Approved: April 1, 2011
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:15 a.m. on January 26, 2011, in Room 548-S of the Capitol.

All members were present.

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

Conferees appearing before the Committee:
Mrs. Karin Brownlee, Acting Secretary, Department of Labor
Mr. Inayat Noormohmad, Director, LMIS & UI Divisions, Kansas Department of Labor

Others attending:
See attached list.

Handouts

Upon calling the meeting to order, Chairperson Wagle announced the Committee would be having confirmation hearings at tomorrow's meeting for Mrs. Karin Brownlee as Secretary of the Department of Labor and Mr. Pat George as Secretary of the Department of Commerce. Confirmation packets for these new appointments were before them to review.

Unemployment Workshop

The next order of business was a workshop on unemployment. Chairperson Wagle stated her goal is to have a hearing on unemployment next Thursday, February 3, to submit a bill while continuing to work on the language, in order to let employers know where they stand. She then recognized Mrs. Karin Brownlee, Acting Secretary, Department of Labor who offered the following update:

1.) Regarding the Call Center, they had implemented a new process that began on January 18, 2011 and as of Friday, January 21, the DOL had zero disconnects compared to the 24K they had received on her first day at the department.

2.) They had discussed having to implement a new surcharge on employers to pay the interest, but thanks to Mr. Inayat Noormohmad, the surcharge that is currently on the negative-pay employers, can be used by moving it to a separate fund and utilizing it to pay the interest. Mr. Noormohmad is communicating with the Federal government to make sure it is an acceptable solution, so the DOL does not have to implement another fee on all employers just to pay the interest alone. No written testimony was offered.

The Chair thanked Mrs. Brownlee and then recognized Mr. Inayat Noormohmad, Director, Labor Market Information Services (LMIS) & Unemployment Insurance (UI), Kansas Department of Labor,who offered a packet entitled, "Introduction to the Kansas Unemployment Insurance Program: A Guide to Understanding the UI Trust Fund and Tax Contributions," and giving a brief overview regarding the:

1.) Unemployment Insurance Trust Fund - stating the money for the fund comes from employer contributions and the interest the fund earns, which can only be used to pay benefits. As of January 25, 2011, the trust fund balance is zero and the outstanding loan amount, Title X11 is $100.8M.

2.) Employer Tax Rates - stating there are four major components of that tax rate that each individual gets including: the length of time in business and industry. There are the ineligible employers who do not have more than 24 consecutive months of chargeability with the DOL, experiences using the UI system, average annual payroll, overall trust fund balance. The average tax rate for 2011 on the taxable wage base of the first $8K of the salary, is 4.79% or $383.20 per employee annually. However, he said when you factor in **HB2676.** the relief that was given the employers the effective tax rate is 3.93% or $314.00 per employee.

The minutes of the Senate Commerce Committee at 8:15 a.m. on January 26, 2011, in Room 548-S of the Capitol.

3.) Calculating the UI Tax Rates - stating everything that is used in the tax rate is based on Kansas statute KS 44-710a explaining:

A.) They first determine the Planned Yield based on what they call Schedule III, based on what their reserve fund ratio is. The DOL takes the balance as of July 31 and divides that by the total payroll of contributing employers in the previous fiscal year. For 2011, the reserve fund ratio was 0.076%, which helps them determine what the tax rate is going to be on total wages.

B.) Referring to the chart on page 5, he said by finding the 0.076% from Column A, it will give the Planned Yield or 1.1% of total wages of contributing employers, which will be the yield that is collected. The Planned Yield for 2011 was $406.9M based on the tax rate on taxable wages and the total taxable wages we had in the previous state fiscal year.

Chairperson Wagle asked if it went down because wages went down, and weren't last years wages higher? (Yes, last year was the first year in Kansas history that total wages went down as well as taxable wages.) He went on to say the Planned Yield for 2010 was $406.9M but **HB2676** rates reduced it to $363.5M. That was some relief they were able to provide.

The Chair asked is this is only for this year, next year we do not have this reduction? (Correct, **HB2676** was only in effect for 2010 and 2011.)

4.) Types of Employers - the rate mechanism includes:

A.) Ineligible Employers, as explained earlier, do not have 24 consecutive months of chargeability and have set rates. The construction industry has a rate of 6%, all other industries are at 4%.

B.) Negative Balance Employers – have more benefits charged against their account than they have paid in and have the maximum allowable 5.4% rate, plus a surcharge ranging from 0.2% to 2.0% with the effective rates ranging from 5.6 to 7.4%.

C.) Positive Balance Employers –have paid in more than they have benefits charged against their account and are rated in 51 rate groups depending on their experience using the UI system. The maximum tax rate for all 51 groups is 5.4%.

The Chair asked, to coordinate things with what we did last year, in the bill that we finally passed last year, was there an increase on the rates paid by a surcharge put on negative employers last year? (No.)

