

MINUTES

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

August 15-16, 2002
Room 123-S—Statehouse

Members Present

Senator Nick Jordan, Chairman
Representative William G. Mason, Vice Chairman
Senator Jim Barone
Senator Karin Brownlee
Senator U. L. "Rip" Gooch
Representative Jerry Aday
Representative Carol Edward Beggs
Representative Mary Compton
Representative Annie Kuether
Representative Margaret Long

Members Absent

Senator Lynn Jenkins
Representative Vern Osborn
Representative Valdenia C. Winn

Staff Present

April Holman, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Lea L. Gerard, Committee Secretary

Conferees

Representative Al Lane
Representative Candy Ruff
Rick Beyer, Secretary, Department of Human Resources
Roger Aeschliman, Deputy Secretary, Department of Human Resources
Williams Layes, Director, Labor Market Information Services, Department of Human Resources
Paul Bicknell, Chief of Contributions, Department of Human Resources
Steve Markley, Chief of Benefits, Department of Human Resources
Representative Dale Swenson
Terry Leatherman, Kansas Chamber of Commerce and Industry
Wayne Maichel, Kansas AFL-CIO
Mary Feighny, Assistant Attorney General
Dave DeMoss, Southeast Kansas Education Service Center at Greenbush

Roger Haack, Data Team Systems, Inc., Lawrence
Ken Daniel, State Chairman, National Federation of Independent Business
Natalie Bright, Wichita Independent Business Association
Dr. Mary Devin, Superintendent USD 475, Geary County
Dr. Gary Price, Superintendent USD 250, Pittsburg
Dr. Cal Cormack, Superintendent, USD 458, Basehor-Linwood
Dr. Ron Wimmer, Superintendent, USD 233, Olathe
Representative Robert Bethell
Phil Harness, Director, Division of Workers Compensation
Rudy Leutzinger, Supervisor, Industrial Safety and Health
Orville "Butch" Spray, Gread Bend

Thursday, August 15

The meeting was called to order by Chairman Nick Jordan at 10:05 a.m., on August 15, 2002, at the Statehouse, Room 123-S, Topeka, Kansas. The Chairman advised the Committee that the following topics would be discussed at future meetings:

- Broadband Deployment—September 12 and 13, 2002
- Review of Kansas Business Tax Structure—October 17 and 18, 2002
- Tourism and Rural Development—November 14 and 15, 2002

The first item on the agenda was Unemployment Insurance (UI) Benefits and representatives from the Kansas Department of Human Resources (KDHR) were present to give testimony.

The Chairman introduced Representative Al Lane. He testified regarding the need for a more in-depth interim examination of unemployment benefits and HB 2868, the State Occupational Safety Plan ([Attachment 1](#)). Representative Lane noted that the Legislature imposed a moratorium on unemployment tax for positive pay employers for a five-year period and estimates show that employers throughout the state saved approximately \$800 million. Many of the employers invested the savings in their business for expansion and update of equipment. The tax was restored and brought back at approximately one-half of the rate that it would have been at the beginning of the moratorium. The tax rate was increased so that by 2003 it will be back to about 100 percent. Representative Lane identified the following specific concerns relating to the trust fund that need more study:

- Whether the state can extend the date for resuming unemployment insurance contributions at 100 percent to a later date;
- Whether unemployment insurance benefits can be extended for a longer period of time; and
- Whether benefits can be increased.

Representative Candy Ruff expressed her appreciation for a job well done by the KDHR in meeting the needs of unemployed workers (no written testimony presented). She

noted that for major layoffs, the agency has gone to the job site to help people get their benefits started.

Representative Ruff responded to a Committee question regarding complaints by unemployed workers of inaccessibility by telephone. She stated the agency's system was set up to handle a certain number of callers that were unemployed and it was not ready for the fallout of September 11, 2001, and the impact on the airline industry. The agency did not have the capacity to handle the large number of people calling in to file for unemployment benefits.

Rick Beyer, Secretary, KDHR reported that the Kansas economy has recently recorded an increase in the unemployment rate (Attachment 2). The rate for June 2002, was 4.6 percent compared to the national total unemployment rate of 5.9 percent. Mr. Beyer stated the agency is concerned regarding the adequacy of the unemployment insurance trust fund, reminding the Committee that the state enacted an unemployment insurance tax moratorium from 1995 to 1999 and during that period, the Kansas unemployment insurance trust fund receded from a \$724 million balance to the current level of \$505 million. The \$505 million balance includes \$78 million in federal funds from the Reed Distribution Act and without this allocation there would be more concern. In 2003, there will be an increase in taxes which will give a slight increase but not sufficient to return the fund to safe levels. Federal funding for the Kansas UI program has been at a standstill for a number of years. Out of each dollar that employers pay, the federal government returns only 40 cents to Kansas; therefore, it is very difficult to give adequate service. Recently Kansas has actually experienced cuts in federal funding and at the same time there has been an enormous increase in workload.

