32,212	\$1,338
Retail	22	2,051	\$7,461	\$1,864	\$329
Transportation	134	1,377	\$189,356	\$33,552	\$1,574
Information	2	295	\$348	\$348	\$174
Financial & Insurance	12	1,267	\$5,351	\$2,270	\$342
Real Estate	42	889	\$44,136	\$13,412	\$991
Professional Services	121	2,470	\$119,094	\$13,348	\$1,137
Management	0	90	\$0	\$0	\$0
Administration	88	1,319	\$34,367	\$5,421	\$517
Education	0	159	\$0	\$0	\$0
Health	19	1,689	\$4,521	\$925	\$300
Arts	6	373	\$208	\$155	\$27
Accommodation	20	1,774	\$9,145	\$5,016	\$295
Other Services	37	1,765	\$13,825	\$2,728	\$504
Local Government	4	242	\$3,278	\$3,278	\$820
Total	1,133	23,297	\$2,889,023		

2017	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	52	851	\$99,201	\$15,140	\$2,547
Mining/Oil & Gas	225	445	\$1,589,236	\$207,663	\$7,591
Utilities	2	62	\$52,395	\$48,380	\$4,015
Construction	331	3,502	\$1,494,452	\$290,379	\$7,253
Manufacturing	46	673	\$319,388	\$137,231	\$5,205
Wholesale	96	2,023	\$286,713	\$94,900	\$2,628
Retail	22	2,071	\$5,423	\$1,694	\$233
Transportation	205	1,420	\$308,097	\$34,269	\$1,722
Information	3	286	\$1,420	\$1,142	\$279
Financial & Insurance	9	1,286	\$1,629	\$1,102	\$132
Real Estate	57	879	\$102,817	\$16,388	\$1,921
Professional Services	150	2,445	\$201,955	\$21,678	\$1,515
Management	3	84	\$387	\$387	\$129
Administration	78	1,280	\$47,803	\$4,618	\$771
Education	3	156	\$398	\$398	\$133
Health	21	1,664	\$5,353	\$1,053	\$331
Arts	11	365	\$300	\$180	\$30
Accommodation	38	1,786	\$49,730	\$12,316	\$1,439
Other Services	50	1,778	\$43,117	\$9,965	\$1,143
Local Government	5	244	\$4,470	\$3,356	\$557
Total	1,407	23,310	\$4,614,283		

2016	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	55	827	\$119,513	\$22,066	\$2,953
Mining/Oil & Gas	139	574	\$569,609	\$145,950	\$4,074
Utilities	2	62	\$1,941	\$1,941	\$971
Construction	312	3,656	\$1,659,292	\$376,503	\$8,552
Manufacturing	39	694	\$333,668	\$156,288	\$7,391
Wholesale	60	2,069	\$86,126	\$41,000	\$960
Retail	14	2,107	\$2,784	\$938	\$185
Transportation	147	1,757	\$113,561	\$16,151	\$862
Information	4	280	\$904	\$577	\$328
Financial & Insurance	14	1,258	\$2,250	\$714	\$192
Real Estate	22	917	\$23,939	\$5,557	\$1,313
Professional Services	132	2,501	\$96,260	\$13,763	\$801
Management	0	91	\$0	\$0	\$0
Administration	71	1,236	\$30,435	\$5,819	\$473
Education	0	139	\$0	\$0	\$0
Health	14	1,605	\$3,248	\$1,195	\$228
Arts	7	367	\$960	\$527	\$217
Accommodation	24	1,791	\$34,483	\$15,218	\$1,605
Other Services	34	1,818	\$31,065	\$6,721	\$1,014
Local Government	6	244	\$5,236	\$3,675	\$780
Total	1,097	24,003	\$3,115,275		

Various scenarios can be run fairly easily by Job Service to identify various other potential levels of surcharge should the concept be accepted but with adjustments. Two examples of scenarios and percentages are displayed on the next two pages.

Example Scenario – All negative employers receive surcharge. 100% of contributions and 10% multiplier:

Jan 9, 2019

2018	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	127	808	\$413,266	\$57,004	\$3,254.06
Mining/Oil & Gas	171	488	\$2,712,802	\$624,346	\$15,864
Utilities	0	61	\$0	\$0	\$0
Construction	686	2,978	\$8,973,784	\$1,288,519	\$13,081
Manufacturing	78	637	\$1,459,870	\$405,113	\$18,716
Wholesale	114	2,000	\$496,489	\$124,556	\$4,355
Retail	35	2,038	\$25,925	\$4,137	\$741
Transportation	202	1,309	\$583,765	\$38,766	\$2,890
Information	4	293	\$2,042	\$1,180	\$510
Financial & Insurance	17	1,262	\$10,133	\$2,845	\$596
Real Estate	49	882	\$95,386	\$17,338	\$1,947
Professional Services	175	2,416	\$364,376	\$20,760	\$2,082
Management	5	87	\$582	\$325	\$116
Administration	139	1,268	\$241,740	\$24,209	\$1,739
Education	4	157	\$755	\$377	\$189
Health	27	1,681	\$11,768	\$2,838	\$436
Arts	21	358	\$12,768	\$2,592	\$608
Accommodation	42	1,752	\$63,264	\$14,903	\$1,506
Other Services	58	1,744	\$112,985	\$35,641	\$1,948
Local Government	1	9	\$452	\$452	\$452
Total	1,955	22,228	\$15,582,153		

2017	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	125	778	\$464,403	\$63,563	\$3,715.23
Mining/Oil & Gas	297	373	\$4,810,627	\$617,119	\$16,197
Utilities	2	62	\$87,969	\$81,214	\$0
Construction	655	3,178	\$8,545,637	\$1,320,295	\$13,047
Manufacturing	79	640	\$1,510,613	\$419,310	\$19,122
Wholesale	137	1,982	\$668,707	\$223,066	\$4,881
Retail	32	2,061	\$22,582	\$2,711	\$706
Transportation	270	1,355	\$894,283	\$56,288	\$3,312
Information	4	285	\$4,183	\$2,466	\$1,046
Financial & Insurance	13	1,282	\$6,827	\$1,778	\$525
Real Estate	69	867	\$218,905	\$28,785	\$3,173
Professional Services	199	2,396	\$462,624	\$30,553	\$2,325
Management	4	83	\$1,914	\$756	\$478
Administration	140	1,218	\$202,127	\$24,109	\$1,444
Education	5	154	\$970	\$638	\$194
Health	26	1,659	\$12,665	\$3,065	\$487
Arts	25	351	\$13,339	\$2,493	\$534
Accommodation	58	1,766	\$131,687	\$32,008	\$2,270
Other Services	74	1,754	\$173,976	\$42,206	\$2,351
Local Government	1	9	\$1,288	\$1,288	\$1,288
Total	2,215	22,253	\$18,235,326		

2018	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	13	922	\$11,656	\$6,055	\$896.59
Mining/Oil & Gas	47	612	\$228,367	\$40,913	\$4,859
Utilities	0	61	\$0	\$0	\$0
Construction	47	3,617	\$365,882	\$114,636	\$7,785
Manufacturing	19	696	\$62,438	\$24,676	\$3,286
Wholesale	30	2,084	\$29,586	\$9,867	\$986
Retail	11	2,062	\$4,262	\$1,339	\$387
Transportation	60	1,451	\$108,649	\$29,553	\$1,811
Information	0	297	\$0	\$0	#DIV/0!
Financial & Insurance	6	1,273	\$4,259	\$1,799	\$710
Real Estate	21	910	\$25,913	\$10,316	\$1,234
Professional Services	62	2,529	\$64,923	\$11,793	\$1,047
Management	0	92	\$0	\$0	#DIV/0!
Administration	33	1,374	\$10,627	\$1,642	\$322
Education	0	161	\$0	\$0	#DIV/0!
Health	9	1,699	\$2,295	\$701	\$255
Arts	3	376	\$57	\$26	\$19
Accommodation	8	1,786	\$1,524	\$614	\$190
Other Services	14	1,788	\$8,614	\$2,007	\$615
Local Government	0	10	\$0	\$0	\$0
Total	383	23,800	\$929,053		

2017	Employers with Surcharge	Employers not impacted	Surcharge per Industry	Largest Surcharge	Average Surcharge
Agriculture	17	886	\$17,247	\$7,954	\$1,014.55
Mining/Oil & Gas	125	545	\$746,878	\$119,319	\$5,975
Utilities	2	62	\$19,838	\$18,455	\$0
Construction	50	3,783	\$329,854	\$92,674	\$6,597
Manufacturing	22	697	\$77,185	\$30,634	\$3,508
Wholesale	50	2,069	\$89,395	\$38,808	\$1,788
Retail	9	2,084	\$2,739	\$1,456	\$304
Transportation	109	1,516	\$165,578	\$27,437	\$1,519
Information	2	287	\$331	\$232	\$165
Financial & Insurance	4	1,291	\$1,092	\$837	\$273
Real Estate	35	901	\$68,900	\$14,798	\$1,969
Professional Services	79	2,516	\$114,852	\$14,400	\$1,454
Management	1	86	\$200	\$200	\$200
Administration	33	1,325	\$20,639	\$2,306	\$625
Education	1	158	\$172	\$172	\$172
Health	9	1,676	\$2,369	\$870	\$263
Arts	3	373	\$72	\$31	\$24
Accommodation	14	1,810	\$11,900	\$3,553	\$850
Other Services	17	1,811	\$22,102	\$6,839	\$1,300
Local Government	0	10	\$0	\$0	\$0
Total	582	23,886	\$1,691,342		

Testimony HB 1060
House Industry Business & Labor Committee
January 9, 2019

Attachment 3
Page 1

Mr. Chairman and members of the House Industry Business & Labor committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400 member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to testify today and would like to bring a few pieces of information to the committee as you deliberate HB 1060 as Unemployment Insurance relates to the construction industry. First, we fully aware the construction industry is one of the heaviest users of UI benefits due to the seasonal nature of many of the skilled employees in the highway and civil/heavy sectors. If HB 1060 is enacted as proposed, the construction industry would be assessed a good portion of the surcharges proposed.

When I first saw HB 1060, my initial thought was perhaps the Unemployment Insurance fund may be quite a bit lower than the targeted amount and perhaps this legislation was an attempt to replenish it. I learned this is not the case as it currently is \$186 million compared to the target level of \$184 million. With the fund being above targeted level, we'd offer the prospect of possibly rewarding the positive balance employers when the fund is at levels allowing so rather than assessing an additional UI fee to further increase the fund. WSI has, in statute, a method for issuing dividends when its fund it at certain levels – perhaps this model could be somewhat replicated for Unemployment Insurance and would only be issued to positive balance employers? Or to continue to provide the positive employer relief through the premium ~~benefit~~ rates?

Another bit of information I'd like to share with the committee is a reminder the construction industry has a policy in statute to protect against large projects and them potentially damaging the UI fund by drawing large amounts of benefits. I've attached a copy of the Construction

Project Risk Protection provision. If a project is valued at \$50 million or more, a surety bond or an irrevocable letter of credit must be issued to ensure the employer will guarantee to cover the cost to cover benefits paid to employees who worked that respective project. I share this simply to illustrate the statutory protection in statute to protect the Unemployment Insurance fund on large scale construction projects. I share this in case any are wondering if a large scale construction project could have an impact on the fund status due to a large benefit draw, there is this projection in place to ensure it does not occur.

