

Approved: 3/5/10

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:12 a.m. on February 10, 2010, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Art Griggs, Office of the Revisor of Statutes  
Renae Jefferies, Office of the Revisor of Statutes  
Jerry Donaldson, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Jim Garner, Secretary, Kansas Department of Labor

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2664**.

**HB 2664**     **Income tax credit for certain taxpayer payments to the employment security fund**

The Chairman called upon Renae Jefferies to explain the changes in the statutes that **HB 2664** would make (Attachment 1).

Representative Quigley asked if there was a fiscal note for the bill. Renae said that when she pulled up the bill there was no fiscal note on the bill.

The Chairman asked the committee to find in previous testimony the 2010 Original Tax Rate computation chart and the 2010 Adjusted Tax Rates chart.

Renae Jefferies explained the changes on **HB 2644** (Attachment 2).

The Chairman said that we have three steps for handling the problem of the depletion of the UI Trust Fund. The first is to offer some relief to employers hit by huge increases in UI tax rates that are due in April. Second was a mechanism to restore solvency to the Trust Fund. The third was a method of repaying any borrowing from the Federal Government to pay UI benefits.

Representative Jack said that he agreed that the most important thing right now was to get some relief to the employers hit with large increases. His method for giving that relief was corporate income tax credits for these businesses. The most important thing is to get the layoffs stopped.

The Chairman said that the first bill, **HB 2664** gives a tax credit back to those businesses that paid the adjusted rate.

Representative Grant asked Representative Jack, who introduced **HB 2664**, about the possibility of bringing the percentage down from 5.4% to 3.4%.

Representative Brunk said **HB 2644**, the next bill to be heard, does that. While **HB 2664** does give them some tax relief it is probably better for it to be run through the tax committee.

The Chairman closed the hearing on **HB 2664**.

Representative Grant said that he would not discount **HB 2664** and maybe it could be changed to an unemployment credit.

The Chairman opened the hearing on **HB 2644**.

## CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:12 a.m. on February 10, 2010, in Room 784 of the Docking State Office Building.

### **HB 2644**      **Employment security law; relating to contribution rates, penalties and interest for calendar years 2010 and 2011**

The Chairman said that what **HB 2644** does is take the businesses back to the 2010 Original Tax Rate Computation chart starting with Rate Group 33 and each Rate Group up to Rate Group 51 having a higher Contribution Rate are capped at 5.40% so they get some relief with that. The other thing that it does is say that although it is still due in April it forgives the penalty and interest. So it gives them the whole year to pay the tax without penalty and interest. The bill is good for 2010 and 2011.

Representative Quigley asked how much money was gained by raising, for example, Rate Group 25 from 4.06% to 5.40%. The Chairman said that we have not heard that number yet. We are asking Megan to help us with that. Megan said they were still working on those figures and hoped to have them available no later than Friday.

Representative Kerschen said that looking at Secretary Garner's testimony, it indicates in paragraph four that it would cost the Trust Fund \$43.4 million, so employers would save that much.

The Chairman called upon Secretary Garner for a discussion of the ESAC recommendations (Attachment 3). The Secretary said that his testimony had to do with restoring solvency to the Trust Fund and what procedure we should use to repay the interest on the funds borrowed to pay UI benefits.

Representative Grant asked what the average benefit amount was. The Secretary said that this would be capping the maximum benefit which is \$436.00 a week.

Representative Jack asked for a definition of solvency in the Trust Fund. The answer was that solvency is when we have money in the bank.

Representative Grange asked how long would it take to pay the interest on the loans. The Secretary said that it would be determined every year if there was money to be paid back. Once the loans are paid there would be no more interest.

Representative Suellentrop asked if there was a time line to repay the principal. The Secretary said there was no time line for the repayment of the principal.

Representative Worley asked if the surcharge would apply to all rate groups. He asked if once again the positive balance employers would be paying a penalty for the negative balance employees. The Secretary replied that the Council wanted a fair across the board rate with everyone paying the same percentage.

Representative Grant asked if there was any rumor of more stimulus money for unemployment. The Secretary said that right now there was no discussion at the Federal level about that.

Representative Suellentrop asked if the projections took into consideration **HB 2644**. The Secretary said no.

