

Approved: February 16, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 15, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Bill Layes, Chief of Labor Market Information Services, Department of Human Resources
Terry Leatherman, Kansas Chamber of Commerce and Industry
Wayne Maichel, AFL-CIO
Hal Hudson, State Director, National Federation of Independent Business

Others attending: See attached list

SB 76 - Star Bonds for Historic Theater Preservation

Bob Nugent, Revisor of Statutes, submitted technical amendments to **SB 76**, proposed by the Kansas League of Municipalities. Page 1, Line 15 changes the use of tax increment financing (TIF) from applying only to historic theaters, to any eligible entity under the TIF law; Line 18, strikes the requirement that a theater has been enrolled on the state historical register, to its being eligible to be on the state historical register; Page 2, line 13, amends enterprise zone to include historic theaters.

Senator Ranson moved, seconded by Senator Gooch that SB 76 be amended on Page 3, line 26 by striking the word "within" and inserting the word "for". The voice vote was unanimous in favor of the motion.

Senator Gooch moved, seconded by Senator Donovan, that SB 76 be amended on Page 1, Line 14, by striking the words "As used in this act" and inserting "For the purposes of the tax increment financing law, K.S.A. 12-1770 et seq. and amendments thereto"; Line 18, by striking the words "has been" and inserting the words "is eligible to be"; and on Page 2, Line 13 following the word "thereto," inserting the following: "a historic theater, as defined in section 1 and amendments thereto". The voice vote was in unanimous in favor of the motion.

Senator Ranson moved, seconded by Senator Barone, that SB 76 be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

SB 270 - Unemployment Compensation Eligibility for Benefits and Determination of Contribution Rates

Bob Nugent, Revisor of Statutes, briefed the Committee on the provisions contained in **SB 270**, stating there are five areas of change: Pages 20 - 23 changes definition and requirements for seasonal employment employers; Page 27 establishes drug and alcohol use making them compatible with workers compensation requirements; Pages 27-28 deals with absenteeism, allows written notice to be addressed to the last known address of the employee and shifts the burden of proof to the employee; Pages 35 - 43 alters the tax formula from reserve ratio to benefit ratio; and Page 43 changes negative account balance employer contribution rates from 5.4% to 6.4%.

Bill Layes, Chief of Labor Market Information Services, Kansas Department of Human Resources, appeared before the Committee to explain Experience Rating Method and the Reserve Ratio System. Mr. Layes stated Kansas employers are assigned a tax rate based on their "experience rating", which is based

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on each employer's experience with unemployment. Those employers placing a greater demand on the state's trust fund pay higher taxes and bear a greater share of the system's cost. The proposed change contained in **SB 270** alters the state's method of the way taxes are assessed for unemployment insurance. The change would not affect the overall amount of annual contributions received, it would shift the tax burden across the employer base. (Attachment 1)

Currently, employers "experience rating" is determined through use of a reserve ratio system, which involves the subtraction of benefits paid from total contributions divided by average annual payroll. The higher the reserve ratio, the more favorable the tax rate; conversely, the lower the reserve ratio, the higher the tax rate assigned. Presently there are 51 rate groups. Kansas has utilized the reserve ratio system since the inception of its Unemployment Insurance program in 1937.

Mr. Layes submitted the effects of converting to a "benefit ratio" system, in two illustrations and further advised there are presently 37 states who utilize the reserve ratio system and 17 states using the benefit ratio system.

Terry Leatherman, Kansas Chamber of Commerce and Industry, (KCCI), testified in support of **SB 270**, stating it is a bill requested by the KCCI. The KCCI supports the proposed conversion from a reserve ratio system to a benefit ratio system because it more clearly reflects the amount of unemployment an employer causes. The benefit ratio provides that an employer who experiences no claims for five years will pay at the lowest tax level; an employer who causes the most unemployment will pay taxes at the highest brackets. Mr. Leatherman stated **SB 270** should be further amended to raise the taxes paid for a negative balance employer to 7.4% from the 6.4% contained in the bill. This proposed amendment would ensure the negative balance employer would pay closer to their fair share of the taxes. (Attachment 2)

KCCI supports the proposed changes relating to Misconduct/Absenteeism, on Page 27. The changes provide that an employer can send written notice to the "individual's last known address"; and add a fifth step to the unemployment test: "If the employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause". The KCCI suggested an additional amendment to the misconduct statute, found on Page 27, line 39, by inserting before the "will" the words "**may, or**". Statistics reflect that in 1997 there were 3,700 unemployment cases where absenteeism misconduct was alleged. In 65% of the cases, the employees were cleared for unemployment benefits. Page 27 establishes a new procedure for determining unemployment compensation misconduct due to drug and alcohol abuse and proposes a simpler test for dismissal: 1) the employee consumed alcohol or drugs while working; 2) the employee was impaired by alcohol or drugs while working; 3) the employee refused to take a drug or alcohol test that was required as a condition of employment; and 4) the employee failed to comply with an employee assistance program, including failing a chemical test given as part of the program. To meet the burden of showing the employee was impaired by drugs or alcohol, a chemical test is required showing an alcohol concentration of .04 or more and a drug concentration level higher than allowed by the Department of Transportation.

The KCCI supports a change in the seasonal employment provision on Page 20 which defines a seasonal employer as an employer that operates all or a portion of their business for a regular period of less than 26 weeks, due to climatic conditions or the seasonal nature of a product or service. The definition also makes the Secretary of Human Resources responsible for determining whether an employer is considered seasonal. On Page 22, the new rules concerning benefit eligibility are established: 1) when seasonal job ends, an employee would no longer be eligible to draw benefits on their seasonal wages; 2) an employee who had nonseasonal wages that qualify them for benefits, could draw; and 3) if seasonal work is terminated during the "season" and they otherwise qualify for benefits, they could draw unemployment.

Wayne Maichel, Executive Vice President, Kansas AFL-CIO, testified in opposition to certain portions of **SB 270**. AFL-CIO has concerns about the intent and the ramifications with the new definition of "seasonal employer". On Page 25, Line 15, allowing random drug testing when there is not an established chain of custody relating to the gathering of samples. AFL-CIO urge that a licensed care provider be charged with the gathering of samples, and is also concerned about the false/positive results which can be the result of prescription medicines. The AFL-CIO objects to the change in the burden of proof under

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the misconduct test from the employer to the employee. Mr. Maichel stated AFL-CIO does not oppose the change in contributions from a reserve ratio concept to a benefit ratio. (Attachment 3).

