

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle, at 8:30 a.m. on February 3, 2011, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Ms. Janet Stubbs, Administrator,
Kansas Building Industry on behalf of the Worker's Compensation Fund (KBIWCF)

Others attending:

See attached list.

Introductions of bills

Upon calling the meeting to order, the Chair recognized Senator Holland who made a motion to introduce legislation that allows state government to get an injunction against employers who misclassified the employees. It was seconded by Senator Steineger and the motion carried.

Overview of SB77 – an act concerning the employment security act

The Chair said the next order of business is an overview from the Department of Labor and introduced Ms. Kathie Sparks, Deputy Secretary who stated this bill is needed due to the impact of the recession on the Kansas Unemployment Fund and the fact we have borrowed \$108M from the federal government and we have to pay back the interest. The American Recovery and Reinvestment Act (ARRA) established these loans be interest-free until January 1, 2011. At such time, interest began accruing on the outstanding loan balance with the first interest payment due September 30, 2011 with billing sent September 15, 2011.

The Chair asked if, on November 9, 2011, they plan to pay on the principal? (No, we will not be making any principal payments until next year.) And you are hoping we are out of the recession, the fund is built up, and whatever is left over you can make the first significant payment on it? (Yes.)

She went on to say that we are not allowed to pay it from the solvency trust fund however, this bill modifies the negative balance employer surcharge to allow that funds collected from the surcharge paid will be used to pay interest due on Title XII advances and potentially pay down the principal balance at a later time. The process for this is as follows:

- 1.) For this year, 50% of the surcharge will be paid into the newly established employment security interest assessment fund for the purpose of paying interest due.
- 2.) For any succeeding year for which interest is due, the Secretary of Labor may adjust the amount of the surcharge necessary to pay such interest.
- 3.) If the dollar amount collected from the surcharge is in excess of the amount needed to pay interest due the excess amount will remain in the employment security interest assessment fund to be used to pay interest in future years. She said this is important to the negative balance employers, while the rates do not go up, these employers will not be able to count this amount of money against their ratio.
- 4.) When all interest has been paid, any excess funds remaining in the employment security interest assessment fund will be transferred to the Trust fund for the purpose of paying any remaining principal amount due. If the amount transferred from this fund exceeds the amount of principal due, the excess will remain in the Unemployment Insurance Trust Fund.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:30 a.m. on February 3, 2011, in Room 548-S of the Capitol.

Regarding the reinstatement of the Waiting week she stated this law was enacted back in 1937 and has prevailed until 2007 when the Kansas Legislature passed **SB83** eliminating this provision. She said there is some confusion regarding this but claimants under the regular fund get 26 weeks, it is just when you start counting the weeks.

Regarding the reinstatement of the waiting week – it was enacted in 1937 and prevailed until 2007 when it was eliminated with the passing of **SB83**. There is some confusion regarding this, but claimants still get the 26 weeks under the regular fund, it is just when you start counting the weeks.

The Chair called on Senator Holland who asked for further explanation of the 10 regular balance account and how much they owe the state? (Group 1-9 paid in \$46.2M in contributions and took out \$119.8M in benefits or 2.6 times more than they paid in. For group 10, Ms. Sparks referred the Committee to a chart entitled “Distribution of Benefits Charges & Tax Contributions by Reserve Ratio,” stating in Group 10 there are 9 groups of employers, 7 are active and of that, 4500 are in the last group.

Chairperson Wagle asked if Ms. Sparks was saying half of all employees are in the negative group? (Half of all the employers who are in the negative group are in group 10, paying in \$36.5M but taking out \$225M in benefits or 6.2 times what they paid in. For the total of the 10 groups, the difference is \$262.4M or 4.2 times. Regarding the positive balance employers for the same period, contributions of \$244M were made and \$522.7 were paid out. If the Committee is wondering why these employers are still positive balance, it is because they are only looking at one year and the positive balance is over the life of the company.

Regarding the elimination of benefit eligibility for relocating spouses except for armed forces. In 2010 approximately 469 individuals gave up their jobs to take jobs in Kansas, 1599 were spouses of members of the armed services. If this provision is repealed except for relocating spouses of the armed forces who would remain eligible, the UI benefit savings to the State would be \$1.9M.

The Chair recognized Senator Holland who asked what the rationale was for excluding military families. She recognized Senator Merrick who stated the military families are not voluntarily moving. But most of the people who are not military and in that category are volunteering. A copy of her testimony and charts are (Attachment 1) attached and incorporated into the Minutes as referenced.

