

MINUTES OF THE House COMMITTEE ON Labor and Industry

Held in Room 521-S, at the Statehouse at 9:00 a. m. ~~p.m.~~,

on January 18, 1983.

All members were present except:

All members were present.

The next meeting of the Committee will be held at 9:30 a. m. ~~p.m.~~,

on January 20, 1983.

These minutes of the meeting held on _____, 1983 were

considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Dr. Harvey Ludwick
Mr. Arnold Berman

The meeting was called to order by Chairman Douville.

Chairman Douville stated that the Labor and Industry Committee faces a real problem regarding the long range plan in respect to what criteria should be established in determining whether or not the reserve for employment security that we set up is adequate to meet the future demands.

Mark Burghart from the Research Department handed out to the committee two memorandums, one dated December 29, 1982 (Attachment #1) and one dated January 17, 1983 (Attachment #2).

Chairman Douville then introduced Dr. Ludwick who spoke to the committee (Attachment #3).

Mr. Arnold Berman then addressed the committee. Mr. Berman said, "For every thousand persons collecting unemployment at an average benefit rate of \$125.00 a week, we are talking on the order of \$70 million a year."

A short discussion followed.

Mr. Berman then stated that the increase in the base from 6 to 7 thousand dollars would bring into the fund an additional ten million dollars. Which means that for calendar year 1983 there will be \$127 million dollars brought into the fund.

A discussion followed.

Chairman Douville adjourned the meeting at 9:58 a.m.

MEMORANDUM

December 29, 1982

FROM: Kansas Legislative Research Department
RE: Overview of Employment Security Law (K.S.A. 44-701 et seq.)

This memorandum is intended to provide a general overview of the Kansas Employment Security Law.* A related memorandum setting forth in detail the method of computing employer contribution rates also has been prepared. For that reason, the coverage of that particular aspect of the Employment Security Law in this memorandum is minimal.

Background

Unemployment compensation insurance is an income maintenance plan paid for by employers whereby workers who are unemployed due to no fault of their own are paid relatively short term cash benefits to replace part of their lost earnings. The primary objective of the benefit payments is to replace enough of the current wages lost so that unemployed workers can provide for themselves and their families while they are without jobs. The program is designed also to facilitate the reabsorption of workers into the job market by maintaining contact between jobless persons and state job service centers.

The Kansas Employment Security Law was enacted in 1937. As stated in the declaration of state public policy contained in K.S.A. 44-702:

"Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of the state. . . . The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed."

Financing of Employment Security

Unemployment insurance is a federally established program, enacted as part of the Social Security Act of 1935, implemented through conforming state legislation. The state's employment service and unemployment compensation programs are financed by a combination of state and federal payroll taxes against the employer's covered payroll. In general, the Federal Unemployment Tax Act (FUTA) levies a payroll tax of 3.4 percent on the first \$6,000 of annual earnings paid employees by employers of one or

* Much of the material contained on the following pages reflects actual statutory language found in the Employment Security Law. However, some of the information is excerpted from a publication prepared by the U.S. Department of Labor, Manpower Assistance entitled, Comparison of State Unemployment Insurance Laws.

Atch. 1

more workers for some portion of 20 different weeks within a calendar year or has gross payroll of \$1,500 or more in any calendar quarter. This federal tax is actually reduced to a constant tax of .7 percent (on all nongovernment employers except certain nonprofit organizations) by allowing employers a credit of 2.7 percent for state taxes which have been timely paid under an approved state employment security law. Beginning in 1983, the FUTA wage base is increased to \$7,000. The FUTA tax rate is increased to 3.5 percent in 1983 and 1984 and to 6.2 percent in 1985 and thereafter. (When there are no longer any outstanding repayable general revenue advances to the federal extended unemployment compensation account, the 6.2 percent rate will drop back to 6.0 percent, the "permanent" tax rate.) The credit for state taxes will remain at 2.7 percent in 1983 and 1984, and will increase to 5.4 percent in 1985 and thereafter. Thus, the tax rate paid to the federal government will increase from the present .7 percent to .8 percent in 1983 and thereafter, until there are no more outstanding repayable general revenue advances. State imposed taxes finance benefits and the federal (FUTA) taxes finance the administrative costs of the program at the state level as well as a proportionate share of administrative costs at the federal level. The state taxes are collected and remitted to the United States Treasury and credited to the state's trust account. Moneys are requisitioned from the trust account as needed to make benefit payments. That portion of the federal tax which is returned to Kansas to pay for administrative costs of the program is returned as a grant.

Kansas employers, with respect to Kansas tax or financial liability under the Employment Security Law, are classified as either reimbursing, rated governmental or contributing employers. Reimbursing employers include some local governmental entities and certain nonprofit corporations which pay the actual cost of unemployment benefits charged to their accounts on a quarterly basis. Unemployment benefits charged to the state of Kansas are governed by a special provision allowing the state to make reimbursements quarterly but as determined on a fiscal year rate. The rated governmental employer category is one created by the 1977 Legislature for local units of government, and authorizes these employers to pay a fixed annual rate based on their benefit-cost experience. Most employers in Kansas, however, are in the contributing category. These employers pay taxes at rates which vary up to a maximum of 3.8 percent of the first \$6,000 in wages paid to each employee during the calendar year. Note: Under certain conditions the maximum rate may be increased to as high as 4.3 percent as was done in 1982. Beginning in 1983 a surcharge will be added to employers having a negative account balance.

Contributions for contributing employers accrue and become payable for each calendar year in which the contributing employer is subject to the law. Employers are classified in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing the contribution rates as will reflect such experience.

The employer is promptly notified of his or her rate determination by the Secretary. Such a determination is conclusive unless within 15 days the employer files an application for review and redetermination. If the Secretary grants the review, the employer shall be given the opportunity for a hearing to contest the rate. The employer is promptly notified of the Secretary's denial of the application for review or of the Secretary's redetermination both of which shall become final unless a petition for judicial review is timely filed.