A letter from Wayne K. Westblade, Attorney at Law, Syracuse, endorsing the change to a benefit ratio system was distributed to the Committee. (Attachment 4)

A letter from Jacki Summerson, Manpower Temporary Service, endorsing the change from a reserve ratio system to a benefit ratio system was distributed. (Attachment 5)

Hal Hudson, State Director, National Federation of Independent Business testified in support of **SB 270**, stating a poll of their 7,000 members supports a change to a benefit-ratio formula for determining unemployment tax for employers with 62% in favor, 17% against and 21% undecided. (Attachment 6)

Upon motion by Senator Umbarger, seconded by Senator Donovan, the Minutes of the February 12, 1999 Meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 16, 1999.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 15, 1999

NAME	REPRESENTING
Hal Hudson	NFIB / Kansas
Christ Caldwell	Topeka Chamber of Commerce
Rice Janese	BOEING
Branden Hall	Citizens
Roger Trautz	KGC
Paul Bicknell	KDHR
Linda Tierce	"
Russ Vawter	"
Bill Hayes	"
William Sanders	"
Roger Aeschlman	"
Jim DeHoff	KS AFL-CIO
Wayne ^{Mauch} Mauch	KS AFL-CIO
Terry Leatherman	KCCI
Carol Dale Hays	Parent

TESTIMONY
SENATE COMMERCE COMMITTEE
SB 270 – BENEFIT RATIO SYSTEM
FEBRUARY 15, 1999

Good morning Madam Chair and members of the Committee. My name is Bill Laves. I am Chief of Labor Market Information Services at the Kansas Department of Human Resources. I welcome the opportunity to appear before you today to discuss SB 270 treating the method by which employers are assigned tax rates. I refer specifically to page 34, line 43 and extending through line 11 of the following page.

Experience Rating Method

The majority of employers in Kansas are assigned a tax rate based on their "experience rating." Under the "experience rating" concept, taxes are assessed based on each employer's experience with unemployment. Employers placing greater demand on the state's trust fund pay higher taxes and thus bear a greater share of the system's cost. Employers with lesser unemployment pay lower taxes. Enactment of this modification to K.S.A. 44-710a would alter the state's method of "experience rating," that is to say, the way taxes are assessed for unemployment insurance. The change would not affect the overall amount of annual contributions received. Rather, it would shift the tax burden across the employer base.

Reserve Ratio System

Currently, each employer's standing for purposes of "experience rating" is determined through use of a "reserve ratio" system. The formula involves the subtraction of benefits paid from total contributions divided by average annual payroll. This is done to rank or "array" all employers. The higher the reserve ratio, the more favorable the tax rate the

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Attachment # 1-1 thru 1-5

employer is assigned. Conversely, the lower the reserve ratio, the higher the tax rate assigned. At present, there are 51 rate groups. Kansas has utilized the "reserve ratio" system as its funding mechanism since inception of its UI program in 1937.

Benefit Ratio System

Implementation of a "benefit ratio" system would revise the formula by which employers are ranked or "arrayed" for "experience rating" purposes. The formula involves the division of total benefits charged for the past five years by total annual taxable payrolls for the same period. The "benefit ratio" system removes employer contributions from the "experience rating" formula. This implies that the employer's experience rating account will no longer maintain an account balance (contributions minus benefits charged). Negative account employers will not exist under a "benefit ratio" system.

Benefit Ratio vs. Reserve Ratio System

The effects of converting to a "benefit ratio" system are illustrated in the following materials:

- Status of Employer Accounts in a Benefit Ratio System, Rate Year 1999
- Tax Rate Comparison between Reserve Ratio and Benefit Ratio, Rate Year 1999
- Comparison of States by Experience Rating System

Madam Chair this concludes my presentation. I will answer any questions the Committee might have.

Current Number of Accounts (Reserve Ratio) and Change in Contributions with Benefit Ratio Rate Year 1999

