Approved: April 9, 2010
Date

MINUTES OF THE SENATE BUSINESS AND LABOR COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 8:15 a.m. on March 2, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:
Ms. Margaret Cianciarulo, Committee Assistant
Mr. Reed Holwegner, Kansas Legislative Research Department
Mr. Kathie Sparks, Kansas Legislative Research Department
Mr. Ken Wilke, Kansas Office of the Revisor of Statutes

Conferees appearing before the Committee:

Ms. Natalie Bright, Legislative Counsel, KS Society of HRM - KS (SHRM)

Others attending:
See attached list.

Hearing on HB2676 - an act concerning employment security law; relating to contribution rates and penalties and interest

Upon calling the meeting to order, the Chair stated that the House bill dealing with unemployment **(HB2676)** did come over and is before them. The bill goes back to the original 2010 rate as they were first set and before they were adjusted. She said she wanted to have a quick hearing on the bill and the same proponents of the bill that testified on the House side are here and noted in their testimonies are quite a few organizations that support the reduction of the 2010 rates. She asked the Committee for questions on the bill or if they wanted to hear from any of the proponents?

The Chair called on one of the proponents, Ms. Natalie Bright, Legislative Counsel, Kansas Society of Human Resource Management (KS-HRM) who states the bill proposes:

- For calendar years 2010 and 2011, charge contributing employers in rate groups one through 32 the 2010 original tax rate computation table and employers in rate groups 33 through 51, a capped rate of 5.4 percent contribution rate.

- Grant employers 90 days past the due date to pay that contribution without being charged a penalty or interest.

She went on to say that their members strongly support the provisions in this House bill as it provides immediate relief to Kansas employers from their 2010 current unemployment insurance assessments and affords them additional time to come up with the cash to pay them, and while it will not provide relief to all positively balanced employers, it does provide relief for a large portion of those who saw the greatest increases. A copy of her testimony is (Attachment 1) attached and incorporated into the Minutes as referenced.

Written proponent testimony was also offered from:

- Mr. Daniel Murray, State Director, National Federation of Independent Business - KS (NFIB-KS).

- Ms. Rachelle Columbo, Senior Director of Legislative Affairs, The Kansas Chamber, on behalf of the Kansas Business Coalition on Unemployment Insurance.

Copies of their testimonies are (Attachment 2) attached and incorporated into the Minutes as referenced

The Chair recognized:

- Senator Faust-Goudeau who asked, with this proposal, how would this affect the employees? Ms. Bright felt it would not as they would be borrowing federal money to maintain the level of need for claims on a daily basis.

-Secretary Garner read and offered a copy of "Governor Parkinson's comments on House approval of Unemployment Insurance bill" and is (Attachment 3) attached and incorporated into the Minutes as referenced.

He went on to say that he encourages the Committee to keep the bill clean and work on providing immediate relief, urging that other issues not get tangled up because it is a time sensitive piece of legislation. And anything dealing with long term solvency, he encourages them to take up in separate legislation.

Questions for Secretary Garner came from Senators Lynn and Wagle such as, are you following federal legislation and can you verify that the House and Senate both want to extend unemployment? Answer: The Emergency Unemployment Compensation Program, the federal extension of benefits, actually expired February 28, 2010 so technically they are in a situation where people are expiring benefits now are not rolling over into any of the extended benefit programs. It is his understanding there will be an effort in Congress to get some extension of those programs passed with the retroactive provision to go back to February 28. When the Governor wants to prevent the reductions in benefits, what is the impact on not reducing them? Answer: The issue of **HB2676** is to provide immediate relief because of that compression of rates that many of the positive balance employers saw. As there were no further discussion or questions, the Chair closed the hearing.

Action on previously heard bills and a proposal bill

The Chair stated she had met with the Governor's Chief of Staff suggesting to him that the legislature was going in the direction of reducing the rates for businesses because no one predicted they would go that high. His first comment was, it only compounds the problem if they reduce the money into the fund. The Chair went on to say, if we only reduce the amount the employers are paying in, which is **HB2676**, we would have to borrow more than $750M this year, and the cost of borrowing the extra money would be an additional $150M over two years. But definitely, if their predictions were correct, just passing **HB2676,** we would be in the hole a minimum of $850M and whatever we would need to borrow next year, which means businesses still need to make up that amount of money, and it would click in the extra federal unemployment tax rate that would go up every year to state employers until we get it paid off.