The federal law establishes minimum standards for state unemployment compensation laws. If a state unemployment compensation law meets the minimum federal requirements, employers in the state subject to the federal unemployment tax are then allowed to claim a 2.7 percent credit against the 3.4 percent federal payroll tax and the state is entitled to federal grants to cover the costs of administering the program.

The original Social Security Act, enacted in 1935, set the basic requirements for state unemployment compensation laws. However, there were no detailed specifications concerning benefit levels, duration of benefits, or general eligibility requirements. Section 303(b)(2) of the Social Security Act merely required states to substantially comply with requirements set out in Section 303(a) of the same Act. The federal taxing provisions are now contained in the Federal Unemployment Tax Act (FUTA). Kansas law currently is in conformity with all federal requirements.

Employment Security Fund

K.S.A. 44-712 creates the employment security fund which consists of moneys from six different sources: (1) all contributions collected; (2) all fines and penalties collected; (3) interest earned on money in the fund; (4) all moneys credited to the fund pursuant to 42 U.S.C.A. Section 1103; (5) any property or securities acquired with money from the fund; and (6) all earnings on such property or securities. Three accounts are maintained within the fund: (1) a clearing account; (2) an unemployment trust fund account; and (3) a benefit account. All moneys received by the Secretary are given to the state treasurer for deposit in the clearing account. After refunds, all the remaining moneys in the account are transferred to the Secretary of the Treasury for deposit in the account of this state in the unemployment trust fund established by 42 U.S.C.A. Section 1104.

The benefit account consists of all moneys requisitioned from the state account in the unemployment trust fund. Moneys that are maintained in the clearing and benefit accounts may not be commingled with other state funds.

The Secretary requisitions money from the state's account in the unemployment trust fund as needs dictate. Upon receipt of the funds, the state treasurer deposits the funds in the benefits account. Warrants for the payment of benefits are charged solely against the benefit account. Any balance of moneys not used in the benefit account may either be returned to the state's account in the unemployment trust fund or be used to pay benefits in succeeding periods.

Two additional funds also are created by statute. K.S.A. 44-716 creates the Employment Security Administration Fund. The fund consists of all moneys received from the federal government for the proper administration of the act.

K.S.A. 44-716a creates the Special Employment Security Fund which consists of all interest and penalties collected under the Employment Security Law. The moneys in the fund may be used by the Secretary only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants in the Employment Security Administration Fund.

Benefit Eligibility Conditions

The federal law contains few requirements concerning eligibility and disqualification provisions. Each state establishes its requirements which an unemployed worker must meet to receive unemployment compensation. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic causes.

K.S.A. 44-705 specifies the conditions that must be met by an unemployed worker before becoming eligible to receive unemployment benefits. An unemployed worker shall be eligible only if the Secretary of Human Resources or his designee finds that:

1. the claimant has registered for work with a state employment office in accordance with regulations promulgated by the Secretary;
2. the claimant has made a valid claim for benefits in accordance with regulations promulgated by the Secretary;
3. the claimant is able to perform the duties of his or her customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience and is available for work;
4. the claimant has been unemployed for a waiting period of one week and that week must be in the benefit year for which the claimant is claiming benefits. A week shall not be counted as a week of unemployment if:
 - a. benefits have been paid during that week;
 - b. the claimant fails to meet the other eligibility requirements; or
 - c. the individual is receiving unemployment compensation from another state or the United States;
5. the claimant has been paid total wages for insured work in the base period of not less than 30 times his or her weekly benefit amount and has been paid wages in more than one quarter of the base period.

The burden of proving that the conditions of eligibility have in fact been met is placed with the claimant. Unless the claimant can establish that he or she has in fact met each of the five eligibility conditions, that individual may not receive unemployment benefits.

Benefits

The Social Security Act incorporated no standards for benefits in the federal-state system of unemployment insurance. K.S.A. 44-704 establishes the amount of benefits that is to be received by an eligible claimant in Kansas. The weekly benefit

amount is determined by multiplying the unemployed person's highest quarter wage in the person's base period by 4.25 percent, subject to a maximum of 60 percent of the state's average weekly wage and a minimum of 25 percent of the maximum weekly benefit. The state's average weekly wage is currently at \$242.47, with maximum benefits of \$163.00 and minimum benefits of \$40.00 available under the Employment Security Law. Benefits can be drawn for 26 weeks under the regular state program.

Individuals also may be eligible to receive extended benefits for a maximum of 13 additional weeks beyond the normal 26 week benefit period or one-half the person's original entitlement if certain conditions exist. The federal-state extended benefit program is designed to pay extended benefits to workers during periods of high unemployment. The program is financed equally from federal and state funds and becomes operative at the state level. A new, temporary benefit program, funded entirely by federal general revenue funds, authorizes a maximum of ten additional weeks of benefits after both the regular and extended unemployment benefits are exhausted (this latter program is scheduled to terminate after March, 1983.)

Disqualification for Benefits

The area of disqualification for benefits is extremely important because this portion of the law determines to a great extent the benefits which are to be paid from the Employment Security Fund. After several years of legislative debate, the disqualification provisions of K.S.A. 44-706 were amended in 1982 S.B. 876. Most legislators are aware of the disqualification provision relating to individuals who voluntarily leave their jobs; however, the law specifies a number of other circumstances which also disqualify persons for benefits. K.S.A. 44-706 sets forth 14 classifications of individuals who are disqualified, in whole or in part, from unemployment benefits. Each such classification is addressed separately below.

Subsection (a) provides that an individual who leaves work voluntarily without good cause shall be disqualified for benefits beginning with the week in which a valid claim is filed plus the following ten consecutive weeks. The unemployed worker also forfeits benefit entitlements equal to ten times the individual's full weekly benefit amount. The 1982 Legislature also attempted to clarify "good cause." A person shall be construed as having left work with good cause if:

1. after pursuing all reasonable alternatives, the circumstances were of such urgent, compelling or necessitous nature as to provide the individual with no alternative but to leave work voluntarily; or
2. a reasonable and prudent individual would separate from the employment under the same conditions.

