

February 10, 2021

The Honorable Sean Tarwater, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 151D-S
Topeka, Kansas 66612

Dear Representative Tarwater:

SUBJECT: Fiscal Note for HB 2196 by House Committee on Commerce, Labor and Economic Development

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2196 is respectfully submitted to your committee.

HB 2196 would hold employers harmless for fraudulent claims of unemployment benefits. Additionally, employers would not be charged for any benefits paid beginning March 12, 2020, through December 31, 2021. Employers would not be required to reimburse the state for claims identified as fraudulent by the employer. The time limitation on disputed claims or appeals in current law would not apply to cases of fraud or benefits paid from March 15, 2020 through December 31, 2022. The Department of Labor would be required to immediately and fully credit an employer's account for any benefits that were determined to be fraudulent or provided in error. The Department of Labor would be required to review all reimbursing employer accounts for the 20 years preceding July 1, 2021 and credit any employer for benefits paid by fraud or in error that were charged to the employer's account and not recovered through normal recovery efforts.

The bill would require the Department of Labor to review all available information regarding improper unemployment benefit payments for the state for the time period of March 15, 2020, through December 31, 2022. Within 60 days of the information becoming available, the Department of Labor would be required to certify to the Department of Administration any amounts for improper payments. The bill would require the Department of Administration to transfer amounts identified in the certification from the State General Fund to the Unemployment Trust Fund. The bill would authorize the Governor to transfer the certified amounts from a fund other than the State General Fund, if approved by the State Finance Council.

Any federal funds for the Unemployment Insurance Trust Fund received after January 1, 2021, in response to the pandemic would be subject to determination by and an act of the Legislature. Any federal unemployment insurance benefit program established as a result of COVID-19 or any pandemic would not be continued after the ending date of the federal program through the use of state unemployment insurance fund contributions made by employers.

The bill would create a new standard rate schedule, new solvency rate schedules, new credit rate schedules and a new fund control table for Rate Year 2022 and subsequent calendar years for the calculation of employment contributions to the Unemployment Insurance Trust Fund. The bill would also establish a new calculation for the reserve fund ratio. The bill would abolish the Employment Security Interest Assessment Fund. The Department of Labor would be required to post Unemployment Insurance Trust Fund computations and data on the Department's website. The data must include information from the previous 20 fiscal years and for FY 2022 and each subsequent fiscal year.

The bill would create the Unemployment Compensation Modernization and Improvement Council. The 11-member Council would include employers, employees, members of the Legislature, and the Secretary of Labor or the Secretary's designee. Members of the Council would be eligible to receive compensation for costs associated with a member's service on the Council. Member compensation and expenses would be paid by the Department of Labor from the Employment Security Administration Fund or the Department's State General Fund account. The Secretary of Labor would be required to appoint an Executive Secretary of the Council. The Council would be required to examine and recommend changes to the unemployment compensation system and claims filing process. Within six months of the Council's first meeting, the Council would be required to submit a report with its recommendations on improvements to the unemployment claims filing process. The bill would also require the Department of Labor, with the assistance of the Council, to develop a strategic staffing plan that accounts for substantial increases or decreases in the number of claims for benefits. The staffing plan must be presented to the Council, the Legislature, and the Governor no later than six months after the first Council meeting.

The bill would require a new unemployment insurance system to be deployed no later than December 31, 2022. The bill specifies the required functions, features, and benefits of the system. The Department of Labor would be required to provide annual updates to the Council and the Legislative Coordinating Council on the status and progress of the new unemployment insurance system.

In response to the COVID-19 pandemic, the duration of unemployment benefits was extended to 26 weeks. Under HB 2196, for the weeks commencing on and after April 1, 2021, claimants would be eligible to receive benefits for:

1. A maximum of 16 weeks if the Kansas unemployment rate is less than 5.0 percent;
2. A maximum of 20 weeks if the Kansas unemployment rate is at least 5.0 percent but less than 6.0 percent;

3. A maximum of 26 weeks if the Kansas unemployment rate is at least 6.0 percent.

The Department of Labor would be required to create and manage a promotional campaign for the short-term compensation program. The bill would adjust the reduction limits of the normal weekly hours of work for employees under a shared work plan. The bill would also add services performed by a petroleum landman on a contractual basis to be covered by unemployment laws.

The Kansas Department of Labor is currently unable to estimate the total amount of fraudulent or improper unemployment payments in the state. As a result, the amount from State General Fund or other funds that would be transferred to the Unemployment Trust Fund because of fraudulent or improper payments is unknown. The Department anticipates having a working figure in the coming weeks. A revised fiscal note will be issued once the information is available. The agency notes that, according to the U.S. Department of Labor's Office of Inspector General, the national total of fraudulent unemployment payments could be \$36.0 billion or more. The Kansas Department of Labor estimates the fiscal effect on the State General Fund could be sizeable.

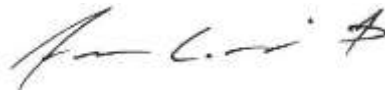
The Kansas Department of Labor indicates the bill would affect contributions to the Unemployment Insurance Trust Fund. The Department uses a measure called the Average High Cost Multiple (AHCM) to assess the solvency of the Fund. The AHCM is the number of years benefits could be paid based on the average of the three highest years of benefit payments over the last 20 years. An AHCM of 1.0 would mean the Unemployment Insurance Trust Fund would have enough reserves to pay one year of benefits. To estimate the potential fiscal effect on revenue to the Unemployment Insurance Trust Fund, the Department looked at scenarios for various AHCMs. If the AHCM was 0.20, the Department estimates the Unemployment Insurance Trust Fund would receive \$146.7 million less revenue under HB 2196 compared to current law. If the AHCM was 0.50, the Department estimates the Fund would receive \$131.1 million less revenue. Lastly, if the AHCM was 0.70, it is estimated that the Fund would receive \$115.6 million less revenue.

The Kansas Department of Labor estimates that upgrading the unemployment insurance system would cost \$46.7 million from all funds, including \$9.6 million from the State General Fund. The all funds figure includes \$42.7 million for design and implementation and \$4.0 million in annual maintenance costs. The total cost includes \$27.8 million in FY 2021, all from special revenue and federal funds, and \$18.9 million in FY 2022, which includes \$9.6 million from the State General Fund and \$9.3 million from special revenue and federal funds. Of the total cost for modernizing the unemployment insurance system, approximately \$37.0 million from special revenue and federal funds is included in the Governor's budget. The revised estimate from the Department would ensure the upgraded unemployment insurance system would be ready for deployment before December 31, 2022, as required in the bill.

The Kansas Department of Labor estimates the bill would require additional expenditures of \$688,660 from federal funds and 9.00 FTE positions. This includes \$125,800 for 1.00 FTE position to support the Unemployment Compensation Modernization and Improvement Council (\$82,800 for salaries and wages plus \$43,000 for other operating expenditures); \$499,650 for 7.00

FTE positions to conduct research on fraud (\$356,650 for salaries and wages and \$143,000 for other operating expenditures); and \$63,210 for 1.00 FTE position for the shared work program (\$45,210 for salaries and wages and \$18,000 for other operating expenditures). Except as noted above, any other fiscal effect associated with HB 2196 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Dawn Palmberg, Department of Labor