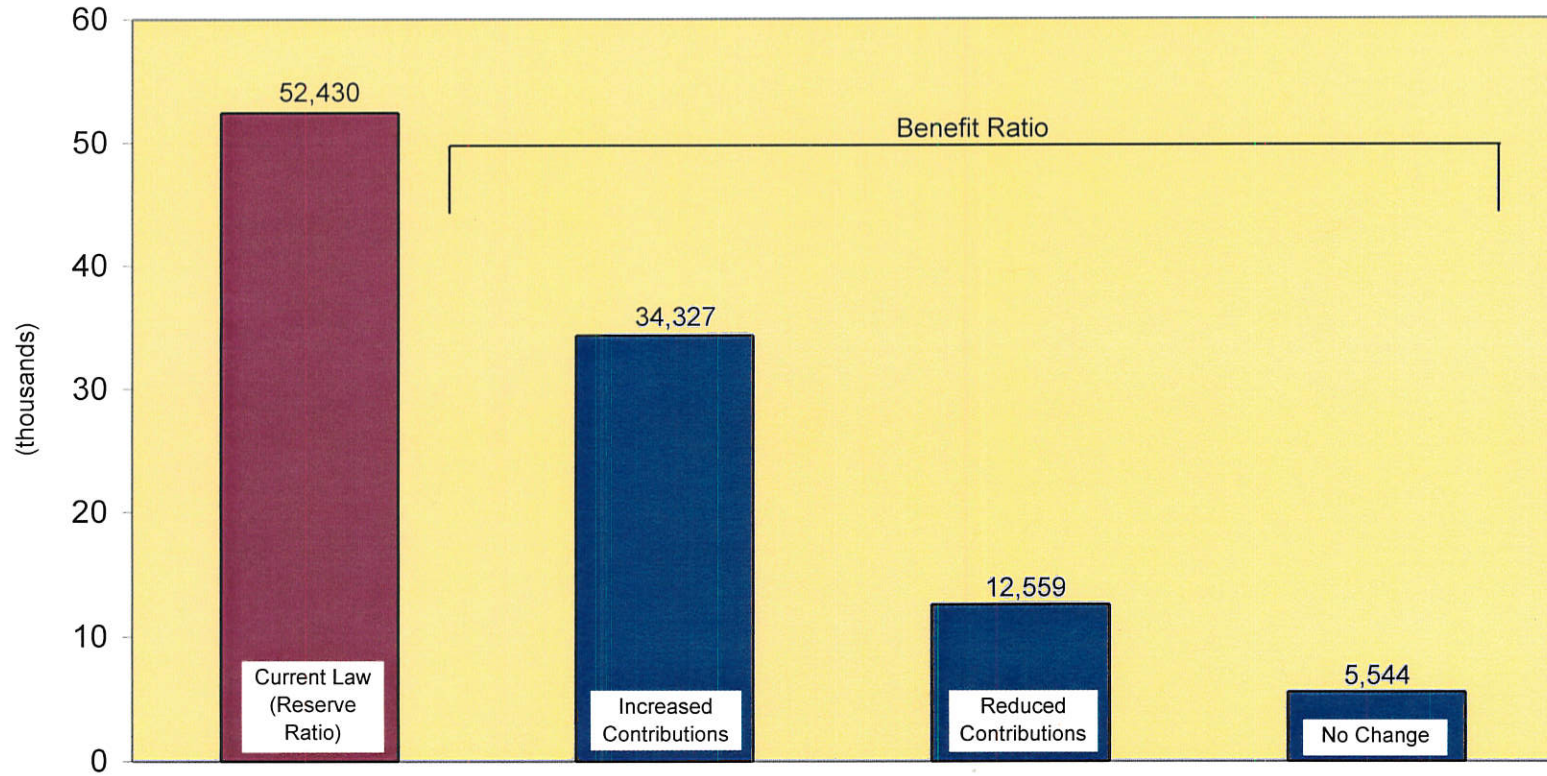


Table 1
 Tax Rate Comparison Between Reserve Ratio System
 and Benefit Ratio System
 Rate Year 1999

Reserve Ratio System		Benefit Ratio System	
Number of Accounts	Contribution Rates	Number of Accounts	Contribution Rates
46,918 ^{a/}		52,430 ^{a/}	
4,314	0.04	31,313	0.04
2,054	0.06	-	0.07
1,281	0.11	-	0.13
1,407	0.17	-	0.20
1,788	0.23	-	0.26
1,398	0.29	-	0.33
921	0.34	-	0.39
725	0.40	-	0.46
932	0.46	1,037	0.52
73	0.52	876	0.59
425	0.57	719	0.66
654	0.63	159	0.72
858	0.69	481	0.79
545	0.75	309	0.85
376	0.80	214	0.92
586	0.86	372	0.98
535	0.92	444	1.05
317	0.98	372	1.11
729	1.03	327	1.18
697	1.09	419	1.24
691	1.15	373	1.31
694	1.21	457	1.38
82	1.26	200	1.44
678	1.32	376	1.51
668	1.38	340	1.57
422	1.44	360	1.64
489	1.49	261	1.70
396	1.55	243	1.77
741	1.61	155	1.83
427	1.66	422	1.90
346	1.72	467	1.97
655	1.78	268	2.03
474	1.84	314	2.10
845	1.89	339	2.16
782	1.95	487	2.23
964	2.01	120	2.29
489	2.07	212	2.36
961	2.12	369	2.42
773	2.18	341	2.49
1,068	2.24	489	2.56
846	2.30	442	2.62
1,117	2.35	389	2.69
1,297	2.41	442	2.75
1,113	2.47	600	2.82
2,535	2.53	646	2.88
999	2.58	831	2.95
1,081	2.64	753	3.01
682	2.70	846	3.08
642	2.76	959	3.14
573	2.81	1,438	3.21
2,773	2.87	1,449	3.28

^{a/} Reserve Ratio System totals include positive balance accounts only.
 Benefit Ratio System totals include 5,512 negative balance accounts.

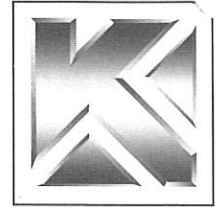
Table 2
Comparison of States By Experience Rating System

State	Reserve Ratio System	Benefit Ratio System	Benefit Wage Ratio System	Payroll Declines System
Alabama		x		
Alaska				Quarterly
Arizona	x			
Arkansas	x			
California	x			
Colorado	x			
Connecticut		x		
Delaware			x	
Florida		x		
Georgia	x			
Hawaii	x			
Idaho	x			
Illinois		x		
Indiana	x			
Iowa		x		
Kansas	x			
Kentucky	x			
Louisiana	x			
Maine	x			
Maryland		x		
Massachusetts	x			
Michigan		x		
Minnesota		x		
Mississippi		x		
Missouri	x			
Montana	x			
Nebraska	x			
Nevada	x			
New Hampshire	x			
New Jersey	x			
New Mexico	x			
New York	x			
North Carolina	x			
North Dakota	x			
Ohio	x			
Oklahoma			x	
Oregon		x		
Pennsylvania		x ^{1/}		
Rhode Island	x			
South Carolina	x			
South Dakota	x			
Tennessee	x			
Texas		x		
Utah		x		
Vermont		x		
Virginia		x		
Washington		x		
West Virginia	x			
Wisconsin	x			
Wyoming		x		

Source: *Comparison of State Unemployment Insurance Laws, January 1998*

^{1/} Formula includes reserve ratio.

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

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SB 270

February 15, 1999

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee Commerce

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to present KCCI's support for a series of reform ideas for the Kansas Employment Security Law that is contained in SB 270. In an attempt to review the bill in an orderly fashion, the remainder of my testimony is broken into four topics addressed in SB 270.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Senate Commerce Committee

Date: *2-15-99*

Attachment # *2-1 thru 2-9*

BENEFIT RATIO

WHERE IT IS IN SB 270:

Language to convert Kansas to a benefit ratio begins on page 37. This section concerns arraying employers into the 51 rate groups using benefit ratios. The maximum effective contribution rate is increased on page 43 of the bill from the current 5.4% to 6.4%.

THE REFORM PROPOSES TO:

Kansas is one of 32 states to employ the “reserve ratio” system for determining unemployment compensation taxes. If SB 270 is adopted, Kansas would be the 16th state to utilize the “benefit ratio” system.

WHY KCCI SUPPORTS BENEFIT RATIO:

Whether Kansas is a reserve ratio or benefit ratio state will not affect the overall tax collection called for in the law. If the tax formula calls for employer taxes to be \$100 million dollars, \$100 million will be collected, regardless of the ratio system employed. KCCI supports conversion to a benefit ratio process because it would more clearly reflect the amount of unemployment an employer causes in determining their taxes.