William Layes, Chief of Labor Market Information Services of KDHR, discussed the Kansas unemployment rates and also the status of the UI Trust Fund (Attachment 3). Mr. Layes discussed that the State of Kansas continues record layoffs which places significant demands on the fund in the form of benefit payments and the weekly benefit amount continues to rise. In order to increase revenues to maintain solvency, a long-range financial plan needs to be designed and applied. Mr. Layes stated that the Employment Security Advisory Council held its first meeting on July 29, 2002, and a subcommittee has been formed to study long-range financial solutions.

Steve Markley, Chief of Benefits Administration KDHR briefed the Committee stating that the mission of the benefit section is to pay timely and accurate unemployment insurance benefits (Attachment 4). He gave a brief background of the call centers and the use of automated telephone systems for filing unemployment claims.

The Committee requested that Mr. Markley correct his testimony on page 1, last sentence, to read: "Unemployment insurance pays benefits to workers until the employer recalls, or until they find jobs, or up to a current maximum of 39 weeks, which includes the 13-week temporary extension."

The Committee questioned the backlog of approximately 800 adjudication cases (legal decisions) and requested that Mr. Markley provide a status report within ten days on the backed-up claims that temporary or contracted employees are attempting to resolve.

Discussion followed regarding the average number of calls per hour received at the call centers, number of customer service representatives handling those calls, and the average contact time and hold time.

In response to a Committee question, Mr. Markley said that state statute provides criteria on setting weekly and maximum benefit amounts.

Paul Bicknell, Chief of Contributions for KDHR, presented written testimony to provide the Committee with a broad understanding of the Kansas UI Program (Attachment 5). The program is funded through two taxes on employers. The first tax is for administrative programs funded by federal taxes and the second pays benefits to the claimants which is a state tax. Included in his testimony was a copy of the UI Success Model to simplify the complicated UI process the Department follows.

Responding to a question regarding claims made via the Internet, Mr. Bicknell stated the Internet website is open from 7:00 a.m. to 7:00 p.m. He noted that until the agency can make investments in the whole system, it will not be able to offer around the clock service. While the front end of the system, or the intake, is state-of-the-art, but the back end is still the old batch processing cobalt. The agency has only had money to deal with the front end of the system which is visible to customers. The short-term strategy is to advertise and drive more claims to the Internet just by letting people know that it is there. When the agency first did advertising, the Internet traffic went to 30 percent and now has fallen back to 15 percent because there is no money to advertise on a consistent basis. There is a new add campaign coming out soon and this should channel more of the claims to the Internet.

Secretary Beyer concluded that the agency has done everything it can do to service the employer and job seeking customer. The agency has made dramatic progress in processing and productivity to handle work claims in spite of not having enough dollars to operate on. KDHR is in a financial and operational stranglehold and support is needed on behalf of all of the customers served in order to provide responsive service. The UI Trust Fund has fallen to a perilously low level and collective and thoughtful action is necessary to address this serious concern. Another year like 2002 will jeopardize the fund and may require that the agency borrow from the federal government. Historically, it has taken approximately 1 percent of Kansas wages to fund benefit payments. The five-year UI moratorium provided a significant boost to the economy but times have changed and more than twice as many Kansans are drawing UI benefits today than 18 months ago.

In summary, Secretary Beyer stressed the following three items need strong consideration:

- Restoring the UI tax to a level more consistent with historic levels;
- Support the expenditure of 5 percent of the Reed Distribution Act money to build capacity to service the business community and job seekers; and
- Discussion regarding the many possibilities of wisely using the \$74 million balance of the Reed Distribution Act money.

The meeting was recessed for lunch at 12:05 p.m. on August 15, 2002.

Afternoon Session

Chairman Nick Jordan reconvened the meeting at 1:30 p.m.

The Committee requested that Secretary Beyer put together a report discussing KDHR's plan for using Reed Act money and the anticipated results from this use.

The Committee requested a history of plans relating to what was done in 1983-1984 showing total amount of claims and total costs versus what the agency is doing today. Also to be included would be a state-by-state comparison illustrating the operation in other states, gross cost per resident, gross cost per employee, and gross cost per unemployment.

