Approved ______________________
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Senator Paul Hess (Chairperson) at

11:00 a.m./~~p.m.~~ on January 25, 1982, 19__ in room 123-S of the Capitol.

All members were present except:

Committee staff present:
Research Department: Marlin Rein, Sherry Brown, Mary Galligan, Ray Hauke
Revisor's Office: Norman Furse
Committee: Mark Skinner, Administrative Aide; Doris Fager, Secretary

Conferees appearing before the committee:

Lynne Muchmore, Director of Budget

SB 84 - Certificates of Indebtedness

Mr. Muchmore distributed copies of SB 84 showing proposed amendments (See Attachment A), and a summary of the Governor's Proposal regarding SB 84 (Attachment B). He then explained the reason for the proposal. He noted that on December 17, 1982, the State Finance Council authorized issuance of Certificates of Indebtedness in the amount of $65 million to cure what proved to be a cash flow shortage in early January. According to Mr. Muchmore, this statute had not been invoked before, and in the process of researching it, it was discovered that there were some difficulties with portions of the law. He continued by explaining the changes in the law, and the amendments noted in Attachment A.

There was discussion concerning the change in the statute from providing for a uninamous vote to majority vote of the State Finance Council (Section 1). Senator Talkington suggested this is an extraordinary measure (to issue Certificates of Indebtedness) and he questioned this change for such an important issue. Mr. Muchmore noted that this is a conventional procedure in many other states, and that unless the balances can be rebuilt it may be that the procedure is not so extraordinary. Senator Talkington countered that this was his concern, and he would prefer rebuilding the balances. Senator Hess stated that he hoped the bill would not encourage unnecessary borrowing.

Motion was made by Senator Doyen and seconded by Senator Talkington to adopt the amendments set out in Attachment A. The motion carried by voice vote.

Following a short discussion, motion was made by Senator Doyen and seconded by Senator McCray to report SB 84 favorably as amended. The motion carried by roll call vote.

Budget Memo 83-2 (Continued)

Staff completed the presentation of the Budget Memo on Medicaid Cost Containment Options. Committee members were given opportunity to ask questions.

SB 22 - Medium Custody and support facilities, Kansas State Penitentiary

Senator Bogina explained that he did not feel SB 22 was necessary at this time, and he suggested that it be delayed or tabled. Following committee discussion, it was decided to take no action on SB 22.

Budget Memo on Unemployment Compensation Management

Staff presented the above memo, and there were questions from committee members. The Chairman requested that the memo be completed at the next meeting. Atch. C

The meeting was adjourned by the Chairman.

SENATE BILL No. 84

By Committee on Ways and Means

1-24

AN ACT relating to the issuance of certificates of indebtedness to meet obligations of the state payable from the state general fund; amending K.S.A. 75-3711c and 75-3725a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-3725a is hereby amended to read as follows: 75-3725a. *(a)* Whenever it shall appear that the estimated resources for any fiscal year in the state general fund are sufficient to meet in full the estimated expenditures for that fiscal year, but that the estimated resources in the state general fund in any month or months of such fiscal year are insufficient to meet in full the estimated expenditures for such month or months, the director of the budget shall so inform the secretary of administration. Unless ~~such~~ *the* secretary finds that the estimates of the director of the budget are grossly incorrect, ~~such~~ *the* secretary shall inform the governor of the report of the director of the budget, and thereupon the governor shall call a meeting of the state finance council within ~~forty-eight (48)~~ *48* hours after receiving such notice for the sole purpose of implementing provisions of this act. At such meeting the director of the budget shall inform the state finance council of the facts which caused the meeting to be called and together with the director of accounts and reports shall report upon the finances of the state relevant to the call of such meeting, including the availability of ~~cash in state bank accounts~~ *moneys on deposit in banks as provided in article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto,* to meet all the obligations of the state as the same become due. Thereupon the state finance council may by ~~unanimous~~ *the affirmative* vote *of the governor and of a majority of the*

and obligations

as the same become due

and obligations

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legislator members of the council order the pooled money investment board to issue a written certificate of indebtedness subject to redemption from the state general fund not later than ~~sixty (60) days after the date of issuance thereof or on the~~ June 30 next following the issuance of such certificate of indebtedness~~, whichever is the sooner~~. Upon the issuance of any such certificate of indebtedness the state treasurer shall purchase the same for the amount specified therein from state moneys on deposit in banks as provided in article 42 of chapter 75 of Kansas Statutes Annotated. Upon the occurrence of any such purchase the state treasurer and the director of accounts and reports shall make appropriate entries to credit the state general fund in the amount of the state treasurer's purchase. In the event that the state finance council orders the issuance of any certificate of indebtedness under authority of this act, the amount thereof shall be sufficient in the opinion of the state finance council to increase the resources of the state general fund such that such resources will be sufficient to meet the estimated expenditures from the state general fund in each month for the balance of such fiscal year. No interest shall accrue or be paid on any such certificate of indebtedness. Not later than ~~sixty (60) days after the date of issuance thereof or on the~~ June 30 following the issuance of any such certificate of indebtedness~~, whichever is the sooner,~~ the pooled money investment board shall redeem ~~any~~ such certificate of indebtedness by issuing an order to the state treasurer to return such certificate of indebtedness with the word "canceled" written across the same by the state treasurer, and thereupon the state treasurer and the director of accounts and reports shall make appropriate entries to reduce the balance of the state general fund by the amount specified in such certificate of indebtedness and restore the same to the state moneys on deposit in banks under authority of article 42 of chapter 75 of Kansas Statutes Annotated.