In light of this she said she wanted to work a proposed bill concerning the employment security act, creating an assessment for the payment of interest on advances received from the federal government; pertaining to negative account balance employers; pertaining to employer contributions; pertaining to benefits and eligibility therefor; pertaining to duties of the secretary of labor and called on Mr. Ken Wilke, Kansas Office of the Revisor of Statutes to explain the bill the Committee had put together at their last Committee meeting. Highlights included:

- Section one requires Secretary Garner to attend every meeting of the Legislative Coordinating Council (LCC), from July 1, 2010 to December 31, 2011, to advise the council about the status of the unemployment security fund.

- Section two establishes an interest assessment mechanism for the Secretary of Labor to have a separate revenue stream to pay the interest on any loans from the federal government for any advances of funds. (This is currently in **SB551** which was recommended by the Employee Security Advisory Counsel.) This applies only to payment of interest on the advances made to the Secretary. Referring to page 2, he said, the interest assessment is a flat percentage of the employer's current tax rate and is sent out with their annual rate of contributions. If there are excess funds collected from one year, it carries over to the next year to help defray interest expenses and the only time this comes into play is if the Secretary does in fact, borrow funds.

Questions came from Senator Brownlee and Wagle including when you say the interest payment will be a flat percentage of each employer's tax current rate, is there not still a distinct surcharge? Answer: This is totally separate from other interest and penalty provisions of the Unemployment Security Act. To clarify, this language comes from the KDOL in order to comply with to federal law and what was this surcharge. Answer: This is language is in **SB551** and the surcharge would be around 11%.

- Section three is a companion piece creating a separate fund in which these interest assessments go and allows the Secretary to disburse the funds out. This also is part of the ESAC bill SB551.

- In Section four, the bottom of page 5 and top of page 6, the language basically caps the maximum weekly benefit determined by the Secretary on July 1, 2009 or whatever is calculated on July 1, 2010, whichever is less. Then there follows a corresponding provision regarding determinations on July 1, 2011 and that again is asking what the Secretary calculated on July 1, 2009, and takes the minimum of those two. This is a cap on the maximum benefit that is allowed under the act. It is not possible to go in and cap the weekly wage benefits because those are determined on the person's last salary before they became unemployed. What this does do is establish a maximum so if salaries had gone up, there is still a ceiling over which they can't go. This was another ESAC recommendation found in **SB552.**

- Section five, page 11, paragraph three, takes out the compensation for the waiting week period and removes that additional benefit between the time the act becomes effective which is July 1, 2010 through December 31, 2011, basically creating a moratorium on that piece.

- Section six, the bottom of page 13 through the top of page14, is language very similar to what they saw in the preceding section pertaining to the waiting week, however, this pertains to the trailing spouse, discussed in Committee and again, creating a moratorium on that also until December 31, 2011.

- Section 7, page 39, is language dealing with the maximum negative ratio surcharge which again, comes from one of the ESAC bills that deals with an increase in the taxable wage base. They do not have the increase in the taxable wage base in this bill so this language has no effect here, but at the bottom of the page (39) is the addition of the nine categories for the negative account balance and the effect of that is to bring a little more money to the fund.

On page 43,, is language change dealing with revenues generated by increasing the taxable wage base. He said, since this was part of the section that he carried over from the ESAC bill, the language here will have no effect because there is no provision in this bill dealing with increasing the taxable wage base. It is basically surplus but he carried it over anyway since it is part of this whole section.

The Chair asked, when the money comes in, what is the effect? Answer: This would refer to revenue if you increased the taxable wage base above $8K and the only time this particular sentence at the top of page 43 would come into play. There is no provision in this bill that would increase the taxable rate base above $8K. There is a tax increase here with the surcharge with respect to the assessment, but this is a separate issue.

The next change in this section appears on page 44, dove tailing in with the fact that you are trying to make sure that the maximum benefit is based on calculations in 2009 or 2010 whichever is less, because that process starts with determining the maximum yield. We put this language in so that the plan yield calculations would go back and basically use the calculations for the year 2010 to be used for the years 2011 and 2012. This helps insure that the cap on the maximum benefit stays in accordance with the other provisions of the bill.

The Chair recognized Senator Holland who asked for clarification that Mr. Wilke is referring to the employees maximum? Answer: Yes.

