Approved: A. Douville 4-8-87
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:06 a.m./p.m. on March 4, 1987 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Ann Donaldson, Research Department
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative Darrel Webb
Bill Clawson, Chief of Benefits - Department of Human Resources
Wayne Maichel, Executive Vice President - Kansas AFL-CIO

Representative Webb, speaking on behalf of HB 2453, explained the concept of the bill. He discussed an article on shared work from the Texas Employment Commission which had been disbributed to the committee, attachment #1. Essentially this would allow short term compensation to workers having work-weeks reduced during economic downturns. Representative Webb discussed a situation at Motorola where this was in effect and the company estimated that it saved a million dollars. This concept is in use in Canada, several European countries and twelve states. Representative Webb explained that he had discussed this bill with Bill Clawson, Chief of Benefits - Department of Human Resources, and that the bill, as it is written, doesn't adapt well to Kansas law. Representative Webb suggested that an interim study could be requested or that the chairman appoint a subcommittee.

Bill Clawson was recognized to address the committee. He pointed out that this legislation originated in California which has sunset its law as of December, 1986, due to lack of interest.

Mr. Clawson also made note of information on the handout from Representative Webb that in the lower right hand corner a surcharge on employers is mentioned. He stated that: the premise of the bill had merit, that the bill as proposed would not work well for Kansas but with study, work and discussion a "fairly decent" piece of legislation could result.

The intent of the bill was explained to be that whenever an employer has a reduction in work force, to reduce all workers, 20% (as an example) of the weekly hours. Under this provision, 20% of the workers' weekly benefit amount would be paid to supplement those wages earned during the other four work days regardless of the earnings of the four workdays.

Mr. Clawson went on to say that the bill, as it is currently prepared, would not exclude employers who are already deficit. Additional funds would be paid out and these employers could not regain a nondeficit balance. He suggested that employers who are industry rated should possibly be excluded. Industry rated means that the employer is new and the rating is low, usually too low.

Advantages of the shared work program would be:

1. It would keep the employer's work force in tact.
2. In most cases, the insurance and the fringe benefits continue.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Disadvantages of the shared work program would be:

1. Workers would have to be separated out of seniority and in cases where there are bargaining units involved, it would be contrary.
2. Additional costs to the employer:
   a. Individual accounts
   b. A trust fund
   c. Administrative due to a separate system of reporting

Chairman Douville stated that his interpretation of Mr. Clawson's presentation was that the subject requires scrutiny, explanation and might require some changes in the law that would affect employers as well as employees. The response was affirmative.

Representative Acheson asked if income taxes would be collected off the portion paid by employment security. The response was negative.

Representative Buehler related his preception of the presentation to be that if a layoff were necessary in a specific department then that layoff would carry over to the entire work force in the form of reduced hours. This would make the entire work force eligible for benefits, rather than the core group affected, and assure the workers' wages so that they could maintain their standard of living.

Mr. Clawson answered in the affirmative and explained that the supplement would be 20% of the weekly benefit amount (in case of a one day off, 20% work reduction). In some of the projected instances it could bring the workers' gross income up to 92% of their average weekly wage (under this provision otherwise there would be no unemployment insurance).

Representative Whiteman asked Mr. Clawson if, to his knowledge, there were any employers in the state using some form of the shared work plan. He was not aware of any but went on to relate that some state agencies are considering furloughs which will require reducing staff by five days in each pay period.

Wayne Maichel, Executive Vice President - Kansas AFL-CIO, was recognized and stated that it supported the concept. He also noted that when the concept was first introduced several years ago that it was not supported by labor but is now recognized and supported by the national unit. Mr. Maichel suggested the Labor-Management Advisory Council on Compensation as another alternative to further examining the concept. He added that it was of benefit to the employer by having a trained employee retained on the job and to the employee by being able to maintain a job.

Chairman Douville asked, that assuming something could be done, how long it would take the Department of Human Resources to be able to handle the situation administratively.

Mr. Clawson estimated that it would take a "bare minimum" of six months to allow for proper programming of computers.