[and obligations

(b) Whenever it appears that the estimated resources for any fiscal year in the state general fund are sufficient to meet in full the estimated expenditures from such fund for such fiscal year and in addition to redeem any outstanding certificates of indebtedness issued pursuant to subsection (a) of this section, but that

[and obligations

the estimated resources in the state general fund, including the amount of any outstanding certificate of indebtedness, in any month or months of such fiscal year are insufficient to meet in full the estimated expenditures for such month or months the state finance council may direct the pooled money investment board to issue another certificate of indebtedness. The issuance and redemption of any certificate of indebtedness issued under this subsection (b) shall be governed by the provisions of subsection (a) of this section.

and obligations

as the same become due

(c) The certificate of indebtedness that the state finance council, at the December 17, 1982, meeting, ordered the pooled money investment board to issue shall not be subject to redemption prior to June 30, 1983.

Sec. 2. K.S.A. 75-3711c is hereby amended to read as follows: 75-3711c. (a) The following matters of business before the state finance council are hereby declared to be matters characterized as legislative delegations:

(1) Increase of expenditure limitations on special revenue funds imposed by legislative act.

(2) Grant of approval pursuant to K.S.A. 75-3711a, *and amendments thereto.*

(3) Exercise of functions specified in K.S.A. 75-3712, 75-3713, 75-3713a or 75-3725a *and amendments thereto.*

(4) Exercise of the functions specified in K.S.A. 46-[illegible]38.

(b) All matters of business provided by this act to be performed by the governor in lieu of the state finance council are hereby declared to be executive functions to be exercised by the executive department subject to subsequent enactment by the legislature.

(c) The matters specified in subsection (a) shall be approved, authorized or directed by the governor and a majority vote of the legislative members of the state finance council ~~and~~. *Except for functions specified in K.S.A. 75-3725a, and amendments thereto,* such approval, authorization or direction shall be given only when the legislature is not in session, upon findings, in addition to any enhancement or alteration thereof by legislative enactment, that:

Division of Budget
January 24, 1983

Senate Bill No. 84

GOVERNOR'S PROPOSAL

Amendments to K.S.A. 75-3725a
Certificates of Indebtedness

Summary

The Governor proposes four changes in K.S.A. 75-3725a authorizing the issuance of certificates of indebtedness to meet State General Fund cash shortages. The amendments are designed to make the procedure a workable one through the remainder of FY 1983 and in future years. They in no way affect the obligation of the state to balance State General Fund demands and resources on an annual basis. The Governor's proposals include:

1. Remove the requirement that certificates be redeemed within 60 days of issuance and require only that they be redeemed within the fiscal year in which issued.

Current law requires redemption within 60 days, but at the same time implies that only one certificate may be issued within a fiscal year. State General Fund cash flow problems may and likely will occur more than 60 days apart. Retention of current law would leave the state unable to respond to subsequent shortages except through disrupting expenditure flows. It is extremely important that this amendment be made applicable to the certificate issued on December 30, 1982. Otherwise, alternative actions will be necessary to offset a cash shortage anticipated in March and April 1983.

2. Specifically authorize the issuance of more than one certificate within a fiscal year, if necessary, provided that all certificate are redeemed within the fiscal year in which they are issued.

A limitation of a single certificate will prevent the state from utilizing the procedure to adjust to rapidly changing circumstances that may occur subsequent to the issuance of an initial certificate. It also causes any certificate issued to be in an amount larger than projections may require because of the inability to address changing circumstances through a subsequent certificate.

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3. Require the affirmative vote of the Governor and a majority of the legislative members to issue a certificate, rather than the current unanimous approval requirements.

The current unanimous approval requirement was adopted when the Finance Council consisted of only six members. The amendment would eliminate the potential for the inavailability of one Council member to preclude the state from responding to an emergency situation.

4. Allow the Finance Council to order the issuance of a certificate of indebtedness while the Legislature is in session.

The proposed amendment will allow the state to respond quickly to situations during the session and will prevent faulty actions being taken prematurely to avoid being required to take the matter to the full Legislature.

Background

As is the case in many states, current Kansas law (K.S.A. 75-3725a) establishes a procedure for managing State General Fund cash flow shortages that occur in the course of a fiscal year. Such a procedure is necessary because of the widely fluctuating pattern of receipts and disbursements from the State General Fund. At times, demands can exceed the level of accumulated balances plus new receipts, and without a mechanism such as the certificate of indebtedness, drastic and abrupt changes in expenditure flows would be necessary to avoid a negative General Fund balance.

