

MINUTES OF THE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:30 a.m. on February 8, 2011, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant  
Mr. Ken Wilke, Office of the Revisor of Statutes  
Mr. Reed Holwegner, Kansas Legislative Research Department  
Ms. Dorothy Noblitt, Kansas Legislative Research Department

Conferees appearing before the Committee:

Mr. Eric Stafford, Senior Director of Government Affairs,  
The Kansas Chamber  
Mr. Blake Benson, President, Pittsburg Area Chamber of Commerce  
Mr. Daniel Murray, Kansas State Director,  
National Federation of Independent Business (NFIB)  
Mr. Kenneth Daniels, Governmental Affairs Director,  
Topeka Independent Business Association  
Mr. Bill Goodlatt, Senior Vice President, Human Resources,  
The LDIF Companies  
Mr. Andy Sanchez, Executive Secretary- Treasurer, Kansas AFL-CIO

Others attending:

Please see attached list.

**Hearing on SB77 – an act concerning the employment security act**

Upon calling the meeting to order, Chairperson Wagle announced they would be having a hearing on **SB77**, an act concerning the employment security act and recognized the first of five proponents, Mr. Eric Stafford, Senior Director of Governmental Affairs, The Kansas Chamber. He stated the bill offered short-term and long-term solutions to restore stability to the Unemployment Fund, which is entirely funded by employer contributions including:

1. A plan to pay off the interest owed to the federal government through existing revenue streams, avoiding any additional surcharges on employers and retains the rate caps implemented in last year's **HB2676** for the next three-year, offering stability to employers. (Short-term solutions)
2. Increasing the taxable wage base over the next three years from \$8K to \$11K, helping speed up the federal loan payback, reinstating the waiting week, and eliminating the trailing spouse exemption with the exception for military spouses. (Long-term solutions.)

Lastly, he stated the Kansas Chamber supports **SB77**, they would like to express their desire to work over the coming year to review several proposals with the department that could bring positive changes to the UI fund which establish predictability to employer contribution rates without sacrificing the solvency of the fund.

A copy of his testimony is (Attachment 1) attached to and incorporated into the Minutes as referenced.

The Chair said that she would hold all questions until all have testified.

The second proponent recognized was Mr. Blake Benson, President, Pittsburg Area Chamber of Commerce, who stated the bill is a balanced way to modernize the system and replenish the UI insurance trust fund without an additional tax burden to employers, because it is not only business

## CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:30 a.m. on February 8, 2011, in Room 548-S of the Capitol.

that pay this tax, that could further threaten an already fragile economy. He went on to say not only were the UI tax increases surprising and costly, they unfairly penalized responsible employers trying to avoid layoffs in the middle of the worst recession Kansas has seen in decades stating even the Chamber, with a staff of six, saw its experience rating go to the maximum of 5.4% despite the fact that they have not had an unemployment claim against them for years.

Lastly, he stated the bill would:

1. Help restore employers' confidence in the system by adjusting benefits and fairly increasing the burden on negatively balanced employers.
2. Bring stability to the trust fund and allow the state to meet its obligations without further risk to economic recovery; and,
3. While it would increase the wage base over three years, it would also allow employers to return to the experience rating they had prior to 2010.

A copy of his testimony is (Attachment 2) attached and incorporated into the Minutes as referenced.

Next to testify was Mr. Daniel Murray, Kansas State Director, National Federation of Independent Business (NFIB) who stated he found himself in the very uncomfortable position of supporting what will be a tax increase on their employers' members but circumstances have led us to a point in history where we must choose the lesser of all evils.

He said their members pay the unemployment tax with the understanding that their dollars will be used properly and judiciously, however, he continues to hear one horror story after another regarding abuse and concerns with the appeals process. (An NFIB Kansas Leadership Council member sent him the following concerns regarding unemployment being abused: an employee of his quit, but on appeal was granted unemployment because "he did not mean it." He had to fire an employee for embezzlement and being drunk on the job, and this person was granted unemployment saying the system was intended to help people when they "lose" their job due to circumstances beyond their control.)

Finally, he said the most recent NFIB Small Business Economic Trends edition, which measures the confidence of small business owners conclude, "It appears that the small business sector remains in a "rut, unable to find reasons to ramp up hiring and capital spending." He urges the legislatures to do all it can to improve the business tax climate. A copy of his testimony is (Attachment 3) attached and incorporated into the Minutes as referenced.