Thanks for the opportunity to comment HB 1060 and offer our input as you deliberate it.

North Dakota

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HB 1060

Attachment 3
Jan 9, 2019
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Comply with Construction Project Risk Protection

The construction project risk protection provision of North Dakota Century Code (NDCC 52-04-06.1) requires the general or prime contractor, or the owner, of a major construction project to post a surety bond or irrevocable letter of credit with Job Service North Dakota before work on a project begins.

Purpose of the Construction Project Risk Protection Provision

This surety bond or irrevocable letter of credit is intended to guarantee the cost to cover benefits paid to employees who worked on the projects. It is in addition to required payment of all unemployment contributions/taxes due for employees on the project.

Determination of project liability

A project is liable to the construction project risk protection provision if the project meets the following criteria:

- Bids are let after August 1, 2001, AND
- Construction costs are \$50 million or more, AND
- The project is planned to be completed or discontinued within a period of seven years.

The amount of protection required

The amount of the surety bond or irrevocable letter of credit is calculated and determined by Job Service North Dakota as the difference between the estimated benefits paid to all employees of the project and estimated contributions collected from all employers on the project. The amount can be modified as project costs and total positions employed on the project warrants.

Notification of contract award

Project owners and contractors on a liable project must notify Job Service North Dakota in writing, within 30 days of awarding a contract to any contractor. The notification must include:

1. AWARDING ENTITY'S name, address, company contact, contact's phone number, and North Dakota State Unemployment Insurance (NDSUI) account number.
2. CONTRACTOR'S name, address, company contact, contact's phone number, NDSUI account number, and Federal Employer Identification Number (FEIN).

Reporting requirements and payroll recording

All entities must maintain separate payroll records for all employment on the project. Job Service North Dakota will establish for each entity a North Dakota State Unemployment Insurance (NDSUI) employer tax account for the project. Each employer must submit quarterly Employer's Contribution and Wage Reports for employment on the project. These reports must be separate from reports listing other employees working for that employer.

The general or prime contractor, or owner, is required to report to Job Service North Dakota annually, within thirty days of the anniversary of the project's date of liability to this provision, any change in the construction costs of projects subject to this section.

Obligation of payment

Thirty months after the completion or discontinuance of the project, Job Service North Dakota will determine the total benefits paid to employees of all employers on the project. If the total amount paid to the employees exceeds the total amount of contributions collected from the (project) employers under the North Dakota Unemployment Compensation Law, the general or prime contractor, or owner, shall reimburse Job Service North Dakota for the benefits paid to the employees.

HB 1060

Attachment 3

Payment of this amount is due within 30 days after the notice is mailed. If payment of this amount is not paid within the time frame specified, Job Service North Dakota will redeem the surety bond or irrevocable letter of credit for payment. If the amount of the bond or letter of credit is not large enough to cover the cost of benefits paid, Job Service North Dakota will collect the additional amount due from the general or prime contractor, or owner.

If the party that posted the surety bond or irrevocable letter of credit fulfills the stated obligation by paying the additional cost of benefits to Job Service North Dakota, we will return the surety bond or irrevocable letter of credit.

Jan 9, 2019
Page 4



100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

House Bill 1060
Testimony of Brady Pelton
House Industry, Business and Labor Committee
January 9, 2019

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Brady Pelton, government affairs director of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of House Bill 1060.

Representing approximately twenty percent of the workforce and thirty percent of total wages earned in the State of North Dakota, the oil and gas industry has a keen interest in the financial health of the Unemployment Insurance Trust Fund. Despite the recent industry downturn, the balance of this fund has continued to remain sufficient and has exceeded its target level consistently.

Notwithstanding the objective of House Bill 1060, significant details remain pertaining to the potential benefits to the tax rate structure and employers in the state. We believe additional data on changes to the rate structure across employer industry sectors should be acquired and analyzed before an additional level of taxation is assessed. Keeping the Unemployment Insurance Trust Fund in a healthy state is critical, and we are willing to work toward adjusting the rates within the tax rate structure to accomplish that goal if necessary. However, we feel that a ten percent surcharge is not the optimal method by which to do so at this time, given the state of the fund.

Without additional data, the North Dakota Petroleum Council cannot support this measure, and we therefore urge a Do Not Pass on House Bill 1060. I would be happy to answer any questions.

Introduced by

Representatives Roers Jones, Headland, Dockter

Senators Meyer, Unruh, Poolman, Myrdal

A BILL for an Act to create and enact a new subsection to section 52-04-06 of the North Dakota Century Code, relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, no later than January thirty - first of each calendar year, if the amount of cumulative benefits charged to an employer's account exceeds the amount of cumulative contributions made by the employer, the bureau shall assess a surcharge amount to the employer based upon the following table.

<u>Cumulative benefits divided by cumulative contributions</u>	<u>Surcharge percentage</u>
100% to 149%	3%
150% to 199%	7%
200% and greater	10%

The surcharge amount shall equal the surcharge percentage multiplied by the cumulative benefits charged to the employer's account in excess of the cumulative contributions paid by the employer as of December thirty-first of the most recent completed calendar year.

The employer shall pay the assessment amount by October thirty – first of the year in which the surcharge is assessed. The assessment must be placed in the unemployment insurance trust fund and credited to the employer's account. Payments shall not be used as credit in the payment of contributions. If an employer makes a voluntary contribution as provided under section 52-04-06 which would reduce or eliminate the assessed surcharge, the surcharge assessment must be recalculated and provided to the employer. Surcharges unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date. The interest collected must be paid into the federal advance interest repayment fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after

December 31, 2019

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	102	861	963	\$314,830	\$57,610
21-Mining	85	595	680	\$830,094	\$256,081
22-Util	1	61	62	\$1,821	\$1,821
23-Const	635	2,960	3,595	\$6,613,067	\$1,311,749
31-Manuf	56	672	728	\$1,130,493	\$413,530
42-Whole	88	2,089	2,177	\$147,177	\$36,752
44-Retail	23	2,016	2,039	\$12,055	\$2,455
48-TranWare	119	1,400	1,519	\$191,352	\$35,809
51-Info	8	299	307	\$38,509	\$37,408
52-Fin&Ins	21	1,286	1,307	\$13,158	\$2,533
53-RealEst	35	904	939	\$50,007	\$14,613
54-ProServ	136	2,618	2,754	\$143,489	\$9,573
55-Managemt	0	95	95	\$0	\$0
56-Admin	129	1,380	1,509	\$152,919	\$14,568
61-Educ	0	182	182	\$0	\$0
62-Health	22	1,775	1,797	\$4,233	\$954
71-Arts	16	396	412	\$4,944	\$1,053
72-Accomod	25	1,789	1,814	\$16,569	\$8,018
81-OtherSer	36	1,837	1,873	\$48,117	\$15,802
9920StGovt	1	11	12	\$140	\$140
9930LocGovt	8	241	249	\$16,381	\$8,795
99-NEC	0	1	1	\$0	\$0
Total	1,546	23,468	25,014	\$9,729,354	\$1,311,749

	Employers at Each Rate	Total Surcharge per Rate
1st Rate (3%)	995	\$2,500,933
2nd Rate (7%)	293	\$4,925,854
3rd Rate (10%)	258	\$2,302,566

The option exists to make the effective date of the legislation December 31, 2020. This would provide sufficient time for employers to plan for the addition of a surcharge. The potential benefits of this would be:

- Allows Job Service to educate employers as to the upcoming surcharge
 - As part of the education, Job Service could provide employers with the dollar amount the surcharge would have been for their business specifically for 2020.
- Allows employers to adjust business models if necessary to account for the surcharge they would incur

Attachment 2
Jan 22, 2019

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1060

Introduced by

Representatives Roers Jones, Headland, Dockter

Senators Meyer, Unruh, Poolman, Myrdal

A BILL for an Act to create and enact a new subsection to section 52-04-06 of the North Dakota Century Code, relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, no later than January thirty - first of each calendar year, if the amount of cumulative benefits charged to an employer's account exceeds the amount of cumulative contributions made by the employer for the two preceding calendar years, the bureau shall assess a surcharge amount to the employer. The surcharge percentage shall equal five percent plus an additional percentage of the amount that cumulative benefits charged exceeds cumulative contributions divided by one million dollars, but not more than one hundred percent, multiplied by fifteen percent. The surcharge amount shall equal the surcharge percentage multiplied by the cumulative benefits charged to the employer's account in excess of the cumulative contributions paid by the employer. The employer shall pay the assessment amount by October thirty – first of the year in which the surcharge is assessed. The assessment must be placed in the

unemployment insurance trust fund and credited to the employer's account. Payments may not be used as credit in the payment of contributions. If an employer chooses to make a voluntary contribution as provided under section 52-04-06 which would reduce or eliminate the assessed surcharge, the surcharge assessment must be recalculated and provided to the employer. Surcharges unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date. The interest collected must be paid into the federal advance interest repayment fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2019

NOTES FOR SUBCOMMITTEE DISCUSSION:

- Yellow shading outlines the two-year grace period
- Green shading is the graduated surcharge percentage calculation
- Light Blue shading within the green shading are the variables that should be discussed by the committee to establish the appropriate level
 - The language presented provides a surcharge percentage range of 5% to 20% of the total negative amount. The 20% comes from the addition of the 5% and 15% referenced within the green text. This graduated surcharge begins at 5% for those who are minimally negative, and grows to 20% up to a negative amount of \$1 million dollars. At \$1 million, the surcharge percentage caps at 20% under this model.
- Gray shading indicates addition of voluntary contribution language
- Red shading indicates addition of language relating to interest which mirrors existing contribution language

Formula utilized to calculate graduated surcharge percentage:

Base 5% surcharge

Cannot be over 100% or surcharge will exceed maximum surcharge percentage

Calculated surcharge percentage which will be multiplied by negative amount

$$5\% + \left(\frac{500,000}{1,000,000} = 50\% \times 15\% = 7.5\% \right) = 12.5\%$$

Amount to add to base 5% surcharge

Difference between base surcharge (5%) and maximum surcharge (20%)

Negative balance divided by \$1 million

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Jan 22, 2019

Minimum = 5%

Maximum = 20%

Minimum Amount for Maximum = \$1,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$450,904	\$142,749
21-Mining	70	610	680	\$3,397,286	\$1,707,206
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$18,719,739	\$3,747,853
31-Manuf	42	686	728	\$3,156,501	\$1,181,516
42-Whole	53	2,124	2,177	\$226,365	\$67,599
44-Retail	15	2,024	2,039	\$6,611	\$1,250
48-TranWare	88	1,431	1,519	\$247,903	\$52,997
51-Info	2	305	307	\$326	\$313
52-Fin&Ins	9	1,298	1,307	\$4,668	\$1,363
53-RealEst	23	916	939	\$36,909	\$10,509
54-ProServ	83	2,671	2,754	\$114,360	\$13,602
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$201,673	\$38,215
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,083	\$740
71-Arts	11	401	412	\$7,839	\$1,941
72-Accomod	9	1,805	1,814	\$13,612	\$7,696
81-OtherSer	24	1,849	1,873	\$135,146	\$67,954
9920StGovt	1	11	12	\$237	\$237
9930LocGovt	6	243	249	\$18,838	\$6,034
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$26,741,999	\$3,747,853