In its essentials, K.S.A. 75-3725a provides that if the State Finance Council finds that the expected resources of the State General Fund will be sufficient to meet all demands for the entire fiscal year but that the resources will be insufficient to meet demands in any month or months of the fiscal year, the Council may order the Pooled Money Investment Board (PMIB) to issue a "certificate of indebtedness." The certificate is to be purchased by the State Treasurer. The Treasurer and Director of Accounts and Reports are then to credit the State General Fund in the amount of the purchase. When redeemed, the Treasurer is to return the certificate to the PMIB, and the Treasurer and Director of Accounts and Reports are to make appropriate entries to reduce the State General Fund balance.

The effect of the certificate of indebtedness procedure is to increase the balance in the State General Fund temporarily so that the state can meet its obligations as they come due. The statute speaks in terms of purchasing a certificate with other non-State General Fund monies deposited in the state treasury. In actuality, however, no funds are withdrawn from state accounts and no monies are actually transferred to the State General Fund. Instead, the transaction is handled solely through accounting entries. The State General Fund is credited in the amount of the certificate, and a future accounts payable entry is made simultaneously to offset the credit.

The certificate of indebtedness procedure was utilized for the first time (it was adopted in 1970) on December 17, 1982 when the State Finance Council, acting upon the Governor's recommendation, directed the PMIB to issue a $65.0 million certificate in order to meet a cash shortage anticipated to occur in early and mid-January 1983. The certificate was formally credited to the State General Fund on December 30, 1982.

The certificate of indebtedness statute must be revised if it is to be a workable tool for cash flow management in the remainder of FY 1983 and in future years. Current law contains certain irreconcilably conflicting provisions that will force expenditure flow changes in the coming months unless amendments are adopted. These provisions will also limit the utility of the certificate procedure in future years. In addition certain procedural features of current law are cumbersome and impede orderly, effective cash flow management. The specific amendments proposed by Governor Carlin to resolve these problems are discussed below.

It is important to note at the outset, however, that none of the amendments in any way affect the obligation of the state to insure that State General Fund demands do not exceed resources of the Fund on an annual basis. They only make the certificate of indebtedness a workable and effective cash flow management mechanism.

<u>Redemption Requirements</u>

Current provisions of K.S.A. 75-3725a require that any certificate of indebtedness shall be redeemed within 60 days from issuance or by the following June 30, whichever is sooner. Yet the statute also implies that only one certificate may be issued within a fiscal year because it requires that a certificate be of a sufficient amount in the opinion of the State Finance Council to meet the estimated cash shortages in the State General Fund for each month of the remainder of the fiscal year.

These provisions are conflicting and unworkable. The reality is that several distinct cash shortages may occur within a fiscal year, and they may be separated by more than 60 days. A certificate that is sufficient to meet cash shortages more than 60 days subsequent to issuance is obviously of little value if it must be redeemed within 60 days.

The Governor recommends that K.S.A. 75-3725a be amended to eliminate the requirement that a certificate of indebtedness be redeemed within 60 days and to require only that they be redeemed by the following June 30, i.e., by the end of the fiscal year in which they are issued. The Governor's recommendation is also intended to apply to the certificate of indebtedness authorized by the State Finance Council on December 17, 1982.

The Governor's recommendations will enable the certificate of indebtedness statute to be utilized to meet the realities of the State General Fund cash flow in FY 1983 and in subsequent years. It is extremely important that this amendment be adopted for FY 1983 and be made applicable to the certificate issued in December 1982. Otherwise, substantial expenditure flow changes will be necessary in February and March 1983 to avoid a negative balance in the State General Fund during March and April. Current projections indicate that even with adoption of Governor Carlin's proposals to defer Local Ad Valorem Tax Reduction and County and City Revenue Sharing payments and to accelerate withholding, retail sales and compensating use tax collections effective April 1, 1983, State General Fund cash shortages should be expected from mid-March through April. With adoption of the Governor's deferral and acceleration proposals, the State General Fund should return to a positive balance position by the end of April and remain there through the fiscal year.

Under current law, the certificate of indebtedness issued in December must be redeemed by March 1, and thus will be unavailable to meet the March and April cash needs. Without the amendment to K.S.A. 75-3725a, deferral of certain statutorily established payments to local school districts would likely be required to avoid pushing the State General Fund into a negative unencumbered cash balance position. Those payments of sufficient magnitude to affect significantly the expected shortage are school transportation aid ($23.0 million on February 25), special education ($17.2 million on February 28), and general school aid ($32.8 million on the 20th of each month). These deferrals would require legislative action because the allotment system imposed under K.S.A. 75-3722 et seq. must be withdrawn if the Legislature adopts the Governor's deferral and acceleration proposals. These actions will bring the resources of the State General Fund to a level sufficient to meet all obligations during FY 1983.

