Approved: February 11, 2005
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:30 A.M. on January 24, 2005 in Room 123-S of the Capitol.

Committee members absent: Susan Wagle-excused

Committee staff present:

Kathie Sparks, Legislative Research
Susan Kannarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Secretary Jim Garner-Department of Labor

Others attending:
See attached list

Chairman Jordan opened the meeting by introducing Secretary Garner of the Department of Labor to introduce a bill. Secretary Garner is representing the Kansas Advisory Counsel regarding employment security law: amendments to comply with the SUTA Dumping Prevention. (Attachment 1)

Motion by Senator Emler to introduce the bill and seconded by Senator Wysong. Motion passed..

Chairperson Jordan introduced Jim Edwards representing the Kansas Association of School Boards to introduce a bill. A bill dealing with compensation on rule 10 coaches who are not employees of the school system. They are just people who help out.

Motion by Senator Schodorf to introduce and seconded by Senator Elmer. Motion passed.

Chairperson Jordan introduced Pat Tarrat with the CB Foundation . Mr. Tarrat would like introduced a bill to include business technologies opportunities into the Kansas use law. Motion to introduce by Senator Barone and seconded by Senator Schodorf. Motion passed.

Chairperson Jordan recognized Natalie Brite, Via Christi Regional Medical Center in Wichita. Ms. Brite would like to introduce a bill regarding payment of compensation; payment methods; electronic transfer and deposit. Senator Schodorf made motion to introduce bill and Senator Reitz seconded. Motion passed.

Chairperson Jordan explained **SB 1** stating it was a bill to clean up the language of the Kansas Economic Growth Act. A Motion to pass this bill out and put it on the Senate Calendar was made by Senator Barone and seconded by Senator Wysong. Motion passed.

Chairperson Jordan informed the committee that a copy of the new goals and a new mission statement they had worked on last Thursday and Friday was available by email. With no further questions or business the meeting adjourned at 9:20 a.m. The next meeting schedule for Tuesday, January 25, 2005 at 8:30 a.m. in room 123S.

Senate Commerce Committee
Guest List

Date: January 24, 2005

Stephanie Buchanan	DOB
Jim Edwards	KASB
Natalie Bright	Via Christi
[illegible]	Cerebral Palsy Research
Jim Garner	KDOL
[illegible]	Am Inst of Architects
Tom Slattery	AGC KS
Duane Simpson	KARA
John Peterson	Ks Governmental Consulting
Jeff Bottenberg	PSWS
[illegible]	Commerce
[illegible]	Hein Law Firm
Jessica Bourquin	KGC

KANSAS
DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

MEMORANDUM

TO: Members of the Senator Commerce Committee
FR: Jim Garner, JG
RE: Bill request
DT: 24 January 2005

I would respectfully request that the Senate Commerce Committee introduce as a committee bill, revisor's bill draft 5rs 0215. The following is a very brief overview of the contents of the bill. I will provide more detailed information if a hearing is held on the bill.

1. Conformity language to the newly enacted federal SUTA dumping bill. Recently, President Bush signed a new federal law requiring each state to conform to a set of general requirements to prevent the manipulation of State Unemployment Tax Acts (SUTA) to avoid the payment of UI taxes. Attached is an article detailing this information.
2. Language granting permanent authorization to the agency to use funds in the penalty and interest accounts (collected on late of delinquent tax payers) to cover the costs of employers filing their UI taxes electronically on-line. Previously, the employers have been required to pay this processing fee to pay their taxes.
3. Changes to simply make clear that payments to employees' health savings accounts under federal law will not be treated as wages for UI tax purposes.

The changes in this bill have been presented to and approved by the Employment Security Advisory Council.

I would appreciate your consideration of introducing this bill and granting hearings on the bill.

Thank you for your consideration.

Senate Commerce Committee
1-24-05
Attachment 1-1

OFFICE OF THE SECRETARY
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The Charlotte Observer
WEDNESDAY, AUGUST 11, 2004 www.charlotte.com

Bush signs bill to halt ploy to avoid taxes

N.C. toughened law last year to crack down on accounting practice

By Tony Mecia
Staff Writer

President Bush this week signed into law a measure designed to crack down on a controversial accounting practice that's drawn the attention of N.C. investigators.

The "SUTA Dumping Prevention Act of 2004," signed Monday, requires states to ensure that employers are not improperly slicing the amount they pay in unemployment insurance taxes.

The accounting move occurs when a company creates subsidiaries that have lower unemployment-tax rates than the parent company ordinarily does. State officials regard them as shell companies that serve no legitimate purpose other than to dodge taxes.

State officials said Tuesday they don't anticipate changing N.C. law, which legislators toughened last year.

"Essentially, the federal law was modeled on ours," said David Clegg, deputy chairman of the N.C. Employment Security Commission.

It was unclear whether South Carolina will be required to change its laws as a result of the new federal mandate.

North Carolina is providing technical assistance to other states on how to detect and penalize companies engaged in the practice, Clegg said.

