

Report of the Legislative Budget Committee to the 2023 Kansas Legislature

CHAIRPERSON: Senator Rick Billinger

VICE-CHAIRPERSON: Representative Troy Waymaster

OTHER MEMBERS: Senators J.R. Claeys and Tom Hawk; and Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe Moore

CHARGE

Review State Budget Issues

The Legislative Budget Committee is statutorily directed to compile fiscal information and study and make recommendations on the state budget, including revenues and expenditures, and the organization and functions of the State, including its departments, subdivisions, and agencies, with a view of reducing the cost of state government and increasing efficiency and economy. In addition to its statutory duties, the Committee is to review the following:

- Impact of the 24/7 Pay Plan on correctional facilities and state hospitals;
- Extraordinary transfers to the Kansas Public Employees Retirement System Trust Fund;
- Construction and remodeling of the Docking State Office Building and the Kansas Department of Health and Environment Forensic Science Laboratory;
- Receipts of federal COVID-19 relief funding; and
- The independent audit of the State Unemployment Trust Fund and report to the Legislative Coordinating Council in September 2022.

January 2023

Legislative Budget Committee

ANNUAL REPORT

Conclusions and Recommendations

The Legislative Budget Committee (Committee) makes the following recommendations:

- The Legislative Coordinating Council should recommend the State Finance Council approve the transfer of an additional \$107.9 million from the Legislative Employment Security Fund to the Unemployment Trust Fund from federal funds. This is in addition to the \$250.0 million transferred to the Unemployment Trust Fund in FY 2022, for a total of \$357.9 million. [Note: The report to the Legislative Coordinating Council concerning the transfer is contained in the appendix.]
- The House Committee on Appropriations and the Senate Committee on Ways and Means should receive updates regarding and consider the following items:
 - Providing additional funding to the Budget Stabilization Fund; and
 - Reevaluating investment priorities for the \$167.0 million from the State Fiscal Recovery Fund in FY 2022, for a total of \$357.9 million that may be recouped and reallocated from other purposes.
- The Kansas Department of Transportation should consider conducting a cost analysis study to construct or enhance mass transit systems in Johnson, Sedgwick, and Wyandotte counties to address economic growth in those areas and changing travel behaviors. The study should propose what such transit systems would look like and account for any federal funds estimated to be available in future years.

Proposed Legislation: None.

BACKGROUND

The Legislative Budget Committee (Committee) is statutorily directed in KSA 46-1208 to compile fiscal information.

It is also directed to study and make recommendations on the state budget, revenues, and expenditures, and on the organization and functions of the State, including its departments, subdivisions, and agencies, with a view of reducing the cost of state government and increasing efficiency and economy.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council authorized six meeting days for the Committee during the 2022 Interim. The Committee met five times in 2022, on August 25, September 20, October 28, November 22, December 19, and once in 2023 on January 6.

Revenues

State General Fund Profile, State General Fund Receipts, and Economic Indicators

At the August 25, 2022, meeting, staff from the Kansas Legislative Research Department (KLRD) provided an update on the FY 2022 actual receipts and a revised State General Fund (SGF) profile through FY 2026. Actual receipts for FY 2022 exceeded the estimate by \$221.0 million, or 2.9 percent. The KLRD staff also provided the quarterly economic indicators report. High levels of inflation were the most noteworthy economic variable for the second quarter of 2022. The three-month period saw the national consumer price index increase at an average year-over-year rate of 8.6 percent.

At the November 22, 2022, meeting, KLRD staff provided an update on the revised consensus revenue estimates. The overall estimate for FY 2023 was increased by \$794.2 million. Of this amount, the estimate for total tax revenues was increased by \$773.0 million, while the estimate for other revenues was increased by \$21.2 million. The initial estimate for FY 2024 revenues was \$10.124 billion. The forecast for FY 2024 represents a 4.4 percent increase above the newly revised FY 2023 total.

At the January 6, 2023, meeting, KLRD staff provided an update on SGF receipts through December 2022. The KLRD analyst indicated that Kansas received \$110.2 million SGF in excess of estimates; however, the majority of the excess income was attributable to changes in taxpayer behavior associated with the SALT Parity Act that was enacted through 2022 Senate Sub. for HB 2239. The Act allows for certain income taxes that would otherwise be paid by individuals to be paid by business entities. Individual business owners then receive a tax credit equal to the amount of tax paid. Accordingly, receipts under the Act will reduce individual income tax receipts by an equal amount during individual income tax filing season.

Budget Stabilization Fund Balance

At the August 25, 2022, meeting, KLRD staff provided an update on the Budget Stabilization Fund balance. During the 2022 Legislative Session, \$750.0 million was transferred to the Budget Stabilization Fund in FY 2022 by the

appropriation bills. In addition to these transfers, 50.0 percent of SGF tax-only receipts in excess of the consensus revenue estimates adjusted amount are to be transferred to the Budget Stabilization Fund in FY 2022, FY 2023, and FY 2024. The actual transfer for FY 2022 under this provision was \$219.1 million.