The chairman reiterated alternatives regarding the bill and asked for ideas or suggestions from members of the committee. Representative Buehler asked if the bill were let lie if it would remain "alive" until next session. The answer being affirmative, he noted that would allow time for the members to study the issue.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,

room 526-S, Statehouse, at 9:06 a.m./p.m. on March 4, 1987.

Chairman Douville stated that an interim study could be requested and Representative Acheson noted that an advisory committee might be an alternative.

Chairman Douville stated that he would hold the idea in abeyance for the time being and would talk with the Secretary of Human Resources when he assumes duties March 9, 1987. Further discussion on the bill will be scheduled at a future date.

Following was committee discussion on the proposed changes. Chairman Douville asked the committee to take the information, review it and call him if there were any questions, attachment #2.

The meeting was adjourned at 9:53 a.m.

The next meeting will be March 5, 1987, 9:00 a.m.

HOUSE COMMITTEE
ON
LABOR AND INDUSTRY

GUEST LIST DATE March 4, 1987

Name	City	Representing
Bill Layes	~~Dept. Human Res.~~ Topeka	Ks. Dept. Human Resources
Paul Bicknell	Topeka	Ks Dept of Human Resources
BILL CLAWSON	"	" " " " "
Bill Morrissey	"	DHR/Work Comp
Bud Langston	"	" "
[illegible]	"	Rehab Svc / SRS.
Mike Wheeler	Marion	Marion High School
Joan Vinduska	Marion	Marion High School
BRUNO PINTO	MARION	MARION HIGH SCHOOL
Harry D. Helser	Wichita	Ks. AFL-CIO
Wayne Maichel	Top	Ks. AFL-CIO
RON GACHES	WICHITA	BMAC
Dave Johnson	Top	Ks Ins Dept
Chris Cowger	Topeka	KS. Ins. Dept.

An Alternative to Layoffs

Legislation now provides employers the opportunity to participate in the Shared Work Unemployment Compensation Program effective January 1, 1986.

Shared Work is a program which was developed to help both employers and employees in a recessionary economy. The principle behind Shared Work is to distribute the effects of an economic downturn more evenly throughout a workforce, consequently minimizing harm to the economy as a whole. The practice involves reducing work hours for employees in the affected unit, rather than laying off a given percentage of its work force and permits prorated unemployment compensation benefits to employees to supplement wages lost as a result of reduced hours.

Shared Work

Unemployment Compensation Program

Attachment #1
House Labor & Industry
March 4, 1987

The Process

An interested employer may obtain a Shared Work Plan Application by contacting any office of the Texas Employment Commission. To participate, an employer must reduce the normal weekly hours of work for an employee in the affected unit by at least 10% (but not more than 40%), and the plan must apply to at least 10% of the employees in the affected unit who meet monetary requirements for regular Unemployment Compensation. If the plan is approved by the Commission, workers who qualify for unemployment benefits would receive both wages and shared work benefits. The shared work benefits would be that percentage of regular unemployment benefits which matches the reduction described in the employer's plan.

For example:

A firm facing a 20% reduction in production usually lays off one-fifth of its work force. Faced with this situation, a company could retain its total work force on a four-day-a-week basis. This reduction from 40 to 32 hours cuts production by the required 20% without reducing the number of employees. All receive their wages based on four days of work and in addition, receive a partial Unemployment Compensation benefit equal to 20% of the Unemployment Compensation weekly benefit amount (WBA) payable had the employee been unemployed a full week.

An employee normally works a 40 hour week. The employer has to reduce the work schedule by 20%. The employer submits a plan and it is approved under the Shared Work program. The employee qualifies for regular Unemployment Compensation with a weekly benefit amount (WBA) of $150.

20% × 40 hour work week = 8 hours
Employee works and earns wages for 32 hours
20% × $150 WBA = $30

The employee receives $30 of unemployment benefits in addition to the 32 hours of wages earned from you the employer.