This particular subsection also provides that if a person leaves work because of domestic or family responsibilities, not including pregnancy, self-employment or to retire because of disability or old age or to return to school, such individual shall be disqualified until he or she becomes reemployed and has earned eight times that person's weekly benefit amount.

Subsection (b) also provides for a similar period of disqualification for a person who has been discharged for breach of duty reasonably owed an employer. The period of disqualification begins with the week in which a valid claim was filed and continuing for the following ten consecutive weeks. Benefit entitlements equal to ten times the individual's full weekly benefit amount are also forfeited. The period of disqualification is made even more punitive if the disqualification is for gross misconduct which is defined as "conduct evincing willful and wanton disregard of an employer's interest or a carelessness or negligence of such degree or recurrence as to show an intentional or substantial disregard of the employer's interest." If gross misconduct is proved, then the period of disqualification continues until the person is reemployed and has earned eight times such individual's weekly benefit amount.

Subsection (c) provides that if an unemployed worker fails, without good cause, to apply for work or to accept suitable work, the worker shall be disqualified for benefits beginning with the week in which the failure occurred and the following ten weeks. Benefit entitlements equal to ten times the full weekly benefit amount are also forfeited. The statute sets forth several factors that must be considered by the Department of Human Resources in determining whether the work is suitable. The Secretary or his designee considers the degree of risk involving health, safety, and morals; physical fitness and prior training, experience and prior earnings; length of unemployment; prospects for securing work in the individual's particular occupation; and the distance of the available work. The individual shall not be disqualified for refusing to accept work under the following conditions: (1) the vacant position is due to a strike or other labor dispute; (2) the hours, wages and other conditions are less favorable than those for similar work in the locality; or (3) the employee, as a condition of employment, would be required to refrain from joining a labor organization.

Subsection (d) specifies that a worker shall be disqualified for benefits for any week in which the Secretary determines that the worker's unemployment is due to a stoppage of work which exists because of a labor dispute or would have existed had normal operations not been maintained with other personnel previously and currently employed by the same employer. This section has been clarified somewhat by the 1982 Legislature. Previously, there had been some question as to whether a worker would be disqualified from benefits if in fact there were no work stoppage because supervisory personnel continued operating the plant facility. The law is now clear that workers would not be entitled to benefits under such circumstances.

Subsection (e) disqualifies a worker from unemployment benefits for any week in which the worker is receiving benefits from another state or the United States.

Subsection (f) disqualifies a worker from unemployment benefits for any week in which a person receives unemployment compensation from the United States based on the person's prior service with the military.

Subsection (g) disqualifies a worker from unemployment benefits for one year if the person has knowingly made a false statement or representation or has knowingly failed to disclose a material fact to obtain or increase benefits under this act. The period of disqualification begins the first day following the last week of unemployment for which the individual received benefits or from the date the act was committed, whichever is later. Criminal penalties for unlawful conduct are also contained in K.S.A. 44-719.

Subsection (h) provides that a worker shall be disqualified for benefits for any week in which the worker was receiving temporary total disability or permanent total disability under the worker's compensation law of any state or the United States.

Subsection (i) disqualifies workers on the basis of service in an instructional, research or principal administrative capacity for an educational institution between successive academic years or terms, or, when an agreement so provides, between two regular but not successive terms, if the individual performed one of the three types of services in the first year or term and has a contract or a reasonable assurance of performing one of the three types of services in the second year or term.

Subsection (j) disqualifies other employees of educational institutions from receiving benefits between successive academic years or terms if the individual performed services in the first year or term and has a reasonable assurance of performing those services in the second year or term.

Subsection (k) disqualifies administrative, research and instructional employees in any educational institution and all other employees of educational institutions other than institutions of higher education from receiving benefits for any week within a term that begins during an established or customary vacation period or holiday recess if the individual performed services prior to the holiday and has a reasonable assurance of doing so after the holiday.

Subsection (l) disqualifies a worker for any week of employment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to participate if the week falls between two successive sport seasons. This subsection basically refers to the professional athlete.

Subsection (m) disqualifies an alien from unemployment benefits unless the alien is one who (1) was lawfully admitted for permanent residence at the time the services were performed and for which the wages were paid are used as wage credits; (2) was lawfully present in the United States to perform the services for which the wages paid are used as wage credits; (3) was permanently residing in the United States.

To avoid discriminating against certain groups, federal law requires that the information designed to identify illegal nonresident aliens must be requested of all claimants. Whether or not the individual is a permanent resident is to be decided by a preponderance of the evidence.

Finally, subsection (n) disqualifies certain persons from receiving unemployment benefits if those persons are also receiving pension amounts. Generally, only that portion of the pension that is attributable to contributions made by the employer will be offset against the unemployment compensation. The subsection provides:

1. an absolute offset requirement, similar to current law, for those unemployed workers who are receiving pensions or retirement pay under pension plans for which the contributions to the plans were paid entirely by the employer with no contributions by the employee;
2. an offset against the portion of the employer's share of any pension or retirement pay received by the unemployed worker under a pension plan in which both the employer and the employee each contributed a

portion of the total contributions, but only in those instances when the employer contributing to the retirement plan is also the base period employer for unemployment compensation benefits consideration;

3. no reduction in the weekly unemployment compensation benefit amount in which the employee contributed the entire amount of the contributions to the pension or retirement plan and the employer contributed none, or the situation in which the employer and the employee both contributed to the pension or retirement plan but the employer is not the base period employer for unemployment compensation benefits consideration; and
4. no reduction in the weekly unemployment compensation benefit amount in those situations where the amount of compensation or remuneration received by the unemployed worker does not effect either the employee's eligibility for or increase the amount of the pension or retirement pay received under the retirement plan.

The employer must prove by a preponderance of the evidence that an employee is disqualified to receive benefits under K.S.A. 44-706 (as amended by S.B. 876).