Representative Grange asked if UI benefits were taxed. The Secretary said that yes they are subject to both Federal and State income tax, except for 24 weeks of tax year 2009.

Representative Bowers asked what the average weekly wage was now in Kansas. The Secretary said it was \$718.00. For a person to earn the maximum UI benefit of \$436.00 you would need to have an annual salary of \$34,000.00. The majority of workers in Kansas make \$37,000.00 annually. The largest number of claims are coming from factory and construction which are typically higher paid.

The Secretary presented his testimony as neutral on **HB 2644** (Attachment 4). He indicated that a primary concern with section 1 of the bill is that it might raise a federal compliance issue.

In section 2 he drew attention to the difference between "penalty" and "interest" in dealing with the UI taxes. A "penalty" applies when an employer fails to file a quarterly wage report by the last day of the month

## CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:12 a.m. on February 10, 2010, in Room 784 of the Docking State Office Building.

following the close of each calendar quarter. "Interest" applies when an employer fails to pay contributions by the last day of the month following the close of each calendar quarter. It is critical that the Quarterly Wage Reports be filed timely. If they are not filed it could affect the claimant's unemployment benefits.

In regard to spreading the payment of this years UI taxes over the entire calendar year there are two problems. First, any contributions not made by July 31<sup>st</sup> will affect the Trust Fund tax rates for the next year. Second, The Federal Unemployment Tax Act allows employers to take a credit against the FUTA tax as long as they are paid by January 31<sup>st</sup> of the following year. Therefore if the contribution is not paid by January 31<sup>st</sup> of the following year the FUTA credit will be reduced.

Representative Kerschen asked why we could not carry over the experience rating to the next year. The Secretary said we need to explore further the federal compliance issue because they require a recalculation every year based on the last three consecutive years of data.

The Chairman asked the Secretary for his help in figuring out how we could set the rates for 2010 and 2011 without endangering the FUTA credit. We are moving in that direction.

The Chairman closed the hearing on HB 2644.

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 10:28 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-10-10

NAME	REPRESENTING
TED HENRY	CAPITOL STRATEGIES.
Kendra Hanson	Hein Law Firm
-JUDITH GARD	CAPITOL ADVANTAGE
Matt Carey	GBA
Jason Watkins	Wichita Chamber
John Donley	KS Lusk Ass'n
J. P. SMAU	KOCH INDUSTRIES
Rue Suter	KANA / KQFA

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MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 10, 2010  
Subject: HB 2664

HB 2664 establishes a tax credit for contributing employers to the state employment security fund for the calendar year 2010 based on the amount of contributions actually and timely paid by the contributing employer. The amount of the credit shall be the difference between what the contributing employer paid pursuant to the 2010 adjusted tax rate computation table and the rate of computation determined by the 2010 original tax computation table. If the tax credit exceeds the contributing employer's income, premiums or privilege tax liability in the 2010 taxable year, it may be carried over to succeeding years for deduction until the total amount of the credit is used up. However, the tax credit may not be carried over past the fifth year succeeding the year the tax credit is accrued.

This act shall take effect upon its publication in the statute book.

There is not fiscal note at this time.

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MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 10, 2010  
Subject: HB 2644

House bill.2644 amends K.S.A. 44-710a on section 1, page 1, lines 32 through 36. that for calendar years 2010 and 2011 to provide that each contributing employer in rate groups 1 through 32 pay the computation rate in the 2010 original rate computation table, with contributing employers in rate groups 33 through 51 being capped at a contribution rate of 5.4 %. This provision in essence freezes the contribution rate charged in the 2010 original tax rate computation table as the rate for calendar year 2011.

In section 2, on page 13, lines 36 through 43, K.S.A. 44-717 is amended to provide that a contributing employer who pays its 2010 contribution rate in full by the close of the final calendar quarter for the calendar year 2010 shall be forgiven any penalties and interest accrued during such time period. However if the contributing employer does not pay its contribution rate in full by the end of the final calendar quarter for calendar year 2010, such contributing employer shall be responsible for paying accrued penalties and interest.

This act takes effect upon its publication in the Kansas Register.

**Testimony on the Recommendations by the  
Employment Security Advisory Council  
To House Commerce and Labor Committee**

By  
**Jim Garner, Secretary  
Kansas Department of Labor**

**10 February 2010**

Chairman Brunk and Members of the Committee:

Thank you for giving me the opportunity to share an update on the recent recommendations of the Employment Security Advisory Council.