Deletion of the 60-day redemption requirement will return the certificate of indebtedness statute to the form in which it was originally introduced in the 1970 Legislature. As introduced, the bill required that a certificate be sufficient to meet estimated demands for each month remaining in the fiscal year and that a certificate be redeemed only by the close of the fiscal year in which it was issued. The 60-day redemption feature was adopted as a floor amendment, but apparently no attempt was made to reconcile the conflict presented by the amendment.

Requiring that a certificate be redeemed within the fiscal year in which it is issued is consistent with sound cash management. It still obligates the state to balance State General Fund resources and demands each fiscal year, but it minimizes the need for the state to disrupt its expenditure patterns as would be the case in FY 1983 if no changes are made. It also recognizes that in years such as FY 1983 where substantial changes in expenditures and receipts are necessary to balance the State General Fund that these changes require time to implement and take effect and may not be able to eliminate cash flow shortages. The amendment would enable the state to continue operations as smoothly as possible with the reasonable assurance that there will be a positive State General Fund balance at the close of the fiscal year.

Multiple Certificates

As stated, current law provides no specific authorization for issuing more than one certificate in a fiscal year and in fact implies that only one certificate may be issued. This prevents the state from utilizing the certificate of indebtedness procedure to respond to rapidly changing circumstances subsequent to the initial certificate. Additionally, it is literally impossible to project with complete accuracy the day-to-day cash flow in the State General Fund for all or any substantial part of a fiscal year as is necessary in assessing the need for and amount of any certificate of indebtedness. Consequently, this limitation causes any certificate that is issued to be in an amount that is larger by some measure than estimates might indicate is necessary.

The Governor recommends that K.S.A. 75-3725a be amended to authorize specifically the issuance of more than one certificate in a fiscal year should the State Finance Council find it necessary.

The proposed amendment will not affect the requirements that accompany the issuance of a certificate of indebtedness. That is, the State Finance Council would still be required to find that the resources of the State General Fund will be sufficient to meet all demands for the fiscal year and that all certificates can be redeemed within the fiscal year in which they are issued. The amendment will simply allow the state to respond to rapidly changing circumstances that may transpire after the issuance of one certificate. This will enable state government operations, particularly aid flows to local government, to proceed as smoothly as possible in such situations. It will also enable policymakers to focus their attention on the most effective means of achieving a year-long balance between resources and outlays. Without authority to issue subsequent certificates, it is likely that abrupt changes in expenditure flows would be required to meet cash shortages. In addition, the amendment should reduce the bias inherent in current law which causes certificates that are issued to be larger than may be required.

Unanimous Approval Requirement

Current law requires that the State Finance Council must approve the issuance of a certificate of indebtedness by a unanimous vote. This was adopted as part of the original bill in 1970 when the State Finance Council consisted only of six members -- the Governor, Lieutenant Governor, President Pro Tem of the Senate, Speaker of the House, and chairpersons of the Senate and House Ways and Means Committees. In 1974, the Council was expanded to the current membership of nine members -- the Governor and eight legislators (majority and minority leadership plus the chairpersons of the Ways and Means Committees). Since the change in membership, most actions by the Finance Council have required approval only by the Governor and five legislative members. General laws for the Finance Council (K.S.A. 75-3711) provide that such a vote is sufficient for all actions of the Council unless otherwise specifically provided by law.

While it is not likely that there will often be disagreement over the need for a certificate of indebtedness, the unanimous vote requirement could hinder the ability to move quickly on issuing a certificate if necessary. Current law requires the Governor to call a meeting within 48 hours of being notified of the need for a certificate. The inavailability of one member of the Council during this period would preclude it from acting, and if the inavailability were for an extended period of time, it could be detrimental to the operation of state government. While the need for a certificate can be reasonably anticipated, the actual details as to amounts and timing can not be projected accurately far in advance. Thus the need to schedule Council meetings to act on certificates with little advance notice is likely to continue. The unanimous vote requirement can prove a hindrance in this regard.

The Governor proposes that K.S.A. 75-3725a be amended to provide that the State Finance Council may approve the issuance of a certificate of indebtedness by an affirmative vote of the Governor plus five of the legislative members.

The proposed amendment will bring the certificate of indebtedness statute into line with the voting requirement for most other Finance Council actions and will reflect the change in Council membership adopted in 1974. It will also eliminate possible situations where the inavailability of a single Council member would preclude the Council from acting on a necessary certificate.

Action During the Legislative Session

Current law prohibits the State Finance Council from acting on the issuance of a certificate of indebtedness while the Legislature is in session, as is the case with most other functions of the Council. This can impede effective operations in one of two ways. First, it could lead the Finance Council to act prior to the legislative session on a certificate that might not be needed until some later date to avoid taking the matter to the entire Legislature early in the session. The danger is that the certificate may be issued at too early or late a date and that it may be in an amount that is less than or greater than is necessary due to the difficulties in predicting day to day cash flow very far in advance. Second, if an unforeseen cash shortage were to develop during the legislative session, it would be difficult for the entire Legislature to act quickly enough in ordering a certificate to meet such an emergency.

The Governor recommends amendments that will allow the State Finance Council to order the issuance of certificates of indebtedness while the Legislature is in session.

