

**Testimony on Substitute for HB2196
Senate Commerce Committee
Peter Brady, Deputy Secretary KDOL
March 16, 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 Substitute for 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**.

Adding Tax Withholding Information to Initial Determinations (p. 9-10). The agency supports this provision as it will make tax information more readily available to claimants, particularly claimants filing for benefits for the first time.

Temporary expansion of the Kansas Employment Security Board of Review (KESBOR) membership from three to six members (p. 58-60) KDOL strongly supports this provision, it allows us to greatly increase the bandwidth of KESBOR and work through our increased volume of cases quicker. This expansion will be crucial in mitigating large claim backlogs that have impacted other areas of the unemployment insurance program. This expansion is temporary and sunsets on June 30, 2024.

Improvements to the Shared Work Program (p 96-100). 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. We also support expanding the program eligibility from 26 maximum weeks to 52.

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 improved education and outreach efforts to the business community. To this end, we have revamped the program's branding, developed a new website and designed new digital and print materials to be more user-friendly for employers. We have also added additional staff support and created a dedicated employer help desk phone line so that employers do not have to

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go through the call centers that handle claimant issues. This has been a significant improvement in customer service for employers and we handle between 700-800 employer calls a week. The next phase of improvements to the Shared Work program will be the addition of automation to the system. Once these changes are made early this year, we expect to see a reduction in workload for employers and staff. Please see the attached documents that show the new branding and messaging for the program.

Changes for Professional Employer Organizations (Old SB27) (p 101). 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.

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

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 three reasons.

First, it is dangerous to list technological requirements in statute. While we support and are planning for many of these suggested requirements, the agency does not believe that statute is an appropriate place for items this detailed and time-sensitive. The current system was put into service back in the 1970's, and technology looks very different today than it did back then. We do not want to tie the hands of lawmakers and agency personnel from responding to emergencies or hamper progress with changing unemployment laws and trends in the future by locking in technology and requirements of today. Furthermore, having these requirements laid out in law will likely slow down the agency's modernization efforts and prevent us from making critical future improvements.

The items listed as technological requirements are vague and would present challenges for implementation. They are more akin to technological buzzwords than actual, useful system specifications. For example it's unclear what is meant by the term "multi-speed information technology" and how the agency would be required to implement that provision in the modernization project. We have reached out to many national experts in unemployment modernization and none of them have been able to define this term. These items operationalize statute and could paint the agency into a corner. Imagine, for example, if the agency was bound today by the codification of 1970s mainframe technology. Technology changes so quickly now

that the agency would be limited by these items even 2 years from now, let alone 20 years, into the future.

Second, we are concerned with adding layers of bureaucracy to the agency's modernization and stabilization efforts that will ultimately slow them down and result in worse outcomes for Kansans interacting with the UI system.

Third, because existing state law outlines the process and oversight for large-scale technology projects, we are concerned that this new committee could run afoul of existing oversight bodies, namely the Joint Committee on Information Technology. Committees like JCIT contain legislators and staff who are well-versed in state statute requirements, help to oversee major technology projects like UI modernization and hold agencies accountable. By introducing a new committee with differing authority, we are worried that this will cause more confusion in an already complicated environment that will translate into long and costly bureaucratic delays. In the spirit of transparency and accountability, an alternative may be to mandate updates to existing legislative committees, including the Joint Committee on Information Technology (JCIT), at certain points in the process.

Finally, the agency plans to work closely with stakeholders on our modernization efforts and we have already made significant progress towards modernizing our system. However, completion of an entirely modernized system by December 31, 2022 is not feasible and would be substantially faster than any known successful modernization project nationwide. The traditional timeline for these projects has ranged from 3 – 6 years. There is feedback from the vendor community that the timeline for successful modernization projects is decreasing. Further, KDOL is attempting to position itself for success in this space by focusing on solutions that have already been previously implemented in at least one state. But, putting a timeline on the project that is not rooted in more objective criteria is problematic in many areas. Including the possibility of reducing interest in bidding on the project from the available vendor pool.

Establishment of the My-Reemployment Plan. (p. 10-12). This section requires the Secretary of Labor to work with the Secretary of Commerce to jointly establish and implement programs providing reemployment and works skills training to UI benefit recipients. This includes a requirement for the Secretary of Labor to collect work search materials from claimants and provide assistance in creating those documents as needed.

This section substantially increases the administrative workload of the agency. Additionally, this section duplicates much of the work already being completed by the Kansas Department of Commerce and the Kansas Workforce Centers. It is important to note that this provision was not considered in the original fiscal note and will likely increase the total cost of this legislation. Neither KDOL nor Commerce were asked to testify about our joint efforts in this space. Further,

similar to codifying information technology standards in statute, the practice of setting forth definitive work search requirements in law is self-limiting as best practices in this area emerge and more capability is achieved through improved technology.