The fourth proponent was Mr. Kenneth Daniel, Governmental Affairs Director, Topeka Independent Business Association and Chairman of the Board of Midway Wholesale, stated:

- 1.) As shown by the history of Midway's Unemployment Payments included at the end of this testimony, the rates are highly variable from year to year.
- 2.) In spite of the fact that they have not had a single year in the past ten years where the benefits charged were greater than the contributions paid, they have paid in 2.5 times as much as has been paid out in benefits over that time,

He went on to say they must have greater predictability than they have had in the past, especially when it is a virtual certainty they will be called upon to pay even higher premiums to pay interest to the federal government and rebuild the Kansas Trust Fund.

## CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:30 a.m. on February 8, 2011, in Room 548-S of the Capitol.

Lastly, he offered an attachment of Midway Wholesale's 2011 Unemployment rating notice. A copy of his testimony and attachment are (Attachment 4) attached and incorporated into the Minutes as referenced.

The final proponent was Mr. Bill Goodlatte, Senior Vice President, Human Resources, The LDF Companies, who stated LDF owns 20 Wendy's Restaurants and has 600 employees in Kansas and in late December of 2010, received their annual notification from the Kansas Department of Labor stating their SUTA rates had increased again, this time by over 60% which will cost them an additional \$50K in 2011, with of course, no way to have predicted or planned for this increase.

He went on to say they have never had a layoff but sometimes they do have to fire employees for cause or poor performance and these employees always apply for and receive unemployment benefits. He said many companies have regular layoffs, draining the trust Fund and often leaving them in a negative position. And a system that allows some employers to pay out 4 to 6.5 times the amount of benefits than they pay in while companies like LDF pays in more than three times as much as they pay out, absolutely makes no sense. It is not sustainable and it is not fair to punish positive balanced employers with higher taxes than negative balanced employers.

Lastly, he said they support the bill as a first small step in the right direction, but the goal however, must be to revise the system to give more predictability, be fair to all employers, reduce benefit levels, their duration, and the granting of benefits, so we can return unemployment insurance to being a safety net again instead of a welfare program that allows people to stay home and collect rather than look for work. A copy of his testimony is (Attachment 5) attached and incorporated into the Minutes as referenced.

The Chair then called on the only opponent available to testify at today's meeting, Mr. Andy Sanchez, Executive Secretary-Treasurer, Kansas AFL-CIO, who stated the system has worked for many and we should continue on course to help working families weather the storm with the most concerning issue being the rainy day concept, how we could stock away reserves when we might need them the most. He said the same could be said for the Employment Security Trust Fund but:

1. From 1995 to 1999 employers enjoyed a moratorium on contributions amounting to \$556M over that time that did not get put into the Trust Fund.
- 2.) From 2000 to 2002 because of a phase-in of increased tax rates for employers, rates were still at a reduced discount rate.
- 3.) In 2007 and 2009 alone, the reduced rates amounted to \$170M in savings for employers. He said let's not forget that from 2004 to 2007, Trust Fund Revenues exceeded Trust Fund payouts and we were talking about a shortage of a skilled and qualified workforce but that changed however, in 2008 when payouts exceeded revenues.

Lastly he stated that employers must think with a business sense about hiring new workers or investing in their business but working families on the other hand spend money out of basic necessity. A copy of his testimony is (Attachment 6) attached and incorporated into the Minutes as referenced.

The Chair thanked the conferees and asked if there were questions or comments which came from Senators Lynn, Wagle, Faust-Gaudeau, Merrick, and Holland, including:

1. To Mr. Murray, what is business saying about what they are going to be doing if we cannot address the predictability issue, what do they do if they have a cash flow problem, and can you get a sense of how many businesses might be leaving the state? And, are businesses across the nation complaining?

## CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:30 a.m. on February 8, 2011, in Room 548-S of the Capitol.

2. To Mr. Sanchez, would your organization have an objection to a compromise losing the trailing spouse but keep the waiting week? Do you think there has been abuse in the system? A clarification of "trailing spouse" was asked. (Chairperson Wagle explained.)

3. To Mr. Stafford, referring back to the issue of predictability, asked him to explain a little more specifically about unemployment insurance when you talk about predictability for businesses. Do you think part of why we are here today is because of fraud against the trust fund? If we had not had the freeze in the rates between 2007 and 2009, and you talk about Kansas having one of the largest jumps in the nation, how large would that rate increase been if there had been no moratorium?

A discussion ensued regarding the waiting week, with the Chair called on Ms. Kathie Sparks, Deputy Secretary, Department of Labor to clarify what disqualifies you from getting benefits.

### **Adjournment**

As it was going on 9:30 a.m., the Chair adjourned the meeting stating the hearing on this bill would continue tomorrow. The meeting adjourned at 9:31 a.m.

The next meeting is scheduled for February 9, 2011.