The Employment Security Advisory Council (ESAC) is a group created by statute and is comprised of members from the business community, labor organizations and economists from our universities. They oversee matters concerning the Unemployment Insurance Trust Fund and provide insight and recommendations on the Employment Security laws and legislation in Kansas.

In August, this group was charged with providing recommendations and solutions regarding the Unemployment Insurance Trust Fund to the Labor Secretary. ESAC held its first meeting September 3, 2009 and formed a sub-committee that examined a variety of options for the full ESAC to review. The ESAC sub-committee met three times to study the issue and develop possible recommendations for the full Council to provide to the Legislature and Labor Secretary on how to rebuild the Trust Fund and pay off any federal loans that may be needed. The full Council then met five times to review the work of the sub-committee. They have studied a variety of options and scenarios, taking into consideration both employer and claimant interests.

After much study, last week the ESAC adopted two sets of recommendations. One set of recommendations to address the UI Trust Fund's solvency and efforts to help pay back the debt incurred to pay benefits. The second recommendation concerns the payment of the interest on federal advances.

**Trust Fund solvency and payment of principle on debt:**

The ESAC recommends the Legislature enact three options that will create new revenue to help address the Trust Fund solvency and pay back the debt from federal advances.

- 1) Increase the taxable wage base to \$9,000 in 2011, \$10,000 in 2012 and index the taxable wage base to increases in the annual average weekly wage in future years**

- 2) **Add nine additional negative balance rate groups to the existing 10 negative balance rate groups**
- 3) **Place a two-year moratorium on the maximum weekly benefit amount**

Under this scenario and factoring in FUTA credit reductions, we project the UI Trust Fund will become solvent in 2016.

**Payment of the accrued interest on federal loans:**

The ESAC agreed to recommend to the Legislature legislation that would:

- 4) **Implement a special assessment dedicated to paying only for the interest accrued on federal loans for the Trust Fund.**

The legislation would provide an assessment which would be paid into a separately created employment security interest assessment fund. The amount would be a flat percentage on an employers' current tax rate, to be set by the Secretary of Labor upon determination of the amount needed to pay interest due on advances for such tax year. The assessment would be in addition to current contributions and would be used to pay for interest owed the federal Treasury for Trust Fund borrowing.

The collection would begin once interest had begun to accrue. Determination of the surcharge rate would be made in time to notify employers of the rate at the same time they receive notice of their annual contribution rate. Also, any excess collections would be placed in the interest assessment fund for use to pay interest in future years. Any funds remaining in the account once all interest payments have been paid would transfer to the Trust Fund.

**Conclusion**

The Council will meet again on Thursday, March 4. I will be happy to answer any questions.



## Methodology

The forecast of data listed above was produced using the State Benefit Financing Model (BFM) developed by the U.S. Department of Labor. BFM was first developed in 1977. It has since been modified and expanded by the Division of Actuarial and Fiscal Services in the Office of Workforce Security of the U.S. Department of Labor. 3-3

The Benefit Financing Model is comprised of two separate programs. Program one, the Projection Program, projects specific Unemployment Insurance variables twelve years into the future. Section two, the Financial Forecast, forecasts the Unemployment Compensation Fund. The Projection Program forecasts twelve Unemployment Insurance variables on a quarterly basis starting from a base year, which is the most recently completed calendar year. All of these variables are forecasted by relying on their historical pattern by itself or with other variables.

The majority of the relationships established between variables are linear regressions which are run within the Model using the least square methodology. Based on these relationships, a series of standard equations will be developed for each State. Such equations will be measured against defined test standards before being acceptable for the Projection Program. The coefficients of these algebraic relationships will be used to forecast each of the quarterly UI variables.

Since regression analysis is the basis for projecting a number of the Projection Program variables, it must be remembered that this technique presupposes that relationships, which have existed in the past, will continue to exist in the future. However, this may not always be the case, as the degree of the relationships may be changing over time, or may change abruptly if changes occur in the Unemployment Insurance program itself. The output from the Projection Program forms the input for the Financial Forecast Program.

