

SESSION OF 2011

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 77**

As Amended by House Committee of the Whole

**Brief\***

SB 77, as amended, would revise certain provisions of the employment security laws, commonly referred to as Unemployment Insurance (UI), pertaining to loan interest payments, the taxable wage base, an extension of tax rate caps on positive balance employers, the number of rate groups for negative balance employers, and benefits.

The bill would authorize the creation of the Employment Security Interest Assessment Fund that would be administered by the Secretary of Labor. The Interest Assessment Fund would be used to pay interest and principal owed to the U.S. Department of Labor for advances received by the Kansas Employment Security Trust Fund. In subsequent years, the Secretary would be able to adjust the amount of the surcharge necessary to pay the interest. The portion of funds that would be used to pay the interest would not be included in the subsequent reserve ratio calculations of the negative account employers; however, that portion applied to principal payments would be used in future reserve ratio calculations. After there would be sufficient funds to pay all of the interest to the federal government, any excess money in the Interest Assessment Fund would be transferred to the Employment Security Trust Fund.

In 2010 the Legislature enacted HB 2676 which lowers the contribution rates that are charged to positive balance employers, for 2010 and 2011, who are in rate groups 1 through 32 to the original 2010 tax rate contribution table. Employers in rate groups 33 through 51 are capped at the maximum contribution rate of 5.4 percent. Employers have

---

\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

ninety days past the due date to file their contributions without being charged interest for the first three quarters in each of the two years. The bill would extend the tax rate caps for three more years, from 2012 to the end of 2014. However, the bill would not extend the ninety-day extension to file contributions.

The bill would increase the number of reserve ratio groups for negative balance employers from ten to twenty, and the surcharge rate applied to negative balance employers would increase from 2.0 percent to 4.0 percent. For those employers in the top ten negative reserve ratio groups, there would be a temporary 0.1 percent surcharge increase for 2012, 2013, and 2014. Starting in calendar year 2012, negative balance employers with a negative reserve ratio of 20.0 percent or greater would have a surcharge rate that ranged from 2.2 percent to 4.0 percent. The additional surcharge revenue would be deposited in the Employment Security Interest Assessment Fund.

The bill would repeal the provision that allows an unemployed individual to receive compensation for the waiting period of one week. Under current law, a person may receive UI benefits if that person left a job because the person's spouse had to transfer to another location for employment. The bill would modify the so-called "trailing spouse" provision so that it applied only to the spouses of personnel in the U.S. armed forces or military reserves.

The Pooled Money Investment Board (PMIB) would be authorized to make long term loans to the Department of Labor in order to fund debt obligations owed to the federal government. The interest rate for a PMIB loan would not exceed 2.0 percent. The loan period would not exceed three years unless the PMIB and the Secretary of Labor agreed to the extension.

As a means to continue the federal government's funding for administrative costs, the bill would revise the definition of "extended benefit period" to include a three-year

average unemployment rate instead of a two-year average. The remaining provisions of the bill would insert references of “interest assessments” in provisions relating to the collection of payments, penalties and interest, liens, seizures, and refunds.

The bill would grant an unemployed individual who receives UI benefits the discretion to have state income tax withheld from the payments. State law currently allows an unemployed individual to have federal income tax withheld.

### **Background**

Unemployment Insurance is a partnership between the federal government and the State. Almost all wage and salary workers now are covered by the program. For purposes of determining contributions made under law, employers are classified into one of three categories: ineligible employers, negative balance employers, and positive balance employers. The first category consists of those employers who do not have twenty-four months of payroll experience. Negative balance employers are those who have contributed less into UI than what their former employees have received in benefits. Positive balance employers have contributed more to UI than what their former employees have received. Each year the Labor Department determines the planned yield for the Employment Security Trust Fund as provided by statute. The contributions due from ineligible employers and then negative balance employers are calculated first. The remaining amount is derived from the positive rate employers.

Due to the recent recession, there was unprecedented demand for UI benefits. At the beginning of calendar year 2009, the Employment Security Trust Fund had a balance of \$566.5 million. During 2009, Kansas paid out approximately \$766.8 million in regular program benefits. By January 9, 2010, the Trust Fund's balance was \$65.2 million. As of January 31, 2011, Kansas had an outstanding loan balance of \$100.8 million.

The federal American Recovery and Reinvestment Act (ARRA) authorized these loans to be interest-free until January 1, 2011. Since the start of the year, interest has begun to accrue on the outstanding loan balance. The first interest payment will be due and payable no later than September 30, 2011. Federal law prohibits the State from using money in the Trust Fund for interest payments. According to testimony provided by the Department of Labor, it is estimated that Kansas will have to pay \$6 million to \$9 million in interest this year. Federal law has no restrictions on the funding sources used to pay back the principal.

Proponent testimony was provided by representatives of the Department of Labor, the Kansas Chamber, the chambers of commerce for Lenexa and Pittsburg, the National Federation of Independent Business in Kansas, the Kansas Society for Human Resource Management, and the Wichita Independent Business Association, and by private business owners. Proponents stated the bill, along with the amendments proposed in the Senate, would provide solvency to the State's Employment Security Trust Fund. Proponents supported greater predictability for the contribution rates charged to employers, in particular, the rates charged to positive balance employers.