Gerald Steineger, Fiscal Officer, KDHR stated that the Reed Act moneys are not distributed annually. He noted that the funds may only be used for administration of the UI program and may not be used for benefits or support of the job service program. He explained that there have been only three instances in the last 40 years where there has been a distribution of Reed Act Funds and each distribution was based on separate federal legislation with requirements attached to it.

Representative Swenson presented testimony regarding the importance of unemployment insurance for individual workers and the need to increase the UI benefits envisioned by HB 2728 ([Attachment 6](#)). He identified and discussed three issues:

- Unemployment insurance an economic stimulus;
- HB 2728 to increase benefits for unemployed workers; and
- Specific objections to HB 2728.

Terry Leatherman, Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry, presented written testimony addressing the State of Kansas economy and the impact felt by the unemployment compensation system ([Attachment 7](#)).

Wayne Maichel, Kansas AFL-CIO testified that he has served on the Employment Security Advisory Council since 1980 and this is not the first time the State of Kansas has had an economic downturn with significant job losses. This situation happened back in the early 80s and was referred to the Advisory Council to make some tough decisions to keep the funds solvent and pay benefits. The Advisory Board has had one meeting regarding the funding issue and a task force was appointed to look at three things:

- UI funding and the trust fund balance;
- Benefits; and
- The use of Reed Act moneys.

Mr. Maichel stated the Task Force is working on the funding issue and will bring back recommendations to the full Advisory Committee.

In response to a question of the Advisory Council's time frame for making recommendations, Mr. Maichel stated the next meeting is August 29, 2002, and the Task Force is to have recommendations back to the full Advisory Committee August 28.

April Holman, Kansas Legislative Research Department, briefed the Committee on the Reed Distribution Act moneys and how some other states utilized the funds ([Attachment 8](#)).

Secretary Beyer told the Committee that the agency wants to use \$4 million of the Reed Act Funds to handle the winter workload. In response to a Committee question, Secretary Beyer stated the agency is short 50 to 60 FTEs in terms of call center personnel,

appeals personnel, programming staff, and communicators sufficient to handle the winter volume.

In view of the upcoming Advisory Council meeting, it was the Committee's recommendation to wait until the Advisory Council takes action before the Committee makes final recommendations on this topic. It was further discussed that both bodies, the House and Senate, overwhelmingly passed amendments to the budget regarding the use of Reed Act moneys, which were later vetoed. The *House Journal* dated May 9 and the *Senate Journal* dated May 4 stated: "the state finance council should have no authority to approve any additional expenditures or to increase the expenditure on this account" (Attachment 9).

The Committee questioned if the Advisory Council will address the issue of extending benefits instead of increasing the amount. Secretary Beyer stated it was not part of the mandate for the task force and can be brought before the full Advisory Committee in August 2002.

The meeting was adjourned at 3:30 p.m., August 15, 2002.

Friday, August 16 Morning Session

The meeting was called to order by Vice Chairman Mason at 9:06 a.m., Room 123-S at the Statehouse. The Vice Chairman advised the Committee that testimony would be presented regarding Interlocal Cooperatives and competition with private business.

Mike Heim, Kansas Legislative Research Department, gave the Committee an overview regarding Interlocal Cooperatives and competition with private business. Senate Substitute for HB 2831, as amended by the Senate Committee, had the following language placed in the bill: "An interlocal agreement shall not authorize or enable a public agency to purchase a private business concern." This language was removed in conference committee with the understanding that it would be an interim study request (Attachment 10). Mr. Heim also presented background information regarding state statutes that deal with Interlocal Cooperation agreements with school districts, cities, and municipalities (Attachment 11).

Mr. Heim noted that the purpose of the act is to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations, and corporations on the basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Mary Feighny, Assistant Attorney General, told the Committee that the Attorney General is responsible for reviewing all interlocal agreements. She stated school districts can create a separate legal entity to conduct the joint venture and is permitted under the interlocal act. The independent legal entities are very powerful and the powers are listed in KSA 72-8230.

In response to a question regarding school districts creating independent legal entities with board powers, MS. Feighny said that the Interlocal Agreement creates a separate legal entity which has the same powers as school districts would have. School districts have

expressed statutory powers but also have implied powers. Implied powers are not in the statutes but they are powers that are necessary for a school district to be able to fulfill the expressed statutory limits. Interlocal agreements can be between any public agency.