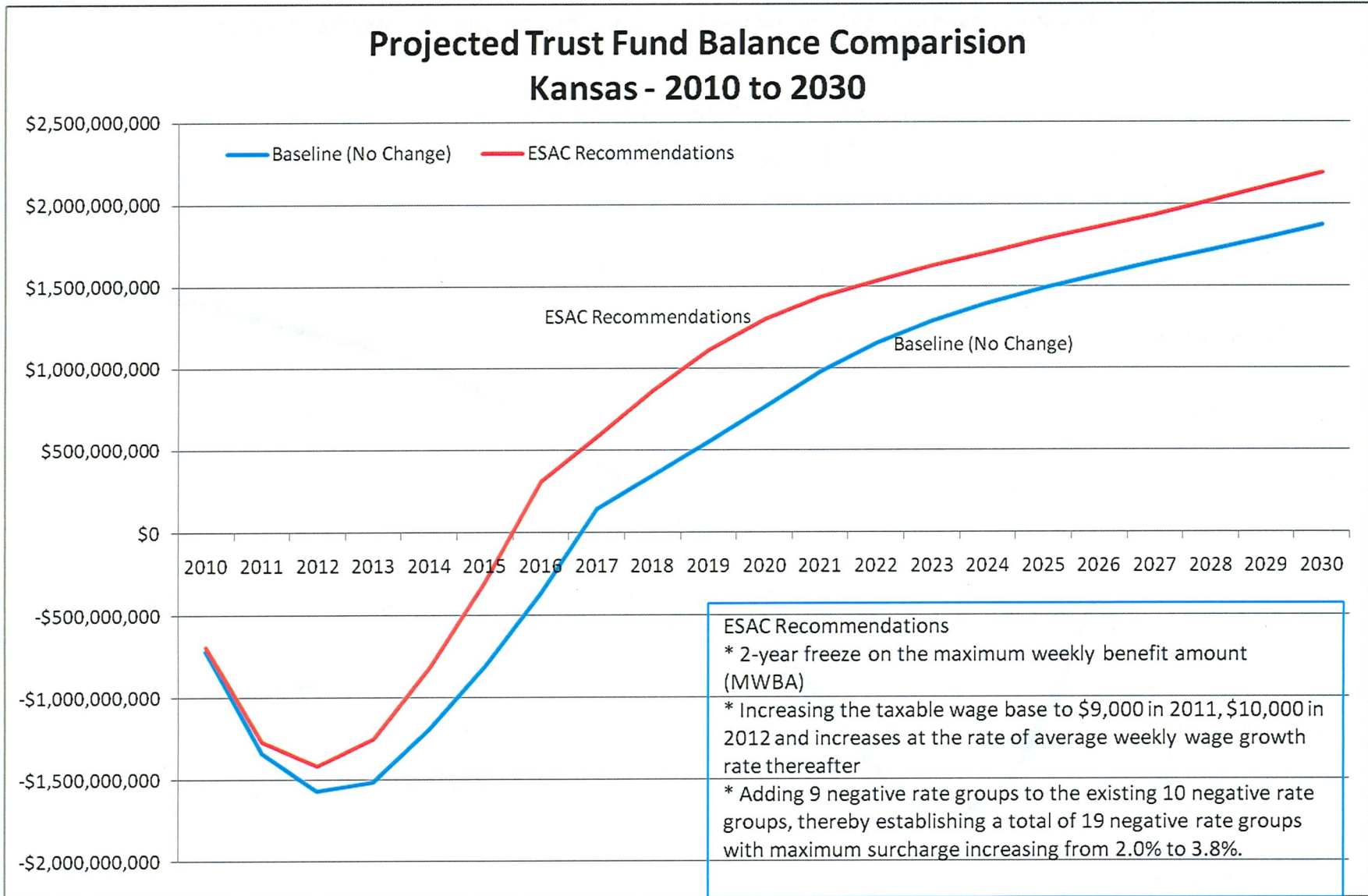
The inputs in this model were annual growth rate of labor force, average weekly wage and insured unemployment rate. Labor force and average weekly wage growth rates were determined from historical paths. The insured unemployment rate was derived using a linear regression technique of U.S. total unemployment rate and Kansas insured unemployment rate. The projections of the U.S. unemployment rate were taken from the Congressional Budget Office (CBO) economic forecast as of August 25<sup>th</sup> 2009. As such these projections are subject to change as the CBO revises its estimates. In selecting the best predicting variable and linear regression model, statistical diagnostics such as adjusted  $R^2$  were used.