Deputy Secretary then offered two amendments:

1.) When all rate groups are paying 5.4%, groups 1-15 do not need much. The first amendment proposes that next year the taxable wage base be increased \$1,000 over for the next three years and then hold at \$11M. She referred the Committee to page 3 of her testimony, showing the increased funds based on today's total wages. This amendment also extends the rates from last year for three more years.

The Chair stated the way she understands this is we would have lost those rates had they not increased the wage base, because you are trying to comply with federal law. (Yes, and if we had not extended and stayed with the \$8K, the positive balance rates would have gone up \$75M. But under this proposal, they are going up \$29.4M. Now, the negative balance employers account for 10% of the employers in the system, but under this, by 2014 would be picking up 22% of the cost excluding the surcharge. Regarding the fourth year when **HB2676** goes away, we pay off the loans, and the rates significantly drop, we believe only the last 10 will be paying 5.4%.

Regarding the chart they discussed earlier showing the 10 negative groups, she stated there was some movement earlier where some of the negative employers were moved back onto the positive rate group. With the second amendment, they are suggesting the Committee increase to 20 groups. They now are paying 2% but with this amendment they would pay 2-4%. **HB2676** did not address them at all. Group 1-9 would pay 1/10th of a percent higher for three years then return to .2%. This modification would raise an additional \$8.5M.

Chairperson Wagle asked what the total increase we are asking of businesses in this bill? (\$45M-\$55M increase to employers and referred the Committee to the second chart entitled, “Distribution of Benefits Charged and Tax Contributions by Reserve Ration (with 10 additional groups) Kansas, SFY2010.”)

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:30 a.m. on February 3, 2011, in Room 548-S of the Capitol.

The Chair asked for questions or comments from the Committee which came from Senators Schodorf, Merrick, Wagle, Masterson, Faust-Gaudeau, Lynn and Holland including: clarification of both balloons and the trailing spouse. How long has the trailing spouse been effect? (Mid-80s'.) Where in the unemployment process are people monitored? (2 programs, the federal government requires people be examined regarding their skills and random number selection monitors certain people.) Has the DOL done some modeling showing what the balance of the fund looks like over time, any projections 3-5 years out? (3 years out still negative in the sense of paying off the loan. The Chair stated one thing they might want to get is the wage base for all states. Since we have a system where you can apply on line, can you offer a series of questions that then automatically build a generic resume that says this person is looking for employment, posted so employers to look at? (They share all of this with their fore force centers.) And, did you consider raising the negative balance employers higher? (First, not sure if you can do this and this legislation has to be approved by the federal government. They will let you enact a surcharge which is what we are doing. Also, we do not want to run them out of business either.

Chairperson Wagle announced her goal would be to have a hearing on this bill next week and then work the bill so they can get the information to the employers by the end of the first quarter.

Adjournment

As there was no further business, the meeting was adjourned. The time was 9:31 a.m.

The next meeting is scheduled for February 8, 2011.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: Tuesday, February 3, 2011

NAME	REPRESENTING
Martin Hansen	Hansen's Capitol Report
Melissa Waid	Hein Law Firm
John Deen	SSG/RS
Row Seiber	KGFA/KARA
ROGER BEACH	workers
Robert Bausch	workers
Roger Taylor	Workers
Susan Allen	Legis
Michelle Butler	Cap Strategies
Chris Carey	GBA
Maxine Carpenter	SHRM
Bernie Koch	KEPC
ISREAL T. OWENS	WORKERS
Tom Palace	PMCA OF KS
Andy Sanchez	IES AFL-CIO

**Testimony before the
Senate Committee on Commerce
Karin Brownlee
Secretary of Labor
3 February 2011**

Chairwoman Wagle and Members of the Committee:

As you are aware, this recession has dramatically impacted the Kansas labor market. The unemployment rate has been, and continues to be, significantly elevated and the number of individuals receiving unemployment insurance benefits has reached record highs. Consequently, this has placed an unprecedented demand on the Unemployment Insurance Trust Fund and has resulted in its depletion and the acquisition of more than \$100 million in Title XII loans. This depleted Trust Fund balance has resulted in higher unemployment insurance contributions rates for our Kansas employers, creating additional hardship for them during difficult economic times.