Dave DeMoss, Southeast Kansas Education Service Center at Greenbush, stated the Southeast Kansas Education Service Center was established in 1976 as an interlocal cooperative agreement ([Attachment 12](#)). He explained that Greenbush, as an interlocal, performs services, duties, functions, activities, obligations, or responsibilities which are authorized or required by law. Interlocals do not have the power to levy taxes; therefore, revenue for services comes from contracted services by those Greenbush serves. He noted that the Greenbush consortium obtained from an entity, fund accounting and payroll source, codes developed in the 1960s that Greenbush and approximately 70 other school districts used for almost 30 years. Concern has been expressed that interlocals do not have the statutory authority to maintain an accounting function. The Attorney General in Opinion No. 2002-10 supports this function and KSA 79-2925 through 79-2968 place fund accounting and payroll processing within the powers, privileges, and authority possessed by school districts and are proper subjects for interlocal agreements by clear statutory provisions.

In response to a question regarding the Management Advisory Computer System and changing to a more uniform accounting system, Mr. DeMoss stated if it is a high quality program, provides outstanding service, and the state would be willing to pay for it, Greenbush would look at it very closely.

The Committee expressed an interest in having a uniform accounting system, allowing for a comparison of school district to school district. Committee members explained that patrons want to understand better where school district money is being spent and where the revenue comes from.

Roger Haack, Data Team Systems, Inc., Lawrence, stated Data Team develops, markets, and supports specialized fund accounting, human resources, fixed asset and other software solutions, Internet based requisitions, and web communication services, for school districts and other publicly funded institutions ([Attachment 13](#)). He stated a concern that unfair competition develops when a government agency is allowed to compete with private enterprise.

The Committee requested that Roger Haack provide specific examples of services that are available both in private and public sectors that would be acceptable for the government to be in that business.

Ken Daniel, National Federation of Independent Business (NFIB), spoke on behalf of small businesses in Kansas ([Attachment 14](#)). He opined that it is a flagrant violation of this country's tradition of fair and open competition when government becomes the competitor. He went on say that the Attorney General's opinion is very alarming when it comes to fair competition. Mr. Daniel noted that under his reading of the opinion, there is virtually no business that Kansas governments cannot enter into.

In response to a Committee question, Mr. Daniel stated there are two options available to the NFIB:

- Due to this being an election year, the NFIB could seek another opinion from the new Attorney General.
- The NFIB could take legal action against the State of Kansas on the issue through its national legal foundation.

Natalie Bright, Wichita Independent Business Association, expressed concern regarding the Attorney General's Opinion No. 2002-10 ([Attachment 15](#)).

Hal Hudson, State Director, National Federation of Independent Businesses, provided written testimony stating concern over government agencies competing with private businesses in providing goods and services ([Attachment 16](#)).

Dr. Mary Devin, Superintendent USD 475, Geary County expressed concern that changes in the existing interlocal agreement law might result in additional bureaucratic demands that would burden school districts and produce increased costs for needed services ([Attachment 17](#)).

Dr. Gary Price, Superintendent USD 250, supported the value of interlocal agreements between governmental agencies in Kansas. The Interlocal Cooperation Act encourages cooperation, collaboration, and efficiency ([Attachment 18](#)).

Dr. Cal Cormack, Superintendent, USD 458, expressed support for the Interlocal Cooperation Act in that it provides responsible stewardship of public moneys ([Attachment 19](#)).

Dr. Ron Wimmer, Superintendent, USD 233, Olathe, testified in support of the interlocal cooperative agreements ([Attachment 20](#)). He stated the agreements are cost-effective learning opportunities for students as well as services to school districts.

Mark Tallman, Kansas Association of School Boards, testified in support of the Interlocal Cooperation Act ([Attachment 21](#)). He stated that Interlocal cooperatives allow state leaders to be more efficient in finding ways to reduce costs and improve services.

Don Moler, Executive Director, League of Kansas Municipalities, testified that the League is concerned about the impact of potential changes to the Interlocal Cooperation Act ([Attachment 22](#)). He noted that anything a unit can do individually they can do in conjunction with other units utilizing the Interlocal Cooperation Act. Mr. Moler stated that if changes are made to fix a specific problem in a specific area the end result could have a spill-over effect. He pointed out that there are a lot of interlocal agreements in different areas that provide public and private services. The Interlocal Cooperation Act has been in effect since 1957 and has been a very helpful and useful statute.

Craig Elliott, Superintendent of Maize Schools, provided written testimony in support of the Interlocal Cooperation Act ([Attachment 23](#)).

Judy A. Moler, General Counsel, Kansas Association of Counties, provided written testimony in support of the Interlocal Cooperation Act ([Attachment 24](#)).