For background purposes, here is how the two systems work.

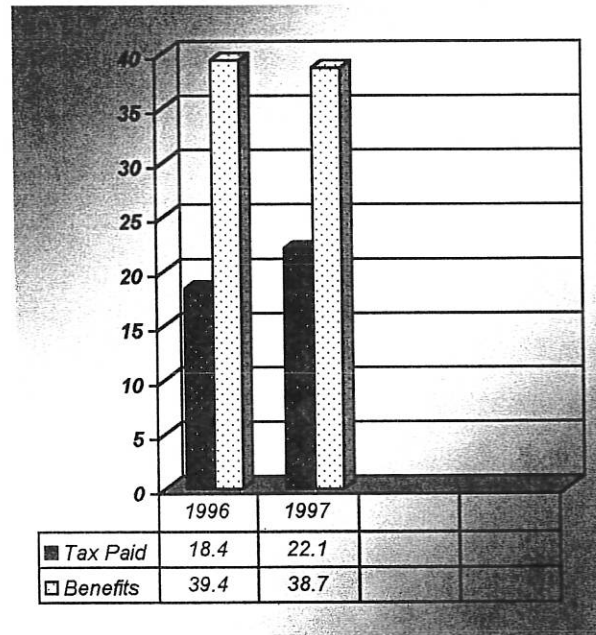
RESERVE RATIO	BENEFIT RATIO
<ul style="list-style-type: none">• Used in 32 states• Ratio determined by: Subtracting all benefit charges by all taxes paid, and then dividing by the business' average annual payroll over a 3 to 5 year period• Main Strength A very stable system....layoffs can be cushioned by reserves	<ul style="list-style-type: none">• Used in 15 states• Ratio determined by: Dividing benefit charges over a 3 to 5 year period by the business' average annual payroll over a 3 to 5 year period• Main Strength A more pure “experience rating” system

Under a benefit ratio system, an employer who experiences no claims for five years will pay at the lowest tax level in the state. Conversely, employers who cause the most unemployment will pay taxes at the highest brackets. Because it holds the promise of apportioning taxes more closely to employers who cause unemployment, KCCI supports the change to the benefit ratio system.

However, the benefit ratio conversion proposed in SB 270 is flawed, and must be further amended. Under its reserve ratio process, Kansas has a separate tax bracket for “negative balance employers.” A negative balance employer is one who has been charged more benefits than has paid taxes over the business' history. The negative

balance employer tax range currently (when the moratorium is not in effect) is 5.4% to 6.4%.

In a benefit ratio system, there are no negative balance employers. Instead, these employers will join all the rest in the array of 51 rate groups for tax purposes. If SB 270 is not amended, employers in rate group 51, the group with the worst unemployment experience in the state, will see reduced taxes under benefit ratio. As a result, KCCI would urge the Committee to amend this bill to require rate group 51 pay at the highest rate in the law. KCCI would further recommend that rate be increased from the 6.4% proposed by SB 270 to 7.4%. The table below shows why the highest tax rate should be applied to employers who are “negative balance” under the reserve ratio system. In both 1996 and 1997, negative balance employers were charged around \$40 million in unemployment benefits. However, in both years, the negative employers paid only around \$20 million in taxes. These two years are examples of a consistent practice of negative balance employers paying well less in taxes than they are charged in benefits.



If the highest tax bracket is established at 7.4% and applied to employers in rate group 51 of the benefit ratio system, the employers in the bottom brackets will pay taxes which more closely reflect the benefits they cause. In addition, if these employers pay more in taxes, the employers in lower brackets will pay less.

MISCONDUCT/ABSENTEEISM

WHERE IT IS IN SB 270:

Beginning on page 27, line 32, amendments to the current statute governing misconduct, due to chronic absenteeism is shown.

THE REFORM PROPOSES TO:

Unemployment compensation benefits are intended to benefit individuals who have become unemployed through "no fault of their own." Traditionally, Kansas law has made clear that people who cause their unemployment through their own misconduct at work caused their unemployment, are not unemployed through "no fault of their own," and are not entitled to benefits. One of the specific areas in the law where misconduct is declared involves employees who are dismissed for "chronic absenteeism."

Current law establishes several steps that an employer must meet to establish chronic absenteeism constitutes misconduct. Those steps are:

1. The employee was absent, without good cause;
2. The absence violated a business' written absenteeism policy;
3. The employer gave or sent written notice to the individual, that future absence will lead to discharge, and;
4. The employee knew about the written absenteeism policy.

There are two amendments to the absenteeism law proposed in SB 270. They are:

1. Amend step #3 by adding the italicized language.
The employer gave or sent written notice to the individual, *at the individual's last known address*, that future absence will lead to discharge, and;
2. Add a new fifth step to the unemployment test.
If the employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause.

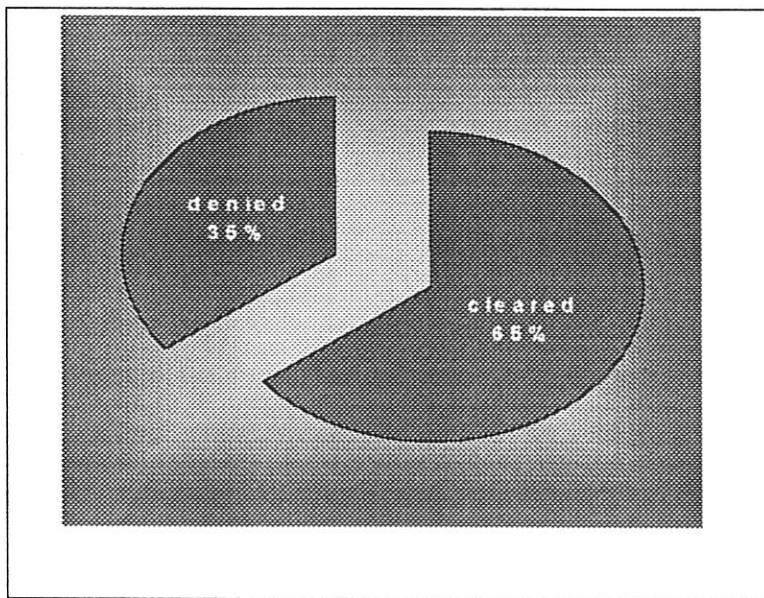
KCCI would respectfully suggest a third amendment to the misconduct statute. This minor change would amend the third step in the law, as follows.