The major provisions of this bill are as follows:

Establishment of an Employment Security Interest Assessment Fund

- As of January 31, 2011, Kansas has an outstanding loan balance of \$100.8 million.
- The American Recovery and Reinvestment Act (ARRA) established that these loans would be interest-free until January 1, 2011. At such time, interest began to accrue on the outstanding loan balance. The first interest payment will be due and payable no later than September 30, 2011.
- It is projected that Kansas will be required to pay approximately \$6 to \$8 million in interest this year. Interest cannot be paid directly or indirectly from funds in the state's unemployment fund.

The proposed provision modifies the negative balance employer surcharge to allow that funds collected from the surcharge paid will be used to pay interest due on Title XII advances, and potentially to pay down the principal balance at a later time. The process of utilizing funds collected from the negative balance employer surcharge for the purposes of paying interest is as follows:

- For the calendar year 2011, 50% of the surcharge will be paid into the newly established employment security interest assessment fund for the purpose of paying interest due.
- For any succeeding year in which interest is due, the secretary of labor may adjust the amount of the surcharge necessary to pay such interest.
- If the dollar amount collected from the surcharge is in excess of the amount needed to pay interest due, the excess amount will remain in the employment security interest assessment fund to be used to pay interest in future years.

*Senate Commerce Committee
Date: February 3, 2011
Attachment 1*

- When all interest has been paid, any excess funds remaining in the employment security interest assessment fund will be transferred to the Trust Fund for the purpose of paying any remaining principal amount due. If the amount transferred from the employment security interest assessment fund exceeds the amount of principal due, the excess will remain in the Unemployment Insurance Trust Fund.
- Regarding the negative balance employer's individual UI accounts, the portion of the surcharge used for the payment of interest will not be included in the calculation of an employer's reserve ratio. However, the portion of the surcharge used for the payment of principal will be included in the calculation of an employer's reserve ratio.

Reinstatement of the Waiting Week

K.S.A. 44-705(d)(1) establishes a one week waiting period requirement on all new claims filed for unemployment insurance benefits. In 2007, the Kansas Legislature passed Senate Bill 83, which eliminated this provision.

During calendar year 2010, retroactive compensation of **the waiting week resulted in \$11,452,037 of UI benefit payments** which would not have been issued were this provision not in effect. Therefore, as a means of reducing the dollar amount of benefits being paid from the UI Trust Fund and the dollar amount of benefits being charged to employers' UI accounts, it is proposed that this provision be repealed.

Elimination of Benefit Eligibility for Relocating Spouses (Excluding Armed Forces)

In 2010, approximately 469 individuals received benefits under the relocating spouse provision, receiving a total of \$2,826,494. Of these individuals, 159 were spouses of members of the United States armed forces. These military spouses received approximately \$889,800 in UI benefits in 2010.

Again, as a means of reducing the dollar amount of benefits being paid from the UI Trust Fund and the dollar amount of benefits being charged to employers' UI accounts, it is proposed that this provision be repealed except with regard to relocating spouses of members of the armed forces who would remain eligible to receive UI benefits. **In 2010, this would have saved \$1.9 million in UI benefit payments.**

Increase in Taxable Wage Base – Balloon #1

The taxable wage base refers to the dollar amount of wages paid to each employee that are subject to UI tax each calendar year. Any wages paid to employees beyond the amount of the taxable wage base are considered to be excess wages and are not subject to UI tax. By federal law, states must have a taxable wage base that is equal to or greater than the federal taxable wage base of \$7,000. The current taxable wage base in Kansas is the first \$8,000 of covered wages paid to each employee. The taxable wage base in Kansas has remained unchanged since 1984.

This balloon proposes incrementally increasing the taxable wage base to \$9,000 in 2012, \$10,000 in 2013 and \$11,000 in 2014. As a means of generating additional revenue for the Trust Fund, each year the planned yield and resulting employer tax rates will be based on an \$8,000 taxable wage base, but will be assessed on the respective taxable wage base specified for that year.

In addition, the balloon proposes the extension of HB 2676 for the next three years. If the rates established in HB 2676 are extended for the next three years, it is estimated that this provision will generate approximately \$45.8 million in 2012, \$79.9 million in 2013 and \$112.9 million in 2014, totaling \$238.7 million in additional Trust Fund revenue over the 3-year span.