5.) Employer Tax Amount Determination - the amount of money the DOL will be collecting from the three different groups of employers starting with what they need to collect, the overall year according to Schedule III, or $420.0M. They deduct $14M they estimate will be collected from ineligible employers, then deduct $75.7M they anticipate to collect from the negative balance employers, and the remaining balance of $330M is what they will collect from the positive balance employers.

6.) Tax Relief – 2010 **HB2676 -** only applied to positive balance employers. They did not go to the rate compression technique they normally do which almost eliminated the experience rating because quite a few groups were accessed 5.4%. They also allowed the employers 90-days, in addition to what the statute dictates, to pay the contributions without being charged interest for the first three quarters of each of the two years.

7.) Positive Balance Employers – by calculating the individual employers reserve ratio, which is the account balance divided by the annual average payroll for the past three years, determines how an employer is placed in one of the 51 rate groups. To equally spread wages across each of the rate groups, they start with rate group one, selecting those employers who have the best reserve ratio, and put 1.96% of total taxable wages into it, then they go to rate group two and so on until they get to rate group 51 where they have exhausted all of their positive balance employers.

8,) Comparison Charts showing 2011 Calculated Tax Rates and 2011 **HB2676** Tax Rates - once employers are arranged in these rate groups, if they were to calculate the tax rates with the compressions, rate groups 13 through 51 would have the tax rate of 5.4%, essentially not allowing for any experience rating since they all paying the same flat rate. With **HB2676**, the 5.4% does not begin until rate group 33.

The Chair recognized Senator Masterson who asked for clarification on the way the formula works, offering an example of two companies both having the same amount of employees: Company A employees are all making $10K so contributing about the same rate & Company B employees are all making $100K, so Company B would have a much better reserve ratio correct? (The effective tax rates would be lower in Company B but the reserve denominator in the reserve ratio is the average annual payroll. It is the risk that you are exposing the UI system to that factors into the determination of the reserve ratio.) So if Company B lays off, those employees get higher benefits? (Yes, but it is being charged against their account which pushes down their reserve ratio.)

The Chair asked if the DOL could provide an analysis on the following: list all of the positive balance employers in all groups, provide the total amount they have drawn out of the fund, how much they have paid into the fund, and possibly the total amount they are projected to pay into the fund this next year and provide the same calculations for the negative employers who have had a surcharge of .2 -2.0%, so we could compare the two groups? (Yes, and could tell her by sheer definition of who they are, the amount of money paid in by the positive balance employers by definition would be higher than the amount of money used and vice versa for negative balance employers.)

She asked, when did we implement the surcharge on negative balance employers? (To their 25 years on the job, they have always had this.) Regarding using this surcharge to pay back the interest to the federal governmental, did it turn out to be enough? (More than enough, the DOL is collecting about $18M from the surcharge and they are estimating somewhere between $6M-$8M for the interest payment.)

The Chair recognized Senator Lynn who asked if they were using the surcharge to pay down the interest payment, how does that effect the overall fund and what about the principal? (It does have a double impact including: the interest payment money cannot be used in the calculation of the reserve ratio of those employers and it reduces the trust fund balance because again you cannot count this money. And again, if the trust fund balance is lower then it impacts the calculation of the reserve ratio of Schedule III yield that you would require. However, because of the situation we are in we cannot get worse than 1,1%.)

9.) Yearly Schedule - notices are sent out in mid-December, the employers have the right to appeal within 15 days and file four Quarterly Wage Reports paying tax contributions at the end of each quarter.

HB2676 provides a 90-day interest free grace period for contribution payments for the first three quarter of 2010 and 2011, but not the fourth quarter because of the federal requirements.

10.) Trust Fund Borrowing – the DOL draws funds on a daily basis per need, the federal government will only give us the amount needed to pay benefits from the Federal Unemployment Account. The current outstanding loan balance is $100.8M.

11.) Lastly, Interest on Trust Fund Loans – through ARRA, Trust Fund loans have been interest free through 2010, but began accruing daily on balances effective January 1, 2011. The loans are payable no later than September 30. (With interest rates changing each calendar year, he found it interesting how it is calculated, it is the same interest you would earn if you had a trust fund balance.) A copy of his handout is (Attachment 1) attached and incorporated into the Minutes as referenced.

The Chair thanked Mr. Noormahmad and asked for questions or comments from the Committee which came from Senators Longbine and Holland including: do you have an idea the percentage or number of employers that have gone from positive to negative balance over the last 24 or 36-months? (From 2009 to 2010, the taxes collected went up to 4.9% and in 2009 there were 4,700 negative balance employers, in 2010 it went to 6,370, and in 2011, 7,705.) Once that employer has gone to the negative balance position, on an annual basis, how many of those, on a percentage basis, are coming out or are they just lost in this spiral? (Does not have that information available right now, but will get it for him. In terms of the industry classification, the majority are construction and manufacturing related simply because of the nature of the recession where there were a lot of layoffs in this classification.) Would it be a fair assessment to say that the negative balance employers are not pulling their fare share? (The Chair mentioned that she has asked for the figures of what the positives are paying in to hold up the negatives.)