The ESC has reached settlements with 10 companies and recovered nearly $7 million, and it is actively investigating an additional 50 companies.

Kelly Services, the nation's No. 2 staffing company, applauded the new legislation, which passed the House and Senate unanimously. The Troy, Mich.-based firm lobbied lawmakers for the measure because it believed competitors were using the accounting maneuver to gain an unfair advantage.

"Once states enact and enforce these requirements, employers are going to have to start paying their fair share," said Matt Harvill, Kelly Services' vice president of unemployment compensation. "Clearly, it levels the playing field if our competitors have been involved in the practice."

Last week, the Wall Street Journal reported that the Securities and Exchange Commission is looking into SUTA dumping at the world's largest staffing company, Adecco SA, as part of an investigation into accounting issues. The Journal cited unnamed sources familiar with the probe. Adecco has 25 N.C. offices, according to its Web site.

Clegg declined to say whether N.C. officials were investigating Adecco.

Of the six companies publicly accused by N.C. officials of using the accounting practice, two are in the staffing industry. Fayetteville-based Mega Force Staffing Group Inc. settled with the state in January for $681,000 and admitted no guilt, and Charlotte-based AdminSolutions Inc. is still negotiating over about $1 million the state says it owes, according to state records.

The new federal law mandates that states specifically prohibit the practice, establish procedures to identify questionable corporations, and impose "meaningful civil and criminal penalties" on people caught violating the law. Last year, the N.C. General Assembly explicitly outlawed the maneuver and made the practice a felony.

The federal law might not end the maneuver.

"This provides major tools for addressing the problem," said Eric Oxfeld, president of UWCStrategic Services on Unemployment and Workers' Compensation, a Washington employers association that studies the issue. "It will still be up to states to implement the law."

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Attachment 1-2

Stateline.org

Politics & policy news, state by state

MONDAY, AUGUST 9, 2004

Bill would help states fight unemployment tax fraud

By Colin Quinn, special to Stateline.org

States may soon have a new tool to keep businesses from dodging unemployment taxes, a practice that is estimated to collectively cost states many millions of dollars a year.

The tool is a bill (HR 3463) that passed Congress last month and is now awaiting President George W. Bush's signature. Sponsored by Republican U.S. Rep. Wally Herger, it closes a loophole that allows companies to avoid paying high unemployment taxes, a practice known as SUTA dumping.

SUTA is an acronym for State Unemployment Tax Acts. The Congressional Budget Office estimates the SUTA Dumping Prevention Act could save state unemployment funds and small businesses $498 million over five years.

"I'm very excited," Herger told *Stateline.org*. "This is a win-win situation for everyone."

Herger's home state of California had identified 29 companies with payrolls between $10 million and $1.6 billion who practiced SUTA dumping, costing the state's unemployment fund nearly $100 million annually.

The practice works like this: when an employee is laid off, he or she can go to the state to receive unemployment benefits, which are paid for from a fund partially financed by employers. The more claims a company has historically, the higher its tax rate. To skirt the tax, companies under present law can do one of two things: form a new corporation and use the fledgling company's lower rate or buy a different firm and use the purchased businesses' rate. In both cases, companies can save a huge chunk of money.

"We basically had some unscrupulous business entities that were taking advantage of the system," Herger said. "[They were] changing the name of the company and getting out of paying normal rates they should have been paying. Other companies were paying the tab for them."

Nearly 30 state unemployment insurance administrators said their laws were inadequate to stop SUTA dumping, Robert J. Cramer, managing director of the The Government Accountability Office's, formerly known as the General Accounting Office, special investigations group, told a congressional hearing in 2003.

Arkansas, Maine North Carolina and Washington passed legislation in 2003 to impose fines on businesses that manipulated their unemployment tax rates, but they were the exception rather than the rule.

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Herger, who chairs the U.S. House Ways and Means Subcommittee on Human Resources, decided to act. He held hearings and listened to testimony from CEOs before writing legislation. Herger said the bill received wide bipartisan support.

The bill does not dictate to states how to enforce the law or provide specific penalties for companies found guilty of SUTA dumping. That decision will be left to the states to decide.

"It's telling states they need to change their individual state laws," Herger said. "The message is that companies know they can no longer get away with this."

The bill also goes after people who fraudulently claim unemployment benefits. Savings will be routed back to state unemployment benefit accounts.

Milan P. Yager, executive vice-president of the National Association of Professional Employer Organizations, said it was critical to working people that the federal and state governments work to protect the integrity of the tax rating system.

"The small businesses are out there trying to sell hammers and dresses," Yager said. "They don't know why their rates are going up… the job of protecting the system is for state legislators."

Send your comments on this story to letters@stateline.org. Selected reader feedback will be posted in the Letters to the editor section.

See related *Stateline.org* story:

Unemployment tax cheats on states' radar

Contact Colin Quinn at cquinn@stateline.org

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Attachment 1-4