The employer gave or sent written notice to the individual, that future absence **may, or** will lead to discharge, and;

WHY KCCI SUPPORTS AMENDING THE MISCONDUCT STATUTE:

Some statistics regarding misconduct, due to chronic absenteeism, are included in my testimony. The pie chart concerns the nearly 3,700 unemployment cases where absenteeism misconduct was alleged in fiscal year 1997. 65% of the time, the employer's

suggestion of misconduct was rejected and the employee was cleared for unemployment benefits. Slightly more than a third of the time (35%) was the employee denied unemployment, due to chronic absenteeism.



The following table takes a closer look at the 2,376 times an employee was cleared for benefits in FY 1997, in spite of the claim of chronic absenteeism. Nearly half the time, the employee received benefits because it was decided the employee was absent for "good cause." 41% of the time the clearance was because an employer did not send a written notice to the workers that further absence would lead to discharge, even though the employee had been excessively absent or late.

Absent with good cause	1,131	48%
Absent, but no written notice	849	36%
Late, but no written notice	123	5%
Replaced while on leave	74	3%
Absence did not violate policy	50	2%
Late with good cause	47	2%
Other reason for clearance	102	4%

The proposed changes are an attempt to produce the following results.

- 1) By adding “the last known address” to the third test in the law, an employer would have a defense in cases where an employee was sent a written notice, but it was not received.
- 2) Adding a new section “E” to the law requiring an employee to present evidence that a majority of their absences were for good cause is proposed for the following reasons.
 - A) Realize the burden employers currently bear in an absenteeism/misconduct case. The employer must show the employee was absent, without good cause. It is often not known by the employer why the employee was absent from work, making this a very high burden. Adding the new section “E” would properly shift the burden to an employee to show why their absence would justify receiving benefits, because they were gone for “good cause.”
 - B) The new language also requires the employee to present evidence to justify a “good cause” claim. An employer complaint about today’s system is an employee can present a reason for being absent and have it accepted, without any supporting documentation to their claim.
 - C) The new language also requires a “majority” of the absences to be for good cause. In today’s process, many cases hinge on the employee’s final absence that led to dismissal. While an employee might have a long list of unjustified absences, showing the final one was for “good cause” will clear the individual to receive benefits.
- 3) KCCI also suggests the words “may, or” be included in the written notice test in the law. If amended, employers who send a written notice that future absence “may” lead to discharge, rather than “will” lead to discharge, can make a claim of absenteeism misconduct.

MISCONDUCT/DRUG AND ALCOHOL USE

WHERE IT IS IN SB 270:

Beginning on page 25, current language is stricken. On page 27, a new procedure is presented for determining unemployment compensation misconduct, due to drug and alcohol abuse

THE REFORM PROPOSES TO:

The premise behind the current unemployment compensation law concerning misconduct, due to drug or alcohol use, is that employees dismissed because they are drunk or on drugs caused their unemployment and should not receive unemployment. During many debates on this subject, no one has disputed the appropriateness of denying unemployment to workers fired on these grounds.

Amendments to the drug/alcohol abuse section of the misconduct statute have been approved many times in the 1990's. The main portion of today's law dates back to 1990. Following that change, there have been several more to address employer concerns. The result is a confusing law that treats some employers differently than others.

SB 270 deletes the current test. Instead, the bill proposes a simpler test. It would be misconduct, and unemployment benefits would be denied, if the employee was fired because:

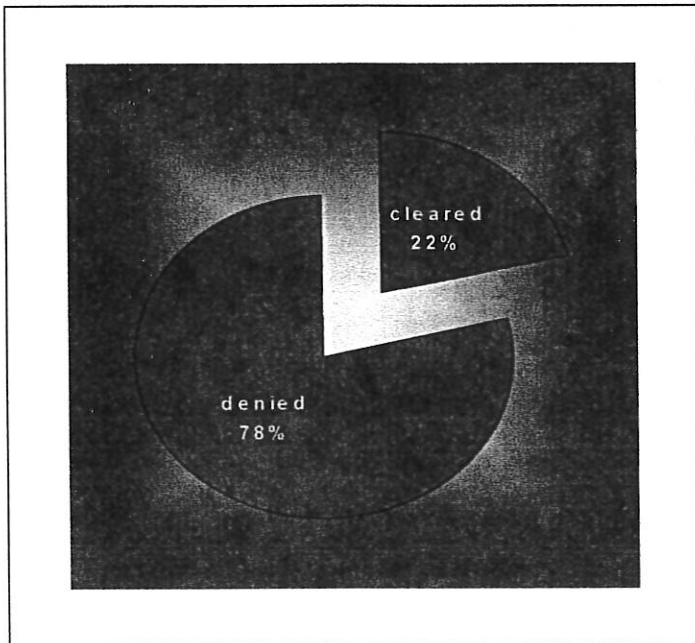
- 1) the employee consumed alcohol or drugs while working;
- 2) the employee was impaired by alcohol or drugs while working;
- 3) the employee refused to take a drug or alcohol test that was required as a condition of employment
- 4) the employee failed to comply with an employee assistance program, including failing a chemical test given as part of the program.

To meet the burden of showing the employee was impaired by drugs or alcohol would require a chemical test. A chemical test that shows an alcohol concentration of .04 or more, or showed a drug concentration at levels higher than allowed by the Department of Transportation, would lead to a conclusive presumption of impairment. The impairment test in SB 270 is the same as the one recently approved by this Committee to establish impairment in workers compensation cases involving drug use in SB 219.

WHY KCCI SUPPORTS AMENDING THE MISCONDUCT STATUTE:

Unlike the absenteeism/misconduct statute, employers win a large majority of cases heard in Kansas today where misconduct is alleged, due to alcoholism or drug use. In fiscal year 1997, there were 200 cases involving dismissals for drug or alcohol use. As

the chart below shows, in 157 cases (78%) the employee was denied benefits. In the remaining 43 cases (22%), the employee was granted unemployment benefits.



KCCI's main concern with today's law is how it treats employers differently. If a federal or state law, or local ordinance, requires a drug free workplace, and an employee fails a random drug test as part of complying with this law, then it will be considered misconduct and the employee is denied benefits. However, if an employer simply considers it a good business practice to follow a drug free workplace policy, a dismissal following a random drug test will not be considered misconduct. Of the 43 clearances in this area in FY 97, 24 of them fell into this category.