The result of all transfers to the Budget Stabilization Fund for FY 2022 totals \$969.1 million. The statute also provides that the Budget Stabilization Fund receive interest earnings on a monthly basis. The balance in the Budget Stabilization Fund in August 2022 was \$970.5 million.

SGF Reappropriations from FY 2022 to FY 2023

At the September 20, 2022, meeting, KLRD staff provided an overview of the reappropriation process and discussed the \$315.9 million in SGF reappropriations for FY 2023. The majority of the reappropriations were for human services caseloads and the Department of Corrections Evidence-based Programs.

Caseloads

Education Consensus Caseloads Estimate

At the November 22, 2022, meeting, KLRD staff provided an update on the revised consensus caseloads estimate for education. For FY 2023, the estimate was reduced by \$70.2 million, including \$65.3 million SGF, below the previous estimate. The decrease was predominantly in State Foundation Aid due to revised student enrollment estimates. For FY 2024, the estimate increased by \$48.3 million, including \$21.6 million SGF, above the revised FY 2023 estimate.

Human Services Caseloads

At the December 19, 2022, meeting, KLRD staff provided the updated fall estimate of the human services caseloads. The revised estimate for FY 2023 was \$4.8 billion, including \$1.3 billion SGF. This is an all funds increase of \$259.5 million, including an SGF decrease of \$198.0 million, from the approved amount. The initial estimate for FY 2024 was \$4.8 billion, including \$1.5 billion SGF. This is an all funds increase of \$7.9 million, including an SGF increase of \$163.0 million, above the FY 2023 revised estimate.

Agriculture

Water Supply Storage Debt

At the September 20, 2022, meeting, the Director of the Kansas Water Office presented an update on water supply storage debt. She provided a brief overview of the agency and the Water Planning and Implementation program. The Public Water Supply program administers programs to ensure an adequate supply of water to Kansans who receive water from state-owned storage in federal reservoirs. Customers pay the Kansas Water Office for use of the water. The customers are primarily municipal and industrial users, but there are some irrigation customers as well. These funds help pay for the water supply storage debt with the federal government.

State Fair Capital Improvements Update

At the October 28, 2022, meeting a representative of the Kansas State Fair reviewed the \$14.5 million SGF in estimated FY 2023 capital improvements, \$10.0 million of which is for Bison Arena renovations. The full renovation costs for the Bison Arena are estimated to be \$20.0 million.

Bipartisan Infrastructure Law for Wildfires

At the December 19, 2022, meeting, the Secretary of Agriculture provided an update on the Governor's Wildfire Task Force. The Task Force had met four times, with another meeting scheduled for January 5, 2023, at which time the Task Force would make recommendations. The Secretary discussed possible recommendations related to mitigation projects, weather monitoring, response plans, mapping, and challenges to local firefighting entities.

Commerce

Panasonic Agreement and APEX Legislation

At the August 25, 2022, meeting, representatives of the Department of Commerce provided an update on the APEX agreement with Panasonic. According to the Department of Commerce, the Panasonic Agreement includes a \$4.0 billion capital investment, 4,000 planned new jobs, 4,000 additional jobs that could be created by suppliers and community businesses, and 16,500 construction jobs.

Build Up Kansas

At the September 20, 2022, meeting, the Executive Vice President, Associated General Contractors (AGC) of Kansas, Inc., presented information on the Build Up Kansas program, which is a collaborative effort between the State and private industry designed to educate and attract young people into careers in construction and industry. He said the 2022 Legislature provided funding to help build on the success of the program. The Executive Vice President noted that approximately 40 years ago, the federal government encouraged people to attend college, which dismantled the vocational training system. Twenty years ago, AGC noticed the impact of the lack of vocational training and began working with high schools, community colleges, and vocational technical centers to ensure that vocational training systems remained in place in Kansas. The AGC also started a program with selected prisons to train low-risk inmates; approximately one-third of those inmates have been hired into industry after their release. The Executive Vice President noted that in recent years, there has been a recognition that skilled workers are needed; therefore, four years ago, AGC started the Build Up Kansas program.

Kansas Infrastructure Hub

At the October 28, 2022, meeting, a representative of the Kansas Department of Transportation reviewed the the federal Bipartisan Infrastructure Law, which provides \$3.8 billion of funding for Kansas over five years. The bill also included \$145.7 million in additional funding for highways, bridges, electrical vehicle infrastructure, and rural transit. The representative also presented on the Kansas Infrastructure Hub, which assists local governments in applying for federal infrastructure grants.

American Rescue Plan Act Grants for Higher Education and Economic Development

At the November 22, 2022, meeting, a representative of the Department of Commerce presented on federal American Rescue Plan Act (ARPA) grants in 2022 HB 2510 and 2022 House Sub. for Sub. for SB 267, which designated funding for State Board of Regents universities, Washburn University, community and technical colleges, private and independent colleges, and Regents University Challenge Grants. According

to the Department of Commerce, all entities have been informed of the requirements for the grants, and the agency is currently accepting requests for proposals. Recipients are required to have the funds expended by June 30, 2024, with extensions on a case-by-case basis up to June 30, 2026.