The Governor's proposal enables the certificate of indebtedness procedure to be utilized in the most orderly manner possible. It will avoid situations where faulty actions are taken on the basis of inaccurate forecasts. It will also enable the procedure to be utilized to meet emergencies which might arise during the legislative session when sufficient time is not available for the full body to act. The Finance Council currently has authority to approve Tort Claims Act agreements while the Legislature is in session.

The Governor's amendments will not affect the limitations on other State Finance Council powers while the Legislature is in session. The bulk of these powers are in the nature of appropriations functions with which the full Legislature is regularly and rightfully concerned.

Budget Memo No.
Legislative Research Department

SUBJECT: Unemployment Compensation Management

A recession and accompanying high unemployment rates have served to increase legislative concern about unemployment compensation. Several measures were considered during the 1982 Session with the focus both on imposing more stringent eligibility criteria and on improving the financial status of the Employment Security Fund through changes in the base upon which contributions to the Fund are calculated. During the last interim, the Special Committee on Labor and Industry was charged with a study of proposed amendments to the Employment Security Law to guarantee the financial integrity of the Fund. That Committee recommended revision to the current experience rating system, by which employer contribution rates are calculated, and concluded that further data was needed to determine the impact of other measures.

Relatively little attention has been given, however, to the manner in which the state of Kansas acts as an employer with respect to unemployment compensation claims made by former state employees. It is the purpose of this memorandum to examine briefly the qualifications for receipt of unemployment compensation, the procedure for processing claims, the financing of the program and the potential for reducing the amount paid by the state for claims charged to its account. The rate of the state's contribution to unemployment compensation insurance has risen steadily in recent years. In FY 1982, the rate was 0.2 percent of covered payroll. That rate increases to 0.7 percent in FY 1984, an amount conservatively estimated to be in excess of $6.7 million. While economic conditions and qualification criteria have the most significant impact on how many dollars the state will pay out in claims it has been suggested that more diligence on the part of state agencies in reviewing and contesting claims could reduce state expenditures. It is the latter premise that this memorandum explores.

Eligibility for Unemployment Compensation

Unemployment compensation insurance is a joint federal-state program and state laws conform to federal requirements. Conceptually, unemployment compensation is designed to replace part of lost earnings for workers who are unemployed through no fault of their own. However, there are few federal laws governing eligibility and Kansas establishes its own requirements which an unemployed worker must meet.

K.S.A. 44-705 specifies basic 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;

2. the claimant has made a valid claim for benefits;

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;

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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; and

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 met each of the five eligibility conditions, that individual may not receive unemployment benefits.

K.S.A. 44-706 sets forth a number of conditions that disqualify an individual from making a valid claim. Particularly significant is the requirement that the employer prove by a preponderance of evidence that the person does not qualify for benefits. The circumstances under which an individual would be disqualified are outlined as follows:

1. 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 construed a person as having left work with good cause if:

    a. 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

    b. a reasonable and prudent individual would separate from the employment under the same conditions.

2. The same period of disqualification applies for a person who has been discharged for breach of duty reasonably owed an employer. 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.

3. 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.

4. 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.

5. A worker is disqualified from unemployment benefits for any week in which the worker is receiving benefits from another state or the United States.

6. A worker is disqualified 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.

7. 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, the individual is disqualified for a one year period beginning 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.

8. A worker is disqualified for benefits for any week in which the worker receives temporary total disability or permanent total disability under the worker's compensation law of any state or the United States.

9. Generally, employees of educational institutions are disqualified between successive academic years or terms and during established vacation or holiday recesses when the individual has a reasonable assurance of returning to work after the period in question.

10. A worker is disqualified 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 category basically refers to the professional athlete.

11. An alien is disqualified 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.

12. Finally, certain persons may not receive 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.

Claims Procedure

K.S.A. 44-709 prescribes the procedures for filing a claim for unemployment compensation, which are further defined through regulations adopted by the Secretary of Human Resources. The claimant must initiate the process by filing with a local

Unemployment Insurance Office. An examiner designated by the Secretary of Human Resources determines the claimant's eligibility and the amount payable and notifies the last employer of the claim and the basis for the claim. The employer may provide information to the examiner at this point if the employer believes that the reason for separation would disqualify the employee. Both the last employer and the claimant are notified of the examiner's determination and either party may appeal the decision within 16 days, in which case the determination is referred to a referee for hearing and a decision to affirm or modify the examiner's finding. Both parties are again afforded an opportunity to appeal the referee's decision to a Board of Review, two members of which are appointed by the Governor with a third member appointed by the first two. Appeal of the Board's decision must be pursued in District Court.

Financing

Employers fall into a number of categories for the purpose of determining the amount they contribute annually to the Employment Security Fund. Kansas statutes establish a special category for the state that requires payments at a fiscal year rate based upon the balances in the state's account, the unemployment experience of covered state agencies, estimated covered wages in the ensuing year and actuarial and other information.