Claims Procedure

The Secretary of Human Resources has promulgated regulations which set forth in some detail the procedure for filing and pursuing unemployment compensation claims. (See K.A.R. 50-3-2 et seq.) The claimant initiates the procedure by filing an unemployment claim with the local Unemployment Insurance Office. A representative of the Secretary (hereinafter referred to as an examiner) examines the claim to determine its validity. If the examiner determines that the claim is valid, he or she will determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits for that benefit year. If the claim is based on a determination as to whether the unemployment is due to a labor dispute (K.S.A. 44-706(d)), the claim is referred to a special examiner for the determination as to whether the claim is valid. Any party aggrieved by the decision of the special examiner, either the claimant or employing unit, may appeal to a referee, the first step in the appeals process.

If he has good cause to do so, an examiner may reconsider his decision as long as the redetermination occurs before the end of the benefit year. The examiner is required to promptly notify the claimant and the claimant's most recent employing unit of his decision to reconsider the claim. The 1982 Legislature amended K.S.A. 44-709 to provide that a claimant or the claimant's most recent employing unit must appeal the decision of the examiner within 16 days or the decision of the examiner is final.

If an appeal to the referee is properly perfected, the referee may affirm or modify the findings of fact and decision of the examiner or special examiner. The parties again have 16 days to appeal the decision of the referee to the Board of Review. The Board of Review consists of three members, two of whom are appointed by the Governor. The members represent employees, employers and the public in general. The Board is authorized to affirm, modify or set aside any decision of a referee on the basis

of the evidence previously submitted, or direct the taking of additional evidence. The Board also has the authority to remove to itself an appeal before a referee. The Board then promptly notifies the interested parties of its findings and decisions.

Within 16 days after the decision of the Board has been mailed, any aggrieved party may secure judicial review of the Board's decision. In the absence of an appeal, the decision of the Board becomes final after 16 days.

Penalties for Violation of Act

K.S.A. 44-719 sets forth the penalties for one who makes a false statement or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment. Such individual shall be guilty of theft and receive the criminal sanctions specified for that crime.

Any employing unit or any other person who makes a false statement or representation known by such unit or person to be false, or fails to disclose a material fact in order to reduce or prevent the payment of benefits or to reduce or avoid making the required contribution or who willfully fails or refuses to make such contributions shall be punished by a fine of not less than \$20 nor more than \$200, by imprisonment for not longer than 60 days or by both fine and imprisonment.

Any person who willfully violates any provision of this act or any rule and regulation adopted by the Secretary for which a penalty is not provided shall be punished by a fine of not less than \$20 nor more than \$200, by imprisonment for not longer than 60 days or by both fine and imprisonment.

1-18-83 #2

MEMORANDUM

January 17, 1983

FROM: Kansas Legislative Research Department and Department of Human Resources

RE: Explanation of Formula for Computing Annual Unemployment Insurance
Tax Rates

The main purpose of this memorandum is to provide an explanation of the formula contained in the Kansas employment security law that is used in the annual computation of taxes that contributing employers must pay in the next year to meet unemployment benefit entitlements and to maintain the solvency of the state's employment security fund. The memorandum also discusses briefly the provisions of the law relating to governmental employers and nonprofit organizations that opt to become reimbursing employers.

TAXES FOR CONTRIBUTING EMPLOYERS

Annual Tax Requirement

The first question that must be answered before the rates of individual employers are determined each year is: How much money, in total, is needed next year in order to maintain the solvency of the fund? Initially, the answer to this question is expressed in terms of a reserve fund ratio. Later, the reserve fund ratio is translated into dollar amounts.

The reserve fund ratio is computed each year by dividing the amount of money in the employment security trust fund (less amounts credited to the state pursuant to Sec. 903 of the Social Security Act for benefits or for administration) on July 31 by the total of the payrolls of all taxed employers for the fiscal year ending on June 30, just one month earlier.

Example

Trust Fund Balance 7/31/82 equals \$ 216.8 million
Total of Payrolls for FY 1982 equals \$10,656.2 million equals 2.03% (Reserve Fund Ratio)

As a general principle, the lower the reserve fund ratio in any year the greater the peril to fund solvency and vice versa. Thus, when the reserve fund ratio is low, adjustments must be made in the taxing structure for the next year to increase tax revenues with the objective of increasing the reserve fund ratio. Conversely, in any year in which the reserve fund ratio is regarded as being higher than necessary, adjustments will be made to reduce somewhat tax contribution rates.

Attch. 2

The basis for making such adjustments from one year to the next is specified in the statute. Inherent in the schedule used for this purpose are actuarial principles and experience as to reserve levels that are needed to protect the solvency of the fund. Shown below is the schedule used as the basis for generating adequate revenues for the operation of the fund:

SCHEDULE III — FUND CONTROL

Ratios to Total Wages

<u>Column A</u> <u>Reserve Fund Ratio</u>	<u>Column B</u> <u>Planned Yield</u>
5.0% and over	0.30%
4.5 but less than 5.0	.50
4.0 but less than 4.5	.70
3.5 but less than 4.0	.80
3.0 but less than 3.5	.90
2.5 but less than 3.0	1.00
2.0 but less than 2.5	1.10
1.5 but less than 2.0	1.30
Less than 1.5	1.50

Under this schedule, as the reserve fund ratio (Col. A) decreases, the planned yield (Col. B) increases. The planned yield percentages serve as an important factor in the preparation of the annual adjustments in individual employer tax rates so that an adequate fund balance can be maintained.

As noted above, for 1982, the reserve fund ratio was 2.03 percent. The schedule (Col. B) reveals that for such a ratio the planned yield rate is 1.10 percent.