For all the estimates listed below it was assumed that state triggered extended benefit will be triggered on from 2010 quarter 1 to 2011 quarter 4. According to the existing statute, the state is responsible for paying 50% of the extended benefits.

All projections from 2014 forward are based on constant average insured unemployment rate of 1.5%, long run annual average weekly wage growth rate of 3.8% and annual labor force growth of 0.6%. Please note that these projections are subject to revisions as national and statewide forecast continues to be revised as new data becomes available. Some of these revisions could be substantial. 3-4

Impact of ESAC Recommendation on Trust Fund Balance

3-4

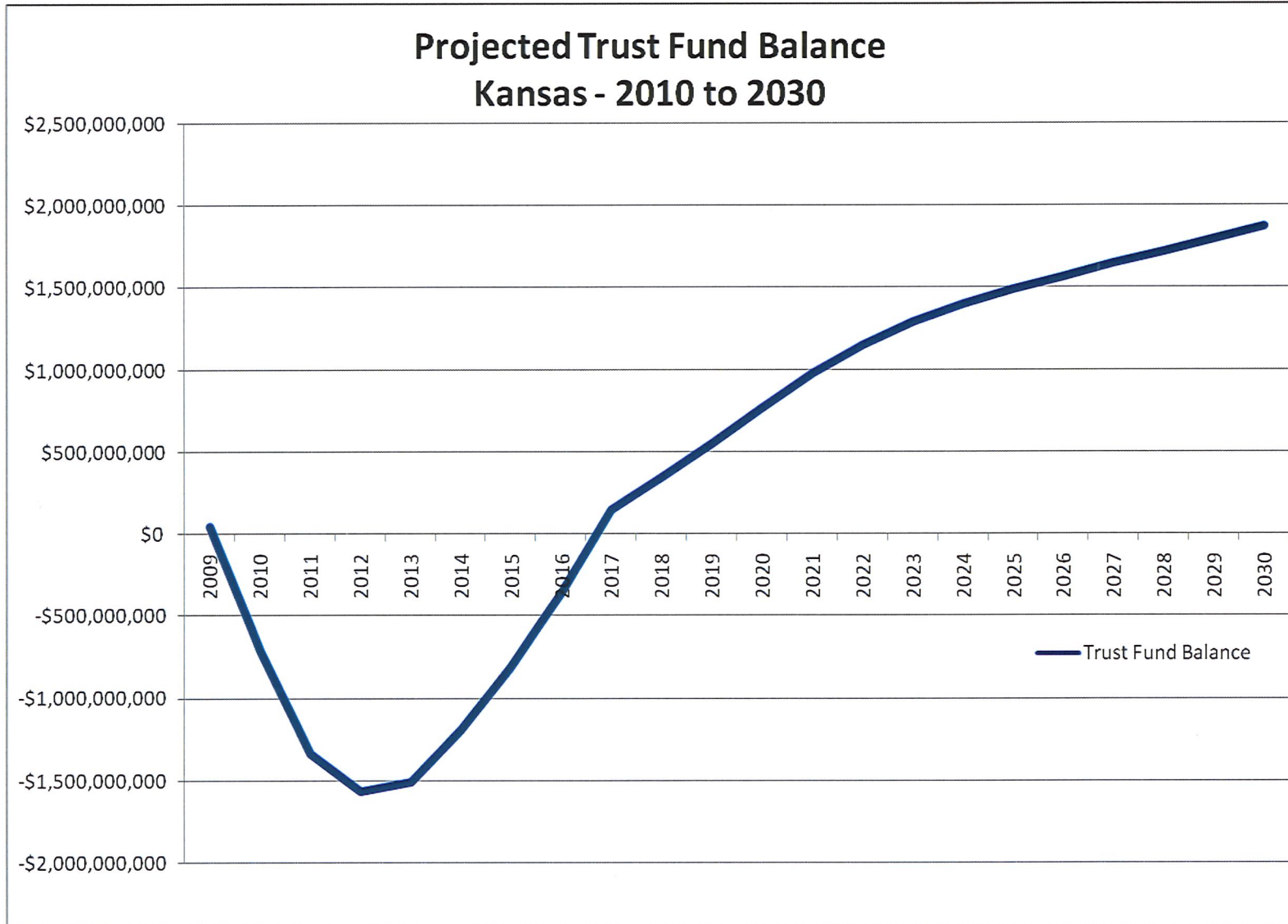


3-4

### Trust Fund Balance – Baseline Scenario

(No change in existing statute except for provisions to pay interest payments)