Broadband Expansion

At the November 22, 2022, meeting, a representative of the Office of Broadband Development, Department of Commerce, presented on the Broadband Acceleration Grant program started in 2020. The program is funded through the Eisenhower Legacy Transportation Program and will grant \$85.0 million over 10 years. The program requires a 50.0 percent match with a minimum grant of \$1.0 million.

The Department of Commerce representative also reviewed federal capital projects funds within ARPA; the Infrastructure Investments and Jobs Act; the Broadband, Equity Access, and Deployment Act; the Digital Equity Act; and the Enabling Middle Mile Broadband Infrastructure Initiative. As of May 2022, the Department of Commerce had awarded \$11.1 million in Broadband Acceleration Grants and \$15.8 million in Capital Project Funds Grants.

The representative noted the remaining programs were still being rolled out.

Update on Digital Transformation Fund

At the December 19, 2022, meeting, a representative of Wichita State University presented an update on the digital transformation funds provided to the university by the 2022 Legislature. He explained there are two ongoing projects, the National Institute for Aviation Research (NIAR)/WERX program and the Wichita Biomedical Campus.

COVID-19

COVID-19 Expenditure Update

At the September 20, 2022, meeting, a Principal Auditor from the Legislative Division of Post Audit (LPA) provided an overview of the performance audit concerning COVID-19 relief funding distribution. The audit's objective was to answer the following questions:

- What is Kansas' process for distributing COVID-19 relief funding?
 - The auditors determined that Kansas used a special task force and legislative appropriations to distribute certain COVID-19 relief funding.
- Have Kansas' distributions of COVID-19 relief funding been appropriate?
 - The auditors determined that the State's distribution of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding appears appropriate, but some spending may be problematic.

At the December 19, 2022, meeting, the Secretary of Administration explained that a plan would be presented to the State Finance Council on December 20, 2022, to distribute the remaining ARPA funds provided for discretionary purposes.

The Secretary stated that all ARPA funds must be encumbered by December 31, 2024, and expended by December 31, 2026. The Secretary reported the Office of Recovery will continue to monitor the status of projects to maximize the use of any unspent funds.

General Government

Kansas Public Employees Retirement System Trust Fund Transfers, Rate of Return, and Modernization

At the August 25, 2022, meeting, a representative of the Kansas Public Employees Retirement System (KPERs) presented on the status of the KPERs Trust Fund.

As of December 31, 2021, the KPERs Trust Fund funded ratio was 71.6 percent, which is a decrease below 72.5 percent in the previous year. The decrease is attributable to the KPERs Board reducing the estimated rate of return from 7.75 percent to 7.00 percent.

The KPERs representative also reviewed various other elements of the KPERs system.

Judicial Branch Operations and Docket Fees Credited to State General Fund

At the September 20, 2022, meeting, the Special Counsel to the Chief Justice, Judicial Branch, provided an update on Judicial Branch operations and docket fees credited to the SGF. He noted there have been historic changes in the Judicial Branch that would not have been possible without the partnership of the Legislature.

During the 2022 Legislative Session, HB 2541 was passed, which moved the funding of core Judicial Branch operations to the SGF. In return, the Judicial Branch deposits some fees into the SGF instead of court-specific funds. For FY 2022, \$27.7 million was collected. For FY 2023, the Judicial Branch estimates that \$28.3 million will be collected. Accounts that flow to counties and agencies were not impacted by this action.

The representative also noted that the 2021 Legislature provided funding to hire 70 additional court services officers (CSOs). Those positions have been filled, and the retention rate for those positions, and CSOs in general, is high.

Sports Wagering

At the September 20, 2022, meeting the Executive Director of the Kansas Lottery provided a presentation on the rollout of sports wagering in Kansas and stated the rollout has gone well. The 2022 Legislature passed a bill to authorize sports wagering at the four state-owned and -operated gaming facilities, which became law on July 1, 2022. Each gaming facility is authorized to have up to 12 mobile platforms such as FanDuel and DraftKings.

The Executive Director said the agency went through many steps including negotiating amendments to the existing casino contracts to provide for in-house sports wagering. Two of the four facilities offer in-house sports wagering. The agency promulgated various rules and regulations related to sports wagering that have been approved by the Office of the Attorney General.

The Executive Director noted the agency would provide updated estimates that include sports wagering revenues during the consensus revenue estimates process in fall 2022.

State Employees Health Care Commission Update

At the October 28, 2022, meeting, a representative of the Department of Administration presented on the 2023 State Employee Health Plan. For calendar year 2023, the employee rates will remain unchanged, and dental rates will decrease. The agency has also developed new flexible spending account (FSA) options including a mass transit FSA and a parking FSA with the ability to carry over deposits.

Docking State Office Building and Kansas Department of Health and Environment Laboratory Construction Status

At the meeting on December 19, 2022, the Secretary of Administration provided an update on the renovation of the Docking State Office Building and the construction of the new Kansas Department of Health and Environment (KDHE) Laboratory. The Secretary reported the Docking State Office Building renovation was on schedule to be completed in FY 2025, and the new KDHE Laboratory was on schedule to be completed in calendar year 2024. The Secretary also noted that 87 percent of the supplies and labor for the Docking State Office Building renovation is Kansas-based. The Secretary provided a timeline and map reflecting the impact of the projects on the Capitol Complex. The Secretary clarified that Parking Lots 1 and 8 contain enough spaces to accommodate construction.