SB 270 proposes to end this disparity and to make this area of the law much simpler. If you use drugs or alcohol at work, if a test shows you are impaired, if you refuse to test you knew was required by your employer, or if you don't follow the rules of an assistance program your employer has implemented to help a drug or alcohol abusing worker, you have caused your unemployment because of your misconduct.

SEASONAL EMPLOYMENT

WHERE IT IS IN SB 270:

Seasonal employment is defined on page 20. Rules concerning benefit eligibility begin on page 22.

THE REFORM PROPOSES TO:

A seasonal employment provision would be a new concept in the Kansas Employment Security Law. In the definition section on page 20, a seasonal employer is defined as an employer that operates all or a portion of their business for regular periods of less than 26 weeks, due to climatic conditions or the seasonal nature of a product or service. The definition section also makes the Secretary of Human Resources responsible to determining if an employer would be considered seasonal.

On page 22, the new rules concerning benefit eligibility are established. In a nutshell, when the seasonal job ends, the employee would no longer be eligible to draw benefits on their seasonal wages. If the employee had nonseasonal wages that would qualify them for benefits, they could draw. In addition, if their seasonal work was terminated during the "season," and they otherwise qualify for benefits, they could draw unemployment.

WHY KCCI SUPPORTS A SEASONAL EMPLOYMENT PROVISION:

During the review of misconduct changes, it was noted that unemployment compensation is intended for individuals unemployed "through no fault of their own." When you accept a job knowing it will end on a specific day, is it appropriate to extend your pay by drawing unemployment benefits? Some examples of seasonal employment would include:

- Working at a Christmas tree farm in December
- Working until April 16 at a business that prepares tax returns
- Working at the local swimming pool during summer months

From the employer's perspective, these seasonal employment situations lead to an inevitable layoff of a workforce. A seasonal provision would permit the state to declare this reality. As a result, an employee would know when they accept a position that when the day arrives that the work will end, unemployment benefits will not be an option.

Testimony on S.B. 270
Presented to the Senate Commerce Committee

By: Wayne Maichel, Executive Vice President
Kansas AFL-CIO

We appreciate the opportunity Madam Chair to present our views on S.B. 270.

Although we are listed as an opponent of S.B. 270, we are not opposed to the bill in its entirety. Our opposition to this bill is primarily in three areas:

1. Beginning on page 20, line 3: seasonal employer - we have many concerns about the intent and the ramifications of this provision. It appears great latitude lies with the Secretary of Human Resources to determine the definition of seasonal employer. Would these provisions include hotel workers, holiday workers, or construction workers? Just where is the beginning and the end for seasonal employers? There is also a lengthy appeals process which begins on page 22, line 6. In paragraph I., it states in part "an interested party may file an appeal regarding a seasonal termination." Does that mean that the employees can also file an appeal?
2. The striking of language on page 25, beginning on line 15, makes a drastic change in the whole area of drugs. We believe the elimination of this language is detrimental to both employers and employees. The new language on page 27, beginning on line 2, "simply allows random drug testing for the purposes of denying unemployment compensation." This is a proposal the Kansas Legislature has rejected in the past.
3. Our objection is based on page 27, beginning on line 43, which changes the burden of proof under misconduct from the employer to the employee.

We do not oppose the provisions in S.B. 270, which changes contributions to the Employment Security Trust Fund from a reserve ratio concept to benefit ratio. We have always supported the business community in whatever system they devise as far as contributions to the Employment Security Trust Fund. Our only concern in this area is that the benefit ratio concept be fair to all employers.

Madam Chair, we thank you for the opportunity to appear before your committee, and I will be happy to answer any questions.

Senate Commerce Committee

Date: 2-15-99

Attachment # 3

TERRILL & WESTBLADE

Law Office
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SYRACUSE, KANSAS 67878-1407

James S. Terrill, Retired
Wayne K. Westblade

Phone: (316) 384-5352
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February 11, 1999

TELECOPY TRANSMISSION

If there is a problem with transmission or if all pages are not received, please call 384-5352 for retransmission.

TO: Alicia Salisbury
COMPANY: Chairman, Kansas Senate Commerce Committee

Fax No. 785-296-6718

RE: Unemployment Tax, SB270

Dear Ms Salisbury:

I run a small law firm and my wife is my secretary. I am looking to expand my staff. When I did, I discovered that since I had not paid in unemployment tax for a while, my rate had skyrocketed. I believe SB 270 would benefit me since I have never had a claim against by an employee. Please support SB270. I was alerted to this bill by NFIB.

Thank you.


Wayne K. Westblade
Attorney at Law

Number of pages including this cover page: 1

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Senate Commerce Committee

Date: 2-15-99

Attachment # 4



MANPOWER
TEMPORARY SERVICES

**Statement of Testimony
Senate Commerce Committee**

RE: SB-270, Benefit-Ratio System of Employer Contribution Rates for Unemployment Taxes

DATE: February 15, 1999

FROM: Jacki Summerson, Manpower Temporary Services (785/267-4060)

Normally I would be at this hearing to testify in person, but I am out of town today and unable to attend.

My husband and I own and operate nineteen Manpower Temporary Services franchise offices in Kansas. We would like to express our appreciation for passage of the moratorium on unemployment taxes for the past few years. We want you to know that with the money our company saved, we were able to open some new offices, hire new staff and purchase several new computers for our offices. We also made significant contributions to our employee 401(k) plan on their behalf (which is also available for temporary employees).

However, we all realized that some day the moratorium would end and the taxes would be reinstated. When the legislation was originally passed, no one ever imagined that the moratorium would last this long. One side effect of extending the moratorium is that with the current experience rating formula, the account balances for some employers have been drawn down during the moratorium, which in turn, will increase their reserve ratio. The result will be that they will be assigned a new contribution rate at the higher tax brackets.

In fact, one of our newer start-up corporations has experienced a fairly rapid growth in the payroll over the past three years. We are growing our company and providing more jobs in Kansas communities. Approximately 40% of our employees are hired into a permanent job from being placed there on a temporary basis. And yet, when the moratorium is over, the effect on this corporation will be that our rate will probably be at one of the higher rate groups since it is a new corporation and we did not have much time to build up an account balance compared to our payroll. The rate will be high because of our growing payroll and the current formula that Kansas uses to experience rate companies, not because we are having huge amounts of unemployment claims.