For purposes of the discussion that follows, it is important to emphasize that the cost to the state for unemployment compensation is directly affected by the ability of state agencies to stabilize their workforce, minimize use of seasonal and temporary workers (who qualify for benefits at the end of their employment), avoid lay-offs and carefully document terminations. Of course, an unemployment claim will not amount to the cost of retaining a salaried employee, but it is an off-setting cost of reducing the workforce that can easily be overlooked. It is also important to note that, while management of the workforce affects the cost of unemployment compensation, not all of those costs are attributable to the state's actions as an employer. For example, if an individual leaves state employment for another job from which he is subsequently laid off, the state may still be responsible for paying a proportionate share of his unemployment compensation, depending on the duration of the second job. Benefits paid are based on the individual's wages during the first four of the last five completed calendar quarters immediately preceding the week in which a claim is filed. The employer or employers during those first four quarters are charged on a pro rata basis according to the wages that were paid.

Management by State Agencies

While not all of the costs associated with unemployment benefits are controllable, it is possible that more control could be exerted than has been the case in the past. Few statistics are available, but one indication may be the preliminary results of a study conducted by the National Commission on Unemployment Compensation which revealed that almost 19 percent of overpayments to claimants were attributable to employer error or inaction. Unfortunately, that study provided no data on percentage of total dollar payments that such overpayments represented.

The lack of statistical data by which to assess the state's handling of unemployment claims is acute. In FY 1982, the state's account was charged $2,596,235 for claims, although the state made payments of only $1,206,967 to its account in that period. The number of dollars attributable to each state agency and the number of individuals to whom claims were paid in any quarter can be ascertained (Table I). But no centralized records are kept regarding the number of claims that were contested or appealed, the basis for the claims, the number of claims denied or dollar amount of benefits paid to individuals for whom the state was the last employer (as opposed to base year employer). It is possible only to speculate, based upon indirect inferences and informal discussions with agency officials, on the degree to which state agencies scrutinize the validity of claims made by former state employees or the magnitude of overpayments that may result from a lack of scrutiny.

Some agency officials, however, believe there is a problem. Claims personnel at the Department of Human Resources note that a significant number of state agencies either do not respond or respond inappropriately to notices of claims filed by former employees. Since eligibility for unemployment benefits depends in most instances on the reason an individual is out of work, only the former employer is in a position to verify or contest a claim on that basis. Determination on the validity of a claim is made solely on the basis of information provided by the claimant if the agency does not respond. When the former employer, in this case a state agency, is notified of that determination, it has 16 days to respond. If no response is received, the claim is considered valid. State agency personnel, therefore, must carefully document an employee's reason for leaving and be prepared to respond in a timely fashion if they disagree with the information provided by the claimant.

That a number of agencies do not respond has been attributed to several factors. First, there is no direct incentive for agencies to hold down the cost of unemployment benefits. Although the rate that agencies must budget for unemployment compensation varies directly with actual claims paid, the rate is uniform for all agencies. A single agency is not likely to realize savings, therefore, even though it may minimize its own costs. Another apparent problem is that agency personnel often do not understand the process or the circumstances under which they should legitimately contest a claim. As a result, claim notices are ignored or the agency response is irrelevant to the question of disqualification for benefits.

Because there is no statistical information of any kind by which to assess agency behavior in this area, Kansas Legislative Research Department staff contacted personnel officers in six of the larger state agencies to inquire informally about their process for handling unemployment claims. With one exception, these individuals felt they were doing a good job of monitoring and contesting claims and, interestingly, felt their agency was probably the only one in state government that was doing so. The one individual who admitted little effort on the part of the agency gave as the reason the bias on behalf of the claimant. He felt that appeals by the agency were so seldom successful that the effort was not worthwhile. In a similar vein, another personnel officer noted what he felt to be discrepancies between the Employment Security Law and Civil Service regulations in that an agency can discharge an employee under Civil Service regulations for reasons that would not disqualify him or her under the "breach of duty" provisions of the Employment Security Law. Officials at the Department of Human Resources took issue with this observation, however, noting that with the possible exception of "Inefficiency or incompetency in the performance of duties," the grounds for dismissal listed in K.A.R. 1-10-1 would also constitute a breach of duty.

If nothing else, the contradictory viewpoints expressed by personnel officers versus Department of Human Resources staff members indicate a lack of clarity in interpreting and implementing the Employment Security Law. That alone may be sufficient evidence that state agencies need to pay more attention to management of unemployment claims and to secure a thorough knowledge of the legal basis for claims, of when to contest and of the appropriate procedure and documentation. Conversely, it should also be noted that this issue involves an area of law that necessarily requires some discretion and judgment on the part of the individual or individuals who must ultimately decide a claimant's eligibility. In such a circumstance, particularly when the burden of proof rests with the employer, differences of opinion are inevitable.

Possible Alternatives

Although it is impossible to estimate the savings to the state that might result if each agency insured that former employees were disqualified if appropriate, it can be assumed that state expenditures for unemployment benefits could be reduced through an aggressive program. There are a number of options the Legislature could consider.

