

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 8:30 a.m. on February 10, 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:

Ms. Kathie Sparks, Deputy Secretary, Department of Labor

Others attending:

Please see attached list.

Handouts

Upon calling the meeting to order, the Chair called on Ms. Kathie Sparks, Deputy Secretary, Department of Labor, to explain the charts she had brought to answer some of their questions. Ms. Sparks wanted the Committee to understand what this proposal would be for Kansas since it now had federal implications, then referred them to the first of three charts, a map entitled "Taxable Wage Base by State." She explained:

1. Kansas' taxable wage base is one of the lowest states, but no one can be lower than \$7K due to conformity with the Federal government. Surrounding states are higher.
2. The new federal administration is proposing a 2-year moratorium on increasing the reduction and credits, forgiving the interest, and increasing the base wage from \$7K to \$15K.
3. In talking to their Washington counterparts:

A. They do not have a whole lot of information about the proposal. They have not yet seen a bill, but best guess the figure will be somewhat lower in order to pass the US House.

B. 15 states are currently considering raising their base wage rate, including Kansas.

The Chair asked, in the President's proposal, is he also proposing that we do not pay interest in 2011 and, if so, what month is that due? (2011 and 2012 and due in September but again, no proposals, documents, or bills have been seen even by the US Department of Labor. She did suggest that **SB77** be worked to at least get the fund set up in case nothing happens, especially since the Legislature will be gone when this is due. They will start taking the FUTA tax of 5.4% for being below.)

Regarding chart two, entitled "Benefits, Contributions and Trust Fund Balance," it indicates:

1.) When do we estimate we would pay off the loan under the balloons that DOL has offered in **SB77**. This would be 2014 during the second quarter.

2.) Projections through 2015 of how the fund would look.

3.) A list of all the assumptions the DOL did in making these projections and estimate as shown on the back of this chart including reinstating, eliminating the traveling spouse except for military, extending **HB2676** provisions for 2012, 2013, and 2014, adding 10 additional rate groups to the negative balance employers going up to 4%, also 1/10 of a percent on groups one through nine for those three years, and increasing the wage base to \$9K in 2012, \$10K in 13, and \$11K thereafter.

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She said they are estimating wages as it is fairly flat during that period and also, the distribution of ineligible negative and positive balance accounts are also pretty constant during that period. Lastly, she said the DOL thinks benefit payments will decline gradually over that 3-year period.

The Chair asked about projecting growth and new jobs? (This would show in the decline in the benefits.) And what is your employment projection? What kind of economy are you projecting, a growth or a stagnant economy where we do not add jobs? (Mr. Inayat Noormohmad, Director, LMIS & UI Divisions, DOJ answered for the first two years we assume we will stay at the maximum of the Schedule 3 of the yield required from the employers, so no matter what the economy does, the DOL will need to collect that much from the employer community. Going forward, during the last year they assume there will be some trust fund balance which would bring the rates down slightly because we have moved up to Schedule 3 and therefor the amount they need to collect would be less. It assumes a very slow growth in terms of the economy as we have seen in benefit reductions, for example, a gradual reduction of 10% from one year to the next, except for this year where they expect slightly more. Lastly, he said the unemployment rate the DOL has projected for this year is still going to be above the normal level. Ms Sparks asked the Committee to recognize, if we position ourselves this way and if Congress does do something, we would have our loan paid off and the amount to the positive balance employers would go down. She added, it may not be the relief we were hoping for but at least they would not be the position where they were trying to pay off the loan and having to pay the surcharges on top of that.)

The Chair recognized Senator Steineger who asked, what has the CPO projected for growth and employment for the next 5 years? (Mr. Noormohmad stated he did not have the figures in front of him, but thinks they were well below 3 or 4% in terms of the GNP growth rate. And the unemployment rate that the CPO has projected is going to be at the levels of 6% nationally for the next few years.) So they are projecting growth at less than 4% in the US economy? (Yes, it sort of reflects the high unemployment rate.)

The Chair recognized Senator Holland who asked, as far as the Kansas unemployment rate, do you see that basically staying fairly even, say 6+% for the foreseeable future? (Expect some decline but not very dramatically and if you look at the correlation between our unemployment rate and the US it is very similar as in some recessions there has been some lag time, but historically our unemployment rate has been below the national level during good times and bad.

The Chair recognized Senator Masters who asked if they are operating on a calendar or fiscal year? (All unemployment is done on the calendar year.)

Next, Ms. Sparks said the Committee had asked how much revenue is the Trust Fund going to generate by this bill and referred them to chart three, entitled "Estimated Trust Fund Revenue Generated by **SB77.**" She explained what the colors represented with totals provided at the bottom of the chart. A copy of Ms. Sparks handouts are ([Attachment 1](#)) attached and incorporated into the Minutes as referenced.

The Chair recognized Senator Longbine who asked if this is the projected increase for 2012 and are the numbers cumulative? (Yes)

The Chair asked what was the amount of tax increase that went to businesses last year over the year before in employer contributions? (The year before \$212M was collected and last year was \$263M, then an additional \$263M over the next three years. Ms. Sparks said they haven't had to borrow since January 25, so they are still at \$108M of borrowing, but still feel they are looking at having to pay back around \$200M and under this plan, they would have it by the second quarter of 2014.)