Minimum = 5%

Maximum = 20%

Minimum Amount for Maximum = \$5,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$286,855	\$61,470
21-Mining	70	610	680	\$2,530,394	\$1,707,206
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$13,589,650	\$3,747,853
31-Manuf	42	686	728	\$2,309,397	\$1,181,516
42-Whole	53	2,124	2,177	\$143,905	\$34,521
44-Retail	15	2,024	2,039	\$6,379	\$1,185
48-TranWare	88	1,431	1,519	\$178,966	\$28,626
51-Info	2	305	307	\$321	\$308
52-Fin&Ins	9	1,298	1,307	\$4,492	\$1,286
53-RealEst	23	916	939	\$31,555	\$7,947
54-ProServ	83	2,671	2,754	\$98,308	\$9,821
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$149,764	\$22,238
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,015	\$716
71-Arts	11	401	412	\$7,399	\$1,793
72-Accomod	9	1,805	1,814	\$11,547	\$6,121
81-OtherSer	24	1,849	1,873	\$80,310	\$34,660
9920StGovt	1	11	12	\$234	\$234
9930LocGovt	6	243	249	\$16,239	\$4,971
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$19,448,729	\$3,747,853

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Attachment 2
Jan 22, 2019

Minimum = 5%

Maximum = 15%

Minimum Amount for Maximum = \$1,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$382,550	\$108,883
21-Mining	70	610	680	\$2,603,295	\$1,280,404
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$14,415,161	\$2,810,890
31-Manuf	42	686	728	\$2,395,633	\$886,137
42-Whole	53	2,124	2,177	\$192,007	\$53,816
44-Retail	15	2,024	2,039	\$6,515	\$1,223
48-TranWare	88	1,431	1,519	\$219,179	\$42,842
51-Info	2	305	307	\$324	\$311
52-Fin&Ins	9	1,298	1,307	\$4,594	\$1,331
53-RealEst	23	916	939	\$34,678	\$9,442
54-ProServ	83	2,671	2,754	\$107,672	\$12,027
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$180,044	\$31,558
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,054	\$730
71-Arts	11	401	412	\$7,655	\$1,879
72-Accomod	9	1,805	1,814	\$12,752	\$7,040
81-OtherSer	24	1,849	1,873	\$112,298	\$54,082
9920StGovt	1	11	12	\$236	\$236
9930LocGovt	6	243	249	\$17,755	\$5,591
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$20,695,401	\$2,810,890

Minimum = 5%

Maximum = 15%

Minimum Amount for Maximum = \$5,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$273,184	\$54,697
21-Mining	70	610	680	\$2,025,367	\$1,280,404
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$10,995,101	\$2,810,890
31-Manuf	42	686	728	\$1,830,897	\$886,137
42-Whole	53	2,124	2,177	\$137,033	\$31,764
44-Retail	15	2,024	2,039	\$6,360	\$1,179
48-TranWare	88	1,431	1,519	\$173,221	\$26,595
51-Info	2	305	307	\$321	\$308
52-Fin&Ins	9	1,298	1,307	\$4,477	\$1,279
53-RealEst	23	916	939	\$31,109	\$7,734
54-ProServ	83	2,671	2,754	\$96,970	\$9,506
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$145,438	\$20,907
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,009	\$714
71-Arts	11	401	412	\$7,362	\$1,780
72-Accomod	9	1,805	1,814	\$11,375	\$5,990
81-OtherSer	24	1,849	1,873	\$75,740	\$31,886
9920StGovt	1	11	12	\$234	\$234
9930LocGovt	6	243	249	\$16,022	\$4,883
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$15,833,221	\$2,810,890

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Attachment 2
Jan 22, 2019

Minimum = 5%

Maximum = 10%

Minimum Amount for Maximum = \$1,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$314,196	\$75,016
21-Mining	70	610	680	\$1,809,303	\$853,603
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$10,110,582	\$1,873,926
31-Manuf	42	686	728	\$1,634,766	\$590,758
42-Whole	53	2,124	2,177	\$157,648	\$40,034
44-Retail	15	2,024	2,039	\$6,418	\$1,196
48-TranWare	88	1,431	1,519	\$190,455	\$32,688
51-Info	2	305	307	\$322	\$309
52-Fin&Ins	9	1,298	1,307	\$4,521	\$1,299
53-RealEst	23	916	939	\$32,447	\$8,374
54-ProServ	83	2,671	2,754	\$100,983	\$10,451
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$158,415	\$24,901
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,026	\$720
71-Arts	11	401	412	\$7,472	\$1,817
72-Accomod	9	1,805	1,814	\$11,891	\$6,383
81-OtherSer	24	1,849	1,873	\$89,449	\$40,209
9920StGovt	1	11	12	\$234	\$234
9930LocGovt	6	243	249	\$16,672	\$5,148
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$14,648,803	\$1,873,926

Minimum = 5%

Maximum = 10%

Minimum Amount for Maximum = \$5,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$259,513	\$47,923
21-Mining	70	610	680	\$1,520,340	\$853,603
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$8,400,552	\$1,873,926
31-Manuf	42	686	728	\$1,352,398	\$590,758
42-Whole	53	2,124	2,177	\$130,161	\$29,008
44-Retail	15	2,024	2,039	\$6,341	\$1,174
48-TranWare	88	1,431	1,519	\$167,476	\$24,564
51-Info	2	305	307	\$320	\$308
52-Fin&Ins	9	1,298	1,307	\$4,462	\$1,273
53-RealEst	23	916	939	\$30,662	\$7,520
54-ProServ	83	2,671	2,754	\$95,633	\$9,191
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$141,113	\$19,576
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,004	\$712
71-Arts	11	401	412	\$7,326	\$1,768
72-Accomod	9	1,805	1,814	\$11,202	\$5,859
81-OtherSer	24	1,849	1,873	\$71,170	\$29,111
9920StGovt	1	11	12	\$234	\$234
9930LocGovt	6	243	249	\$15,806	\$4,794
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$12,217,713	\$1,873,926

HB 1060

Attachment 2
Jan 22, 2019

Minimum = 5%

Maximum = 10%

Minimum Amount for Maximum = \$500,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$355,967	\$82,300
21-Mining	70	610	680	\$1,907,576	\$853,603
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$10,686,612	\$1,873,926
31-Manuf	42	686	728	\$1,677,468	\$590,758
42-Whole	53	2,124	2,177	\$189,641	\$52,503
44-Retail	15	2,024	2,039	\$6,515	\$1,223
48-TranWare	88	1,431	1,519	\$219,179	\$42,842
51-Info	2	305	307	\$324	\$311
52-Fin&Ins	9	1,298	1,307	\$4,594	\$1,331
53-RealEst	23	916	939	\$34,678	\$9,442
54-ProServ	83	2,671	2,754	\$107,672	\$12,027
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$180,044	\$31,558
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$3,054	\$730
71-Arts	11	401	412	\$7,655	\$1,879
72-Accomod	9	1,805	1,814	\$12,752	\$7,040
81-OtherSer	24	1,849	1,873	\$110,890	\$52,673
9920StGovt	1	11	12	\$236	\$236
9930LocGovt	6	243	249	\$17,755	\$5,591
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$15,522,612	\$1,873,926

Minimum = 2%

Maximum = 10%

Minimum Amount for Maximum = \$1,000,000

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	78	885	963	\$207,703	\$70,646
21-Mining	70	610	680	\$1,676,511	\$853,603
22-Util	0	62	62	\$0	\$0
23-Const	502	3,093	3,595	\$9,209,727	\$1,873,926
31-Manuf	42	686	728	\$1,566,947	\$590,758
42-Whole	53	2,124	2,177	\$104,290	\$32,553
44-Retail	15	2,024	2,039	\$2,683	\$511
48-TranWare	88	1,431	1,519	\$110,651	\$25,261
51-Info	2	305	307	\$131	\$126
52-Fin&Ins	9	1,298	1,307	\$1,896	\$558
53-RealEst	23	916	939	\$15,656	\$4,631
54-ProServ	83	2,671	2,754	\$48,419	\$6,071
55-Managemt	0	95	95	\$0	\$0
56-Admin	77	1,432	1,509	\$89,320	\$17,949
61-Educ	0	182	182	\$0	\$0
62-Health	12	1,785	1,797	\$1,244	\$300
71-Arts	11	401	412	\$3,209	\$801
72-Accomod	9	1,805	1,814	\$5,789	\$3,341
81-OtherSer	24	1,849	1,873	\$63,198	\$32,731
9920StGovt	1	11	12	\$95	\$95
9930LocGovt	6	243	249	\$7,968	\$2,591
99-NEC	0	1	1	\$0	\$0
Total	1,105	23,909	25,014	\$13,115,439	\$1,873,926

Attachment 1
Jan 30, 2019

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1060

Introduced by

Representatives Roers Jones, Headland, Dockter

Senators Meyer, Unruh, Poolman, Myrdal

A BILL for an Act to create and enact a new subsection to section 52-04-06 of the North Dakota Century Code, relating to surcharges paid by employers for employees who receive unemployment insurance benefits at a rate exceeding contributions paid into the system by the employer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-06 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, no later than January thirty - first of each calendar year, if the amount of cumulative benefits charged to an employer's account exceeds the amount of cumulative contributions made by the employer, the bureau shall assess a surcharge amount to the employer based upon the following table.

<u>Cumulative benefits divided by cumulative contributions</u>	<u>Surcharge percentage</u>
100% to 149%	3%
150% to 199%	7%
200% and greater	10%

The surcharge amount shall equal the surcharge percentage multiplied by the cumulative benefits charged to the employer's account in excess of the cumulative contributions paid by the employer as of December thirty-first of the most recent completed calendar year.

The employer shall pay the assessment amount by October thirty – first of the year in which the surcharge is assessed. The assessment must be placed in the unemployment insurance trust fund and credited to the employer's account. Payments shall not be used as credit in the payment of contributions. If an employer makes a voluntary contribution as provided under section 52-04-06 which would reduce or eliminate the assessed surcharge, the surcharge assessment must be recalculated and provided to the employer. Surcharges unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date. The interest collected must be paid into the federal advance interest repayment fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2019

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	102	861	963	\$314,830	\$57,610
21-Mining	85	595	680	\$830,094	\$256,081
22-Util	1	61	62	\$1,821	\$1,821
23-Const	635	2,960	3,595	\$6,613,067	\$1,311,749
31-Manuf	56	672	728	\$1,130,493	\$413,530
42-Whole	88	2,089	2,177	\$147,177	\$36,752
44-Retail	23	2,016	2,039	\$12,055	\$2,455
48-TranWare	119	1,400	1,519	\$191,352	\$35,809
51-Info	8	299	307	\$38,509	\$37,408
52-Fin&Ins	21	1,286	1,307	\$13,158	\$2,533
53-RealEst	35	904	939	\$50,007	\$14,613
54-ProServ	136	2,618	2,754	\$143,489	\$9,573
55-Managemt	0	95	95	\$0	\$0
56-Admin	129	1,380	1,509	\$152,919	\$14,568
61-Educ	0	182	182	\$0	\$0
62-Health	22	1,775	1,797	\$4,233	\$954
71-Arts	16	396	412	\$4,944	\$1,053
72-Accomod	25	1,789	1,814	\$16,569	\$8,018
81-OtherSer	36	1,837	1,873	\$48,117	\$15,802
9920StGovt	1	11	12	\$140	\$140
9930LocGovt	8	241	249	\$16,381	\$8,795
99-NEC	0	1	1	\$0	\$0
Total	1,546	23,468	25,014	\$9,729,354	\$1,311,749

	Employers at Each Rate	Total Surcharge per Rate
1st Rate (3%)	995	\$2,500,933
2nd Rate (7%)	293	\$4,925,854
3rd Rate (10%)	258	\$2,302,566

The option exists to make the effective date of the legislation December 31, 2020. This would provide sufficient time for employers to plan for the addition of a surcharge. The potential benefits of this would be:

- Allows Job Service to educate employers as to the upcoming surcharge
 - As part of the education, Job Service could provide employers with the dollar amount the surcharge would have been for their business specifically for 2020.
- Allows employers to adjust business models if necessary to account for the surcharge they would incur

19.0468.01000

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1060

Introduced by

Representatives Roers Jones, Headland, Dockter

Senators Meyer, Unruh, Poolman, Myrdal

1 A BILL for an Act to create and enact a new subsection to section 52-04-06 of the North Dakota
2 Century Code, relating to surcharges paid by employers for employees who receive
3 unemployment insurance benefits at a rate exceeding contributions paid into the system by the
4 employer; and to provide an effective date.