First, it became apparent through the many discussions that Legislative Research staff held with agency personnel that any effort to train or educate personnel officers regarding the handling of claims is sporadic, fragmented and decentralized. Neither the Division of Personnel Services nor the Department of Human Resources conducts an organized program to keep personnel officers abreast of changes in legislation or to encourage them to contest claims when it appears the claimant is disqualified for benefits. While both organizations have provided training programs in the past, there is no on-going effort and benefits of training are lost as personnel officers turn over. Even modest efforts might prove beneficial. Many of the personnel officers referred to a workshop they had attended as a catalyst for the monitoring of unemployment claims in the last 18 months. As one personnel officer noted, "We've improved our success ratio considerably as we gain experience in documenting and presenting (to the examiner) reasons for dismissal." Further evidence of need for training, or at least for more information, was the fact that most of the persons contacted were unaware of actions by the 1982 Legislature which will reduce costs if claims are contested successfully. At this point in time, it seems safe to say that the degree to which state agencies are monitoring and contesting unemployment claims is a function of the individual initiatives and resources of each agency.

A second option might be development of a centralized staff who could both monitor and assist state agencies. Because of the access to personnel records, the Division of Personnel Services would be a logical place to house such a staff; however, other divisions within the Department of Administration could also perform this function. In conjunction with this approach, consideration might be given to building the costs into the rate agencies pay for unemployment compensation benefits. This form of financing would probably require enabling legislation, but it would alleviate total dependence on the State General Fund.

An alternative to improvement of state agency capacity to handle unemployment claims is to turn to private enterprise. Consulting firms offer unemployment compensation management services which may include claims handling, representation at hearings, benefit charge auditing as well as review and consultation on personnel practices that affect unemployment compensation claims. The obvious advantage to a private firm is the specialization they could potentially offer with respect to familiarity with procedures, documentation and presentation of evidence to ensure conformity with the law. The question to be raised is whether the cost of such services is equaled or exceeded by reduced benefits payments, or whether a relatively modest investment in training for agency personnel officers would comparably reduce costs. Given the lack of statistical data at this time, the possibility exists that either option could cost more than the savings which could result, and the Legislature may wish to suggest a period of data gathering before further action is pursued. Or a private firm could be retained for a limited period of time to conduct a pilot project with one or two agencies to provide a basis for further decisions.

Conclusion

The area of unemployment compensation presents a somewhat unusual budget issue in that it cuts across all agency lines and represents an item of expenditure that has heretofore been only a matter of calculation. It has been an almost hidden expenditure in that legislative budget review has excluded any question of the rate assessed for unemployment compensation. Although a number of unanswered questions remain about the dollar magnitude of the issue this memorandum sought to raise, it seems apparent that not all state agencies are making a positive effort to contain costs. And even agencies that presently conduct an aggressive claims management program may have areas for improvement, as some of the personnel officers admitted. The significant cost increase in recent years and the potential for inadequate management provide a basis for some concern. While most of the cost is necessary, it would be unfortunate if neglect of claims management accounts for a significant portion of expenditures.

TABLE I

BENEFITS CHARGED BY QUARTER AND NUMBER CLAIMANTS BY AGENCY

Fiscal Year Ending June 30, 1982

	9-30-81		12-31-81		3-31-82		6-30-82		Total FY 1982	
Agency	Benefits	No.	Benefits	No.	Benefits	No.	Benefits	No.	Benefits	Average
Adjutant General	$ 825	3	$ 1,210	2	$ 868	2	$ 675	2	$ 3,578	2.25
Department on Aging	70	1	782	2	1,064	2	369	2	2,285	1.75
Board of Agriculture	2,904	5	1,668	4	236	2	2,446	5	7,254	4.00
Animal Health Department	17	1	0		0		0		17	.25
Commission on Civil Rights	1,043	1	2,496	3	1,721	3	589	1	5,849	2.00
Attorney General	1,170	2	332	3	1,401	2	1,015	3	3,918	2.50
Board of Healing Arts	11	1	0		0		0		11	.25
Corporation Commission	299	5	3,518	5	3,057	6	430	6	7,304	5.50
Correctional - Vocational Training Center	1,567	3	9	1	554	2	4,655	4	6,785	3.00
Corrections Ombudsman Board	1,177	1	321	1	0		0		1,498	.50
Crime Victims Reparations Board	596	1	1,077	1	0		0		1,673	.50
Department of Administration	12,069	30	10,344	32	8,432	31	16,476	36	47,321	32.25
Fish and Game Commission	436	3	1,720	4	953	3	103	2	3,212	3.00
Fort Hays State University	2,769	6	2,161	4	2,453	7	3,020	4	10,403	5.25
Governmental Ethics Committee	544	1	0		0		0		544	.25
Governor	1,632	1	2,272	2	175	2	0		4,079	1.25
Governor's Committee on Criminal Administration	3,536	2	2,312	2	0		0		5,848	1.00
Grain Inspection Department	8,722	16	10,444	15	16,784	31	21,694	52	57,644	21.75
Department of Health and Environment	6,951	13	5,715	13	6,643	12	7,018	13	26,327	12.75
Department of Transportation	22,252	62	31,499	72	43,071	72	38,230	69	135,052	68.75
Kansas Highway Patrol	3,010	9	3,036	18	6,047	6	3,261	5	15,354	9.50
Historical Society	4,307	7	3,185	4	1,899	5	2,308	3	11,699	4.75
Department of Human Resources	37,067	85	52,218	111	83,698	116	67,651	101	240,634	103.25
Department of Economic Development	1,623	3	136	1	0		237	1	1,996	1.25
Correctional Institution for Women	8,332	9	16,158	13	10,130	11	5,141	8	39,761	10.25
Industrial Reformatory	5,516	11	6,538	17	5,084	19	4,399	13	21,537	15.00
Youth Center at Topeka	10,738	23	10,052	19	6,708	15	3,500	10	30,998	16.75
Youth Center at Beloit	15*	1	909	1	3,720	3	1,252	3	5,866	2.00
Insurance Department	983	2	2	1	7	1	484	1	1,476	1.25
Youth Center at Atchison	2,120	9	4,079	8	6,284	9	4,039	11	16,522	9.25
Kansas Neurological Institute	20,307	51	22,764	51	20,606	48	20,306	36	83,983	46.50
Kansas Public Employees Retirement System	37	1	1,102	2	56*		110	1	1,193	1.00
Kansas State University	58,834	110	34,106	53	30,645	72	53,258	128	176,843	90.75
Board of State Fair Managers	2,193	3	729	2	667	1	0		3,589	1.50
Emporia State University	6,961	11	9,000	13	7,060	14	4,749	7	27,770	11.25

