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Testimony on HB2196
House Commerce, Labor & Economic Development Committee
Peter Brady, Deputy Secretary KDOL
February 10, 2021

Mr. Chairman & Committee Members,

I am Peter Brady, Deputy Secretary at the Kansas Department of Labor. I am here to present our testimony on House Bill 2196. I want to begin by saying that the agency wants to continue working with the legislature to find solutions and be good partners as we move the agency forward. There are many provisions in this bill that we support, some provisions that we feel are policy decisions to be made by this body, and some provisions that we fear could be detrimental to forward progress and/or create non-conformity issues with federal law.

I would like to start by speaking to the provisions that our **agency strongly supports**.

Improvements to the Shared Work Program (p 65-67). KDOL is in complete agreement that the Shared Work Program is a valuable program for employers and employees alike. The agency supports the change to the requirement for a reduction in weekly hours of 10-50 percent from the current 20-40 percent.

In fact, the agency utilized some of its allocated CARES Act/CRF funds to update the automation and marketing of the Shared Work program, seeing it as an area in need of stabilization and improvement during this time of economic downturn. KDOL's actions in this area include new branding, a new website, digital and print materials, additional staff support, and a dedicated employer help desk phone line. The next phase of Shared Work improvements will be to add automation to the system that will reduce workload for employers and staff. We expect this to be completed in early 2021. Please see the attached documents that show the new branding and messaging for the program.

Changes for Professional Employer Organizations (Old SB27) (p 70). The agency also strongly favors the provisions that we supported in last session's Senate Bill 27. We see these as a win-win situation. It simplifies filings for professional employer organizations and simplifies the business processes for our agency, as well.

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Next, the provisions that are policy decisions for the legislature to make and KDOL is **neutral** on.

Modification to Weeks Available in Regular Unemployment (p 33). This provision changes the thresholds for how many weeks of benefits are available at different levels of unemployment in the state. This provision would result in less benefits being charged to the UI trust fund, and fewer weeks of benefits available to unemployed Kansans. This is a policy decision for legislators to make.

Review and Reimbursement of all Reimbursing Employer Accounts for the Previous 20 Years (p 62- 63). The agency is supportive of ensuring that reimbursing employers are charged correctly. However, there is a substantial operational challenge for implementing this piece of the bill. In addition, under state records retention policies, some of the records older than five years may no longer be available.

Additionally, this provision would require a significant amount of work at a time when the agency is "all hands on deck" to deal with the current onslaught of claims, support businesses, and prevent fraud. Many of the department's resources that would have the knowledge to review benefit records are the same ones who can handle complicated and difficult claims and are being used to address benefit payment issues.

Our agency understands the frustration and anxiety that the tidal wave of recent fraud attempts and the pandemic in general has created among businesses, legislators and claimants. We share those frustrations. Our team wants to pursue whatever action is necessary to make businesses whole and best utilizes agency resources. **However, it is important to note that businesses are *not* held liable for fraudulent claims under existing law.**

Creation of the Unemployment Compensation and Improvement Council (p 1-7). KDOL understands the value of working with stakeholders and legislators in the process of stabilizing and modernizing our unemployment insurance system. The agency has a history of doing this kind of work, including the successful adoption of the OSCAR system for workers' compensation. However, we are concerned with this legislation as written for two reasons. The first is the specificity of the technological requirements listed. The agency does not believe that statute is an appropriate place for items this detailed and time-sensitive, and having these requirements laid out in law may hold up progress and prevent the agency from making future improvements.

The second concern is the possibility that adding bureaucracy to the modernization and stabilization efforts will slow them down and result in worse outcomes for Kansans interacting

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with the UI system. An alternative may be to mandate updates to existing legislative committees, including the Joint Committee on Information Technology, at certain points in the process. The modernization project has clear requirements for oversight and approval, like any other large state IT project, laid out in statute. KDOL cannot implement a large modernization project like this on its own; the agency must follow the procedures already in place—including seeking input and approvals from a number of sources outside of the agency.