The Conditions

The Commission may approve a Shared Work Plan if:

- There is an "affected unit" of not less than 2 employees.
- The normal weekly hours of work and corresponding wages for a participating employee are reduced in the plan by not less than 10% and no more than 40%.
- The plan applies to at least 10% of the employees in the affected unit.
- The plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit.
- The employer certifies that the implementation of a Shared Work Plan and the resulting reduction in work hours is in lieu of the temporary layoff that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours.

Conditions for Shared Work benefits:

- An individual must accept all work offered by the participating employer for the claim period filed.
- An individual must be able to work and be available for full-time work with the participating employer.
- An individual must be eligible for regular benefits in the state of Texas.
- No benefit will be paid to an individual who works more than the reduced hours specified in the plan.
- No benefit will be paid to an individual who is reduced in work hours as a result of seasonal lack of work.

Shared Work Plan Application format:

- Name and TEC account number of employer.
- Proposed beginning date of plan.
- Description of how fringe benefits will be affected by the plan.
- Concurrence of a bargaining representative if one exists.
- Certification that:
  a) The plan applies to at least 10% of employees.
  b) The reduction is in lieu of temporary layoffs.
- An attached listing of affected employees showing:
  a) Full names.
  b) Social Security numbers.

What Happens Once the Application is Filed?

Once the plan is approved, a packet containing Initial Claim forms will be sent to the employer. These forms are distributed to the affected employee for completion, then sent by the employer to the Texas Employment Commission to establish eligibility for benefits. Once the Initial Claim forms are received by the Commission and are processed, a bi-weekly certification form will be mailed to the employer for completion. The bi-weekly certification forms will continue to be mailed to the employer for each week the plan is to be followed.

Will Participation Affect an Employer's Unemployment Tax Rate?

Benefits paid under shared work plans are charged back against employers' accounts for use in computing general (experience) tax rates. Thus, they affect employers' tax rates in the same manner and to the same extent as other chargebacks of benefits. The six percent statutory limit on general tax rates is extended to nine percent for the year of an employer's participation in the shared work program and for three years thereafter.

If you have any questions, call 1-512-463-2577. Applications may be obtained from your local TEC office or by request from:
Texas Employment Commission, Benefits Department - Rm. 352, 15th and Congress, Austin, Texas 78778

PROPOSED AMENDMENTS TO ~~S.B.~~ H.B. NO. 2186

1 On page 21, preceding line 756, by inserting the following
2 material to read as follows:
3 "Sec. 9. K.S.A. 44-510g is hereby amended to read as
4 follows: 44-510g. (a) A primary purpose of the ~~workmen's~~ workers
5 compensation act shall be to restore the injured employee to
6 substantial and gainful employment. To this end, the director
7 shall appoint, subject to the approval of the secretary, a
8 specialist in medical, physical and vocational rehabilitation,
9 who shall be referred to as the rehabilitation administrator. The
10 rehabilitation administrator shall be in the classified service
11 under the Kansas civil service act. The rehabilitation
12 administrator shall: (1) Continuously study the problems of
13 physical and vocational rehabilitation; (2) investigate and
14 maintain a directory of all rehabilitation facilities, public or
15 private, in this state, and, where such rehabilitation
16 administrator determines necessary, in any other state; and (3)
17 be fully knowledgeable regarding the eligibility requirements of
18 all state, federal and other public medical, physical and
19 vocational rehabilitation facilities and benefits. With respect
20 to private facilities and agencies providing medical, physical
21 and vocational rehabilitation services, including rehabilitation
22 service programs provided directly by employers, the director
23 shall approve as qualified such facilities, institutions,
24 agencies, employer programs and physicians as are capable of
25 rendering competent rehabilitation services. No such facility ~~or~~,
26 institution, agency or employer program shall be considered
27 qualified unless it is specifically equipped to provide
28 rehabilitation services for persons suffering from either some
29 specialized type of disability or some general type of disability
30 within the field of occupational injury or disease, and is
31 staffed with trained and qualified personnel and, with respect to
32 medical and physical rehabilitation, unless it is supervised by a