Vice Chairman Mason closed the public hearing on the Interlocal Cooperation Act.

In response to a Committee question regarding Greenbush's charging the school systems just the actual cost of the services or if there are extra funds generated and where those funds went, Dave Demoss told the Committee that administrative fees are charged for every service because there is no basic membership fee to belong to Greenbush. He noted that Greenbush is a not-for-profit organization.

The meeting was recessed for lunch at 12:10 p.m.

Afternoon Session

Chairman Nick Jordan reconvened the meeting at 1:30 p.m., opening the hearing on the state Occupation Safety Program (HB 2868).

Representative Robert Bethell presented testimony regarding HB 2868 and the reasons the bill was created and introduced ([Attachment 25](#)). According to federal law, states can opt out of OSHA. The action would have three beneficial effects for employers and employees in the state.

- Resources could be focused more efficiently in areas which directly impact Kansas (grain handling industry, airplane manufacturing, and the oil and gas industry);
- Fines and penalties would remain in Kansas; and
- Appeals would be made through the state administrative procedures.

In states using the federal system, employers pay larger fines for cited violations when inspected. A major advantage of state plans is that fines and penalties stay in the state.

The Committee questioned whether savings, fines, and penalties would equal the cost of implementing and operating the plan. Representative Bethell stated there will be some savings in fines but the downside to HB 2868 would be the 1 percent surcharge placed on Workers Compensation. The fines would stay in the State of Kansas and not go to the federal government. OSHA, by law, would be required to pay 50 percent of the cost.

According to Division of Budget, the fiscal note on this program would be approximately \$1.2 million to \$1.5 million. This would be the state's portion and the federal government would contribute the same amount.

Representative Jim Garner presented written testimony regarding HB 2888 that would create a Kansas task force on workplace safety ([Attachment 26](#)). The goal of the task force would be to bring diverse interested parties together, including representatives of business and organized labor, to serve on the task force and address some important issues concerning violence in the workplace.

Phil Harness, Director, Division of Workers Compensation, testified the federal Occupational Safety and Health Act of 1970 encourages states to develop and operate their own occupational safety and health programs including enforcement ([Attachment 27](#)). One of KDHR's strategies is occupational safety and health for workers in Kansas. In some states, the state plan has resulted in increased safety and health inspections and increased the identification of serious hazards but has lowered fines and penalties. The average cost of a citation written by OSHA was \$1,166.99 in FY 1999; the average cost of a State Plan was \$301.89. The penalties have ranged anywhere from \$324,000 up to a high in FY 1999 of a little more than \$2.3 million. For the five-year period, the penalties have been approximately \$5 million which is \$1 million per year that is leaving the State of Kansas and going to Washington. The bill was drafted so that the fines and penalties would go to the General Fund of the state while the payment for the program itself would be like the payment for Division of Workers Compensation. This is an assessment on paid losses suffered by insurance carriers, group pools, and self-insured employers in the state.

Rudy Leutzinger, Supervisor, Industrial Safety and Health, testified that HB 2888 calls for a task force to be put into action to take a look at what the impact of safety and health issues are for the State of Kansas. He explained that there is nothing in the bill that would encourage OSHA to take the recommendations and apply them to the State of Kansas. The State Plan would give Kansas the opportunity to become a leader in the industry and also to focus resources where they can be best put in the State of Kansas.

Orville "Butch" Spray, Chairman of Venture Corporation, testified in support of a State OSHA Plan (Attachment 28). With OSHA (federal) funding part of the cost, retaining fines in the state, and reduction of Workers Compensation rates, the program may actually make money.

Dennis Horner, Kansas Trial Lawyers Association, expressed concern over the State Occupational Safety Plan, HB 2868 (Attachment 29). He stated we should not back off on violation fines because those encourage people to actually make the workplace a safe environment.

The Chairman stated HB 2868 was heard during the 2002 Legislative session but the bill still needs further study and discussion regarding costs. The Chairman recommended that HB 2868 and HB 2888 be studied with hearings and further discussion. The Committee expressed concern about the costs of initiating the program and that it might be detrimental to the financial situation for the State of Kansas. Representative Beggs concurred with Chairman Jordan and stated additional testimony is needed from the business sector.

Representative Mason made a motion that HB 2868 and HB 2888 be passed to the respective House and Senate committees for further consideration during the 2003 Session, Representative Beggs seconded the motion. Motion carried.

Meeting adjourned at 4:05 p.m.

Prepared by Lea L. Gerard
Edited by April Holman

Approved by Committee on:

September 13, 2002