The next language for the Committee to look at is on page 50, subsection f, which again, deals with rate contributions and a mechanism for picking up new employers. He stated, we are trying to freeze for calendar years 2011 and 2012, and basically putting in a provision here that freezes the rate calculations that have been done for 2010. If you have a new employer after July 1, they will be treated the same, and deemed to have been an employer on the date preceding so they could enter the contribution base tables we have and categories already in place.

Section eight is the last major section and again comes from one of the ESAC bills dealing with the interest assessment and most of this language, beginning on page 50 and continuing through about the last page, allowing the Secretary to collect penalties and interest on those interest assessments the same way that they collected penalties and interest if the contribution rate forms are not filed or payments are not made. So it is basically blending into their collection statute the material regarding interest assessment.

Two additional subsections added on the last page of the bill which are different from what was in the ESAC bill :

- on page 68, subsection (l) deals with hardships. There is currently a hardship provision in this section but it only applies to those employers who do not file electronically. So we have created a more general hardship provision that allows the employer to apply to the Secretary for hardship and the Secretary may waive any interest providing the employer makes a written request for the waiver, demonstrates the hardship and then files the wage report or contribution return in a timely manner as required by the Secretary.

The timely manner leaves the Secretary a little latitude in that if he wants to adhere to the statutory guidelines or allow a few extra days he can do that, but this leaves the discretion with the Secretary.

- subsection (m) is Senator Kelsey's request of taking care of that first quarterly payment. With this provision going for calendar years 2011 and 2012, basically this provision says if the employer is required to make a quarterly contribution payment on or before April 30, he or she may elect to pay 50% of the payment on or before April 30 and the balance on July 31 without incurring any interest on the amount paid on July 31 of that year.

- and lastly, the third subsection provision makes this subsection expire on December 31, 2012.

Questions and comments came from Senators Kelsey and Wagle including: assumed the setback would be effective immediately and can we do a registered publication? Answer: This can be done, but it would still depend on when the bill was signed. Where do we hold the planned yield for the next two years? Answer: He referred the Committee to page 44, where it basically requires using the planned yield calculations for 2010, 2011 and 2012.

As there were no further discussion or questions, the Chair recognized Senator Emler who made a motion to change the effective date to registered publication, on the outside chance that it could happen. It was seconded by Senator Kelsey and the motion carried.

Next, the Chair recognized:

- Senator Brownlee asked if this motion will go into **HB2676?** The Chair said that was her intent, to have a substitute bill for this as it would be the most expedient way to deal with this.

- Senator Holland, regarding Senator Kelsey's language on the last page, subsection three, he thought the intent was to address 2010 through 2012 and if so, why is it (2010) not stated in this paragraph? Answer: The reason it was not mentioned was when the proposal was originally drafted, the July 1 effective date was used which was going to be after the current year, but if they want to change this to the Kansas register.

The motion was made by Senator Emler to insert 2010 into subsection three. It was seconded by Senator Brownlee, and the motion carried.

- Senator Brownlee asked Secretary Garner if their checks were done electronically. Answer: Yes and transferred to a card electronically.

Senator Brownlee made a motion to add the proposed bill covered by Mr. Wilke in today's meeting, with its amendment into **HB2676**, so basically it would be a gut and go and be a substitute bill. It was seconded by Senator Lynn.

Comments came from Senator Holland who stated he would be voting no on this and referred back to the Governor's statement outlining very clearly what will happen to this bill if we take the contents of this bill and put it into **HB2676**. He feels their mission is to get immediate relief for employers and strongly recommends the Committee leave the bill as is as he is concerned it will ball things up and it will get a veto.

The Chair said to address his concerns, Mr. Wilke has worked with the KDOL on the language and after we worked this proposal a few days, the Governor never came out with a press release against it and she was told he might. It was questionable if they were cutting benefits or not with the federal increase in benefits. We have to have in place, a surcharge for business and a way to pay the funds we have already started borrowing or else we are out of compliance with the federal law and then the taxes go way up on all employers.

As there was no further discussion on the motion on the floor to substitute the House bill, seeing none, the vote was taken. The motion passed.

The Chair asked if the no's would like to be recorded? Senators Faust-Goudeau and Senator Holland both said they would like to be recorded as voting no.

A motion was made by Senator Kelsey to move the bill out favorably. It was seconded by Senator Brownlee and the motion passed.

Adjournment

As there was no further business, the Chair adjourned the meeting. The time was 9:25 a.m.