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

6 **SECTION 1.** A new subsection to section 52-04-06 of the North Dakota Century Code is
7 created and enacted as follows:

8 Notwithstanding any other provision of law, on January first of each calendar year, the
9 bureau shall assess a surcharge amount to each employer equal to ten percent of the
10 amount of cumulative benefits paid to the employees of the employer in excess of one
11 hundred fifty percent of the cumulative contributions paid by the employer in the
12 preceding year. The employer shall pay the assessment amount by October thirty-first
13 of each year. The assessment must be placed in the unemployment insurance trust
14 fund and credited to the employer.

15 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
16 December 31, 2019.

Information relating to HB 1060
Unemployment Insurance Negative Balance Surcharges
Prepared for Senate IB&L Committee
Senator Jerry Klein, Chairman
March 12, 2019

What is the problem that HB 1060 attempts to solve?

- Many positive balance employers feel they are subsidizing negative balance employers and paying higher tax rates as a result
 - Some subsidization has been accepted, however, the level of subsidization can be a point of disagreement, especially in our job rich environment where employers have difficulty hiring staff
- Managing UI benefit payments is a facet of an employer's strategic planning and business model
 - Unfortunately, employers who extensively utilize the UI system often move to the maximum negative tax rate and never move from that level
 - These employers pay the maximum tax rate, but the amounts collected are not enough to cover the costs of benefits paid to their staff. This ultimately impacts tax rates for all employers
 - Example
 - Average weekly benefit amount (WBA) = \$435.00
 - Average duration of a claim = 11 weeks
 - Potential benefit liability is \$4,785
 - Maximum tax rate = 9.75% of wage base
 - 2019 taxable wage base = \$36,400
 - Maximum tax contribution for each employee = \$3,549
 - Shortfall per employee using overall averages = \$1,236
 - The above example uses overall averages of all North Dakota employers. These numbers represent the minimum shortfall
 - The potential maximum shortfalls are:
 - \$595 (maximum WBA) X 26 weeks (maximum) = \$15,470
 - Maximum tax contribution for each employee = \$3,549
 - Maximum shortfall per employee using maximums = \$11,921

How large is the problem?

Following is a breakdown of negative employer account balances:

- 34 employers have a lifetime negative balance of between \$1 million and \$20 million
- 43 employers are negative by between \$500,000 and \$1 million
- 270 employers are negative by between \$100,000 and \$500,000
- 3,937 employers are negative by between \$1 and \$100,000
- The total negative balance of these employers is over \$231 million

The trust fund is solvent, why a surcharge?

There are a couple of reasons to consider a surcharge.

- Equity between employers
 - Positive employers with little to no claims incur rate increases based upon the impact of employers utilizing the system extensively
- Tax rates. Our current tax structure is good in that it reacted to almost devastating benefit payments resulting from the decline in oil prices in 2015-2016 and the fund did not go broke
 - The fund did drop to approximately \$26 million, which equated to approximately four weeks of benefits at the time. The fund was one month away from going broke
 - As noted, the statutory tax rate schedule did adjust accordingly. The result was that very large tax rate increases occurred. While a surcharge would not have eliminated the need for increases, the increases would not have been as steep.

What would the surcharge do to tax rates?

The last several years have seen extreme swings in the otherwise very stable unemployment insurance tax rate environment. This occurred largely because of the decline in oil prices and subsequent layoffs.

Overall, in years where drastic economic changes do not occur, it is projected that tax rates would be approximately 10% to 20% lower per year if the proposed surcharge were in place.

Why not just adjust tax rate schedule?

- To partially account for the issue without creating an onerous tax rate schedule that impacts all employers
- Maximum tax rates needed to cover costs would be extremely high, creating a perceived poor business climate for employers looking to do business in North Dakota
- A surcharge allows a more precise way in which to address excessively negative employers individually without negatively impacting other employers
- A surcharge would allow for an overall reduction in tax rates for all employers
 - The funds collected via the surcharge would be deposited in the UI Trust Fund, positively impacting the overall balance, a key component in the tax rate setting process

Note: By law, funds in the UI Trust Fund can only be utilized for the payment of benefits. None of the surcharge dollars would be accessible to Job Service for administration or any other purpose. Additionally, the funds collected would be credited to the paying employer's account and will positively impact the employer's reserve ratio, potentially decreasing their individual tax rate in the future.

How would the proposed surcharge work?

The surcharge process would be as follows:

- Utilizing the employer's specific contribution and benefit data, employers meeting the surcharge criteria would receive notice of the surcharge in January of each year
 - Surcharge criteria – If cumulative benefits paid from an employer's account are higher than cumulative tax contributions made by the employer, the employer will be assessed surcharge
 - Surcharge calculation – There are three levels of surcharge
 - Cumulative benefits paid are 100 to 149% higher than cumulative tax contributions = 3% surcharge
 - Cumulative benefits paid are 150 to 199% higher than cumulative tax contributions = 7% surcharge
 - Cumulative benefits paid are 200% higher than cumulative tax contributions = 10% surcharge

- To calculate the surcharge, the surcharge percentage is multiplied by the negative balance amount
- Employers will receive notice of their specific surcharge amount in January of each year
- Employers will have until October 31st of the assessed year to make payment of the surcharge

Example of surcharge calculations:

- Employer X has paid \$50,000 in unemployment insurance taxes over the lifetime of their time in business
- The employer's employees or past employees have drawn \$85,000 in unemployment insurance benefits over the lifetime of their time in business. This equates to 170% of the contribution amount ($\$85,000 / \$50,000 = 170\%$)
- Surcharge for the year is \$85,000 minus \$50,000 multiplied by 7%. ($\$85,000 - \$50,000 = \$35,000$) X 7% = \$2,450

How many employers would be impacted by surcharges?

In 2019, there are:

- 23,468 positive balance employers, approximately 94% of employers
- 1,546 negative balance employers, approximately 6% of employers

The tables on the following page show the actual impact upon industries and the number of affected employers if the surcharge were in place for 2019.

The last four pages of the document provide detail as to each industry type, displaying the number of employers within each industry receiving surcharges, and the level of surcharge that would be assessed in 2019. This would vary each year.

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	102	861	963	\$314,830	\$57,610
21-Mining	85	595	680	\$830,094	\$256,081
22-Util	1	61	62	\$1,821	\$1,821
23-Const	635	2,960	3,595	\$6,613,067	\$1,311,749
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71-Arts	16	396	412	\$4,944	\$1,053
72-Accomod	25	1,789	1,814	\$16,569	\$8,018
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9920StGovt	1	11	12	\$140	\$140
9930LocGovt	8	241	249	\$16,381	\$8,795
99-NEC	0	1	1	\$0	\$0
Total	1,546	23,468	25,014	\$9,729,354	\$1,311,749

	Employers at Each Rate	Total Surcharge per Rate
1st Rate (3%)	995	\$2,500,933
2nd Rate (7%)	293	\$4,925,854
3rd Rate (10%)	258	\$2,302,566

The following table shows the number and % of employers in a variety of surcharge ranges:

Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	336	21.73%
\$100 to \$249	236	15.27%
\$250 to \$499	207	13.39%
\$500 to \$999	181	11.71%
\$1000 to \$2,499	238	15.39%
\$2,500 to \$4,999	129	8.34%
\$5,000 to \$9,999	88	5.69%
\$10,000 to \$19,999	49	3.17%
\$20,000 to \$49,999	50	3.23%
\$50,000 to \$99,999	17	1.10%
\$100,000 to \$249,999	10	0.65%
\$250,000 to \$499,000	1	0.06%
\$500,000 to \$749,000	3	0.19%
\$1,000,000 +	1	0.06%

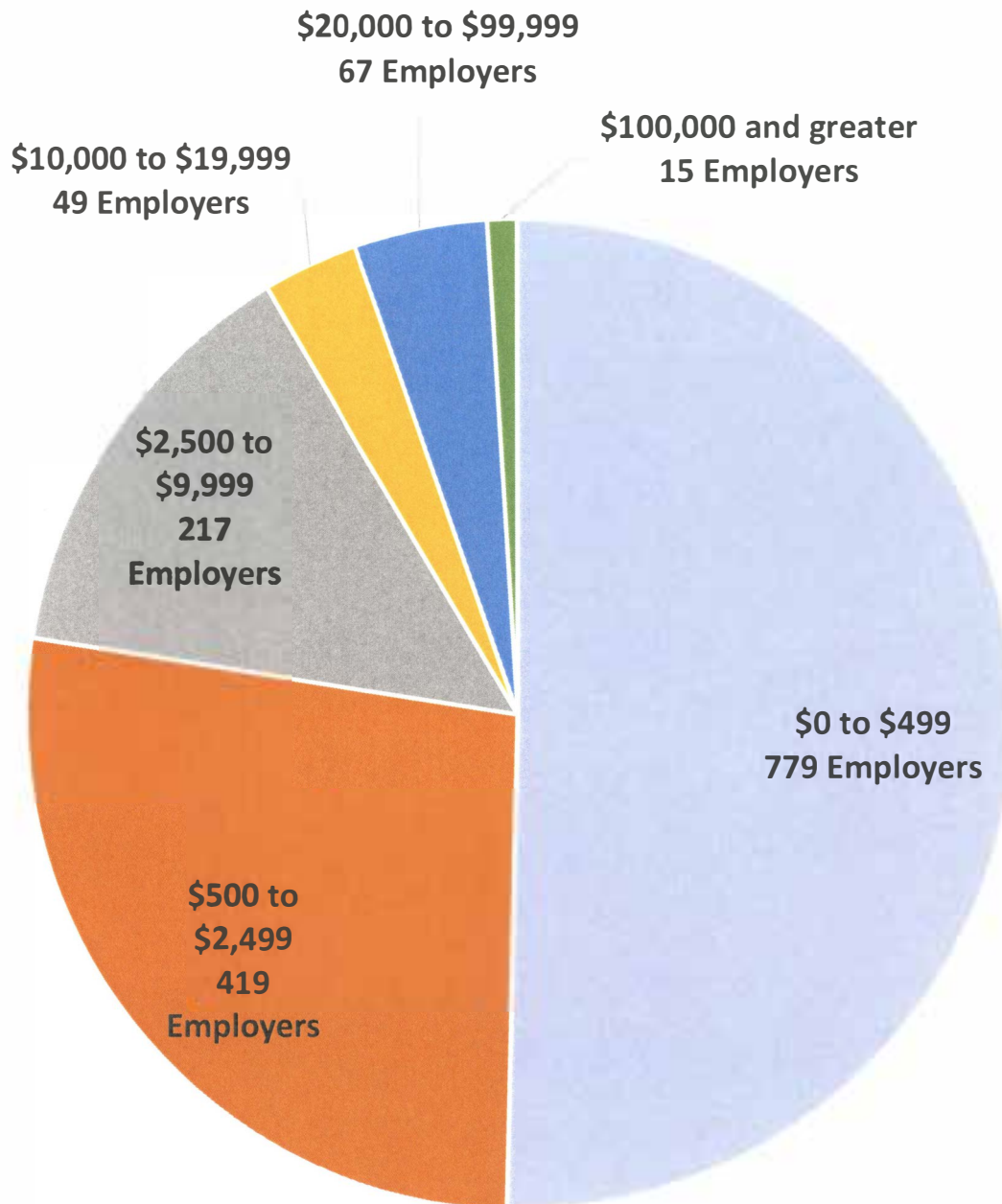
The following shows a cumulative number and % of employers by surcharge amount:

Surcharge Amount	Cumulative Employers	% of Employers
\$0.01 to \$99	336	21.73%
\$0.01 to \$249	572	37.00%
\$0.01 to \$499	779	50.39%
\$0.01 to \$999	960	62.10%
\$0.01 to \$2,499	1198	77.49%
\$0.01 to \$4,999	1327	85.83%
\$0.01 to \$9,999	1415	91.53%
\$0.01 to \$19,999	1464	94.70%
\$0.01 to \$49,999	1514	97.93%
\$0.01 to \$99,999	1531	99.03%
\$0.01 to \$249,999	1541	99.68%
\$0.01 to \$499,000	1542	99.74%
\$0.01 to \$749,000	1545	99.94%
\$1,000,000 +	1546	100.00%

The following table breaks down the number and % of employers by a broader surcharge range and is represented graphically on the following page:

Surcharge Amount	Cumulative Employers	% of Employers
\$0 to \$499	779	50.39%
\$500 to \$2,499	419	27.10%
\$2,500 to \$9,999	217	14.04%
\$10,000 to \$19,999	49	3.17%
\$20,000 to \$99,999	67	4.33%
\$100,000 and greater	15	0.97%

Employers by Surcharge Amount



Agriculture		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	21	20.59%
\$100 to \$249	24	23.53%
\$250 to \$499	11	10.78%
\$500 to \$999	6	5.88%
\$1000 to \$2,499	19	18.63%
\$2,500 to \$4,999	6	5.88%
\$5,000 to \$9,999	6	5.88%
\$10,000 to \$19,999	5	4.90%
\$20,000 to \$49,999	3	2.94%
\$50,000 to \$99,999	1	0.98%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$5,091,256.38

Mining		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	9	10.59%
\$100 to \$249	8	9.41%
\$250 to \$499	9	10.59%
\$500 to \$999	13	15.29%
\$1000 to \$2,499	13	15.29%
\$2,500 to \$4,999	9	10.59%
\$5,000 to \$9,999	9	10.59%
\$10,000 to \$19,999	3	3.53%
\$20,000 to \$49,999	9	10.59%
\$50,000 to \$99,999	2	2.35%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	1	1.18%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$20,907,241.88

Utilities		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	0	0.00%
\$100 to \$249	0	0.00%
\$250 to \$499	0	0.00%
\$500 to \$999	0	0.00%
\$1000 to \$2,499	1	100.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$18,206.70

Construction		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	96	15.12%
\$100 to \$249	93	14.65%
\$250 to \$499	72	11.34%
\$500 to \$999	67	10.55%
\$1000 to \$2,499	110	17.32%
\$2,500 to \$4,999	62	9.76%
\$5,000 to \$9,999	50	7.87%
\$10,000 to \$19,999	33	5.20%
\$20,000 to \$49,999	30	4.72%
\$50,000 to \$99,999	12	1.89%
\$100,000 to \$249,999	7	1.10%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	2	0.31%
\$1,000,000 +	1	0.16%
Industry Negative		
		-\$118,157,632.25

Manufacturing		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	5	9.09%
\$100 to \$249	7	12.73%
\$250 to \$499	12	21.82%
\$500 to \$999	3	5.45%
\$1000 to \$2,499	8	14.55%
\$2,500 to \$4,999	9	16.36%
\$5,000 to \$9,999	2	3.64%
\$10,000 to \$19,999	1	1.82%
\$20,000 to \$49,999	3	5.45%
\$50,000 to \$99,999	2	3.64%
\$100,000 to \$249,999	3	5.45%
\$250,000 to \$499,000	1	1.82%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$10,169,605.69

Wholesale		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	26	29.55%
\$100 to \$249	15	17.05%
\$250 to \$499	16	18.18%
\$500 to \$999	8	9.09%
\$1000 to \$2,499	12	13.64%
\$2,500 to \$4,999	5	5.68%
\$5,000 to \$9,999	4	4.55%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	2	2.27%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$2,144,479.87

Retail		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	7	30.43%
\$100 to \$249	4	17.39%
\$250 to \$499	3	13.04%
\$500 to \$999	6	26.09%
\$1000 to \$2,499	3	13.04%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$182,014.26

Transportation/Warehousing		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	37	31.09%
\$100 to \$249	13	10.92%
\$250 to \$499	17	14.29%
\$500 to \$999	13	10.92%
\$1000 to \$2,499	19	15.97%
\$2,500 to \$4,999	13	10.92%
\$5,000 to \$9,999	4	3.36%
\$10,000 to \$19,999	1	0.84%
\$20,000 to \$49,999	2	1.68%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$3,580,927.70

Information		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	2	25.00%
\$100 to \$249	3	37.50%
\$250 to \$499	2	25.00%
\$500 to \$999	0	0.00%
\$1000 to \$2,499	0	0.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	1	12.50%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$551,591.65

Finance & Insurance		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	6	27.27%
\$100 to \$249	1	4.55%
\$250 to \$499	4	18.18%
\$500 to \$999	6	27.27%
\$1000 to \$2,499	3	13.64%
\$2,500 to \$4,999	1	4.55%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$171,400.58

Professional Services		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	37	27.21%
\$100 to \$249	20	14.71%
\$250 to \$499	20	14.71%
\$500 to \$999	19	13.97%
\$1000 to \$2,499	22	16.18%
\$2,500 to \$4,999	13	9.56%
\$5,000 to \$9,999	5	3.68%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$2,560,233.26

Real Estate		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	12	34.29%
\$100 to \$249	7	20.00%
\$250 to \$499	2	5.71%
\$500 to \$999	2	5.71%
\$1000 to \$2,499	7	20.00%
\$2,500 to \$4,999	3	8.57%
\$5,000 to \$9,999	1	2.86%
\$10,000 to \$19,999	1	2.86%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$666,160.18

Education		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	0	0.00%
\$100 to \$249	0	0.00%
\$250 to \$499	0	0.00%
\$500 to \$999	0	0.00%
\$1000 to \$2,499	0	0.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
\$0.00		

Management		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	0	0.00%
\$100 to \$249	0	0.00%
\$250 to \$499	0	0.00%
\$500 to \$999	0	0.00%
\$1000 to \$2,499	0	0.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
\$0.00		

Administration		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	42	32.56%
\$100 to \$249	21	16.28%
\$250 to \$499	24	18.60%
\$500 to \$999	15	11.63%
\$1000 to \$2,499	12	9.30%
\$2,500 to \$4,999	7	5.43%
\$5,000 to \$9,999	3	2.33%
\$10,000 to \$19,999	4	3.10%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
-\$3,011,481.33		

Accommodations		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	10	40.00%
\$100 to \$249	5	20.00%
\$250 to \$499	2	8.00%
\$500 to \$999	5	20.00%
\$1000 to \$2,499	2	8.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	1	4.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
-\$310,503.63		

Health		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	11	50.00%
\$100 to \$249	4	18.18%
\$250 to \$499	5	22.73%
\$500 to \$999	2	9.09%
\$1000 to \$2,499	0	0.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
-\$83,712.93		

Arts		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	6	37.50%
\$100 to \$249	4	25.00%
\$250 to \$499	1	6.25%
\$500 to \$999	4	25.00%
\$1000 to \$2,499	2	12.50%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
-\$158,076.14		

State Government		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	0	0.00%
\$100 to \$249	1	100.00%
\$250 to \$499	0	0.00%
\$500 to \$999	0	0.00%
\$1000 to \$2,499	0	0.00%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	0	0.00%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$4,667.48

Local Government		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	1	12.50%
\$100 to \$249	0	0.00%
\$250 to \$499	1	12.50%
\$500 to \$999	2	25.00%
\$1000 to \$2,499	2	25.00%
\$2,500 to \$4,999	1	12.50%
\$5,000 to \$9,999	1	12.50%
\$10,000 to \$19,999	0	0.00%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$355,296.29

Other Services		
Surcharge Amount	Employers	% of Employers
\$0.01 to \$99	8	22.22%
\$100 to \$249	6	16.67%
\$250 to \$499	6	16.67%
\$500 to \$999	10	27.78%
\$1000 to \$2,499	3	8.33%
\$2,500 to \$4,999	0	0.00%
\$5,000 to \$9,999	2	5.56%
\$10,000 to \$19,999	1	2.78%
\$20,000 to \$49,999	0	0.00%
\$50,000 to \$99,999	0	0.00%
\$100,000 to \$249,999	0	0.00%
\$250,000 to \$499,000	0	0.00%
\$500,000 to \$749,000	0	0.00%
\$1,000,000 +	0	0.00%
Industry Negative		
		-\$1,397,895.72

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Testimony HB 1060
Senate Industry Business & Labor Committee
March 12, 2019

Mr. Chairman and members of the Senate Industry Business & Labor committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400 member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to testify today and would like to bring a few pieces of information to the committee as you deliberate HB 1060 as Unemployment Insurance relates to the construction industry. We are opposed to HB 1060 and request you issue it a Do Not Pass Recommendation. First, we are fully aware the construction industry is one of the heaviest users of UI benefits due to the seasonal nature of many of the skilled employees in the highway and civil/heavy sectors. If HB 1060 is enacted as proposed, the construction industry would be assessed a good portion of the proposed surcharges. However, as the first attachment illustrates, it does affect a large number of other business sectors. It is not a "construction only" piece of legislation.

When I first saw HB 1060, my initial thought was perhaps the Unemployment Insurance fund may be quite a bit lower than the targeted amount and perhaps this legislation was an attempt to replenish it. I learned this is not the case as it currently is \$186 million compared to the target level of \$184 million. With the fund being above the targeted level, we'd offer the prospect of possibly rewarding the positive balance employers when the fund is at or above target levels rather than assessing an additional UI fee to further increase the fund. HB 1060 would generate an additional \$20 million in assessments at a time when the fund is above its target level. Making additional assessments at a time the fund is fully funded doesn't make sense to us.