	Estimated Additional Yield Using RY 2011 HB 2676 Rates			
	\$8,000	\$9,000	\$10,000	\$11,000
Positive Eligible Employers	\$0	\$29,470,397	\$54,457,473	\$78,567,157
Negative Eligible Employers	\$0	\$15,338,375	\$23,750,337	\$31,989,950
Ineligible Employers	\$0	\$1,019,274	\$1,716,211	\$2,365,520
Total Yield	\$0	\$45,828,045	\$79,924,021	\$112,922,628

Negative balance employer represent approximately 10% of total employers, however, it is expected that by 2014, with a taxable wage base of \$11,000, they would be paying approximately 22% of total required yield.

Negative Balance Employer Rate Groups and Increase in Surcharge – Balloon #2

When the benefits charged to an employer's account exceed the taxes paid and credited to that account, the employer has a negative account balance, and thereby a negative reserve ratio. All eligible contributing employers with a negative account balance are assigned the maximum tax rate allowable by law. As previously noted, the maximum tax rate which must be assigned to negative balance employers is 5.4%. In addition to the maximum tax rate, negative balance employers are subject to a surcharge that may range from 0.2% to 2.0%, resulting in a UI tax rate ranging from 5.6% to 7.4%. The size of the surcharge that is assigned to an employer is based upon the size of the employer's negative reserve ratio, such that a larger negative reserve ratio is associated with a larger surcharge. The distribution of negative reserve ratios and their associated surcharges can be found in Schedule II of K.S.A. 44-710a(a)(2)(E) which is shown below.

SCHEDULE II Surcharge on Negative Accounts

<u>Column A</u>	<u>Column B</u>
Negative Reserve Ratio:	Surcharge as a Percent of Taxable Wages:
Less than 2.0%.....	0.20%
2.0% but less than 4.0.....	0.40
4.0 but less than 6.0.....	0.60
6.0 but less than 8.0.....	0.80
8.0 but less than 10.0.....	1.00
10.0 but less than 12.0.....	1.20
12.0 but less than 14.0.....	1.40
14.0 but less than 16.0.....	1.60
16.0 but less than 18.0.....	1.80
18.0 and over.....	2.00

This provision proposes expanding the number of negative reserve ratio groups from 10 to 20 and increasing the maximum allowable surcharge from 2.0% to 4.0%. The provision also proposes that for a three year period beginning in 2012 and ending in 2014, the first ten rate groups of the negative balance employers pay an additional 0.1% surcharge. According to this provision, Schedule II would be modified as follows:

SCHEDULE II Surcharge on negative accounts

Column A	<u>Column B1</u>	<u>Column B2 (CY 2012, 2013 & 2014)</u>
Negative Reserve Ratio	<u>Surcharge as a percent of Taxable Wages:</u>	<u>Surcharge as a percent of Taxable Wages:</u>
Less than 2.0%	<u>0.20%</u>	<u>0.30%</u>
2.0% but less than 4.0	<u>0.40</u>	<u>0.50</u>
4.0 but less than 6.0	<u>0.60</u>	<u>0.70</u>
6.0 but less than 8.0	<u>0.80</u>	<u>0.90</u>
8.0 but less than 10.0	<u>1.00</u>	<u>1.10</u>
10.0 but less than 12.0	<u>1.20</u>	<u>1.30</u>
12.0 but less than 14.0	<u>1.40</u>	<u>1.50</u>
14.0 but less than 16.0	<u>1.60</u>	<u>1.70</u>
16.0 but less than 18.0	<u>1.80</u>	<u>1.90</u>
18.0 but less than 20.0	<u>2.00</u>	<u>2.10</u>
20.0 but less than 22.0	<u>2.20</u>	<u>2.20</u>
22.0 but less than 24.0	<u>2.40</u>	<u>2.40</u>
24.0 but less than 26.0	<u>2.60</u>	<u>2.60</u>
26.0 but less than 28.0	<u>2.80</u>	<u>2.80</u>
28.0 but less than 30.0	<u>3.00</u>	<u>3.00</u>
30.0 but less than 32.0	<u>3.20</u>	<u>3.20</u>
32.0 but less than 34.0	<u>3.40</u>	<u>3.40</u>
34.0 but less than 36.0	<u>3.60</u>	<u>3.60</u>
36.0 but less than 38.0	<u>3.80</u>	<u>3.80</u>
38.0 and over	<u>4.00</u>	<u>4.00</u>