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33 physician qualified to render such service. No physician shall be considered
34 qualified unless such physician has had such experience and training as the
35 director may deem necessary.
36 (b) Under the direction of the director, and subject to the director's
37 final approval, the rehabilitation administrator shall have the duties of
38 directing and auditing medical, physical and vocational rehabilitation of
39 employees in accordance with the provisions of this section.
40 (c) An employee who has suffered an injury shall be entitled to prompt
41 medical and physical rehabilitation services, as may be reasonably necessary
42 to restore such employee to substantial and gainful employment and as provided
43 in this section.
44 (d) When as a result of an injury or occupational disease which is
45 compensable under the ~~workmen's~~ workers compensation act, the employee is
46 unable to perform work for the same employer with or without accommodation or
47 for which such employee has previous training, education, qualifications or
48 experience, ~~or when such employee is unable to perform other substantial and~~
49 ~~gainful employment~~ such employee shall be entitled to such vocational
50 rehabilitation services, including retraining and job placement, as may be
51 reasonably necessary to restore such employee to substantial and gainful
52 employment as provided in this section.
53 (e) If the employee has remained off work for 60 days and if such
54 approved rehabilitation services are not voluntarily furnished to the employee
55 by the employer, the director, on such director's own motion or upon
56 application of ~~the employee or employer, and after affording the parties an~~
57 ~~opportunity to be heard and to present evidence, may~~ any party, shall refer
58 the employee to ~~a qualified physician or~~ a qualified public or private agency
59 or facility , or the employer's rehabilitation services program if qualified,
60 for evaluation and for a report of the practicability of, need for, and kind
61 of service, treatment, training or rehabilitation which is or may be necessary
62 and appropriate to render such employee fit to perform work in the open labor
63 market and earn comparable wages. ~~for substantial and gainful employment.~~
64 The costs of such evaluation and report shall be at the expense of the
65 employer. Within 60 days after such referral, the report shall be submitted
65a to the rehabilita-

66 tion administrator. Within 60 days after such referral the report shall be
67 submitted to the rehabilitation administator. Within 10 days after receipt by
68 the rehabilitation administrator, the rehabilitation administrator shall
69 assign a rehabilitation coordinator who shall meet with the provider, the
70 employee and the employer to review evaluation and proposed rehabilitation
71 plan. The Rehabilitation coordinator shall insure that the evaluation and
72 rehabilitation plan are accurate and fair, and that the rehabilitation goal is
73 reasonably obtainable. Within 10 days the rehabilitation coordinator shall
74 deliver copies of the approved report to each party and to the Rehabilitation
75 administrator and/or the assigned administrative law judge. ~~in an active,~~
76 ~~docket claim.~~ Upon reciept of such report, and after affording the parties an
77 opportunity to be heard and present evidence, the director:

78 (1) May order that any treatment, or medical and physical
79 rehabilitation, as recommended in the report or as the director may deem
80 necessary, be provided at the expense of the employer;

81 (2) where ~~the employee is unable to engage in any type of substantial~~
82 ~~and gainful employment, and~~ vocational rehabilitation, reeducation or training
83 is recommended in the report, or is deemed necessary by the director ~~to~~
84 ~~restore the employee to some type of substantial and gainful employment,~~ the
85 director may direct ~~the~~ an employee to the appropriate federal, state or other
86 public facility or agency where such services will or may be provided at no
87 cost to the employer, except as hereinafter provided in this section; and

88 (3) if the employee is not eligible for such vocational rehabilitation,
89 reeducation or training through any such state, federal or other public
90 facility or agency, or where such services through such facilities or agencies
91 are not available to the employee within a reasonable period of time, the
92 director may order that such services be provided at the expense of the
93 employer ~~at~~ by any qualified private agency or facility in this state or any
94 state contiguous to this state or by a qualified rehabilitation services
95 program provided directly by the employer. Any such services to be provided
95a at the expense of the employer under this paragraph (3), shall not extend for
95b a period of more than ~~26~~ 52 weeks, except that in extremely unusual cases,
95c after a hearing and the presentation of evidence, the director, by special
95d order, may extend the period for not more than an additional ~~26~~ 52 weeks. The
95e employer shall have a right to appeal