One of the common thoughts is the positive balance employers heavily subsidize the negative balance employers. See the second attachment to this testimony. I had the actual per employee premium amounts calculated for the respective rate classes. Our positive balance employer minimum rate is \$54.60. This is 31 % lower than the national average for minimum UI premiums for positive employers (\$79.96). On the contrary, our negative balance employer rate is amongst the highest in the nation at \$3549 per employee. From the AGC perspective, this is okay as we have always understood the UI fund needs to be solvent and we've contributed through the higher UI rate structure. The attachment immediately behind the ND rate chart illustrates all stated UI rates as well as wage base for premiums.

Another comment mentioned is this legislation addresses "bad actors". As this bill came from the House and our industry has reviewed it to assess the impact to their respective businesses. Many good, well respected, businesses would be adversely impacted due to the fact they employ seasonal workers. Many are community leaders, their business contribute much to the state with their workforce (good paying jobs) and taxes generated, not to mention civic contributions.

A final comment about HB 1060 is regarding the bill imposing a cumulative assessment for the duration a company has drawn benefits. Employers who have been successful in business for multiple generations and happen to employ seasonal workers, are penalized at a much higher rate than a similar business that has been active for only a short duration. Also an out of state business with no negative balance would seem to be at a substantial advantage as it would not be subject to the assessment.

In conclusion, we oppose HB 1060 because we believe the current system is working. The UI Fund is solvent. In fact, premiums have decreased from 2017 to 2019 due to the strength of the reserve fund. When, at times, the economy slows and there are big draws on the reserve fund – the rate structure is set to have the fund recover quickly. The UI reserve fund is in good shape – and is over its target level. To assess another \$20 million in annual penalties doesn't seem to reflect the business friendly environment this state prides itself on. For the reasons

outlined earlier in this testimony, we ask the committee to issue a Do Not Pass Recommendation.

Thanks for the opportunity to comment HB 1060 and I'd attempt to address questions of the committee.

2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	102	861	963	\$314,830	\$57,610
21-Mining	85	595	680	\$830,094	\$256,081
22-Util	1	61	62	\$1,821	\$1,821
23-Const	635	2,960	3,595	\$6,613,067	\$1,311,749
31-Manuf	56	672	728	\$1,130,493	\$413,530
42-Whole	88	2,089	2,177	\$147,177	\$36,752
44-Retail	23	2,016	2,039	\$12,055	\$2,455
48-TranWare	119	1,400	1,519	\$191,352	\$35,809
51-Info	8	299	307	\$38,509	\$37,408
52-Fin&Ins	21	1,286	1,307	\$13,158	\$2,533
53-RealEst	35	904	939	\$50,007	\$14,613
54-ProServ	136	2,618	2,754	\$143,489	\$9,573
55-Management	0	95	95	\$0	\$0
56-Admin	129	1,380	1,509	\$152,919	\$14,568
61-Educ	0	182	182	\$0	\$0
62-Health	22	1,775	1,797	\$4,233	\$954
71-Arts	16	396	412	\$4,944	\$1,053
72-Accomod	25	1,789	1,814	\$16,569	\$8,018
81-OtherSer	36	1,837	1,873	\$48,117	\$15,802
9920StGovt	1	11	12	\$140	\$140
9930LocGovt	8	241	249	\$16,381	\$8,795
99-NEC	0	1	1	\$0	\$0
Total	1,546	23,468	25,014	\$9,729,354	\$1,311,749

	Employers at Each Rate	Total Surcharge per Rate
1st Rate (3%)	995	\$2,500,933
2nd Rate (7%)	293	\$4,925,854
3rd Rate (10%)	258	\$2,302,566

The option exists to make the effective date of the legislation December 31, 2020. This would provide sufficient time for employers to plan for the addition of a surcharge. The potential benefits of this would be:

- Allows Job Service to educate employers as to the upcoming surcharge
 - As part of the education, Job Service could provide employers with the dollar amount the surcharge would have been for their business specifically for 2020.
- Allows employers to adjust business models if necessary to account for the surcharge they would incur

2019 Taxable Wage Base: \$ 36,400.00

Positive Tax Rate

1.34%	\$	487.76
1.12%	\$	407.68
0.93%	\$	338.52
0.77%	\$	280.28
0.65%	\$	236.60
0.54%	\$	196.56
0.44%	\$	160.16
0.34%	\$	123.76
0.25%	\$	91.00
0.15%	\$	54.60

31% less than national average

Negative Tax Rate

9.75%	\$	3,549.00
9.35%	\$	3,403.40
8.95%	\$	3,257.80
8.55%	\$	3,112.20
8.15%	\$	2,966.60
7.75%	\$	2,821.00
7.35%	\$	2,675.40
6.95%	\$	2,529.80
6.55%	\$	2,384.20
6.15%	\$	2,238.60

Amongst highest in the nation

State	Wages Subject to Tax	Minimum Rate	Maximum Rate	New Employer Rate	Wages x Maximum Rate	Compared to ND
AL	\$8,000	0.65%	6.80%	2.70%	\$544.00	-\$3,005.00
AK	\$39,900	1.50%	5.90%	1.28%	\$2,354.10	-\$1,194.90
AZ	\$7,000	4.00%	11.80%	2.00%	\$826.00	-\$2,723.00
AR	\$10,000	0.10%	6.00%	2.90%	\$600.00	-\$2,949.00
CA	\$7,000	1.50%	6.20%	3.40%	\$434.00	-\$3,115.00
CO	\$13,100	0.62%	8.15%	1.70%	\$1,067.65	-\$2,481.35
CT	\$15,000	0.50%	5.40%	3.40%	\$810.00	-\$2,739.00
DE	\$16,500	0.10%	8.00%	1.60%	\$1,320.00	-\$2,229.00
DC	\$9,000	1.60%	7.00%	2.70%	\$630.00	-\$2,919.00
FL	\$7,000	0.10%	5.40%	2.70%	\$378.00	-\$3,171.00
GA	\$9,500	2.50%	8.10%	2.64%	\$769.50	-\$2,779.50
HI	\$46,800	0.00%	5.60%	2.40%	\$2,620.80	-\$928.20
ID	\$40,000	0.26%	5.40%	1.00%	\$2,160.00	-\$1,389.00
IL	\$12,960	0.48%	6.88%	3.18%	\$891.00	-\$2,658.00
IN	\$9,500	0.50%	7.40%	2.50%	\$703.00	-\$2,846.00
IA	\$29,900	0.00%	7.50%	1.00%	\$2,242.50	-\$1,306.50
KS	\$14,000	0.20%	7.10%	2.70%	\$994.00	-\$2,555.00
KY	\$10,200	0.30%	9.00%	2.70%	\$918.00	-\$2,631.00
LA	\$7,700	0.09%	6.00%	IndAvg%	\$462.00	-\$3,087.00
ME	\$12,000	0.00%	5.40%	1.83%	\$648.00	-\$2,901.00
MD	\$8,500	0.30%	7.50%	2.60%	\$637.50	-\$2,911.50
MA	\$15,000	0.94%	14.37%	2.42%	\$2,155.50	-\$1,393.50
MI	\$9,000	0.00%	6.30%	2.70%	\$567.00	-\$2,982.00
MN	\$34,000	0.10%	9.00%	IndAvg%	\$3,060.00	-\$489.00
MS	\$14,000	0.00%	5.40%	1.00%	\$756.00	-\$2,793.00
MO	\$12,000	0.00%	5.40%	2.38%	\$648.00	-\$2,901.00
MT	\$33,000	0.00%	6.12%	IndAvg%	\$2,019.60	-\$1,529.40
NE	\$9,000	0.00%	5.40%	1.25%	\$486.00	-\$3,063.00
NV	\$31,200	0.25%	5.40%	2.95%	\$1,684.80	-\$1,864.20
NH	\$14,000	0.10%	7.50%	1.70%	\$1,050.00	-\$2,499.00
NJ	\$34,400	0.40%	5.40%	2.80%	\$1,857.60	-\$1,691.40
NM	\$24,800	0.33%	5.40%	IndAvg%	\$1,339.20	-\$2,209.80
NY	\$11,400	0.30%	7.30%	2.90%	\$832.20	-\$2,716.80
NC	\$24,300	0.06%	5.76%	1.00%	\$1,399.68	-\$2,149.32
ND	\$36,400	0.15%	9.75%	1.21%	\$3,549.00	\$0.00
OH	\$9,500	0.30%	9.00%	2.70%	\$855.00	-\$2,694.00
OK	\$18,100	0.10%	5.50%	1.50%	\$995.50	-\$2,553.50
OR	\$40,600	0.90%	5.40%	2.40%	\$2,192.40	-\$1,356.60
PA	\$10,000	2.39%	11.03%	3.69%	\$1,103.33	-\$2,445.67
PR	\$7,000	1.40%	5.40%	2.90%	\$378.00	-\$3,171.00
RI	\$25,100	1.10%	9.70%	1.17%	\$2,434.70	-\$1,114.30
SC	\$14,000	0.00%	5.40%	0.81%	\$756.00	-\$2,793.00
SD	\$15,000	0.00%	9.35%	1.20%	\$1,402.50	-\$2,146.50
TN	\$7,000	0.01%	10.00%	2.70%	\$700.00	-\$2,849.00
TX	\$9,000	0.00%	6.00%	2.70%	\$540.00	-\$3,009.00

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State	Wages Subject to Tax	Minimum Rate	Maximum Rate	New Employer Rate	Wages x Maximum Rate	Compared to ND
UT	\$35,300	0.00%	7.00%	IndAvg%	\$2,471.00	-\$1,078.00
VT	\$15,600	0.80%	6.50%	1.00%	\$1,014.00	-\$2,535.00
VA	\$8,000	0.11%	6.21%	2.51%	\$496.80	-\$3,052.20
VI	\$26,500	1.50%	6.00%	2.00%	\$1,590.00	-\$1,959.00
WA	\$49,800	0.00%	5.40%	IndAvg%	\$2,689.20	-\$859.80
WV	\$12,000	1.50%	7.50%	2.70%	\$900.00	-\$2,649.00
WI	\$14,000	0.00%	10.70%	2.50%	\$1,498.00	-\$2,051.00
WY	\$25,400	0.00%	8.50%	IndAvg%	\$2,159.00	-\$1,390.00

Source: U.S. Department of Labor, Employment and Training Administration, January 2019.

<https://oui.doleta.gov/unemploy/content/sigpros/2010-2019/January2019.pdf>

Good Morning Chairman Klein and Committee Members.

Thank you for this opportunity to testify on House Bill 1060.

My name is Susan Shearer, I am the President of a small family owned construction company located in Harvey. I am also an active Board Member of the AGC of ND and have just been re-appointed to the ND Unemployment Advisory Council.

My company, Harvey Sand & Gravel, Inc. was established in 1960 by my parents, so we have had a long and successful presence in the State of ND.

We currently employ 5 full time employees and up to 25 seasonal employees. I mention "seasonal employees" because they are at the core of this discussion.

My testimony this morning is in opposition to this bill.

This bill as written will penalize a majority of the heavy highway and industrial contractors who do business in the State of North Dakota. Unemployment benefits are a necessary evil for these contractors as we do business in a state where our ability to conduct our trade is limited to 8 maybe 9 months out of every year.

It is my opinion, along with a number of my associates, that this bill penalizes companies that have made North Dakota their home base for decades. In some cases, a contractor will be required to pay a surcharge as much as 10 times higher than a similar company that has done business in the State for only 5-6 years.

It is also our opinion that out-of-state contractors already have a competitive bidding advantage as most of the surrounding states have lower unemployment rates than we pay in North Dakota. This “surcharge” will just exasperate this disadvantage for local contractors.