The next meeting is scheduled for March 3, 2010.

BUSINESS AND LABOR COMMITTEE GUEST LIST
DATE: 3-2-10

NAME	REPRESENTING
Bob Lierz	KDOL
Jerry Dimmy	KDOL
Judy Macy	KDOL
Megan Bottenberg	KDOL
Jim Garner	KDOL
Mayat Noormahad	KDOL
Heather Sovern	KDOL
Kelli Kirkwood	KLA
Jim Maag	Spirit AeroSystems
Mike Huttles	Huttles Gov't. Relations
Leslie Kaufman	Ks Co-op Council
Andy Sanchez	Ks AFL-CIO
Bernie Koch	KEPC
Leigh Keck	Hein Law firm
Sean Miller	Capitol Strategies

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please continue passing

Thank You – Committee Assistant

Kansas State Council

Society for Human Resource Management

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Senate Committee on Business and Labor

Testimony regarding HB 2676

By Natalie Bright

March 2, 2010

Chair Wagle and honorable committee members,

On behalf of the members of the Kansas Society of Human Resource Management (KS SHRM), I would like thank you for your consideration of HB 2676. As passed by the House, the bill proposes the following:

- For calendar years 2010 and 2011 to charge contributing employers in rate groups 1 through 32 the 2010 original tax rate computation table and employers in rate groups 33 through 51 a capped rate of 5.4 percent contribution rate; and
- Grant employers 90 days past the due date to pay their contribution without being charged a penalty or interest.

Our members strongly support the provisions in HB 2676 as it provides immediate relief to Kansas employers from their 2010 current unemployment insurance assessments and affords them additional time to come up with the cash to pay them. While HB 2676 will not provide relief to all positively balanced employers, it does provide relief for a large portion of those who saw the greatest increases.

As KS SHRM members have shared with you on numerous occasions this session, Kansas employers expected increases in their unemployment insurance rates, however, none expected the degree of the 2010 increases. With the rate increase notices being delivered in late December Kansas employers have little time to budget for what may be one of their largest costs in 2010. It is our fear that if the Kansas Legislatures does not act to provide relief to Kansas employers we will only see further delay of our economic recovery.

Again, thank you for your steadfast consideration of the issues confronting Kansas employers within the Kansas unemployment compensation system. We appreciate your efforts.

Senate Business & Labor Committee
Date: March 2, 2010
Attachment 1

Legislative Testimony

HB 2676
March 2, 2010
Senate Business and Labor
Rachelle Colombo, Senior Director of Legislative Affairs, The Kansas Chamber

Submitted on behalf of the Kansas Business Coalition on Unemployment Insurance: *The Kansas Chamber; National Federation of Independent Business; The Wichita Chamber; The Overland Park Chamber; Wichita Independent Business Association; Society of Human Resource Managers,Kansas; Protection One; Kansas Cooperative Council; Kansas Grain and Feed Association; Kansas Agribusiness Retailers Association; The Lenexa Chamber; Retail Grocers Association of Greater Kansas City; Kansas Food Dealers Association; Kansas Restaurant and Hospitality Association; Home Builders Association of Greater Kansas City; Adecco Staffing, Kansas; Americans for Prosperity; The Kansas Livestock Association; Amarr Garage Doors; Pittsburg Area Chamber; Associated General Contractors of Kansas; Topeka Independent Business Association*

Chairman Wagle, members of the committee, thank you for allowing me to provide testimony in support of HB 2676.

HB 2676 adjusts the 2010 and 2011 tax rates back to those originally computed by the Kansas Department of Labor (KSDOL). This bill also waives penalties and interest earned on past due quarterly contributions that are paid in full by the close of calendar year 2010.

The KSDOL has estimated that reverting to the 2010 original rate schedule would reduce contributions to the fund by $43 million if all employers opted to utilize the original rate. $43 million is roughly 10% of the total planned yield for 2010 that was shifted to positively balanced employers with experience ratings that did not warrant the maximum tax rate.

<u>The employers who held on to employees through our nation's worst recession should not be penalized with the maximum tax rate, subsidizing those employers who did not maintain employment.</u>

HB 2676 still increases tax rates over what was required in 2009, but it better reflects earned experience ratings. Allowing employers the option of better managing their cash flow by spreading out their payments over the year provides relief for the lack of preparation businesses had for such significant increases.