3-5



**Testimony regarding 2010 House Bill 2644**  
**House Commerce and Labor Committee**  
**Jim Garner, Secretary**  
**10 February 2010**

Chairman Brunk and members of the Committee:

Thank you for the opportunity to appear before the committee today. The issue of unemployment taxes and trust fund solvency are matters of utmost importance to this Administration. We continue to look at all options as we try to find some relief for employers in this current economic environment. We continue to explore whether there are any administrative options available.

Please let me share a few comments regarding 2010 House Bill 2644.

This bill contains two key provisions. Section 1 would change the tax rates for positive balanced employers in rate groups 1 through 32 to the rates assigned to them prior to the adjustments made pursuant to statute and regulations to address the capping of rates in rate groups 33 through 51. Section 2 of the bill forgives any penalty and interest on any employer as long as they pay their contributions in full by the end of calendar year 2010.

Section 1 will reduce revenue going into the Unemployment Insurance Trust Fund. The bill provides some relief for a group of employers this year. The cost of this provision is approximately \$43.4 million to the Trust Fund.

A primary concern related to Section 1 is that the proposed legislation would automatically assign contribution rates for 2011 to be the same rates as were assigned in 2010. Section 3303(c)(7) of the Federal Unemployment Tax Act (FUTA) requires that tax rates be based on experience ratings and that the experience rating be done at least once every year using experience data for at least three consecutive years. Assigning the same rate from a prior year would not meet the requirements of an experience rated computation at least once in each calendar year. This could very well raise a federal compliance issue.

Section 2 of the bill is an effort to allow employers to spread the payment of this year's UI taxes over the entire calendar year, eliminating any penalty and interest for doing so. It is important to recognize the difference between the terms "penalty" and "interest" in dealing with any legislation proposing the deferment of the payment of unemployment contributions.

A "penalty" applies when an employer **fails to file a quarterly wage report** by the last day of the month following the close of each calendar quarter.

"Interest" applies when an employer **fails to pay contributions** by the last day of the month following the close of each calendar quarter.

**House Commerce & Labor**  
**Date: 2-10-10**  
**Attachment # 4**

It is critical that the Quarterly Wage Reports be **filed** timely. The wage data on the reports is used in the calculation of a claimant's unemployment benefits. If the wage credits are not reported, the claimant may not receive benefits. Therefore, so long as these reports are filed timely, "penalty" is not an issue.

With regard to spreading the payment of this year's UI taxes over the entire calendar year, there are two dates having to do with the payment of the unemployment contributions that are very important: July 31<sup>st</sup> and January 31<sup>st</sup>.

**July 31<sup>st</sup>** – Any contributions not made by July 31<sup>st</sup> will affect the Trust Fund and could impact tax rates for the following year. The contributions for employers for the fiscal year July 1<sup>st</sup> through June 30<sup>th</sup> and actually paid by July 31<sup>st</sup>, are used in the calculation of the employer's experience rating for the next year. Consequently, any payment not received by July 31<sup>st</sup> would not be used in the calculation of the employer's tax rate for the next year, which could result in an increase in the employer's tax rate.

**January 31<sup>st</sup>** – the Federal Unemployment Tax Act allows employers to take credit against the FUTA tax for contributions paid to the state unemployment fund so long as those contributions are paid on or before the last day upon which the taxpayer is required to file a return for such year, which is January 31<sup>st</sup> of the following year. Therefore, if contributions due for any given calendar year are not paid by January 31<sup>st</sup> of the following calendar year, employer's credit on their FUTA tax will be reduced.

House Bill 2644 does not appear to create any issue concerning the January 31<sup>st</sup> date, since the bill would require payment of interest on contributions paid after the end of the calendar year. However, the bill does appear to create a July 31<sup>st</sup> date issue and would have an impact on experience rate computations for CY 2011.

Again, Mr. Chairman, thank you for the opportunity to appear and to share this information concerning House Bill 2644.