Just to give you an idea of how this “surcharge” will affect my company, Harvey Sand & Gravel, Inc. had \$373,363.00 in taxable wages in 2018.

I paid \$43,321.15 for unemployment taxes. According to calculations based on the “cumulative” formula in this bill, Harvey Sand & Gravel will be assessed an additional \$18,133.38. That is a 42% increase in my unemployment tax responsibility.

In addition to what I have already testified to, please consider the following:

UI currently has a Reserve Fund target of \$184 million, with the fund currently sitting at \$186 million, 2 million over the target. This proposed “surcharge” will generate approximately an additional \$20 million into the Reserve Fund every 2 years. This extra reserve fund money is not needed.

Also understand that this is \$20 million that will sit in a “fund.” It will not be reinvested into the state’s economy and while inflating the UI Reserve Fund it will do nothing to generate additional income in the State.

For some contractors 85% or more of the work they perform in ND is for the NDDOT, county and local governments. These agencies will lose the benefits they have had from lower construction costs for

infrastructure projects. These costs will be passed onto the projects with the ND tax payer being the biggest loser.

Finally, this bill penalizes ALL negative balance employers. We have heard the comment that this bill will deal with the “bad actors”. We are not “bad actors”! We are companies, a majority of which are made up of families that have invested decades into the State of North Dakota. We are valued businesses who contribute much in payroll and taxes to the state’s economy.

I request the committee to please issue a “do not pass” recommendation on this bill.

Thank you.



NORTH DAKOTA
PETROLEUM
COUNCIL

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Engrossed House Bill 1060
Testimony of Brady Pelton
Senate Industry, Business and Labor Committee
March 12, 2019

Chairman Klein and members of the Senate Industry, Business, and Labor Committee, my name is Brady Pelton, government affairs manager of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of Engrossed House Bill 1060.

Representing approximately twenty percent of the workforce and thirty percent of total wages earned in the State of North Dakota, the oil and gas industry has a keen interest in the financial health of the Unemployment Insurance Trust Fund. Despite the recent industry leveling in growth, the balance of this fund has continued to remain sufficient and has exceeded its target level consistently.

Notwithstanding the objective of Engrossed House Bill 1060, the negative effect on the oil and gas industry, and a number of other industry sectors, is striking. This bill imposes a punitive surcharge on all employers with a negative lifetime reserve balance in their unemployment insurance accounts, effectively penalizing businesses and employers that have operated legally for years under the current law.

We feel that the current system is working well and the imposition of a surcharge for simply using that system to be unnecessary. The North Dakota Petroleum Council therefore respectfully urges a **Do Not Pass** recommendation on Engrossed House Bill 1060. Before I conclude and stand for any questions, Mr. Chairman, I would like to introduce Steve Farden, President and co-owner of Farden Construction based in Maxbass, ND. Among its many services, Farden Construction is involved in rig moving, earthwork, and pipeline work throughout oil country. Thank you, and I would be happy to answer any questions.

TESTIMONY IN OPPOSITION TO HOUSE BILL 1060
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
MARCH 12, 2019

JUSTIN DEVER - SENIOR PUBLIC AFFAIRS SPECIALIST, MDU RESOURCES GROUP, INC.

Good morning, Mr. Chairman and members of the committee. My name is Justin Dever and I am testifying today on behalf of MDU Resources Group. MDU Resources presence in North Dakota includes Montana-Dakota Utilities Co., WBI Energy, Knife River Corporation, and MDU Construction Service Group.

Knife River Corporation has a long history in North Dakota, having formed in the state in 1917 and joined MDU in 1945. It is one of the largest construction materials and contracting companies in the United States operating in 19 states. During construction season, Knife River employs about 225 people in North Dakota.

HB 1060 would unduly punish employers in the state that are impacted by the weather. Knife River Corporation would like nothing more than to operate year-round in North Dakota, but as you may have notice, our winter is not always conducive to outdoor construction projects.

The proposed surcharge in HB 1060, could put North Dakota business at a disadvantage in competing with out-of-state businesses. The surcharge would be charged to in-state business based on negative balances that may have accumulated over decades. Out-of-state businesses do not have this employment history in the state and would not face these surcharges.

We understand that employers making more use of the program should pay more for unemployment insurance. That is why we agree with the current system which has some employers paying as much as \$3,549 per employee, while others pay as little as \$54.60 per employee. In fact, North Dakota has the highest maximum unemployment insurance tax rate in the nation, along with the greatest difference between the maximum and minimum rates.

North Dakota's legislature has supported a fair business climate that has benefited the citizens of the state. I'm asking you to continue this practice by rejecting this \$10 million per year tax increase and recommending a "Do Not Pass" on HB 1060.

Mr. Chairman and members of the committee, thank you for allowing me to visit with you today. That concludes my testimony and I am happy to entertain any questions.



Senate Industry Business and Labor Committee

03/12/19

HB 1060

Chairman Klein and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group.

In North Dakota we represent nearly 2,500 small businesses. Our average member has 10 employees and gross sales of approximately \$500,000 per year.

With a healthy balance in the Unemployment Insurance Trust Fund, we do not believe that this legislation is necessary and on behalf of our membership in North Dakota, we ask that you give a Do-Not-Pass recommendation to House Bill 1060.



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of North Dakota

Senate Industry, Business, and Labor

Testimony Opposed to HB 1060

Chairman Klein and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of HB 1060. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 29 member firms and nearly 1500 employees.

Most engineering firms that are members of ACEC are positive balance employers. But, positive balance employers in North Dakota are already paying competitive rates which are below the national average. ACEC member firms do employ seasonal workforces in the form of field technicians. This bill would affect these businesses which have been positive balance employers to have to make decisions on the way to run their companies in the future. Seasonal workforce is important to the state of North Dakota and to the business of engineering.

Overall, HB 1060 feels like a large tax increase on businesses in North Dakota in the form of an unemployment surcharge.

For these reasons we ask for a DO NOT PASS recommendation on HB 1060 and I'm happy to answer any questions as I am able.

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**TESTIMONY
HOUSE BILL 1060
SENATE INDUSTRY BUSINESS AND LABOR COMMITTEE
MARCH 12, 2019**

Mr. Chairman and members of the Senate Industry Business and Labor committee my name is Mike Gerhart, Executive Vice President of the North Dakota Motor Carriers Association (NDMCA). I am here this morning to testify in opposition to House Bill 1060.

This legislation has adverse impacts on the business community which includes the transportation industry. These impacts include:

- Potentially placing companies who have operated in North Dakota for decades at a disadvantage with out of state companies due to the cumulative balance and the operational impacts this bill would have if passed.
- Employers engaged in the seasonal workforce are hardest hit by this legislation. These industries include agriculture, energy, transportation, construction, and manufacturing. These industries are vital to North Dakota's economy.

In closing, I would ask that you oppose House Bill 1060.

Thank you for your consideration of this legislation and I would be happy to answer any questions.

HB 1060
Senate IBL Committee
March 12, 2019

Good morning, Mr. Chairman and members of the committee.

My name is Art Thompson, and I'm here representing the North Dakota Concrete Council. Our members include ready-mix concrete production companies, cement manufacturers, raw material suppliers, and concrete pavement contractors throughout the state. Companies like Strata Corporation, Dickinson Ready-Mix, Lafarge Holcim, GCC Cement; Fisher Industries; and Northern Improvement, are just a few of our member companies.

All totaled, the production and distribution of concrete is a \$100 million annual industry for the state; factor in the placement aspect and the industry provided conservatively \$500 million of economic impact. Ready-mix concrete production companies are locally-operated facilities with a limited service area due to the perishable nature of our product. Unlike other specialized industries, we provide economic impact throughout every corner of the state and we employ thousands North Dakotans.

On behalf of our members and our industry, I am here today to urge a DO NOT PASS recommendation on HB 1060.

While much has been said about the reasons why this legislation should not move forward, I would like to reiterate the following:

- Our members are already paying the highest unemployment insurance tax rates in the nation for our seasonal workforces.
- The current system is working. Our members have fulfilled their obligation and have operated legally for years without issue. We fail to understand why a change is needed now.
- We are concerned the higher rates could put our member companies at a competitive disadvantage with out-of-state employers.

For these reasons and more, the North Dakota Concrete Council, strongly urges a DO NOT PASS recommendation.

One final note, one of our members, Scott Olin, president of Dickinson Ready Mix was scheduled to be here today. Unfortunately, Scott was diagnosed with Influenza A late yesterday, and rather than run the risk of being here, he has asked that his written testimony be documented as part of the official record against this legislation.

*Testimony Before the ND Senate Industry Business & Labor Committee
Tuesday, March 12, 2019*

Good morning Senators. My name is Scott Olin and I am the President and General Manager of Dickinson Ready Mix, a concrete and concrete products supplier located in Dickinson. Thank you for the opportunity to provide my input on HB 1060. I urge a "Do Not Pass" vote for this legislation. I come before you as a negative balance employer that has weathered the ups and downs of the construction industry in this state for almost 70 years. I am probably a smaller negative balance employer, but HB 1060 as amended, assesses, and hence impacts, all negative balance employers, not just the handful of companies with the largest negative balances. As such I oppose this legislation. There are several points (from previous testimony) I would like to reinforce:

- 1) Unfortunately, because of the climate in North Dakota, like other material suppliers and contractors, I am not able to operate at full-strength year-round and consequently must seasonally layoff some employees. As a Negative Balance employer, I already pay significantly more than non-seasonal employers, through the unemployment insurance tax rate structure. Negative balance rates in North Dakota are amongst the highest in the nation.
 - North Dakota's negative balance tax rate ranges between 6.15% -9.75% which translates to a maximum unemployment insurance rate of \$3,549 per employee, well above the national average of \$1,275 per employee.
 - On the other hand, positive balance tax rates are amongst the lowest in the nation. The positive balance tax rate ranges between .15% and 1.34% which translates to a minimum unemployment insurance rate of \$54.60 per employee, significantly below the national average of 79.96 per employee.
- 2) The target balance for the North Dakota Unemployment Insurance Fund is \$184M. The current fund balance exceeds that, at \$186M, so it's not like the fund is in trouble. Even during the oil slowdown, when fund levels dropped, they recovered to the level they're at now in a relatively short time which indicates the system we have in place now is working. The Unemployment Insurance Fund is solvent.
- 3) There is a lot of momentum right now, especially with HB 1066, for funding infrastructure construction and infrastructure improvements. One thing I haven't heard mentioned is the impact HB 1060 will have on those projects. The companies that will be most impacted by HB 1060 are the ones that will build those infrastructure projects and will supply materials for those projects. The higher labor costs resulting from HB 1060 will have to be passed on, so ultimately, this bill will increase the cost of those infrastructure projects by making it more expensive for seasonal employers to do business in North Dakota.

I understand the intent of this legislation, but I think it is misguided so please give this Bill a Do Not Pass Recommendation. Thank you for your consideration.