Ms. Sparks then offered their new, amendment and asked Mr. Ken Wilke, Office of the Revisor of Statute, to help explain. She said everything the DOL writes in statute has to be approved by the US Department of Labor and they have no problem with the intent of the original balloon but they did send changes in the wording they wanted to see.

The Chair asked, are you now proposing just one amendments instead of the two received earlier?(Ms. Sparks said they have put everything into this balloon, including adding new language proposed by the US DOL)

Mr Wilke stated:

1.) They are going to have to add new sections to the bill because if they are going to increase the wage base they have to change the definition of wages and the Committee is seeing the key portion of that on

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the front (page 1.) He did not balloon the entire section because they would have had about five pages in excess paper. This new section will need to go into the bill basically increasing the wage base the way the US DOJ has explained it.

2.) On page 2, the pertinent portions of the bill have been pulled over with prior language stating such “benefits are funded entirely by the US DOL,” but their new language, states it would go “until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided...” And, this is repeated two more times on page 2, lines 8-12 and lines 20-24.

3.) At the bottom of page 2 is another new section that needs to be added to the bill (44-710) and the reason being, when you are changing the wage base, they have to go into the rate and base contribution section of 44-710(b) and make a linkage to what was done in the wage definition.

4.) On page 3, is something you have seen before, again dealing with the keying to our wage base change (see page 23, lines 19-40) with the new language underlined and a small change under (I) which is a situation the feds wanted creating a deposit in the Kansas Unemployment Insurance Trust Fund. At the bottom of page 3 we are taking out Schedule II and replacing it with two new ones that Ms. Sparks would explain.

5.) On page 4, Ms. Sparks asked the Committee to look at Column B2, stating this is the condition that will exist for the negative rate payers and what surcharge they will be paying for the 3-year period but then at the end of this it goes back to Column B1 because rate group 1 through 10 goes back to what they are now paying and then rate group 11 through 20 will continue as they were before. And, this last group of negative payers has been discussed in Committee, about the 4500 businesses that were all clustered on a chart, this would divide it and hopefully encourage people to work their way out of the negative group.

6.) On page 5, this is the key linkage to the wage base change and this (ii) will disappear at the end of calendar year 2014.

Ms. Sparks said they now find they need one more amendment that will be conceptual and again asked if Mr. Wilke would help her explain which included:

1. The DOL knows they will be collecting \$18M and will need half of it because it is due in September. The positive balance employers pay in April and the negative balance employers, because of the nature of their work, pay later in the year.

2.) They would like to have a Plan B in case they are short so they are asking for a PMIB interest free loan which they would take after September 15, only if they need to, and pay it back in October.

3.) They thought about the proviso, certain members of the Senate strongly asked them to put it in the bill and to keep you fully informed, they would go to Finance Council.

The Chair asked if there was a cap and did it also have to be approved by the feds? (\$3M, and no because it is the state.)

As there were no questions on either amendment, the Chair recognized Senator Holland who has some questions about the base bill including:

1.) Could they briefly explain what the Employment Security Advisory Committee is and have they weighed in on the contents of this bill? And if they did not, did you reach out to any other parties in place of them, who provided you input on this bill or did you totally craft internally? (Secretary Karin Brownlee stated it is an advisory board only, comprised of union membership and economists. They did not weigh in on this bill, however, the Council did meet a year ago and many of the provisions they recommended then are what the DOL have put in this bill. She did say, there were businesses in meetings that reached out to the DOL, but of course they are very impacted by all of this legislation.)

2.) In the original bill, page 10, lines 19-22, there is a section that talks about documentation of users abusers being convicted of one or more enumerated articles 35 and 35, what is this about? (Mr. Wilke stated last year there was a re-codification of the criminal code and the language was given to him by the people that modified this. He said these are now the appropriate section references for the former articles 34 and 35 in Chapter 21 of the criminal code.) Is this a new redirection? (Yes, it is a redirection to a new statutory reference. It is just a technical change.)

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Final action on SB77 – an act concerning the employment security act

The Chair said she knows there are amendments to the bill that are coming, but if the Committee would agree, she would like to consider the Secretary's amendments first so that they have a base of a bill to work from that we have been discussing. A motion was made by Senator Merrick to move the new written amendment offered today, instead of the two amendments the Committee received last week. It was seconded by Senator Olson and the motion carried. A motion was made by Senator Emler to move the conceptual amendment that allows the DOL to borrow \$3M if they need it to pay back the loan. It was seconded by Senator Holland and the motion passed.

The Chair recognized Senator Holland who also offered an amendment to this bill stating, for an explanation to the Committee, this would put into the bill where we stand current laws where it pertains to the waiting week and the trailing spouse provisions. He went on to explain both and **SB83**. He said this bill would address refunding and predictability but it is not going to help address the issue about the experience rating.

A motion was made by Senator Holland to move his amendment favorably and was seconded by Senator Faust-Gaudeau. The motion failed on a voice vote.

The Chair asked if there were other amendments. A motion was made by Senator Holland to offer an alternative amendment to reinstate the trailing spouse provision for all families. It was seconded by Senator Faust-Gaudeau but the motion failed on a voice vote.

The Chair asked if there were more amendments. As there were none, she asked what was the Committee's will on the bill. A motion was made by Senator Masterson to move the bill out favorably as amended. It was seconded by Senator Olson and the motion passed.

Adjournment

As there was no further business or discussion, the meeting was adjourned. The time was 9:31 a.m.

The next meeting is scheduled for February 15, 2011.