The next step is to adjust the planned yield (Col. B) percentage. Remember that this Col. B percentage really reflects the ratio of the necessary tax revenue to the total payroll of employers. In fact, taxes are not assessed against the total payroll — they are assessed against taxable wages. Taxable wages (referred to in the law simply as wages) includes employee compensation up to an annual limit per employee of \$7,000. This \$7,000 is a "minimum" threshold established by federal law. States may exceed this amount if they so desire, and some have chosen to do so. (A provision of the federal Tax Equity and Fiscal Responsibility Act of 1982 raised the taxable wage base from \$6,000 to \$7,000, beginning in 1983. The Kansas law allows for immediate incorporation of changes such as this in the federally-prescribed wage base. Inasmuch as 1983 tax rates, computed on a \$6,000 wage base, will be applied to the new \$7,000 wage base, a one-time "windfall" to the fund will occur in 1983.)

The adjustment to the Col. B rate translates the Col. B percentage from a percentage of the total payroll to the percentage of the taxable payroll; i.e., that payroll amount which actually is subject to taxation. This adjustment for 1982 is shown below:

1982 Total Wages	<u>equals</u>	<u>\$10,656.2 million</u>	<u>equals</u>	2.45 x 1.10	<u>equals</u>	2.69% (Adjusted Planned Yield Percentage)
1982 Taxable Wages (Subject to the \$6,000 limit)	<u>equals</u>	<u>\$ 4,349.7 million</u>				

What this procedure is saying is that since the taxable wage base was only 40.8 percent of total wages, a factor of 2.69 percent is required to produce the number of dollars represented by 1.10 percent of total wages.

What is the amount to be generated from employers during 1983? It is \$117.0 million -- the result of applying 2.69 percent to the taxable wages of \$4,349.7 million.

Employer Tax Rates

Although it applies imperfectly, the principle upon which the actual employer tax rates are based is to provide an incentive for employers to achieve low turnover, that is, to reduce unemployment. This means that employers who have the most favorable employment records also have the most favorable (lowest) unemployment compensation tax rates. Conversely, those with the least favorable experience have the highest tax rates. The procedures that are used to accomplish this objective and to produce the \$117.0 million that is needed in 1983 are described below.

Adjustments. Two types of adjustments are made preceding the refinement of the factor that is used in the formula to determine the tax rates for most employers. These are:

1. New Industries. An employer is not eligible for his or her own separate tax rate computation until 24 consecutive months have passed during which unemployment benefits could have been charged against the employer's account. (As a practical matter, a new employer may not have his or her own experience rating for three or four years, depending upon when eligibility is established.) These employers must pay contributions at the average rate in the preceding year assigned to all employers in such industry division except that:
 - (a) the rate may not be less than the average rate assigned to all covered employers in the preceding calendar year.*
 - (b) The rate may not be less than 1.0 percent.

Industry divisions are determined by the Secretary of Human Resources in accord with a standard classification system. The industry divisions and the calendar year 1981 average rates for each industry division are shown below:

* In fact, data for the second preceding calendar year are used because industry averages for the immediately preceding calendar year are not available when the rate computations for the ensuing calendar year are determined.

<u>Industry Division</u>	<u>Calendar Year 1981 Average Rate</u>
Agriculture, Forestry and Fishing	2.59%
Mining	1.81
Contract Construction	2.92
Manufacturing	2.28
Public Utilities	1.90
Wholesale Trade	1.71
Retail Trade	1.61
Finance, Insurance and Real Estate	1.61
Services	1.64
Government	3.03

The overall average rate was 1.94 percent. Therefore, in 1983, that rate applied to mining; public utilities; wholesale trade; retail trade; finance, insurance and real estate; and services. The actual industrial division averages applied in agriculture, forestry and fishing; contract construction; manufacturing; and government. The 1.0 percent minimum had no relevance to the 1983 rate determination.

Based on these rates, it was determined that in 1983, some \$4.3 million of the total of \$117.0 million would be generated by these "new" industries.

2. Negative Balance Accounts. In some instances, an employer has had charged to his or her account unemployment benefits that exceed the taxes paid to support the program. These employers are known as negative account balance employers. They are required to pay the maximum tax rate that can be charged under the law. This rate is 4.0 percent of taxable payroll. However, under certain circumstances, the Secretary of Human Resources may increase this rate in increments of 0.1 percent to a maximum of 4.3 percent, the rate that currently is in effect. As a result of 1982 legislation, in addition to the 4.3 percent rate, negative account balance employers must pay a surcharge that ranges from .1 percent of taxable payroll to 1.0 percent, depending upon the size of the employer's negative reserve ratio. The schedule for such surcharges is shown below:

SCHEDULE II - SURCHARGE ON NEGATIVE ACCOUNTS

<u>Column A</u> <u>Negative Reserve Ratio</u>	<u>Column B</u> <u>Surcharge as a Percent of Taxable Wages</u>
Less than 2.0%	.10%
2.0 but less than 4.0	.20
4.0 but less than 6.0	.30
6.0 but less than 8.0	.40
8.0 but less than 10.0	.50
10.0 but less than 12.0	.60
12.0 but less than 14.0	.70
14.0 but less than 16.0	.80
16.0 but less than 18.0	.90
18.0 and over	1.00

It was estimated that in 1983, negative account balance employers, taxed at the 4.3 percent rate, would contribute \$11.5 million in taxes. A further estimate is that the surcharge on such employers will produce \$1.7 million for a total of \$13.2 million from negative account balance employers.