Modification to the Unemployment Insurance Fraud Penalty (p. 22-23). This is a step in the right direction as two years is more in line with the majority of defined period penalties in other states. It should be noted that a limited number of states have an open-ended fraud penalty that disqualifies claimants from receiving benefits until they have paid back any principal, penalties, and interest associated with their fraudulent claim. However, KDOL is not aware of any state that has a complete ban on unemployment benefits. A ban of this nature could create a conformity issue with federal law as there is no pathway for the claimant to ever be eligible for benefits again in the future.

Modification to Weeks Available in Regular Unemployment (p 52-53). 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.

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

Adjustments to the Timelines for Trust Fund Computations (p 9-10). We strongly support the goal of this provision as it seeks to make trust fund information more accessible and readily available to the public. Our concern with this provision is that 120 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.

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- 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 in place 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. We would recommend merging this reporting requirement with the existing requirement for the annual certification of trust fund solvency in K.S.A. 44-701a(f)

New Schedule for Contributions from Employers to the UI Trust Fund (p 50-58). The expected contributions based on the solvency schedules in the this legislation 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. Additionally, if Kansas was forced to start borrowing from USDOL, the slow pace of trust fund replenishment significantly increases the possibility of a large tax increase on all businesses within the state by possibly triggering the Federal Unemployment Tax Act (FUTA) effective rate. The change in triggers for weeks of unemployment also represents the abandonment of a previous agreement that was reached between the agency, the business community and labor stakeholders in the wake of the Great Recession.

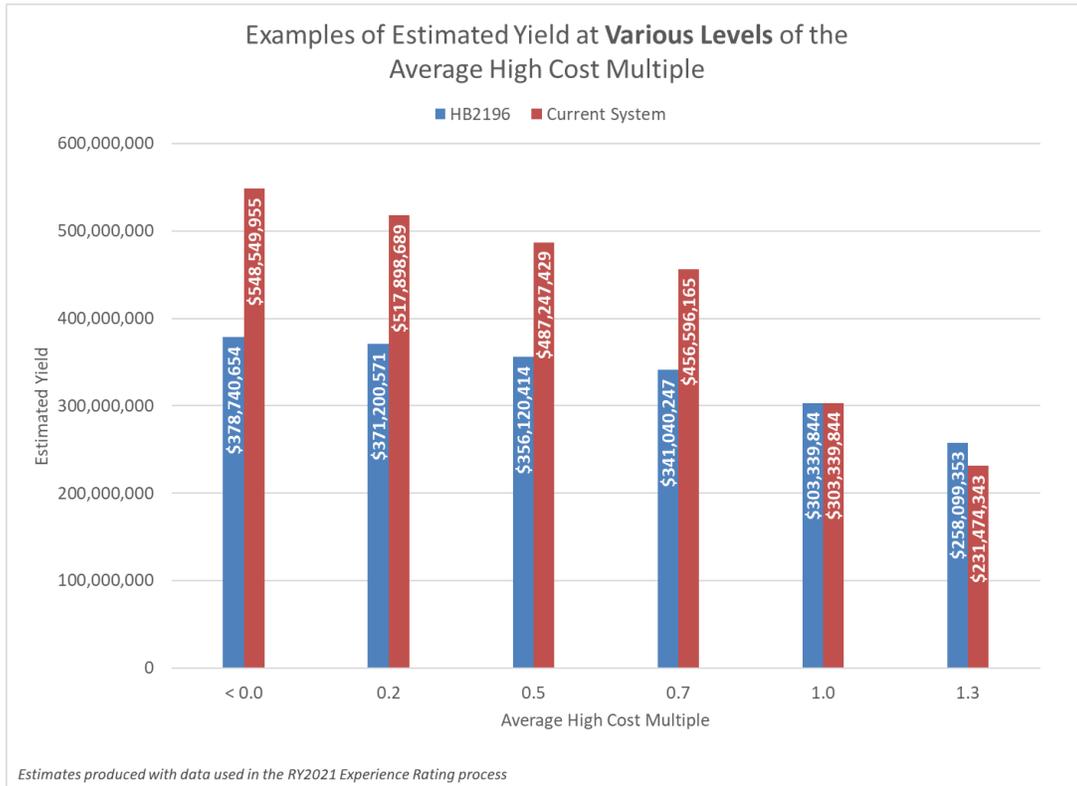
The proposed system provides relatively small gains in overall contributions when moving from one table to the next, and even in the worst case scenario when the Average High Cost Multiple is less than zero (indicating no money in the Trust Fund/borrowing from USDOL), estimated contributions are less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

Comparing these estimated contribution levels to historical payment data, the 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)

The chart below 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.



Transfer of Funds into the Employment Security Trust Fund and Identification of Improper Payment (p 12-13, 93-95). KDOL believes these provisions may present a conformity issues under federal law because of the way UI funds could be transferred between the trust fund and the state general fund. There are strict federal law limitations on how money within a state trust fund can be utilized. Essentially trust fund amounts can only be used to pay benefits and make individual refunds to employers who have overpaid their contributions.

The U.S. Department of Labor is currently reviewing this legislation to determine if a conformity issue may exist.

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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 Substitute for 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 reviewed the original version of this bill and will review this amended 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 of this amended 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.