The agency plans to work closely with stakeholders on our modernization efforts. I would also like to note that while we will have made significant progress towards a modernized system by December 31, 2022, it is not realistic that an entire system will be completed by that date. In fact, no state modernization project nationwide has ever been successfully completed in such a short time period. We have been told by experts and other states to expect that the fastest a new system could be built and deployed would be two to three years from when the actual project work begins. As part of the RFP process, the agency is going to require vendors that have proven track records for UI modernization in other states. This will ensure a faster implementation timeline of proven systems.

Prevention of any Charges to Employers for Claims Filed March 15, 2020 – December 31, 2021 (p 36). The agency supports the goal of providing relief to employers during these unprecedented times. However, the agency would like to provide some clarification on this issue.

First, as written, it prevents the UI trust fund from being replenished based on legitimate claims that were paid, we are opposed to this provision in its current format. However, it is our understanding that this was a drafting error and that the intent is to make only fraudulent and improper payments non-charging. KDOL is supportive of ensuring that employers are not charged for fraudulent or improper payments.

The agency wants to clarify the current status of charges related to the COVID-19 pandemic and to fraud. Under current interpretation of K.S.A. 44-710, employers should not be charged for fraudulent claims. Contributing employers, who make up 97% of Kansas employers, also receive no charge for claims made due to COVID. Reimbursing employers are responsible for 50% of COVID-related claims, as required by current state and federal law.

Finally, the provisions that KDOL **opposes** as written due to compliance issues with federal law or operational concerns.

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Adjustments to the Timelines for Trust Fund Computations (p8). We strongly support the goal of this provision as it seeks to make trust fund information more accessible and readily available to the general public. Our concern with this provision is that 90 days after the end of the state fiscal year is not a feasible timeframe. There are several other processes that need to occur before the official trust fund solvency calculations can be completed. In a typical year the process looks something like the following;

- The Experience Rating process begins in **August**, with Benefit Charge Notices (BCN) being sent to employers to review and appeal any charges that they feel are incorrect. Employers are given time to review and appeal anything that is incorrect on their BCN.

- In **September,** KDOL begins reviewing and keying determinations on those appeals and this continues into early **October**.

- Amended Benefit Charge Notices are mailed shortly after completion of determinations.

- In mid to **late October**, data is compiled for our Labor Market Information Services division which is used to determine whether or not there will be any solvency adjustment and subsequently which tax rate table will be used for the upcoming year.

- Once these steps are complete, we begin the process of certifying the status of the trust fund around the **first week of November.** The current statutory requirement is that the agency submit our solvency report to the Governor and Legislative Coordinating Council by **December 1st** of each year.

In short, the current process is built because of other dependencies in the process. *Additionally, if there are adjustments made to the process, such as removing COVID related charges, this will cause delays in the normal processing schedule.*

New Schedule for Contributions from Employers to the UI Trust Fund (p 50-58). The expected contributions based on the solvency schedules in the new bill will generate less money for the Trust Fund than the current system. This means it will take longer to replenish the Trust Fund following recessions and increase the chances of having to borrow from USDOL to pay claimants in the future. Like the change in triggers for weeks of unemployment, these adjustments would abandon the previous agreement that was reached between the agency and business and labor stakeholders in the wake of the Great Recession.

The following chart uses SFY2020 taxable wage data to estimate contributions using the different solvency and credit rate tables.

- The blue columns represent the expected contributions under the new system.
- The red columns represent expected contributions using the current system.