Recapitulation

\$117.0	needed for 1983
-4.3	million — new industries
-13.2	million — negative balance employers — from
	the 4.3 percent "capped" rate and the surcharge
<u>\$ 99.5</u>	million — to be secured from all other ratepayers

The Basic Rate Determination Schedule. The key to the lowest possible unemployment compensation rate is a high reserve ratio. The reserve ratio for each employer is calculated as follows:

Unemployment Insurance Contributions for All Past Years	<u>minus</u>	All Benefits That Have Been Charged to the Employer's Account	<u>equals</u>	Employer's Reserve (Employer's Account Balance)
<u>then</u>				
<u>(Employer's Reserve Employer's Average Annual Payroll for the Last Three Years)</u>	<u>equals</u>	Employer's Reserve Ratio		

After the reserve ratio for each employer is computed, the positive balance employers are, in effect, ranked from high to low in the order of their computed reserve ratios. This ranking is preliminary to the actual rate computation exercise, which involves the following schedule:

SCHEDULE I -- ELIGIBLE EMPLOYERS

Column A Rate Group	Column B Cumulative Taxable Payroll	Column C Experience Factor (Ratio to Total Wages)
1	Less than 4.76%	.025%
2	4.76 but less than 9.52	.1
3	9.52 but less than 14.28	.2
4	14.28 but less than 19.04	.3
5	19.04 but less than 23.80	.4
6	23.80 but less than 28.56	.5
7	28.56 but less than 33.32	.6
8	33.32 but less than 38.08	.7
9	38.08 but less than 42.84	.8
10	42.84 but less than 47.60	.9
11	47.60 but less than 52.36	1.0
12	52.36 but less than 57.12	1.1
13	57.12 but less than 61.88	1.2
14	61.88 but less than 66.64	1.3
15	66.64 but less than 71.40	1.4
16	71.40 but less than 76.16	1.5
17	76.16 but less than 80.92	1.6
18	80.92 but less than 85.68	1.7
19	85.68 but less than 90.44	1.8
20	90.44 but less than 95.20	1.9
21	95.20 and over	2.0

The schedule, which is fixed by the Legislature, contains 21 divisions for rate determination purposes (Col. A).

As mentioned above, for the purpose of computing the 1983 tax rates the eligible positive balance employers are ranked from high to low according to their reserve ratios. Based on the amount of each employer's taxable payroll in the preceding fiscal year, the employers are placed in the 21 groups. Each group (Col. B) represents 4.76 percent of the total taxable payroll of all such employers. In other words, those employers with the highest reserve ratios are placed in group 1, until the combined taxable payroll reaches 4.76 percent. In 1982, this group included employers having a reserve ratio of 14.592 percent or more. When this threshold is reached, the next highest reserve ratio employers are placed in group 2 until an additional 4.76 percent of the combined taxable payroll is accounted for. In 1982, this group included employers

with reserve ratios ranging from 13.856 percent to 14.592 percent. This procedure continues through the 21 groups until the payrolls of all positive balance employers are included.*

In Col. C, the experience factor is merely a graded scale which, except for group 1, is divided into intervals of one-tenth. This scale is used as the basis for modifying the yield adjustment factor so that employers with the most favorable employment experience will be rewarded with the lowest tax rates and vice versa.

Further Adjustments. Earlier in this memorandum, we explained how the 2.69 percent adjusted planned yield percentage for 1983 was computed. In fact that factor must be modified to accommodate certain other requirements of law. For example:

1. As discussed above, the required basic contribution rate for negative balance employers is 4.3 percent. In addition, such employers also pay the surcharge described herein. If the 1983 negative balance employer tax rates had been determined exclusively under Schedule I, these rates would have exceeded 4.3 percent. Inasmuch as negative balance employer tax rates are capped at 4.3 percent, they do not as a group, contribute as much as otherwise would be required under Schedule I. This "shortfall" is only partially offset by the surcharge. As a result, an additional adjustment of the planned yield percentage was needed to raise the full amount of the required tax revenue.
2. As described above, "new industries" are given assigned rates. The estimated contributions from these employers reduced the amount of the \$117.0 million that had to be generated from the Schedule I employers.
3. A special provision of the law establishes a legal maximum contribution rate of 4.3 percent for Schedule I rate groups 19-21. In making the computations for 1983, it was determined that applying the average rate to the Schedule I, Col. C factors resulted in a rate for groups 19-21 which exceeded 4.3 percent. Thus, a rate of 4.3 percent was assigned to employers in groups 19-21. As a result, further adjustments of the average rate had to be made for application to the remaining rate groups in order to produce the total of \$117.0 million.

For 1982, the taxable payroll of employers in groups 1-18 was \$3,295.8 million. The amount of the \$117.0 million that had to be produced from this remaining group of employers was \$75.9 million. Thus:

* In fact, these cutoffs are not so precise. The law provides that if an employer's taxable payroll falls into more than one rate group, the experience factor in the lower-numbered rate group will apply. Also, if one or more employers have reserve ratios identical to the last employer included in the next lower numbered rate group, the experience factor of the lower numbered rate group applies.

$\frac{\$75.9 \text{ million}}{\$3,295.8 \text{ million}}$ equals 2.30% (Adjusted Average Rate Percentage)

When this factor was applied throughout groups 1-18 of Schedule I, it was determined that only about 85 percent of the \$75.9 million actually would be produced. This was due to the experience factor difference between groups 1 and 2 and to the actual break of taxable wages in each wage group. An adjustment of the average rate (a technical adjustment) was made so that, in fact, the \$75.9 million of revenue could be produced. The factor derived was 2.708 percent. However, it was determined that the use of this percentage resulted in tax rates for groups 17 and 18 that exceeded the maximum rate (4.3 percent) applicable to groups 19, 20, and 21. To prevent groups 17 and 18 from being assigned the maximum 4.3 percent rate, they were arbitrarily assigned rates of 4.29 percent. After taking into account the taxes that groups 17 and 18 would generate at the 4.29 percent rate, a final average adjusted rate applicable to groups 1-16 was computed -- 2.739 percent. This rate applied under Schedule I against the \$2,929.5 million payroll of group 1-16 employers would produce the remaining \$60.2 million of taxes required to reach the \$117.0 million target for 1983.

Application of the Finally Adjusted Average Rate to Group 1-16 Employers.

For Group 1-16 employers, the 1983 rate was computed by multiplying the Schedule I, Col. C factor for the employer's rate group by 2.739 percent. Thus, the rate for a group 1 (highest reserve ratio) employer is .025 percent times 2.739 percent equals .07 percent; for a group 5 employer, it is .4 percent times 2.739 percent equals a 1.10 percent rate; for a group 15 employer, it is 1.4 percent times 2.739 percent equals a 3.83 percent rate; and so on.