For those other states who have gone through their structural shifts in their economy, the types of jobs they are seeing grow are changing, have you seen anything to indicate if they are trying to manage these employers on a long term basis? (Have not seen any studies.)

As there were no further questions for Mr. Noormahmad, Chairperson Wagle recognized Ms. Kathie Sparks, Deputy Secretary, Kansas Department of Labor, who offered a packet entitled “Introduction to the Unemployment Insurance Program: A Guide to Understanding UI Benefits” and explaining the:

1.) FUTA Credit Reduction – stating a state can retain a loan balance on January 1 for two consecutive years before repayment must begin and since we did not start borrowing until February of last year, we will not be in loan repayment until January, 2012. November 9 is also a date to remember because if the loan has been paid off entirely, interest is not charged for that year the following year. If the loan has not been paid off, contributory employees may be subject to reduction of their FUTA credit. The Federal rate is 6.2% and we receive a credit of 5.4% so all employers are paying .8% which they reduce by 0.3% each year the balance remains unpaid and the base is now $7K.

2.) Schedule of FUTA Offset Credit Reductions – which offers a progression of paying off the loan until it is paid off. Currently employers are paying $56 per employee FUTA credits, the .3% would be $77, then $98, and it increases by $21 per employee per year until that money is paid off. For years 3 through 6, it shows an additional credit reduction if your benefit cost rate is higher than your tax rate, Kansas is not in this situation, so this does not apply.

The Chair asked Ms. Sparks, no matter what, our FUTA rate goes up until the loan is paid off? (Yes.) So eventually when you explain the repayment plan, we will want to know how high they expect the FUTA rates to go over the next few years? (Yes.)

3.) FUTA Credit Reduction Cap – stating if the following criteria are met: if you have taken no action to decrease the solvency of the fund in the prior Federal Fiscal Year; state's average tax on total wage exceed 5 year benefit cost rate on total wages and Kansas is in this situation; and the loan balance is not greater than the balance 3 years earlier.

4.) Available UI Benefits -Kansas Shared Work Program – established in 1978 and reduces the operating costs on employers. Qualified employers have an established experience rating and are positive balance employers.. However, if they are a negative balance employer, want to take part in the program, have paid everything in January, and current in their records, the DOL considers them a positive balance employer. Also to qualify, an employer must submit a plan to the DOL that affects at least 10% of the employees in the affected work unit and propose a minimum 20% reduction but no more than a 40% reduction, in hours for each employee in the plan. In 2007, the DOL had 40 employers who participated in this program, by last year they had 305.

The Chair recognized Senator Holland who asked what are employers doing after a certain amount of time, are they still laying off? (Did not have the information with her but they would get it to the Committee.) If the employee is on a reduced work week and receiving partial benefits, would that count against their unemployment benefits if they got laid off? (Yes.)

5.) Maximum and Minimum Benefit Amounts - explained how they calculate, stating the maximum is 60% of the weekly average salary in Kansas and the minimum is 25% of the maximum. To qualify, the individual has received wages from insured employment in two or more quarters of the base period and has total base period wages equaling at least 30 times the weekly benefit amount earned from an employer in Kansas.

6.) Disqualification for Unemployment Insurance Benefits - including voluntarily left work without good cause, was discharges for misconduct connected with the work, failed to accept or apply for work when offered by the employment office or an employer.

In the interest of time, she offered a flow chart showing The Process of Benefit Approval, the Statistics on Appeals, Determining the Benefit Amount, the Average Duration of Benefits including from fourth quarter 2009 to the third quarter 2010 was 19.0 weeks and the U.S. Average during this time was 19.4 weeks. Lastly, 5 charts on Comparing Benefits Statistics for 2010.

- for the minimum wage required to qualify for benefits in Kansas for 2010, the sum of the wages must be at least $3,270 for four of the last five quarters but they would have had to work in at least two of those quarters.

The Chair asked if this was how we cover part-time employee? (This is a separate calculation.)

- the minimum weekly benefit payment amount is one-third of the $3,270 or $1,090 and paid out in 10 payments of $109 each.

- the maximum weekly benefit payment amount was $436, ranking Kansas 23rd.

- the minimum potential benefits amount which for Kansas we are eighth.

- the maximum weekly benefit payment amount of $436 times 26 weeks = $11,336 and is taxable.

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

Adjournment

As it was going on 9:30 a.m., Chairperson Wagle adjourned the meeting. The time was 9:31 a.m.

The next meeting is scheduled for January 27, 2011.