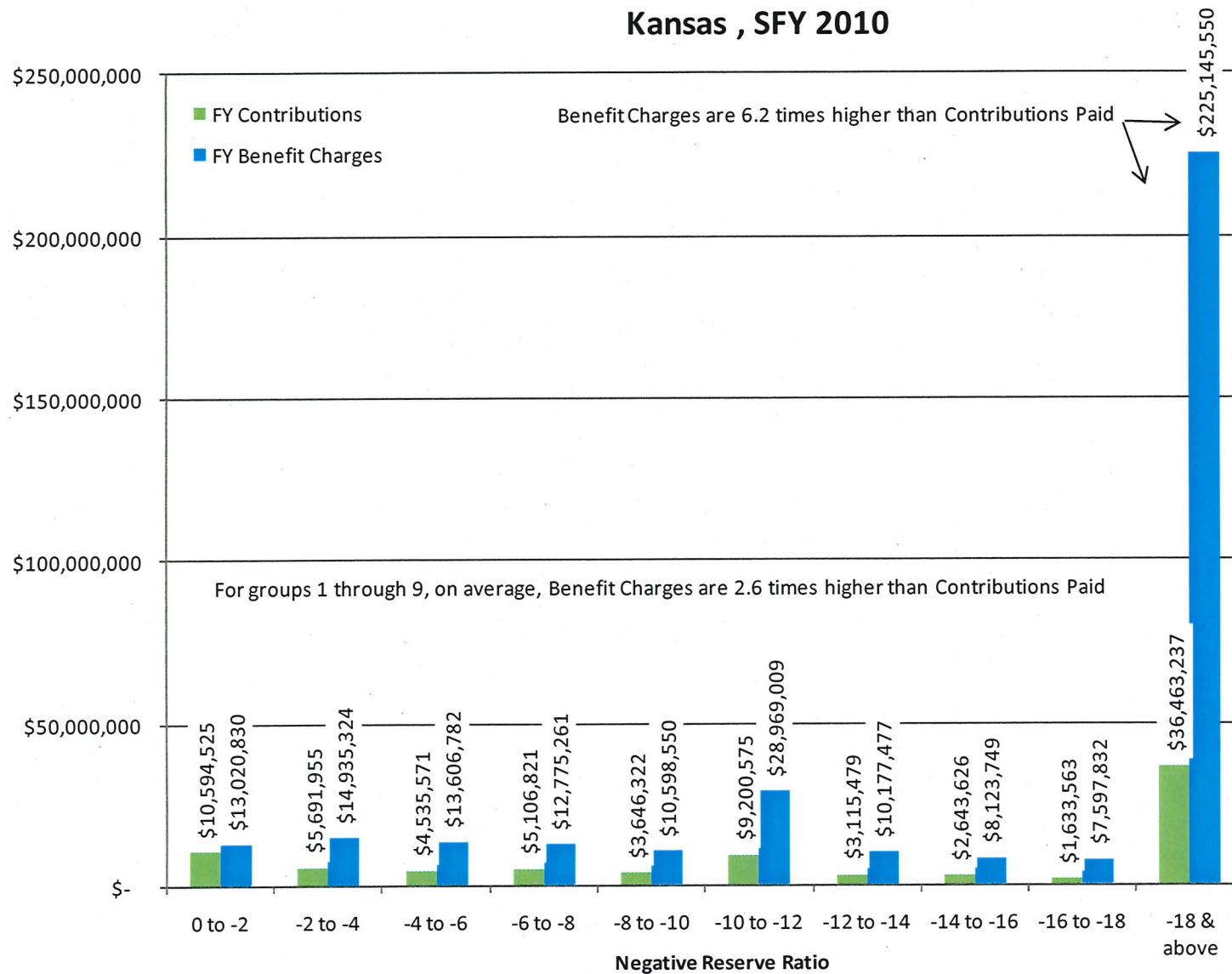
Column B2 will be in effect for calendar years 2012, 2013 and 2014 after which column B1 will be in effect.

Based on data from 2010, it is projected that this **modification** to Schedule II would **raise an additional \$8.5 million in revenue annually** and provide negative balance employers additional incentive to improve their negative reserve ratio.

If you have any questions regarding the testimony provided, or about operations within the Kansas Department of Labor, please feel free to contact me by email at Karin.Brownlee@dol.ks.gov or by phone at 785-296-7474.