Safe and Secure Schools Update

At the October 28, 2022, meeting, a representative of the Kansas State Department of Education presented on the implementation of the Safe and Secure Schools program provisions. Senate Sub. for HB 2567 (2022) provides \$5.0 million, including \$1.0 million in federal funds, for the acquisition and installation of security cameras and other safety equipment in K-12 schools with at one-to-one dollar match requirement. The representative noted the program has established nine safety standards and requires four fire drills, two tornado drills, and three crisis drills per school year.

Housing Programs

At the November 22, 2022, meeting, a representative of the Kansas Housing Resources

Corporation presented on various housing initiatives passed by the 2022 Legislature. For FY 2023, the State provided \$62.0 million in new and enhanced programs for rural and moderate income housing, including the Moderate Income Housing Program (\$42.0 million) and a rural housing loan program (\$20.0 million).

A variety of policy adjustments were also enacted, such as the Affordable Housing Tax Credit, the Kansas Housing Investor Tax Credit, and the Rural Home Loan Guarantee.

Federal Cybersecurity Grant Program

At the November 22, 2022, meeting, a representative of the Kansas Information Security Office presented on the State and Local Security Grant program. Kansas was allocated \$2.8 million in federal funding for federal fiscal year 2022 as the first of four years of funding with a 10.0 percent match requirement. The funds are to build a state cybersecurity plan that must be submitted by September 2023.

Three-year IT Security Summary Report

At the December 19, 2022, meeting, a representative of LPA presented the Three-year Summary of Security Controls report summarizing the findings of information technology (IT) security audits on several agencies. The representative noted that half of the entities did not substantially comply with IT security standards and best practices.

Update on Funds Distributed by Governor's Grants Office

At the December 19, 2022, meeting, a representative of the Kansas Governor's Grants program provided an overview on Victims of Crime Act Victim Assistance program funds.

The representative indicated the federal Crime Victims Fund had a declining balance due to fewer deposits during court closures related to the COVID-19 pandemic. The representative noted the program is able to spend funds over three years, which has allowed the program to manage fluctuations in the fund; however, the program will need to cut approximately 40.0 percent of its subgrants if federal awards in FY 2022 are similar to FY 2021 award levels.

Review of Unemployment Insurance Certification

At the meeting on December 19, 2022, the Director of Legislative Research, KLRD, provided an update on the audit concerning improper unemployment insurance payments. The Unemployment Modernization and Improvement Council was tasked with recommending to the Committee an amount to transfer from the Legislative Coordinating Council's Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor. The Council recommended a total transfer of \$108.0 million.

The Committee voted to recommend the Legislative Coordinating Council transfer \$108.0 million from the Legislative Employment Security Fund (of the Legislative Coordinating Council) to the Unemployment Fund (of the Department of Labor).

Materials relating to the audit and certification of improper payments can be found in the appendix, including:

- The Fraud Investigation Services Report prepared by FORVIS, LLP;
- A supplement to the FORVIS, LLP report;
- Certification of the amount of improper payments; and
- The full report of this Committee to the LCC regarding the amount of improper payments and the transfer to the Unemployment Fund.

Board of Indigents' Defense Services Salaries

At the December 19, 2022, meeting, the Executive Director of the Board of Indigents' Defense Services presented an update on public defender salaries following the salary increases approved by the 2022 Legislature. The Executive Director reported fewer vacancies and a decreased turnover rate. The Executive Director further indicated the agency will request \$600,000 from the 2023 Legislature to avoid stagnating pay rates.

Performance-based Budgeting

At the January 6, 2022, meeting, a representative of KLRD briefed the Committee on performance-based budgeting. For FY 2023, agencies have submitted performance-based budgets in compliance with the request by the House Committee on Appropriations. The performance-based budgets are available on the KLRD website.

Public Safety

24/7 Pay Plan Update

At the August 25, 2022, meeting, a representative of the Kansas Department of Corrections provided an update on the 24/7 Pay Plan. According to the agency, the plan had the effect of immediately reducing the vacancy rate for correctional officers. The representative noted that despite stopping the attrition as of August 15, 2022, the average vacancy rate remains at 22.0 percent, and four adult facilities have a vacancy rate above 25.0 percent.

Evidence Based Juvenile Initiatives Account

At the October 28, 2022, meeting, a representative of the Kansas Department of Corrections presented on the Evidence Based Programs Account of the SGF. For FY 2023, the account has \$63.5 million in resources and a budget of \$18.2 million. The representative presented a plan to expend the Fund through FY 2030 through 22 different grant programs.