96 to the district court any such special order by the director for
97 any extension of the initial ~~twenty-six-week~~ fifty-two-week
98 period, within the time and in the manner provided in K.S.A.
99 44-556~~,~~ and amendments thereto~~,~~ and any such special order shall
100 be stayed until the district court has determined the appeal.
101 There shall be no right of appeal to the Kansas supreme court or
102 court of appeals from a judgment of the district court sustaining
103 or overruling any such special order of the director.
104 (f) Where vocational rehabilitation, reeducation or
105 training is to be furnished at the expense of the employer under
106 this section, and such services require that the employee reside
107 at or near a facility or institution, away from the employee's
108 customary county of residence, either in or out of the state of
109 Kansas, the reasonable costs of the employee's board, lodging and
110 travel, not to exceed a maximum total of ~~$2,000~~ $5,000 for any
111 ~~twenty-six-week~~ fifty-two-week period, shall be paid by the
112 employer, except that, in unusual cases where, after a hearing
113 and the presentation of evidence the director finds that the
114 costs are clearly reasonable and necessary, the director may
115 require by special order that the employer pay an additional
116 amount for the costs of the employee's board, lodging and travel,
117 of not more than ~~$1,000~~ $2,000.
118 (g) The employer shall pay temporary total disability
119 compensation during any period of vocational rehabilitation,
120 reeducation or training, computed as provided in K.S.A. 44-510c
121 and amendments thereto, but the employer shall receive credit for
122 any weekly, monthly or other monetary payments made to the
123 employee or such employee's family by any state, federal or other
124 public agency during any such period, exclusive of any such
125 payments for the board, lodging and travel expenses of the
126 employee. The number of weeks during which temporary total
127 disability compensation is paid during vocational rehabilitation,
128 reeducation or training shall not be deducted from the maximum
129 number of weeks available for the payment of disability
130 compensation under the schedule provided in K.S.A. 44-510d and

131 amendments thereto.

132 (h) The director shall cooperate with federal, state and other public
133 or private agencies for vocational rehabilitation, reeducation or training,
134 or medical or physical rehabilitation. The employer shall not be required
135 to pay the reasonable costs of the employee's board, lodging and travel
136 where such costs are borne by any federal, state or other public agency,
137 nor shall any costs for vocational rehabilitation, reeducation or training
138 be assessed to the employer if such vocational rehabilitation, reeducation
139 or training is in fact furnished by and at the expense of the federal,
140 state or other public agency.

141 (i) Whenever the director determines that there is a reasonable
142 probability that with appropriate medical, physical or vocational
143 rehabilitation or reeducation or training, a person who is entitled to
144 compensation for permanent total disability, partial disability, or any
145 other disability under the workmen's compensation act, may be rehabilitated
146 to the extent that such person can become substantially and gainfully
147 employed or increase such person's earning capacity, and that it is for the
148 best interests of such person to undertake such rehabilitation or
149 reeducation or training, if the injured employee without good cause refuses
150 to undertake the rehabilitation, educational or training program determined
151 by the director to be suitable for such employee, or refuses to be
152 evaluated ~~under--the--provisions--of--subsection--(e);--the--director--shall~~
153 ~~suspend--the--payment--of--any--compensation--until--the--employee--consents--to~~
154 ~~undertake-such-program-or-to-be-so-evaluated;-and-the-director-shall-cancel~~
155 ~~the--compensation--otherwise--payable--if--any--such--refusal--persists--for--a~~
156 ~~period-in-excess-of-90-days~~ and the refusal or failure is not due to the
157 employee's physical or mental inability to do so, the employee shall be
158 considered as having elected to not participate in rehabilitation
159 and compensation for any permanent disability shall be for functional
160 impairment.

161 (j) At such time as any medical, physical or vocational
162 rehabilitation or reeducation or training has been completed under this
163 section, the employer shall have the right, by the filing of an application
164 with the director, to seek a modification of any award which has been
165 rendered granting any compensation to the employee for any disability.

