

Approved: 3/15/10

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:03 a.m. on February 12, 2010, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Delia Garcia- excused

Representative Bob Grant- excused

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

Others attending:

See attached list.

The Chairman opened the hearing on HB 2644 and HB 2676.

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

HB 2676 **Employment security law; interest payment assessment; hardship waiver; new negative account classes; duties of secretary**

Renae Jefferies, Assistant Revisor, gave an explanation for the changes in HB 2644 (Attachment 1) and HB 2676 (Attachment 2) and explained the difference between them.

Representative Quigley asked if the 90 days grace was different from what we currently have. Renae said yes, we do not currently have a grace period. On HB 2676 they will have an additional 90 days to pay the contribution that is due at the first quarter, without interest. With HB 2644 they have the rest of the year to pay the contribution, not just 90 days.

The Chairman asked Jim Garner, Secretary, Department of Labor, what process the Department would have to go through if one of these bills is passed. Secretary Garner said that if employers are allowed to choose their rate there would be over 31,000 employers affected by the change in rate. We would have to send notices out to them, receive back their response of what their choice was and then go into their individual account to make that change noted. The Department estimates that it would take 28 days to accomplish it.

Representative Brunk asked if it was important for the Department to know prior to their payment time what choice of charts they made. Jim said that yes, because at the end of March they send the tax notice out to the employers. We have to know what the rate is so we can tell them what the tax is.

Representative Jack asked if on the optional rate would it be practical to calculate both rates and send both in the notice. Secretary Garner maintained that if they have a choice they would have to send notices out and get back responses and then calculate the tax. He repeated the requirement of the Federal Government that they must calculate their experience rating every year. Allowing employers the same rate in 2011 would prevent them from recalculating their experience rating.

Representative Brunk said the goal was predictability and regardless of your calculation we want you to pay this rate fixed amount.

Rachelle Colombo, The Kansas Chamber, said that they would still have the experience rating calculation and an employer could move from negative balance to positive balance or visa versa but the tax rate would remain constant with the rate group. So you would still recalculate experience rating and still recalculate tax rates for each employer.

2/12

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:03 a.m. on February 12, 2010, in Room 784 of the Docking State Office Building.

Representative Jack asked Rachelle if having the experience rating gave her members an incentive to minimize layoffs. Rachelle said it definitely did.

Representative Tietze asked Secretary Garner if there was an agency to review for compliance issues. Jim replied yes, it was the Federal Department of Labor.

Representative Worley said that he preferred **HB 2644** because it was simple and straight forward.

Representative Quigley wanted to review the numbers regarding the amount the employers would be saving. The first year would be \$43 million and the second year would be \$63 million. So by doing that are we looking at borrowing \$100 million more? The Secretary said yes.

Representative Jack made a motion that we insert Balloon Amendment 1 into **HB 2676**. Representative Kerschen seconded the motion.

Representative Worley said he preferred **HB 2644** because it was easier for the Department to implement.

Representative Schwab suggested that we kick out both bills with their balloon amendments and that way they could be discussed with the whole body.

Representative Jack said that if on the Balloon Amendment, line 33 we strike the words, "shall have the option", would that address your concerns about the one rate and simplicity. Representative Worley said yes.

Secretary Garner said that the 90 day extension was the easy option for the Department.

The Chairman called for a vote on the motion. The motion carried. We are back on **HB 2676** as amended by Balloon Amendment 1.

Representative Schwab made a motion that we pass out **HB 2676** favorable as amended. Representative Gatewood seconded the motion.

Representative Quigley made a substitute motion to combine **HB 2644** into **HB 2676** in order to remove the option and give employers 90 days to pay the UI tax. Representative Prescott seconded the motion.

Representative Pottorff ask for clarification. Are we changing from one year to 90 days to pay the tax?

The Chairman said that yes her motion would be to give them relief for two years and it would remove the option to choose one rate or the other and employers would not have a full year to repay, instead they would have an extended 90 days to repay the tax.

The substitution motion carried.

Representative Grange made a motion to move **HB 2676** out favorable for passage as amended. Representative Hermanson seconded the motion. The motion carried.

The Chairman said we have a proposed amendment to the stimulus bill, **HB 2374** that we passed last year and received \$69 million from the Federal Government. To do that we had to make three expansions in the Unemployment Insurance Act. This amendment would eliminate the three provisions and takes us back to the way we were.

The next meeting is scheduled for February 15, 2010.