Forensic Laboratory Bond Early Payoff and Kansas Incident Based Reporting System Upgrade

At the November 22, 2022, meeting, a representative of the Kansas Bureau of Investigation (KBI) presented on the retirement of the Forensic Science Laboratory bond. The Forensic Science Center is located on the Washburn University campus. The 2022 Legislature appropriated \$41.5 million SGF to retire the bonds on the building early, saving approximately \$10.0 million in interest. The representative then reviewed the Kansas Incident Based Reporting System (KIBRS). KIBRS is the mechanism by which the KBI gathers and reports a statistical profile of state crime data. The KBI

proposed a \$3.5 million project over five years to update the system.

Law Enforcement Aircraft Purchase Update

At the October 28, 2022, meeting, a representative of the Kansas Highway Patrol (KHP) presented on the acquisition of new aircraft for state use. The 2022 Legislature appropriated \$13.8 million to purchase a new helicopter and Cessna Caravan aircraft. The Legislature also appropriated \$9.0 million for a new Executive Aircraft. The KHP estimated that the Cessna upgrades will be operational in February 2023, the Cessna Caravana and Executive Aircraft will be operational by January 2024, and the helicopter will be operational by March 2024.

Firefighter Recruitment and Safety Grant

At the January 6, 2023, meeting, a representative of the State Fire Marshal briefed the Committee on the Firefighter Recruitment and Safety Grant program. Funding of \$1.3 million was granted from the program in June 2022 with the majority of the funds used for purchasing new fire fighting gear. Eight departments were found to be noncompliant due to lacking the National Fire Incident Reporting System.

Human Services

Provider Rates

At the September 20, 2022, meeting, the Commissioner for Financial and Information Services Commission, Kansas Department for Aging and Disability Services (KDADS), presented information on Medicaid reimbursement rates. He discussed reimbursement rates and enhancements that have been implemented since the 2022 Legislative Session. The Medicaid rates are paid as part of KanCare. The Division of Health Care Finance within KDHE is the State's Medicaid agency, and the State contracts with three managed care organizations (MCOs). The MCOs are paid a per-member per-month rate and contract with service providers. The floor rate is set by the State, and the MCOs pay at least that rate to the providers; however, there are exceptions that offer flexibility regarding other payment models. KDADS is responsible for long-term care and behavioral health rates, which can either be cost-based, which are facility-specific, or fees for service rates.

At the December 19, 2022, meeting, a representative of KDADS; the Executive Director of InterHab; and the Executive Director of Developmental Services of Northwest Kansas, Inc., provided an update on wages for direct support workers following the 2022 Legislature's approval of a 25.0 percent increase in I/DD waiver rates. InterHab conducted a survey of its members and reported that 100.0 percent of respondents had increased their direct support worker wages. The average hourly wage increased from \$11.30 per hour in October 2021 to \$15.19 per hour in October 2022.

Waitlist for Services on the Home and Community Based Services Intellectual/Developmental Disability Waiver

At the September 20, 2022, meeting, the Commissioner for Long Term Services and Supports Commission, KDADS, provided a presentation on the waitlist for services on the home and community based services (HCBS) Intellectual/Developmental Disability (I/DD) Waiver. Waivers allow states to tailor services to meet the needs of a particular target group and may be targeted by issues such as age or diagnoses. Kansas has seven HCBS waivers, including the I/DD Waiver. The I/DD Waiver delivers services to people aged five and older who have an intellectual and/or developmental disability.

TANF Data Mining Results

At the December 19, 2022, meeting, a representative of LPA reviewed an audit of the Temporary Aid for Needy Families (TANF) program. The representative stated there was no evidence of unauthorized point of sale purchases, but the agency was unable to identify how recipients used cash benefits.

Report on Mental Health Intervention Team Pilot Program

At the December 19, 2022, meeting, a representative of the Kansas State Department of Education provided an update on the Mental Health Intervention Team pilot program. The program started during the 2018-2019 school year

with funding for 45 liaisons for 9 pilot school districts. In the 2022-2023 school year, the program has expanded to 150 liaisons for 67 school districts.