Agency	9-30-81 Benefits	No.	12-31-81 Benefits	No.	3-31-82 Benefits	No.	6-30-82 Benefits	No.	Total FY 1982 Benefits	Average
Pittsburg State University	$ 7,471	16	$ 8,228	14	$ 11,155	17	$ 6,537	14	$ 33,391	15.25
Larned State Hospital	6,187	12	9,740	20	14,329	29	17,517	28	47,773	22.25
Legislature	0		52	1	302	3	693	4	1,047	2.00
State Library	984	1	578	1	532	1	759	2	2,853	1.25
Board of Nursing	0		0		3	1	0		3	.25
Osawatomie State Hospital	10,513	33	16,482	35	16,911	38	26,760	40	70,666	36.50
Park and Resources Authority	473	2	1,652	5	1,158	7	437	4	3,720	4.50
Parsons State Hospital	12,075	15	10,352	16	6,068	13	3,927	8	32,422	13.00
Department of Corrections	2,959	8	4,468	11	4,564	10	4,582	10	16,573	9.75
Adult Authority	0		0		131	1	149	1	280	.50
State Penitentiary	10,718	21	15,569	21	20,022	32	19,153	27	65,462	25.25
Legislative Division - Post Audit	0		0		0		1,438	2	1,438	.50
Real Estate Commission	1,733	2	382	1	21	1	239	2	2,375	1.50
Reception and Diagnostic Center	2,137	3	1,702	4	1,950	2	1,178	1	6,967	2.50
Rainbow Mental Health Facility	1,417	5	3,919	5	4,428	7	5,153	9	14,917	6.50
Department of Revenue	12,812	46	15,645	48	18,684	51	20,419	52	67,560	49.25
Revisor of Statutes Office	0		0		0		606	1	606	.25
Norton State Hospital	2,828	7	4,133	9	6,691	8	6,080	12	19,732	9.00
School for the Visually Handicapped	2,878	5	2,183	3	2,782	4	2,644	4	10,487	4.00
School for the Deaf	202	1	1,582	2	1,570	3	1,609	3	4,963	2.25
Department of Social and Rehabilitation Services	53,606	132	65,677	133	80,077	129	76,338	140	275,698	133.50
Mental Health and Retardation Services	502	1	1,088	1	586	1	0		2,176	.75
Soldiers Home	279	2	1,025	2	989	4	1,884	5	4,177	3.25
Department of Education	2,648	6	2,534	3	3,037	3	1,814	1	10,033	3.25
Kansas Technical Institute	708	2	2,214	5	1,616	3	297	4	4,835	3.50
Topeka State Hospital	15,207	23	11,258	26	14,034	27	12,632	22	53,131	24.50
State Treasurer	1,769	2	1,088	1	740	2	1,274	1	4,871	2.50
Judicial Department	13,739	19	11,436	19	11,783	18	11,124	20	48,082	19.00
Kansas University	163,053	309	177,193	313	164,883	298	154,618	271	659,747	297.75
Winfield State Hospital	8,682	24	12,870	28	14,235	33	12,372	31	48,159	29.00
Wichita State University	13,594	32	18,725	42	18,550	44	21,397	49	72,266	41.75
TOTAL BENEFITS CHARGED TO STATE OF KANSAS	$ 579,777		$643,669		$ 691,742		$681,045		$2,596,233	

* Credit.

SOURCE: Division of Accounts and Reports.