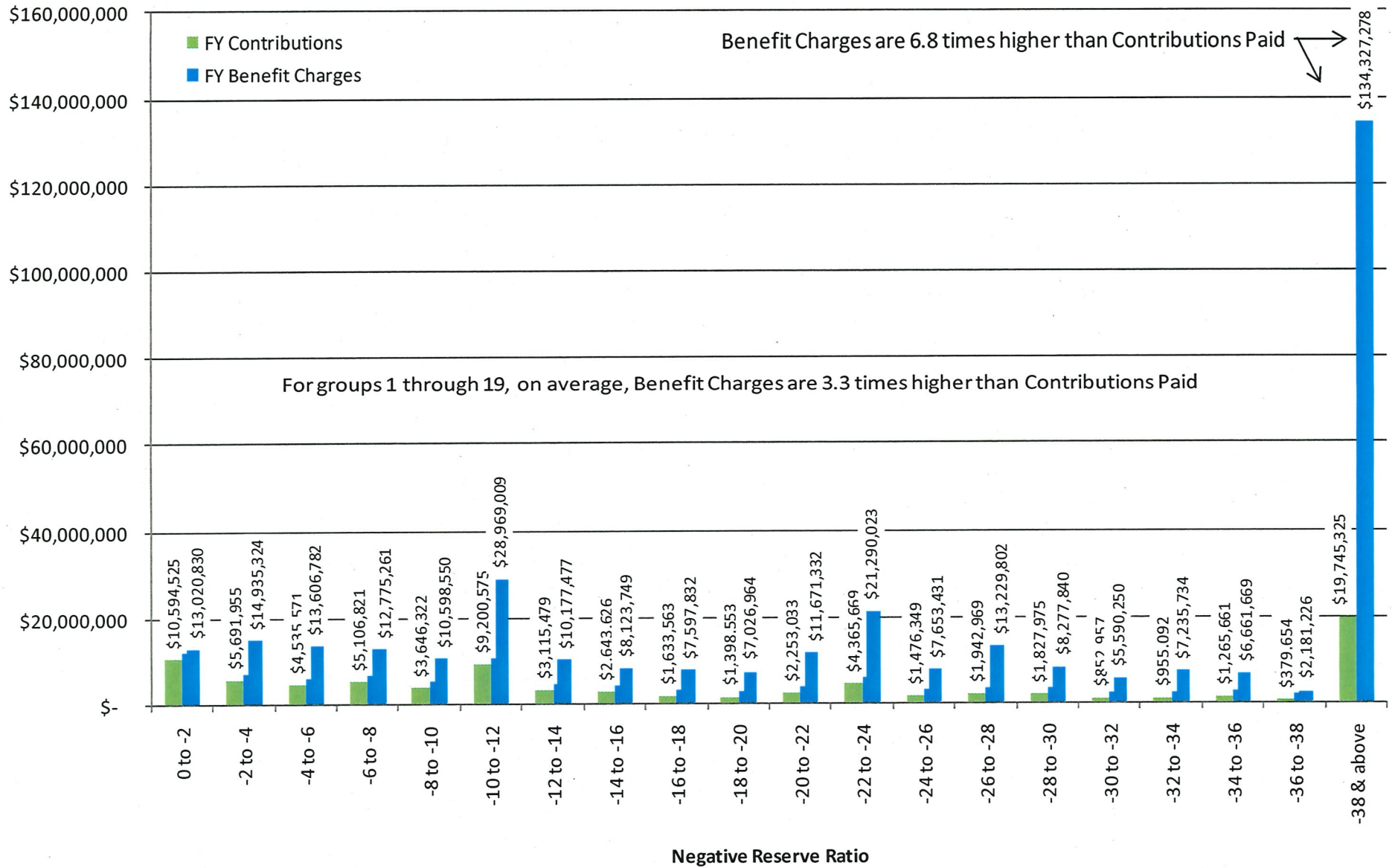
Furthermore, if you have constituent inquiries which require assistance from KDOL, please contact Jenna Keesling by email at Jenna.Keesling@dol.ks.gov or by phone at 785-296-7474.

Distribution of Benefits Charged & Tax Contributions by Reserve Ratio Kansas, SFY 2010



The -18 & above reserve ratio group consists largely of employers from the construction industry, followed by Wholesale Trade; Professional, Scientific & Technical Services; and Manufacturing, respectively.

Distribution of Benefits Charged & Tax Contributions by Reserve Ratio (with 10 additional groups) Kansas, SFY 2010



1.7