The meeting was adjourned at 09:52 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-12-10

NAME	REPRESENTING
Megan Boffenberg	KDOL
Jim Garner	KDOL
Natalie Brife	KS-STRUM
Jen Bruner	OP Chamber
Raehelle Colombo	KS Chamber
Michelle Colby	GSA
Tom Zucker	K&FA
Dan Murray	NFIB

HOUSE BILL No. 2644

By Committee on Federal and State Affairs

2-3

Representative Brunk
Balloon Amendment 1
February 12, 2010

House Commerce & Labor
Date: 2-12-10
Attachment # 1

9 AN ACT concerning employment security law; regarding contribution
10 rates, penalties and interest; amending K.S.A. 2009 Supp. 44-710a and
11 44-717 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 44-710a is hereby amended to read as
15 follows: 44-710a. (a) *Classification of employers by the secretary.* The
16 term "employer" as used in this section refers to contributing employers.
17 The secretary shall classify employers in accordance with their actual ex-
18 perience in the payment of contributions on their own behalf and with
19 respect to benefits charged against their accounts with a view of fixing
20 such contribution rates as will reflect such experience. If, as of the date
21 such classification of employers is made, the secretary finds that any em-
22 ploying unit has failed to file any report required in connection therewith,
23 or has filed a report which the secretary finds incorrect or insufficient,
24 the secretary shall make an estimate of the information required from
25 such employing unit on the basis of the best evidence reasonably available
26 to the secretary at the time, and notify the employing unit thereof by mail
27 addressed to its last known address. Unless such employing unit shall file
28 the report or a corrected or sufficient report as the case may be, within
29 15 days after the mailing of such notice, the secretary shall compute such
30 employing unit's rate of contributions on the basis of such estimates, and
31 the rate as so determined shall be subject to increase but not to reduction
32 on the basis of subsequently ascertained information. ~~For calendar years~~
33 *2010 and 2011, the secretary shall charge each contributing employer in*
34 *rate groups 1 through 32 the contribution rate in the 2010 original tax*
35 *rate computation table, with contributing employers in rate groups 33*
36 *through 51 being capped at a 5.4% contribution rate. Thereafter, the*
37 *secretary shall determine the contribution rate of each employer in ac-*
38 *cordance with the requirements of this section.*

Notwithstanding the federal law requiring the secretary of labor to annually recalculate the contribution rate, for

39 (1) *New employers.* (A) No employer will be eligible for a rate com-
40 putation until there have been 24 consecutive calendar months immedi-
41 ately preceding the computation date throughout which benefits could
42 have been charged against such employer's account.

43 (B) (i) For the rate year 2007 and each rate year thereafter, each

1 after the mailing of the statement of benefit charges, shall bear interest
 2 at the rate of 1% per month or fraction of a month until payment is
 3 received by the secretary of labor except that an employing unit, which
 4 is not theretofore subject to this law and which becomes an employer and
 5 does not refuse to make the reports, returns and contributions, payments
 6 in lieu of contributions and benefit cost payments required under this
 7 law, shall not be liable for such penalty or interest if the wage reports and
 8 contribution returns required are filed and the contributions, payments
 9 in lieu of contributions or benefit cost payments required are paid within
 10 10 days following notification by the secretary of labor that a determi-
 11 nation has been made fixing its status as an employer subject to this law.
 12 Upon written request and good cause shown, the secretary of labor may
 13 abate any penalty or interest or portion thereof provided for by this sub-
 14 section (a). Interest amounting to less than \$5 shall be waived by the
 15 secretary of labor and shall not be collected. Penalties and interest col-
 16 lected pursuant to this subsection shall be paid into the special employ-
 17 ment security fund. For all purposes under this section, amounts assessed
 18 as surcharges under subsection (j) or under K.S.A. 44-710a, and amend-
 19 ments thereto, shall be considered to be contributions and shall be subject
 20 to penalties and interest imposed under this section and to collection in
 21 the manner provided by this section. For purposes of this subsection, a
 22 wage report, a contribution return, a contribution, a payment in lieu of
 23 contribution or a benefit cost payment is deemed to be filed or paid as
 24 of the date it is placed in the United States mail.

25 (2) Notices of payment and reporting delinquency to Indian tribes or
 26 their tribal units shall include information that failure to make full pay-
 27 ment within the prescribed time frame:

- 28 (i) will cause the Indian tribe to be liable for taxes under FUTA;
- 29 (ii) will cause the Indian tribe to lose the option to make payments
 30 in lieu of contributions;
- 31 (iii) could cause the Indian tribe to be excepted from the definition
 32 of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and
 33 amendments thereto, and services in the employ of the Indian tribe, as
 34 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
 35 thereto, to be excepted from "employment."