Note: The law allows employers to make voluntary contributions to improve their reserve ratios. However, such contributions may not result in the lowering of the assigned rate group by more than one step.

GOVERNMENTAL EMPLOYERS

Governmental employers (includes the state, political subdivisions and other public instrumentalities or governmental entities) are subject to some alternative provisions of law.

Generally, governmental entities may elect to pay contributions, become rated governmental employers or become reimbursing employers.

Special provisions apply to the state to make it a reimbursing employer who makes quarterly payments at a fiscal year rate determined by the Secretary of Human Resources. This rate takes into account December 31 balances in the state's reimbursing account, the historical unemployment experience of covered state agencies, estimated total covered wages in the ensuing calendar year, and actuarial and other information provided by the Secretary of Administration.

Contributing governmental employers are subject to the same rate determination procedures as most private employers.

Rated governmental employers who are eligible for a rate computation make quarterly payments at a calendar year rate determined by the experience of all rated governmental employers and the individual employer's experience. An adjustment

factor is computed for all rated governmental employers by dividing total benefits paid by total benefits charged to all rated governmental employers for the preceding fiscal year. An experience factor for each employer is computed separately. It is computed by dividing benefits charged to such employer's account for the preceding fiscal year by the average of such employer's total wages reported for the two preceding fiscal years. The individual employer's rate for the next calendar year is computed by multiplying the experience factor by the adjustment factor. No such rate may be less than 0.1 percent. Rated governmental employers are taxed on total wages. Rated governmental employers may not have individually determined rates until they have been subject to benefit charges for 24 consecutive months preceding the rate computation date. Such employers make payments at a rate based upon the actual cost experience (benefits paid divided by total wages) of all rated governmental employers during the prior fiscal year ending March 31.

Reimbursing public employers simply pay for the benefits that have been charged to their accounts. This is, in effect, a form of self-insurance.

NONPROFIT ORGANIZATIONS

Nonprofit organizations exempt under Section 501(a) and described in Section 501(c)(3) of the Internal Revenue Code may be contributing or reimbursing employers.

An alternative required by the federal law to be available to such nonprofit organizations is for them to become reimbursing employers. As noted above, reimbursement is simply a form of self-insurance. The reimbursing employer pays for the benefits that have been charged to his or her account.

APPENDIX

ADJUSTED RATES FOR 1983

(Application of the 2.739 adjustment to rate groups 1 through 16, rounding to the nearest one-hundredth of 1 percent, gives the following adjusted rates for calendar year 1983)

<u>Rate Group</u>	<u>Reserve Ratio (lower limit)</u>	<u>Number of Employers</u>	<u>FY 1982 Taxable Wages</u> ⁽¹⁾	<u>Experience Factor</u>	<u>Contribution Rate</u>
1	.14592	7,482	\$ 183,200,435	.025%	.07%
2	.13856	3,122	183,007,263	.1	.27
3	.13517	2,224	196,961,493	.2	.55
4	.13351	1,391	169,280,159	.3	.82
5	.13183	1,427	183,621,641	.4	1.10
6	.13026	1,244	184,819,274	.5	1.37
7	.12911	872	187,455,775	.6	1.64
8	.12791	952	177,719,298	.7	1.92
9	.12609	1,313	181,967,608	.8	2.19
10	.12400	1,370	184,676,647	.9	2.47
11	.12164	1,318	181,545,211	1.0	2.74
12	.11871	1,431	183,115,048	1.1	3.01
13	.11557	1,247	189,355,590	1.2	3.29
14	.11426	496	179,560,633	1.3	3.56
15	.10912	1,514	180,064,399	1.4	3.83
16	.10382	1,309	183,191,991	1.5	4.11
17	.09347	1,931	183,197,492	1.6	4.29
18	.07631	2,455	183,102,338	1.7	4.29
19	.05531	2,452	182,847,355	1.8	4.30
20	.03154	2,172	194,114,110	1.9	4.30
21	.00000	2,338	172,792,835	2.0	4.30

1) The average payroll amount per rate group was computed to be \$183,123,648.

TESTIMONY OF THE KANSAS DEPARTMENT
OF HUMAN RESOURCES BEFORE THE HOUSE
LABOR AND INDUSTRY COMMITTEE, JANUARY 17, 1983

Mr. Chairman and members of the House Labor and Industry Committee, we appear before you today in response to your request for information on the current and future financial status of the Employment Security Fund.

As can be seen below, rising unemployment in Kansas, a trend paralleling the national experience, has badly depleted the fund:

	<u>Calendar Year</u>		
	<u>1980</u>	<u>1981</u>	<u>1982</u>
Average unemployment rate	3.9%	3.7%	5.5%
Amount of benefit payments	\$117.7m	\$112.3m	\$217.8m
Amount of contributions	\$ 82.0m	\$ 83.9m	\$108.0m
Reserve fund balance	\$218.8m	\$220.9m	\$135.1m

At the present time the Fund balance is estimated at \$124 million.

We have attempted to forecast the status of the Fund over the next eighteen months for three different sets of economic assumptions. In each instance we assume, however, that no legislative action is taken to alter the current financial structure of the Fund, i.e., the current law is effective with the exception of an increase in the taxable wage base from \$6,000 to \$7,000, beginning January 1, 1983. The forecasts further assume that, as required by law, the maximum benefits will increase on July 1, 1983, from the current \$163.00 per week to approximately \$175.00 per week; and the average benefits paid will increase from \$124.00 to \$130.00 per week.

The attached Table 1 represents the most pessimistic projection. The figures are based upon a three-year historical time series of monthly payouts for calendar years 1980, 1981 and 1982. It further assumes projected outlays will continue at the same rate currently anticipated to occur during 1983,

based upon national and state projections of unemployment. You will note that unemployment is projected to rise to an average rate of 6.3% and Fund revenues will increase to \$127 million during calendar year 1983. Based on these projections, the Fund will be fully depleted by November, 1983, and could reach a negative balance of \$140 million by June, 1984.