By implementing the tax rates for a two year period, businesses can better plan for their unemployment taxes in 2011. Employers' tax rates would be refigured relative to their experience rating as intended in our current statute, but the tax rate would stay constant for rate groups. So an employer who laid off a significant number of employees in 2010 may move to a new rate group but the prescribed rate for that group would remain the same. Employers could see an increase or decrease in 2011 if their experience rating shifts, as required by federal regulation on the computation of experience rating and subsequent tax rates.

Kansas employers have kept our fund healthier than the twenty five states that bankrupted before us and yet have been burdened with the fifth largest unemployment tax increase in the country according to the National Association of State Workforce Agencies.

<u>The Kansas business community needs relief in order to maintain current employment and recover so that our economy can stabilize.</u>

HB 2676 provides reasonable relief for businesses even as it increases contributions into the fund in 2010. The Kansas Coalition on Unemployment Insurance supports HB 2676; please vote "yes" to pass this bill out of committee. Thank you for the opportunity to offer these comments today.

Senate Business & Labor Committee
Date: March 2, 2010
Attachment 2

NFIB

The Voice of Small Business®

Senate Business & Labor Committee
Daniel S. Murray: State Director, NFIB-Kansas
Testimony in Support of HB2676
March 2, 2010

Madame Chair, Members of the Committee: My name is Dan Murray and I am the State Director of the National Federation of Independent Business-Kansas. NFIB-KS is the leading small business association representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB-KS represents the consensus views of its 4,000 members in Kansas. Thank you for the opportunity to comment on HB2676.

The members of NFIB-Kansas support the passage of HB2676. The bill aims to provide employers immediate relief from their unexpected and abnormally high 2010 unemployment compensation tax bills. As you have heard during the last month, many small businesses were greeted with shocking and inflated unemployment taxes this year. Already faced with decreased sales and tight credit markets, small businesses can ill-afford another unexpected swipe at their bottom line. The impact of these taxes will take their toll on small business hiring practices and inventory and capital investment—that's the last thing we need during this dreadful recession.

Specifically, the HB2676 provides employers relief from unemployment compensation taxes by imposing on businesses with favorable experience (experience factors of 1.24 percent or less) a rate that is frozen at the 2010 original rate while positive account balance employers having an experience factor between 1.24 and 2.00 percent would see their unemployment compensation tax rate capped at 5.4 percent; Additionally, the bill provides for a 90-day waiver of penalties and interest for past-due employer contributions.

Our members recognize that we must be mindful of the long-term impact that any short-term relief has on the trust fund. Therefore, we truly appreciate the thorough efforts this committee has taken in reviewing various options. We look forward to sharing with you our thoughts on any steps you take to address the long-term solvency of the Kansas unemployment fund and the manner by which employers will pay back any federal loans Kansas receives for paying unemployment benefits.

Again, thanks for the opportunity to comment.

Small Business Isn't Small

Collectively, small business isn't small. It provides employment to 54.7% of the non-farm private work force in Kansas. It generates more than 50% of the gross domestic product. It possesses half of the business wealth in the U.S. In the past decade, it has annually provided 60% to 80% of net new jobs. It has been giving 67% of workers their first job. It hires a larger proportion of women, younger workers, older workers, and part-time workers than does big business. – Data Compiled in the 2010 Guide to Kansas Small Business Issues.

National Federation of Independent Business – KANSAS
5625 Nall Ave., Roeland Park, KS 66202 • 785-217-3442 • Fax – 785-232-1703 • www.NFIB.com/KS

For immediate release

Seth Bundy,

Press Secretary

February 19, 2010

785.368.8500

Governor Parkinson comments on House approval of Unemployment Insurance bill

The following is a statement from Governor Mark Parkinson regarding the House passage of HB 2676, concerning Unemployment Insurance:

"I am glad to see the House take a positive step toward providing Kansas businesses temporary relief from sudden increases in unemployment insurance rates. While we take these steps to provide relief for employers, we must also prevent reductions in benefits for out-of-work Kansans. Cutting benefits in any way for the unemployed is unacceptable as it would make it more difficult for struggling families to recover from this recession."

# # #

Governor Mark Parkinson
State Capitol
300 SW 10th Ave. Room 241-S
Topeka, KS 66612
1-877-KS-WORKS
www.governor.ks.gov

"safe: morris"

Senate Business & Labor Committee
Date: March 2, 2010
Attachment 3