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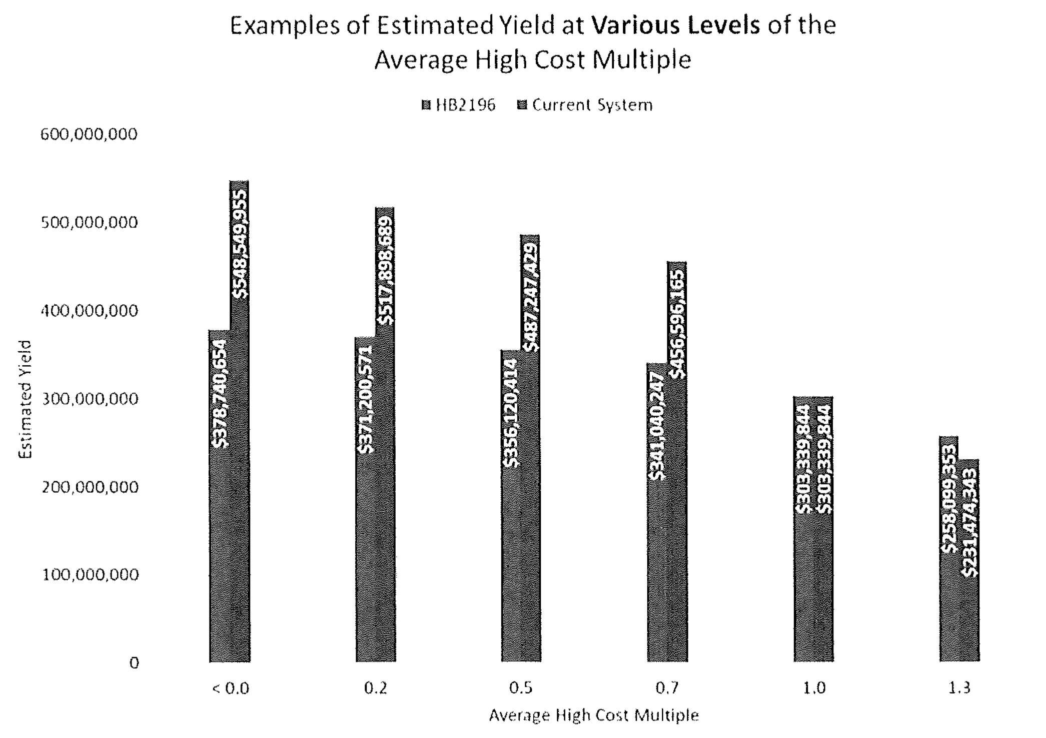
The proposed system provides relatively small gains in overall contributions when moving from one table to the next, and even in the worst case scenario when the Average High Cost Multiple is less than zero (indicating no money in the Trust Fund/borrowing from USDOL), estimated contributions are less than $400 million.

Comparing these estimated contribution levels to historical payment data, this largest solvency adjustment wouldn't be enough to offset payments made during previous recessions:

- SFY2020 ($509.6 million)
- SFY2013 ($383.0 million)
- SFY2012 ($393.3 million)
- SFY2011 ($469.3 million)
- SFY2010 ($692.3 million)
- SFY2009 ($567.8 million)



Estimates produced with data used in the RY2021 Experience Rating process

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Changes Notification Timelines on Benefit Charges and Addresses Improper Payments (p 64). KDOL believes these provisions will be difficult to implement, especially when considering existing processes around improper payments and overpayments. They will require additional staffing to meet the timelines indicated, and will adversely impact the State General Fund.

Kansas law already addresses two distinct types of overpayments: fraud and non-fraud. Each has a different provision for pursuing collections, including penalties and interest. Because of the new programs and additional complexities added to the unemployment insurance benefits system during the pandemic, the state has seen higher-than-usual levels of overpayments, often due to confusion around which program a claimant should be applying for. These overpayments are one of the many different components of the improper payment rate reported by USDOL, which is calculated based off many different factors.

For any overpayments that are paid out of the trust fund, the department follows procedures for collections and recoupment of those funds. In some cases, recapturing funds that are owed takes longer than 60 days. Under the policy in this bill, it is unclear if the trust fund would receive duplicate reimbursement for an improper payment – once from the State General Fund and again from the claimant through recoupment or repayment.

I would like to thank the committee for their patience as I presented our lengthy testimony. Our agency understands the importance of this legislation and we wanted to ensure that we addressed each key provision. This legislation has many provisions that the agency supports. However, the committee should be aware that HB 2196 is a large piece of legislation that touches many aspects of the unemployment system. As part of their normal process for all state legislation, USDOL will review this legislation for conformity with the requirements of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA). KDOL has asked USDOL's Legislative Division to expedite review this legislation for any potential conformity issues but we have not received their analysis at this time.

Mr. Chairman, I thank the committee for your willingness to work with our agency, and I will stand for questions at the appropriate time.