Table 2 presents projections based on the current unemployment rate of 6.1%, and the payout rate remaining constant. Under these assumptions, the Fund will be fully depleted by December, 1983, and would reach a negative balance of over \$100 million by June, 1984.

Table 3 shows the most optimistic projections. It is based on the average Kansas unemployment rate for calendar year 1983 declining to 5.0%. Even under this "best case" situation the Fund is forecast to be fully depleted by February, 1984, and will reach a negative balance of over \$30 million by June, 1984.

To summarize, Mr. Chairman, all of our projections suggest that the Employment Security Fund will be fully depleted long before the end of fiscal year 1984, in the absence of additional revenues being paid into the Fund in a timely manner. While we recognize it is small comfort to point this out, it must be noted that the Kansas experience is by no means unique. The faltering national economy has already resulted in the employment security funds of almost half the states going broke with the concomitant result of these states being required to borrow billions of dollars from the federal government to meet their obligations.

Mr. Chairman, we now stand ready to respond to any questions you and the members of your committee may have.

Table 1
 Estimated Payments, Income, Beneficiaries, and Balance of the Reserve Fund
 Least Favorable Unemployment Rate 1/

<u>Month</u>	<u>Beneficiaries</u>	<u>Payments</u>	<u>Income 2/</u>	<u>Balance</u>
January, 1983	50,000	\$23,300,000	\$10,000,000	\$121,300,000
February.	50,000	23,400,000	3,700,000	101,600,000
March	53,000	24,700,000		76,900,000
April	51,000	24,000,000	61,600,000	114,500,000
May	48,000	22,500,000	2,100,000	94,100,000
June.	55,000	25,900,000		68,200,000
July.	55,000	26,800,000	33,300,000	74,700,000
August.	52,000	25,500,000	1,600,000	50,800,000
September	56,000	27,200,000		23,600,000
October	52,000	25,300,000	18,100,000	16,400,000
November.	49,000	23,900,000	900,000	-6,600,000
December.	67,000	32,700,000		-39,300,000
January, 1984	70,000	34,100,000	14,000,000	-59,400,000
February.	70,000	34,300,000		-93,700,000
March	74,000	36,200,000		-129,900,000
April	72,000	35,200,000	96,000,000	-69,100,000
May	68,000	33,000,000		-102,100,000
June.	78,000	38,000,000		-140,100,000

1/ The unemployment rate for this table is based on current unemployment changing at the average rate for the last three years or 6.3 per cent.

2/ The income shown in the first month of each calendar quarter is contributions. These figures are based on the calculated required contributions for 1983 with an additional amount added due to the wage base changing from \$6,000 to \$7,000. The income shown in the second month is interest. The annual interest earned on the reserve fund is 11 per cent. This percentage was applied to the average balance for each quarter and the result divided by four (4) to obtain the quarterly interest.

Table 2
 Estimated Payments, Income, Beneficiaries, and Balance of the Reserve Fund
 Moderate Unemployment Rate 1/

<u>Month</u>	<u>Beneficiaries</u>	<u>Payments</u>	<u>Income</u> <u>2/</u>	<u>Balance</u>
January, 1983	50,000	\$23,300,000	\$10,000,000	\$121,300,000
February.	47,000	21,900,000	3,700,000	103,100,000
March	50,000	23,300,000		79,800,000
April	48,000	22,400,000	61,600,000	119,000,000
May	45,000	21,000,000	2,700,000	100,700,000
June.	52,000	24,200,000		76,500,000
July.	52,000	25,000,000	33,300,000	84,800,000
August.	49,000	23,600,000	2,500,000	63,700,000
September	53,000	25,500,000		38,200,000
October	49,000	23,600,000	18,100,000	32,700,000
November.	46,000	22,100,000	1,500,000	12,100,000
December.	63,000	30,300,000		-18,200,000
January, 1984	66,000	31,600,000	14,000,000	-35,800,000
February.	66,000	31,700,000		-67,500,000
March	70,000	33,600,000		-101,100,000
April	68,000	32,700,000	96,000,000	-37,800,000
May	64,000	30,700,000		-68,500,000
June.	73,000	35,000,000		-103,500,000

1/ The payment figures for this table are based on the average employment rate for the calendar year 1983 being the same as its current level, 6.1 per cent.

2/ Same as Table 1.

Kansas Department of Human Resources
 Research and Analysis Section
 Division of Staff Services
 January 1983

Table 3
 Estimated Payments, Income, Beneficiaries, and Balance of the Reserve Fund
 Most Favorable Unemployment Rate 1/

<u>Month</u>	<u>Beneficiaries</u>	<u>Payments</u>	<u>Income 2/</u>	<u>Balance</u>
January, 1983	50,000	\$23,300,000	\$10,000,000	\$121,300,000
February.	47,000	21,900,000	3,700,000	103,100,000
March	50,000	23,300,000		79,800,000
April	41,000	19,000,000	61,600,000	122,400,000
May	38,000	17,900,000	2,700,000	107,200,000
June.	44,000	20,600,000		86,600,000
July.	43,000	20,800,000	33,300,000	99,100,000
August.	41,000	19,600,000	2,900,000	82,400,000
September	44,000	21,200,000		61,200,000
October	40,000	19,100,000	18,100,000	60,200,000
November.	37,000	17,900,000	2,200,000	44,500,000
December.	53,000	25,100,000		19,400,000
January, 1984	55,000	26,200,000	14,000,000	7,200,000
February.	55,000	26,200,000	1,100,000	-17,900,000
March	58,000	27,600,000		-45,500,000
April	56,000	26,600,000	96,000,000	-23,900,000
May	55,000	26,100,000		-2,200,000
June.	62,000	29,400,000		-31,600,000

1/ The payment figures for this table are based on the average employment rate for the calendar year 1983 declining to approximately 5.0 per cent.

2/ Same as Table 1.

Kansas Department of Human Resources
 Research and Analysis Section
 Division of Staff Services
 January 1983