CONCLUSIONS AND RECOMMENDATIONS

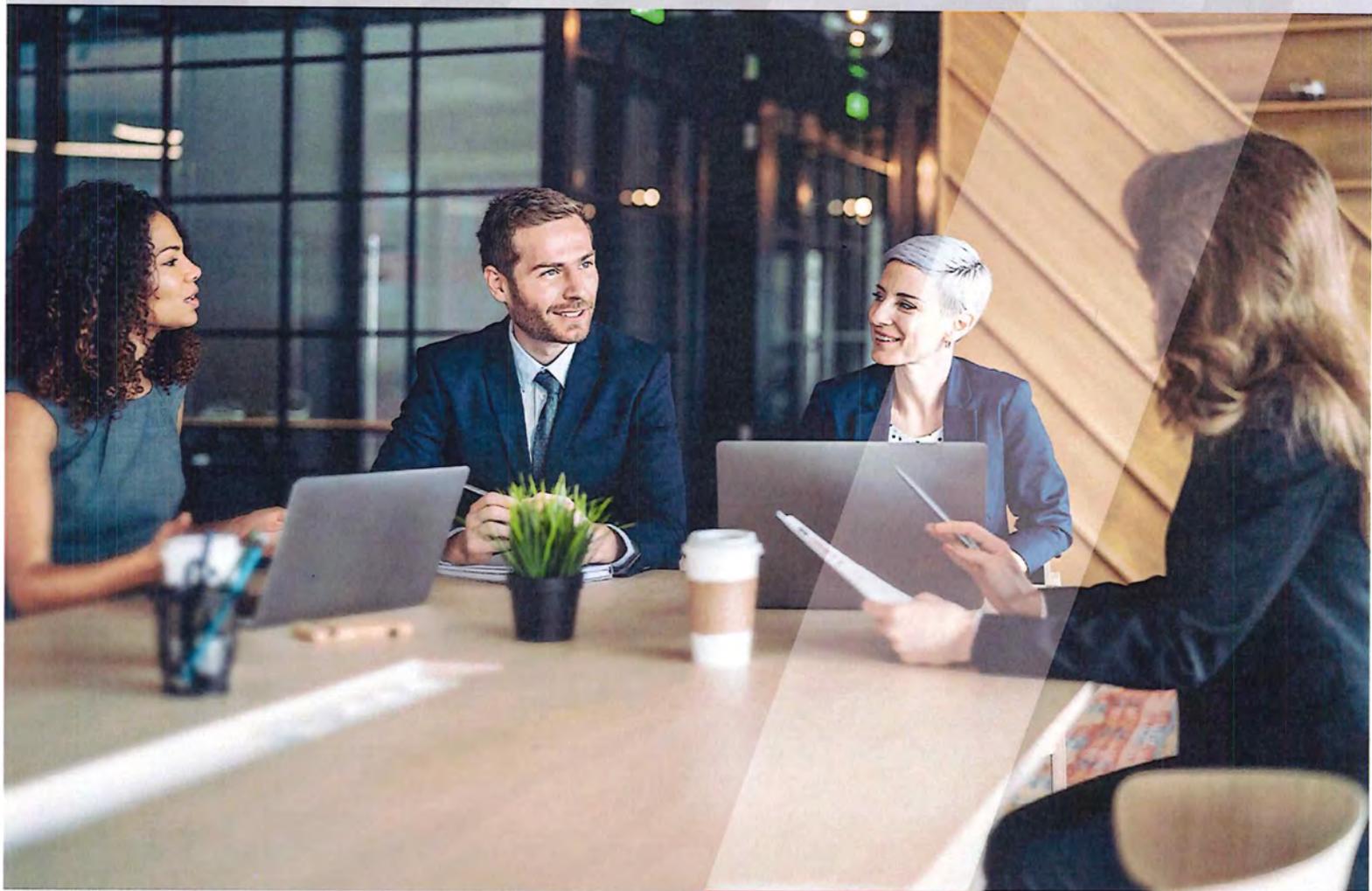
The Committee made the following recommendations:

- The Legislative Coordinating Council should recommend the State Finance Council approve the transfer of an additional \$107.9 million from the Legislative Employment Security Fund to the Unemployment Trust Fund from federal funds. This is in addition to the \$250.0 million transferred to the Unemployment Trust Fund in FY 2022, for a total of \$357.9 million. The report to the Legislative Coordinating Council concerning the transfer is contained in the appendix.
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- The Kansas Department of Transportation should consider conducting a cost analysis study to construct or enhance mass transit systems in Johnson, Sedgwick, and Wyandotte counties to address economic growth in those areas and changing travel behaviors. The study should propose what such transit systems would look like and account for any federal funds estimated to be available in future years.

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FRAUD INVESTIGATION SERVICES REPORT FOR UNEMPLOYMENT COMPENSATION MODERNIZATION AND IMPROVEMENT COUNCIL ON BEHALF OF THE KANSAS LEGISLATURE ("COUNCIL")

SEPTEMBER 1, 2022

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office

Version 6.22

FORVIS

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September 1, 2022

Sean Tarwater, Chairperson
Unemployment Compensation Modernization and Improvement Council
300 SW. 10th Ave., Ste. 551
Topeka, KS 66612

Dear Mr. Tarwater:

Thank you for the opportunity to provide investigation services for the Unemployment Modernization and Improvement Council (the Council) in connection with the effects on the Kansas Department of Labor (KDOL) and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020, through March 31, 2022. For our analysis, we relied upon information provided to us in the form of electronic unemployment insurance claims files, documents, as well as conversations and interviews with relevant parties. This report is based on work completed to date.

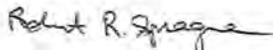
Our services were provided in accordance with the Statement on Standards for Forensics Services promulgated by the American Institute of Certified Public Accountants and, accordingly, do not constitute a rendering by **FORVIS, LLP** (FORVIS) or its partners or staff of any legal advice, nor do they include the compilation, review, or audit of financial statements. Because our services were limited in nature and scope, they cannot be relied upon to discover all documents and other information or provide all analyses that may be of importance in this matter. We were asked to analyze certain designated files, data, and information and, based on the scope of work, we identified matters discussed in this report, including an estimate of potential fraudulent payments based on data analytics procedures. This is a factual report of our findings, and we do not make a determination on if specific claims are fraudulent or comment on legal culpability.