According to the Department of Labor, if the State of Kansas does not find a means to pay the interest payments, Kansas employers may begin to lose credits that offset the Federal Unemployment Tax Act (FUTA). The State could lose future borrowing privileges, and the State would lose federal grant funding for administrative costs. Should a state not pay the principal in the time frame outlined in federal law, the federal government may begin to collect the principal directly from Kansas employers through increased FUTA tax rates.

In response to questions from the Senate Committee on Commerce, the Labor Department analyzed the contributions from negative balance employers compared to the benefits that have been paid to their former employees. In its analysis, the Department assumed there were twenty rate

groups for negative balance employers instead of the current ten. For rate groups 1 through 19, the benefits paid to unemployed employees were 3.3 times higher on average than what their employers contributed. For the last rate group, the benefits paid were 6.8 times higher on average than contributions.

Opponent testimony was provided by the Kansas AFL-CIO and two electricians who either have been recently or currently are unemployed. Opponents expressed concern about the restrictions placed on benefits.

The Senate Commerce Committee amended the bill to:

- Increase the tax wage base from \$8,000 to \$11,000 over a period of three years, starting in 2012 and ending in 2014;
- Increase the number of rate groups for negative employers from ten to twenty;
- Increase the surcharge on negative employers from 2.0 percent to 4.0 percent;
- Add a temporary 0.1 percent surcharge increase, starting in 2012 and ending in 2014, for those negative balance employers in rate groups 1 through 10;
- Extend the temporary tax rate cap on positive employers for another three years, from 2012 through 2014; and
- Authorize a short-term cash flow loan from the PMIB.

The Senate Committee of the Whole amended the bill so that a loan from the PMIB would charge interest.

The House Committee on Commerce and Economic Development amended the bill to:

- Delete the increase of the tax wage base over three years, starting in 2012 and ending in 2014, by \$1,000 per year, from \$8,000 to \$11,000; and
- Change the effective date of sections 2 and 6 of the bill from July 1, 2011, to the date of publication in the *Kansas Register*. Section 2 of the bill would clarify the current provision of law pertaining to the current wage base of \$8,000. Section 6 of the bill would extend for three more years, from 2012 to 2014, the current tax rate cap of 5.4 percent for positive balance employers that are in rate groups 33 through 51.

The House Committee of the Whole amended the bill to:

- Clarify which surcharge rates are to be applied to negative balance employer rate groups and that the additional revenue is to be credited to the new Assessment Fund;
- Authorize the Labor Department to receive long term loans from the PMIB; and
- Grant unemployed individuals the discretion to have state income tax withheld from their UI benefits.

According to the fiscal note prepared by the Division of the Budget, and in consultation with the Department of Labor, the bill as introduced would reduce expenditures in FY 2012 by approximately \$13.4 million from all other funding sources. This would include approximately \$1.9 million due to the modification of the trailing spouse provision and approximately \$11.5 million due to the repeal of the compensation for the waiting week.

In subsequent testimony to the Senate Commerce Committee, the Labor Department said that the amended bill

would raise the following estimated amounts of revenue:

<b>Estimated UI Revenue Increases</b>			
	<b>CY 2012</b>	<b>CY 2013</b>	<b>CY 2014</b>
Increase Negative employer Surcharge, from 2% to 4%	\$8,500,000	\$8,500,000	\$8,500,000
Ineligible employer Taxable Wage Increase	\$1,019,274	\$1,716,211	\$2,365,520
Negative employer Taxable Wage Increase	\$15,338,375	\$23,750,337	\$31,989,950
Positive employer Taxable Wage Increase	\$29,470,397	\$54,457,473	\$78,567,157
<b>Total</b>	<b>\$54,328,046</b>	<b>\$88,424,021</b>	<b>\$121,422,627</b>

The Labor Department estimated that passage of the bill as amended by the Senate Commerce Committee would allow the loans from the U.S. Labor Department to be paid in full during the second quarter of 2014, and that the annual ending balance for the Employment Security Trust Fund would be as follows:

<b>Employment Security Trust Fund Ending Balance (in millions)</b>							
	<b>Actual CY 2009</b>	<b>Actual CY 2010</b>	<b>Est. CY 2011</b>	<b>Est. CY 2012</b>	<b>Est. CY 2013</b>	<b>Est. CY 2014</b>	<b>Est. CY 2015</b>
End of Year Balance	\$119.80	\$(88.20)	\$(183.40)	\$(158.50)	\$(56.70)	\$117.20	\$258.00

The bill, as amended by the House Commerce Committee, would reduce expenditures by \$13.4 million as reported in the fiscal note prepared on the bill as introduced. The House Committee did not receive a subsequent estimate of the Employment Security Trust Fund's revenues, expenditures, or ending balance that took the Committee's amendments into account.