166 Upon at least 20 days' notice by registered mail to all parties, the
167 director shall set the application for hearing and the parties shall
168 present all material and relevant evidence. In the event that the director
169 determines that the employee is rehabilitated medically, physically or
170 vocationally, so that such employee is able to engage in substantial and
171 gainful employment, the director shall cancel any award of compensation for
172 temporary total or permanent total disability, subject to review and
173 modification pursuant to K.S.A. 44-528 and amendments thereto, and shall
174 modify any existing award of partial disability, or, if no such award has
175 been made, the director shall make an award of partial disability, to
176 reflect only such partial disability, if any, as exists at the conclusion
177 of such rehabilitation, reeducation or training. Any award of partial
178 disability made pursuant to this subsection shall be subject to the
179 provisions of K.S.A. 44-510d and 44-510e~~,~~ and amendments thereto.

180 The employer shall pay temporary total disability compensation during
181 the period of vocational evaluation, and continuing until the plan is
182 approved by the rehabilitation administrator. Temporary total compensation
183 paid solely because of involvement in the vocational rehabilitation
184 evaluation process shall not exceed 120 days from the date of referral by
185 the rehabilitation administrator. However, additional time may be granted
186 by the rehabilitation administrator if circumstances outside the control of
187 the employee prevents completion of the evaluation, plan formulation or
188 approval of a plan.

189 If the approved plan undertakes vocational education, temporary total
190 compensation shall be paid until the completion of the education.

191 (k) If an incumbent rehabilitation administrator has served in such
192 office for one year or more on the effective date of this act, such
193 rehabilitation administrator shall be considered as having attained
194 permanent status as a rehabilitation administrator.

195 44-534a. (a) After filing an application for a hearing pursuant to
196 K.S.A. 44-534 and amendments thereto, the employee may make application for
197 a preliminary hearing, in such form as the director may require by rules
198 and regulations, on the issues of: (1) The furnishing of medical treatment
199 ~~and~~; (2) the payment of temporary total disability compensation; (3) the

200 <u>payment of temporary total compensation during vocational rehabilitation</u>
201 <u>evaluation or training; or (4) the advisability of the vocational</u>
202 <u>rehabilitation plan as approved by the rehabilitation administrator.</u> At
203 least seven days prior to filing an application for a preliminary hearing,
204 the employee shall notify the employer of the employee's intent to file
205 such an application and shall confirm such notice by letter. Upon receipt
206 of an application for such a preliminary hearing, the director shall give
207 seven days' written notice by mail to the employer of the date set for such
208 hearing. Such preliminary hearing shall be summary in nature and shall be
209 held by the director or an administrative law judge in any county designated
210 by the director or administrative law judge, and the director or
211 administrative law judge shall exercise such powers as are provided for the
212 conduct of full hearings on claims under the workmen's compensation act.
213 Upon a preliminary finding that the injury to the employee is compensable
214 and in accordance with the facts presented at such preliminary hearing, the
215 director or administrative law judge may make a preliminary award of
216 medical and temporary total disability compensation to be in effect pending
217 the conclusion of a full hearing on the claim. The decision in such
218 preliminary hearing shall be rendered within five days of the conclusion of
219 such hearing. No such preliminary findings or preliminary awards shall be
220 appealable by any party to the proceedings, and the same shall not be
221 binding in a full hearing on the claim, but shall be subject to a full
222 presentation of the facts.
223 (b) If compensation in the form of medical benefits or temporary
224 total disability benefits has been paid by the employer or the employer's
225 insurance carrier pursuant to a preliminary award entered under this
226 section and the amount of compensation so awarded is reduced or totally
227 disallowed upon a full hearing on the claim, the employer and the
228 employer's insurance carrier shall be reimbursed from the workers'
229 compensation fund established in K.S.A. 44-566a and amendments thereto, for
230 all amounts of compensation so paid which are in excess of the amount of
231 compensation that the employee is entitled to as determined in the full
232 hearing on the claim. The director shall determine the amount of
233 compensation paid by the employer or insurance carrier which is to be
234 reimbursed under this subsection, and the director shall certify to the

235 commissioner of insurance the amount so determined. Upon receipt of such
236 certification, the commissioner of insurance shall cause payment to be made
237 to the employer or the employer's insurance carrier in accordance
238 therewith.