This report is the property of FORVIS and has been prepared solely for use by the Council and should not be used by any other party or for any other purpose, without our written permission in each specific instance.

The validity of this report is predicated on the extent to which full, honest, and complete disclosure was made by all parties. We reserve the right to supplement this report if additional information becomes available.

FORVIS, LLP

FORVIS, LLP



Robert R. Sprague, CPA

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Overview of Project and Data

During the COVID-19 pandemic, additional federal funding and flexibility were provided to state unemployment insurance agencies to help address the increase in unemployment insurance claims. These state unemployment insurance agencies became a target for potential fraud, and the Kansas Department of Labor (KDOL) was no exception. We have been asked to gain an understanding of the effects of these potentially fraudulent claims on KDOL's unemployment insurance system as well as KDOL's response during the period March 15, 2020¹ through March 31, 2022 (the "Period"). A complete listing of the Scope of Work can be found in Attachment A of this document. The items covering KDOL's information technology security included in the scope of services were previously covered by FORVIS in two reports issued to the Council on May 11, 2022.

We received data from KDOL representing 1,540,957 million claims representing 1,086,195 million unique claimants, and payments totaling \$3,554,882,327 for the Period. Our understanding is that the Lost Wages Assistance program is out of scope for purposes of this report, as that is not an unemployment insurance program. As such, we have excluded those payments, which total \$130,565,088, from our analysis. As further described below, our data analysis indicates an estimated range of between approximately \$441 and \$466 million potentially fraudulent claims were paid during the Period².

Self-Reported Fraud

We received 329,553 records of data representing claimants who had self-reported a fraudulent claim, or had someone, such as their employer, report fraud on their behalf. KDOL collected this data from the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/>.

KDOL Potential Fraud Flag

KDOL flags claimants as potentially fraudulent for several reasons, such as if a claimant self-reported fraud or if that claimant used the same bank account as a significant number of other claimants. While there were many different reasons why KDOL flagged a claimant as potentially fraudulent, the reasons why specific claimants were flagged as potentially fraudulent were not tracked consistently. We received two files that contained, in addition to other information, information regarding which claimants had been flagged by KDOL as potential fraudulent claimants, but not the specific reason why the claimant had been flagged. Between these two files, 350,137 claimants were flagged as potential fraud and had not been subsequently cleared as legitimate.

IP Addresses

Each time a claimant logs into the KDOL system, their IP address is recorded. We obtained a data set of 24,664,279 logins that provided the IP addresses for claimants that filed online claims.

Deceased Claimants

KDOL provided a listing of deceased claimants which provided date of death for 8,901 claimants.

Incarceration Records

KDOL provided a listing of 70,468 records identifying claimants who had been incarcerated at some point in time according to data KDOL had matched against Kansas Department of Corrections data. This data included claimants with claims in our scope period, but also claimants outside of our scope period. We noted many claimants appeared in this data multiple times with the same incarceration date. We considered this duplication in our analysis.

¹ The scope period outlined in the Agreement for Fraud Investigations Services was March 15, 2020 to March 31, 2022; however, FORVIS received unemployment insurance claim and payment data from January 1, 2020, to March 31, 2022.

² Our initial estimate of potentially fraudulent claims was between approximately \$486 million and \$511 million. As further described below, we have reduced this estimate to account for the possibility that legitimate claims were filed at a later date by claimants that were the victim of an earlier fraudulent claim filing using their stolen personal information.

Summary Claim Information by Employer

KDOL provided a summary of claims by employer, program, month, and year for January 2015 through March 2022, containing 1,320,176 records. In addition, KDOL provided a summary of payments by employer, program, month, and year for January 2015 through March 2022, containing 1,295,415 records.

Self-Reported Fraud Analysis

We utilized the self-reported data from the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/> to identify claimants who had self-reported a fraudulent claim, or had someone, such as their employer, report fraud on their behalf. This data did not contain a claimant ID to enable us to link directly with the claimant data we had been provided, but did include names, some full SSNs, some partial SSNs, and birth dates. We used various combinations of these data elements to match the data between these disparate data sets. After accounting for duplicate reports for the same claimant, we were able to match this self-reported fraud claimant database with 227,918 claimants in the claims database. Of these 227,918 claimants, 115,812 had received payments, totaling \$282,469,430. The average total payments to claimants who had self-reported fraud was \$2,439.