36 (3) *Notwithstanding any provision of subsection (a) to the contrary,*
 37 *for calendar year 2010, any penalty or interest assessed pursuant to sub-*
 38 *section (a) shall be forgiven if the contributing employer pays its 2010*
 39 *contribution rate in full by the close of the final calendar quarter for*
 40 *calendar year 2010. However, if a contributing employer does not pay its*
 41 *contribution rate in full by the close of the final calendar quarter for*
 42 *calendar year 2010, such contributing employer will be responsible for*
 43 *paying any penalties and interest accrued during the calendar year 2010.*

for late payment of the contributing employer's
 contribution rate

HOUSE BILL No. 2676

By Committee on Federal and State Affairs

2-9

Balloon Amendment 1
February 12, 2010

House Commerce & Labor
Date: 2-12-10
Attachment # 2

9 AN ACT concerning employment security law; relating to contribution
10 rates and penalties and interest; amending K.S.A. 2009 Supp. 44-710
11 and 44-717 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 44-710 is hereby amended to read as
15 follows: 44-710. (a) *Payment.* Contributions shall accrue and become pay-
16 able by each contributing employer for each calendar year in which the
17 contributing employer is subject to the employment security law with
18 respect to wages paid for employment. Such contributions shall become
19 due and be paid by each contributing employer to the secretary for the
20 employment security fund in accordance with such rules and regulations
21 as the secretary may adopt and shall not be deducted, in whole or in part,
22 from the wages of individuals in such employer's employ. In the payment
23 of any contributions, a fractional part of \$.01 shall be disregarded unless
24 it amounts to \$.005 or more, in which case it shall be increased to \$.01.
25 Should contributions for any calendar quarter be less than \$5, no payment
26 shall be required.

27 (b) *Rates and base of contributions.* (1) Except as provided in para-
28 graph (2) of this subsection, each contributing employer shall pay contri-
29 butions on wages paid by the contributing employer during each calendar
30 year with respect to employment as provided in K.S.A. 44-710a and
31 amendments thereto.

32 (A) ~~Except that~~ *for calendar years 2010 and 2011, a contributing*
33 *employer shall have the option to pay the 2010 adjusted tax rate or the*
34 *2010 original tax rate computation computed by the department of labor*
35 *in accordance with K.S.A. 44-710a, and amendments thereto.*

36 (B) *No contributing employer choosing to pay the 2010 original tax*
37 *rate computation shall pay a contribution rate above 5.40%.*

38 (2) (A) If the congress of the United States either amends or repeals
39 the Wagner-Peyser act, the federal unemployment tax act, the federal
40 social security act, or subtitle C of chapter 23 of the federal internal
41 revenue code of 1986, or any act or acts supplemental to or in lieu thereof,
42 or any part or parts of any such law, or if any such law, or any part or
43 parts thereof, are held invalid with the effect that appropriations of funds

Notwithstanding any federal law to the contrary
requiring the secretary of labor to recalculate the
yearly contribution rate,

positive balance

2-2

1 ratio to the total benefits paid to the individual as the total base period
2 wages paid to the individual by such employer bear to the total base
3 period wages paid to the individual by all of such individual's base period
4 employers.

5 (4) *Group accounts.* Two or more reimbursing employers may file a
6 joint application to the secretary for the establishment of a group account
7 for the purpose of sharing the cost of benefits paid that are attributable
8 to service in the employment of such reimbursing employers. Each such
9 application shall identify and authorize a group representative to act as
10 the group's agent for the purposes of this subsection (e)(4). Upon ap-
11 proval of the application, the secretary shall establish a group account for
12 such employers effective as of the beginning of the calendar quarter in
13 which the secretary receives the application and shall notify the group's
14 representative of the effective date of the account. Such account shall
15 remain in effect for not less than four years and thereafter such account
16 shall remain in effect until terminated at the discretion of the secretary
17 or upon application by the group. Upon establishment of the account,
18 each member of the group shall be liable for payments in lieu of contri-
19 butions with respect to each calendar quarter in the amount that bears
20 the same ratio to the total benefits paid in such quarter that are attrib-
21 utable to service performed in the employ of all members of the group
22 as the total wages paid for service in employment by such member in
23 such quarter bear to the total wages paid during such quarter for service
24 performed in the employ of all members of the group. The secretary shall
25 adopt such rules and regulations as the secretary deems necessary with
26 respect to applications for establishment, maintenance and termination
27 of group accounts that are authorized by this subsection (e)(4), for ad-
28 dition of new members to, and withdrawal of active members from such
29 accounts, and for the determination of the amounts that are payable un-
30 der this subsection (e)(4) by members of the group and the time and
31 manner of such payments.

32 Sec. 2. K.S.A. 2009 Supp. 44-717 is hereby amended to read as fol-
33 lows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*
34 *contributions, payments in lieu of contributions and benefit cost pay-*
35 *ments.* Any employer or any officer or agent of an employer, who fails to
36 file any wage report or contribution return by the last day of the month
37 following the close of each calendar quarter to which they are related
38 shall pay a penalty as provided by this subsection (a) for each month or
39 fraction of a month until the report or return is received by the secretary
40 of labor *except that for calendar years 2010 and 2011 an employer or any*
41 *officer or agent of the employer shall have up to 90 days past the due*
42 *date to file a wage report or contribution without being charged a penalty*
43 *or interest, however, when the 90 day period has passed, the provisions*

pay such employer's