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838A S. Washington
(913) 776-1094

Ottawa, Kansas 66067
407 South Main
(913) 242-1002

Date: 2-15-99

Attachment # 5-1 thru 5-2

- 2 -

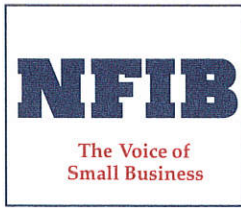
As you can imagine, in our business we have lots of payroll. Unemployment insurance is normally a huge expense to us every year and yet our benefit charges are fairly low. It is a huge disparity when employees of other companies are allowed to take out more in benefits that their company pays in year after year. We would definitely like to see Kansas adopt the Benefit-Ratio formula for computing unemployment taxes since it is actually based on the benefits paid out as opposed to simply the size of the payroll like the current Reserve-Ratio formula that is currently used.

This is the perfect time to change the experience rating formula since the moratorium has been in place for so long. It would not cause an overall tax increase. The Benefit-Ratio system proposed does not collect any more or less unemployment taxes than the current system. Nor does it have any effect on benefits paid to workers. It simply makes unemployment taxes a "user-based" tax. The end result of this formula is that unemployment taxes are tied to the actual benefits being paid out for each employer. This is more like the current system we have for experience rating worker's compensation, where an employer's experience rating is directly related to the payroll and the losses they have experienced over the past three years.

The Benefit-Ratio method of determining employer contribution rates basically makes the employers who are taking money out of the system pay more and the employers who are not taking money out of the system pay less. Over the years, some states have switched to the Benefit-Ratio system since it more closely reflects an employer's unemployment experience. Seventeen states currently use the Benefit Ratio system.

If Kansas is ever going to change the formula for unemployment taxes, this is certainly the ideal time since we've had the moratorium for such an extended time.

I would like to ask for your support in passing this legislation to change to the Benefit-Ratio experience rating formula for unemployment taxes.



NFIB Kansas

**Statement by
Hal Hudson, State Director
Kansas Chapter, National Federation of Independent Business
Before the
Kansas Senate Commerce Committee
On Senate Bill 270
February 15, 1999**

Madam Chairperson and members of the Committee: Thank you for this opportunity to appear here today to express support for S.B. 270. For the record, my name is Hal Hudson, and I am representing the more than 7,000 members of the Kansas Chapter of the National Federation of Independent Business – small business owners who are part of the backbone of the Kansas economy.

Senate Bill 270 addresses several issues about which small business owners have expressed concern. Issues designed to reduce abuse of the system are important, and we hope they will survive and be enacted. However, I would like to devote my remarks to one issue, which our members strongly supported in their response to the 1999 NFIB/Kansas State Ballot – a change to a benefit-ratio approach in calculating employer taxes. According to information received from NFIB's Washington office, this approach currently is used by 17 states. (See attachment.)

For some time, we have been concerned about the consequences of ending the moratorium. It is true that many NFIB members have enjoyed the ride, and have benefited from a zero rate these past four years. Now, unless a change is made, many of those same firms will be penalized for doing exactly what was hoped they would do with the moratorium savings.

They have expanded their businesses and added new jobs. They have been able to increase wages, and in some cases increase employee benefits. What they have not done these past four years – soon to be five years – was increase their reserve in the unemployment fund.

Under the reserve-ratio formula, their year 2000-tax rates would be calculated by comparing their growing payroll with a reserve that has remained flat. If they have added jobs, increased total payroll, maintained a stable workforce, and have few or no claims against the fund, they would be called upon to subsidize those who have not done so well – who have negative fund balances.

Senate Commerce Committee

Date: 2-15-99

We believe the employment security tax should be calculated in a manner similar to the way workers compensation insurance rates are determined. That is: those who have the best experience ratings should have the lowest rates. Therefore, we support S.B. 270, as introduced, with one major exception. The rate schedules in S.B. 270 overall may be higher than necessary to maintain adequate balances in the fund, even with a change in the formula. In addition, rates indicated in S.B. 270 for negative account firms may not be high enough to cover the payments they cause.

As you consider the various changes in current law as presented in S.B. 270, we ask that you give very careful consideration to the rates to be used beginning in the year 2000. We would ask that you further reduce those rates as much as possible – consistent with assuring sufficient funds are available for those who – through no fault of their own – must call on the system for help in their time of need.

We urge you to report S.B. 270 favorably, and to support its final enactment.

Thank you very much.



Hal Hudson
State Director

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EXPERIENCE RATING SYSTEMS

Under the two most popular systems, the key factor in determining an employer's tax rate is the amount of unemployment benefits drawn by his former employees. Under the reserve ratio system, an employer's tax rate reflects his cumulative experience. Generally, all benefits ever charged against the employer are subtracted from all contributions (taxes) he paid into the fund. The resulting balance, either positive or negative, is then divided by his average payroll for the past 3 years.

Under the benefit ratio system, contributions are not a factor. Tax rates are based simply on the ratio of an employer's benefit charges over a period to his payroll over the same period. Unlike the reserve ratio system, only the last few years of benefit charges are used.

The benefit-wage-ratio and the payroll decline systems do not use benefits as the experience factor. Under the former, the factor used is the

amount of wages paid a former worker which have permitted the worker to draw benefits. Under the payroll decline system, experience with unemployment is measured by quarterly or annual variations in an employer's payroll.

Under all experience rating systems, all employers' tax rates are based on some experience factor (e.g., benefits) in relation to the employer's payroll. These ratios reflect the employer's actual experience in relation to his potential liability. Thus, annual benefit charges of \$10,000, for example, are likely to affect significantly the ratio for a firm with a half dozen unskilled workers, but will have a negligible impact on the rate for an employer with several hundred highly paid employees. Actual tax rates are assigned according to tax schedules under which employers with the worst experience, in terms of their ratios, are assigned rates higher than those with better experience.