Vote No on HB 1060 – Unemployment Insurance Surcharge

Bill Summary

HB 1060 would impose a surcharge on unemployment insurance taxes paid by “negative balance” employers. As amended by the House of Representatives, Engrossed HB 1060 would impose a surcharge on all employers with a negative lifetime reserve balance in their unemployment insurance account. The amount of the surcharge is based upon the employer’s cumulative benefits divided by the cumulative contributions, according to the following schedule:

Cumulative benefits ÷ cumulative contributions	Surcharge percentage
100-149%	3 percent
150-199%	7 percent
200% and greater	10 percent

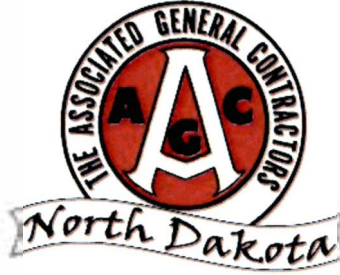
Current Unemployment Insurance Tax Rates

Employers pay state unemployment insurance taxes based upon a rate schedule applied to a taxable wage base, which is the maximum amount of each worker’s wages subject to taxation. North Dakota’s rate schedule has ten possible rates for employers with positive reserve ratios and ten for employers with negative reserve ratios. These rates are applied to a taxable wage base that is 70% of the statewide average wage. Unemployment insurance tax rates are determined annually, based upon the balance in the Unemployment Insurance Trust Fund in relation to the solvency target. The 2019 Taxable Wage Base is \$36,400 and the rates range from a low of 0.15% to a high of 9.75%.

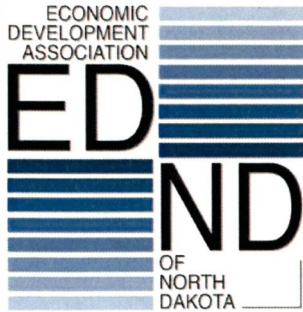
Linking Points

- The current balance of the Unemployment Insurance Fund is \$186 million, which is \$2 million over the target.
 - As indicated by the fiscal note, HB 1060 is a \$10 million per year tax increase on businesses.
- The beneficiaries of HB 1060, the positive balance employers, are already paying competitive rates which are below the national average.
 - North Dakota’s minimum rate is \$54.60 per employee per year, 31% lower than the national average minimum rate of \$79.96.
- HB 1060 would place an additional surcharge on employers that are already paying the highest unemployment insurance tax rates in the nation.
 - North Dakota has the highest maximum unemployment insurance taxes at \$3,549 per employee per year. This is \$489 greater than the next highest state, which is Minnesota at \$3,060 per employee, and \$2,274 more than the national average maximum rate of \$1,275.
- The current system is working. Employers pay unemployment insurance tax rates based upon their usage of the system, with heavier users paying significantly more per employee than light users.
 - The difference between the minimum rate and maximum rate in North Dakota is \$3,494.40, which is the largest spread of any state and is nearly triple the national average spread of \$1,195.32.
- Through the additional surcharge, HB 1060 punishes business in all sectors who have operated legally for years under current law.
 - Specifically, employers in agriculture, energy, construction, manufacturing and transportation which utilize a seasonal workforce will be hardest hit.
 - Because HB 1060 considers the cumulative historical negative balance an employer may have, their negative balances could have been established decades ago.
- HB 1060 could put North Dakota employers at a competitive disadvantage with out-of-state employers. For example, an out-of-state employer that doesn’t have an employment history in the state wouldn’t be paying the same surcharge that a long-term in-state employer may be required to pay under HB 1060.

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MDU RESOURCES GROUP, INC.



A Touchstone Energy® Cooperative 



2019

Industry	Employers			Total Surcharge of Industry	Largest Surcharge of Industry
	Receive Surcharge	No Surcharge	Total Employers		
11-Ag	102	881	983	\$314,830	\$57,610
21-Mining	85	595	680	\$830,094	\$256,081
22-Utill	1	61	62	\$1,821	\$1,821
23-Const	635	2,960	3,595	\$6,813,087	\$1,311,749
31-Manuf	56	672	728	\$1,130,493	\$413,530
42-Whole	88	2,089	2,177	\$147,177	\$36,752
44-Retail	23	2,016	2,039	\$12,055	\$2,455
48-TranWare	119	1,400	1,519	\$191,352	\$35,809
51-Info	8	299	307	\$36,509	\$37,408
52-Fin&Ins	21	1,286	1,307	\$13,158	\$2,533
53-RealEst	35	904	939	\$50,007	\$14,613
54-ProServ	136	2,618	2,754	\$143,489	\$9,573
55-Management	0	95	95	\$0	\$0
56-Admin	129	1,380	1,509	\$152,919	\$14,568
61-Educ	0	182	182	\$0	\$0
62-Health	22	1,775	1,797	\$4,233	\$954
71-Arts	16	396	412	\$4,944	\$1,053
72-Accomod	25	1,789	1,814	\$16,569	\$8,018
81-OtherSer	38	1,837	1,873	\$48,117	\$15,802
9920StGovt	1	11	12	\$140	\$140
9930LocGovt	8	241	249	\$16,381	\$8,795
99-NEC	0	1	1	\$0	\$0
Total	1,546	23,468	25,014	\$9,728,364	\$1,311,749

	Employers at Each Rate	Total Surcharge per Rate
1st Rate (3%)	995	\$2,500,933
2nd Rate (7%)	293	\$4,925,854
3rd Rate (10%)	258	\$2,302,566

The option exists to make the effective date of the legislation December 31, 2020. This would provide sufficient time for employers to plan for the addition of a surcharge. The potential benefits of this would be:

- Allows Job Service to educate employers as to the upcoming surcharge
 - As part of the education, Job Service could provide employers with the dollar amount the surcharge would have been for their business specifically for 2020.
- Allows employers to adjust business models if necessary to account for the surcharge they would incur

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2017 Unemployment Insurance Tax Rate Schedules

2017 Taxable Wage Base is \$35,100

(This amount is set annually and is 70% of a statewide average wage)

New Employer Rate	Positive Balance	Negative Balance
Non-Construction	2.34%	7.33%
Construction	11.43%	11.43%

New Employers are

Non-construction covered after June 30, 2015.

Construction covered after June 30, 2014.

Actual tax rates may differ from those shown on the tables due to the application of NDCC 52-04-05(6)(a) (rate reduction).

Positive Tax Rate Table

Reserve Ratio	Rate
-00.08% and less	02.60%
-00.09% to +00.52%	02.17%
+00.53% to +00.71%	01.80%
+00.72% to +00.84%	01.50%
+00.85% to +00.91%	01.25%
+00.92% to +00.97%	01.05%
+00.98% to +01.01%	00.88%
+01.02% to +01.05%	00.73%
+01.06% to +01.08%	00.60%
+01.09% and over	00.49%

Negative Tax Rate Table

Reserve Ratio	Rate
-11.57% and less	11.43%
-11.56% to -07.60%	10.98%
-07.59% to -05.10%	10.52%
-05.09% to -03.42%	10.06%
-03.41% to -02.62%	09.61%
-02.61% to -01.89%	09.15%
-01.88% to -01.13%	08.70%
-01.12% to -00.61%	08.24%
-00.60% to +00.08%	07.78%
+00.07% and over	07.33%

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2019 Unemployment Insurance Tax Rate Schedules

2019 Taxable Wage Base is \$36,400

(This amount is set annually and is 70% of a statewide average wage)

New Employer Rate	Positive Balance	Negative Balance
Non-Construction	1.21%	6.15%
Construction	9.75%	9.75%

New Employers are

Non-construction covered after June 30, 2017.

Construction covered after June 30, 2016.

Actual tax rates may differ from those shown on the tables due to the application of NDCC 52-04-05(6)(a) (rate reduction).

Positive Tax Rate Table

Reserve Ratio	Rate
+00.28% and less	01.34%
+00.29% to +00.99%	01.12%
+01.00% to +01.21%	00.93%
+01.22% to +01.37%	00.77%
+01.38% to +01.47%	00.65%
+01.48% to +01.54%	00.54%
+01.55% to +01.59%	00.44%
+01.60% to +01.66%	00.34%
+01.67% to +01.71%	00.25%
+01.72% and over	00.15%

Negative Tax Rate Table

Reserve Ratio	Rate
-28.55% and less	09.75%
-28.54% to -16.06%	09.35%
-16.05% to -12.70%	08.95%
-12.69% to -08.141%	08.55%
-08.13% to -06.16%	08.15%
-06.15% to -04.42%	07.75%
-04.41% to -01.99%	07.35%
-01.98% to -00.86%	06.95%
-00.85% to +01.02%	06.55%
+01.03% and over	06.15%

HB1060 4/2/19 AH#1

March 27, 2019

Job Service North Dakota
PO Box 5507
Bismarck, ND 58506-5507

Dear Director Klipfel:

House Bill 1060 was introduced in response to potential inequities of insurance taxes paid into the Unemployment Insurance Fund between positive and negative balance employers. The bill would have imposed a 3% to 10% surcharge on all employers with a negative lifetime reserve balance in their unemployment insurance account. The bill passed the House of Representatives but was defeated in the Senate. The Senate Industry, Business and Labor Committee (IBL) did not support this bill because, while this issue deserves further review and possible action, we do not believe a surcharge for negative balance employers was the correct action.

The Senate IBL committee is requesting that Job Service of North Dakota through the Unemployment Insurance Advisory Council, review this issue and report back to the Interim Government Finance Committee. In our estimation it has been over 10 years since the formula has been reviewed and is deserving of a thoughtful review. The council should examine any disparities among rates and their relationship to the solvency target, analyze rate structures across the country to ensure our rates remain competitive, and look at potential ways to incentivize positive balance rate payers. We also strongly urge the Unemployment Insurance Advisory Council to engage with impacted industries and business groups on this matter.

Please feel free to contact us with any questions. We appreciate your attentiveness to this request.

Sincerely,

Chairman, Senator Jerry Klein,

Vice Chairman, Senator Shawn Vedaas

Senator Randy Burckhard

Senator Jim Roers

Senator Curt Kreun

Senator Merrill Piepkorn

cc: Senator Wardner

April 3, 2019



North Dakota Legislative Assembly

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Job Service North Dakota
PO Box 5507
Bismarck, ND 58506-5507

Dear Director Klipfel,

House Bill 1060 was introduced in response to potential inquiries of insurance taxes paid into the Unemployment Insurance Fund between positive and negative balance employers. The bill would have imposed a 3% to 10% surcharge on all employers with a negative lifetime reserve balance in their unemployment insurance account. The bill passed the House of Representatives but was defeated in the Senate. The Senate Industry, Business and Labor Committee (IBL) did not support this bill because, while this issue deserves further review and possible action, we do not believe a surcharge for negative balance employers was the correct action.

The Senate IBL Committee is requesting that Job Service of North Dakota, through the Unemployment Insurance Advisory Council, examine any disparities among rates and their relationship to the solvency target of the Unemployment Insurance Fund, analyze rate structures across the country to ensure our rates remain competitive, and look at potential ways to incentivize positive balance ratepayers. We also strongly urge the Unemployment Insurance Advisory Council to engage with impacted industries and business groups on this matter. In our estimation it has been over 10 years since the formula has been reviewed and is deserving of a thoughtful review.

The Senate IBL Committee also requests that any recommendations from the Unemployment Insurance Advisory Council review be reported back to the Interim Government Finance Committee, which will then share those recommendations with Legislative Management and members of the Senate IBL Committee.

Please feel free to contact us with any questions. We appreciate your attentiveness to this request.

Sincerely,

Chairman, Senator Jerry Klein

Senator Randy Burckhard

Senator Curt Kreun

cc: Senator Wardner

Vice Chairman, Senator Shawn Vedaa

Senator Jim Roers

Senator Merrill Piepkorn