Table 5 — TYPE OF EXPERIENCE RATING

State	Type of Experience Rating				Years of Benefits Used		Years of Payrolls Used	
	Reserve Ratio (33 States)	Benefit Ratio (17 States)	Benefit Wage Ratio (2 States)	Payroll Decline (1 State)	all past	last 3	average 3	last 3
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Alabama		X ¹				X		X
Alaska				quarterly			X	
Arizona	X				X		X	
Arkansas	X				X		X ⁵	
California	X				X		X	
Colorado	X				X		X ⁵	
Connecticut		X				X		X
Delaware			X			X		X
D.C.	X				X ³		X	
Florida		X				X ⁵		X
Georgia	X				X		X	
Hawaii	X				X		X	
Idaho	X				X ³		5	
Illinois		X				4		4
Indiana	X				X			X
Iowa		X				4	5	
Kansas	X				X		X	
Kentucky	X				X			X
Louisiana	X				X ³		X	
Maine	X				X		X	

Table 5 — TYPE OF EXPERIENCE RATING — Continued

State	Type of Experience Rating				Years of Benefits Used		Years of Payrolls Used	
	Reserve Ratio	Benefit Ratio	Benefit Wage Ratio	Payroll Decline	all past	last 3	aver- age 3	last 3
	(33 States)	(17 States)	(2 States)	(1 State)	(6)	(7)	(8)	(9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Maryland		X				X		X
Massachusetts	X				X			6
Michigan		X ²				4		6
Minnesota		X				4		4
Mississippi		X				X		X
Missouri	X				X		X	
Montana	X				X ³		X	
Nebraska	X				X		5	
Nevada	X				X		X	
New Hampshire	X				X		X	
New Jersey	X				X		5	
New Mexico	X				X		X	
New York	X				X		X ⁵	
North Carolina	X				X			X ⁶
North Dakota	X				X		X	
Ohio	X				X		X	
Oklahoma			X			X		X
Oregon		X				X		X
Pennsylvania		X ²				4	X	
Puerto Rico	X					X	X	
Rhode Island	X				X ³		X	
South Carolina	X				X			6
South Dakota	X				X			X
Tennessee	X				X		X	
Texas		X				X		X
Utah		X				4		6
Vermont		X				X		X
Virginia		X				4		6
Virgin Islands	X							X
Washington		X				4		6
West Virginia	X				X		X	
Wisconsin	X				X			6
Wyoming		X				X		X

FOOTNOTES FOR TABLE 5

1. Uses 3 years of benefit charges and total taxable payroll. *Alabama*.
2. Formula includes reserve ratio, *Michigan, Pennsylvania*.
3. All since July 1, 1939, D.C.; all since January 1, 1940, *Idaho*; all since October 1, 1974, *Louisiana*; all since October 1, 1981, *Montana*; all since October 1, 1958, *Rhode Island*.
4. Last 5 years, *Michigan, Minnesota*; average 3 years, *Pennsylvania*; last 4 years, *Utah, Virginia, Washington*; last 3 years, except if employer has only 3 or 4 years liability in which case, last 1 or 2 years, respectively, *Illinois*; average 5 years, *Iowa*.
5. Average last 3 or 5 years whichever is lesser, or the last year, *Arkansas*; average 4 years, *Idaho, Nebraska*; average last 3 or 5 years, whichever is higher, *New Jersey*; average 3, or all quarters if employer has been liable for fewer than 13 quarters, *New York*; after 8 quarters of chargeability and annually thereafter, *Florida*; last 3 fiscal taxable years, *Colorado*; average 5 years, *Iowa*.
6. Last year, *Massachusetts, South Carolina, Wisconsin*; last 5 years, *Michigan*; last 4 years, *Utah, Virginia, Washington*; last 3 fiscal years, *North Carolina*.

CAPITOL COVERAGE

Here's How NFIB Members Voted on the '99 Kansas Ballot

1. Should Legislation be enacted to increase the property tax exemption for each single item of commercial machinery and equipment to \$1,000?

Yes81 percent
 No15 percent
 Undecided4 percent

2. Should legislation be adopted to exempt computers and related peripherals from state and local property tax?

Yes71 percent
 No22 percent
 Undecided7 percent

3. Should legislation be enacted to exempt motor vehicles from state and local business personal property tax?

Yes66 percent

No26 percent
 Undecided8 percent

4. Should the Legislature enact a new Comprehensive Transportation Program to fund major highway and other transportation facilities improvement?

Yes43 percent
 No41 percent
 Undecided16 percent

5. Should the present reserve-ratio approach be replaced with a benefit-ratio formula for determining the Kansas unemployment tax for employers?

Yes62 percent
 No17 percent
 Undecided21 percent

Who's in Charge in the House?

Last December, both the Democrat and Republican Caucuses met and selected their leaders for the 1999-2000 biennium. The following were elected to their respective leadership posts:

Speaker of the House: Robin Jennison (R-117th Dist. - Healy)	Minority Leader: Jim Garner (D-11th Dist. - Coffeyville)
Speaker Pro Tem: Doug Mays (R-45th Dist. - Topeka)	Asst. Minority Leader: Dennis McKinney (D-108th Dist. - Greensburg)
Majority Leader: Kent Glasscock (R-62nd Dist. - Topeka)	Minority Whip: Richard Aldritt (D-105th Dist. - Harper)
Asst. Majority Leader: Shari Weber (R-68th Dist. - Herington)	Caucus Chair: Barbara Ballard (D-44th Dist. - Lawrence)
Majority Whip: Clark Shultz (R-73rd Dist. - Lindsborg)	Policy Chair: Troy Findley (D-46th Dist. - Lawrence)
Caucus Chair: John Toplikar (R-15th Dist. - Olathe)	

Hal Hudson
State Director

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...and NFIB works for small business.

Senate Leadership is Unchanged

President:
Richard Bond (R-8th Dist - Overland Park)
Vice President:
Alicia Salisbury (R-20th Dist. - Topeka)
Majority Leader:
Tim Emert - (R-15th Dist. - Independence)
Asst. Majority Leader:
Ben Vidricksen (R-24th Dist. - Salina)
Minority Leader:
Anthony Hensley (D-19th Dist. - Topeka)
Asst. Minority Leader:
Janis Lee (D-36th Dist. - Kensington)

Important Topeka Phone Numbers

SENATE
 President's Office: (785)296-2419
 Majority Leader's Office: (785)296-2497
 Minority Leader's Office: (785)296-3245

HOUSE
 Speaker's Office: (785)296-2302
 Majority Leader's Office: (785)296-7662
 Minority Leader's Office: (785)296-7630

General Information
 (during session): (785)296-0111
 Bill Status: (785)296-3296