Overview of Data Analytics Methodology

We used the self-reported fraud claims as our starting point for assessing potentially fraudulent claims and then built additional detection methods on top of that to increase the probability of identifying potential fraud. We employed the following three additional methods:

- Egregious Flag Method
- Machine Learning Method
- Cumulative Risk Score Method

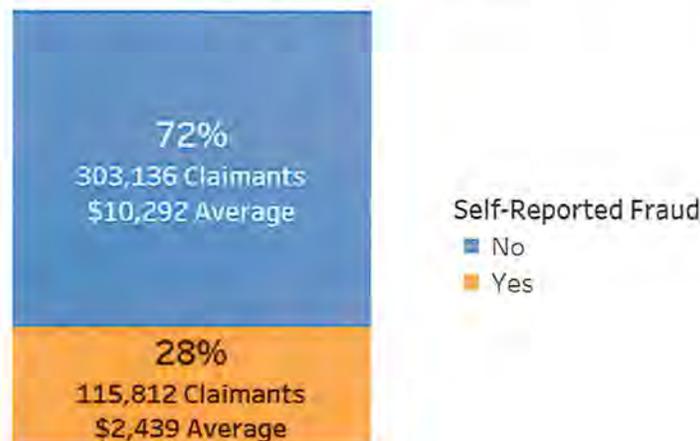
All three of these methods were based on a series of potential fraud flags, such as *claimant shares a bank account with other claimants* or *claimant with a high email address risk score*. The egregious flag method identified specific potential fraud flags that, by themselves, appeared to indicate a high probability that the claim was fraudulent.³ The machine learning method identified claimants with combinations of potential fraud flags that were consistent with those associated with self-reported fraud claims. The cumulative risk score method assigned a value to each potential fraud flag, summed those scores, and assigned a total risk score to each claimant.

To inform these methods, we started by studying the population of claimants who had received at least one payment, split between claimants with self-reported fraud and those without. By doing so, we learned two key pieces of information we used throughout our analysis.

First, we learned that claimants with self-reported fraud made up **28%** of the population of claimants with payments. This was a helpful baseline in our assessment of the efficacy of various procedures we performed, as well as in our assessment of the efficacy of KDOL's potential fraud flags.

Second, we learned that the average of payments to claimants with self-reported fraud, **\$2,439**, was considerably lower than the average to claimants without self-reported fraud, **\$10,292**. Intuitively, this makes sense given our understanding from discussions with KDOL that the Department was considering all information that was available regarding potential fraudulent claimants and stopping payments when they became aware of a potentially fraudulent claimant. Therefore, a claimant may have started to receive payments but been stopped midway through the expected payment stream.

Figure 1 – All Paid Claimants



³ As further described below, our analysis determined that 66% to 70% of the claimants that were flagged by an egregious procedure also had self-reported fraud, suggesting a strong correlation between the egregious flags and claimants with self-reported fraud.

Potential Fraud Flags

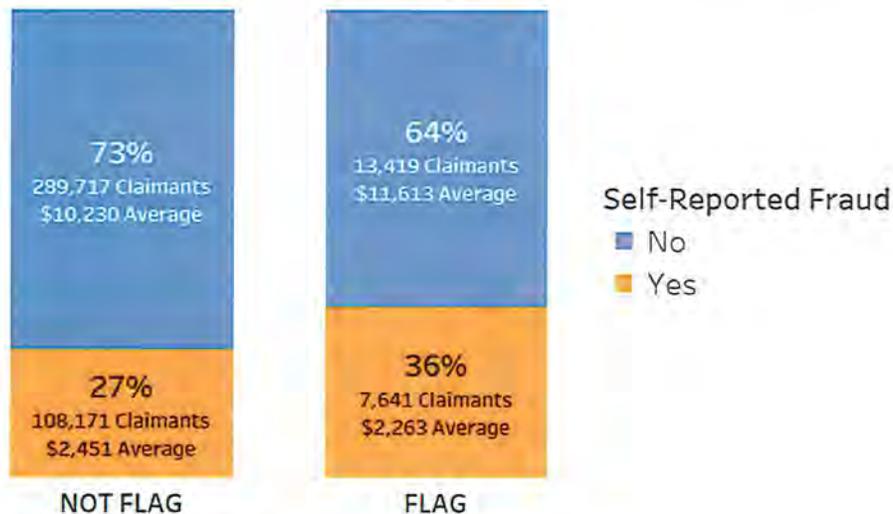
We utilized 53 potential fraud flags in our analyses. We assigned a risk score to each flag, based on how predictive the flag appeared to be. Flags with no predictive capacity were assigned a score of zero, and flags with the highest predictive capacity were assigned a score of 10.

Scoring for Single Value Flags

For flags that were binary, meaning either the claimant was flagged by the test or not, a single score was assigned. To assess a test's predictive value, we compared the percentage of claimants with self-reported fraud who did NOT get flagged relative to the percentage of claimants with self-reported fraud who did get flagged. As an example, the below potential fraud flag identified claimants whose personal address matched the employer address listed on their claim. In figure 2 below, we can see in the left bar that for those claimants not flagged, approximately 27% had self-reported fraud. In the right bar we can see that for those flagged, approximately 36% had self-reported fraud. So, the test appeared to have some predictive value because the percentage of claimants in the subset of claimants flagged (the right bar) was higher than those not flagged (the left bar).

For this test, we assigned a score of two. For reasons explained later in the report, we determined the score using a scale that ranged from 28% of claimants with self-reported fraud for tests with no predictive capacity, since that is our baseline across all claimants, to 66% for tests with the highest predictive capacity, since that is the highest threshold achieved in the egregious section of the report. A score of zero was assigned if the flag resulted in 28% or 10 if the flag resulted in 66%.

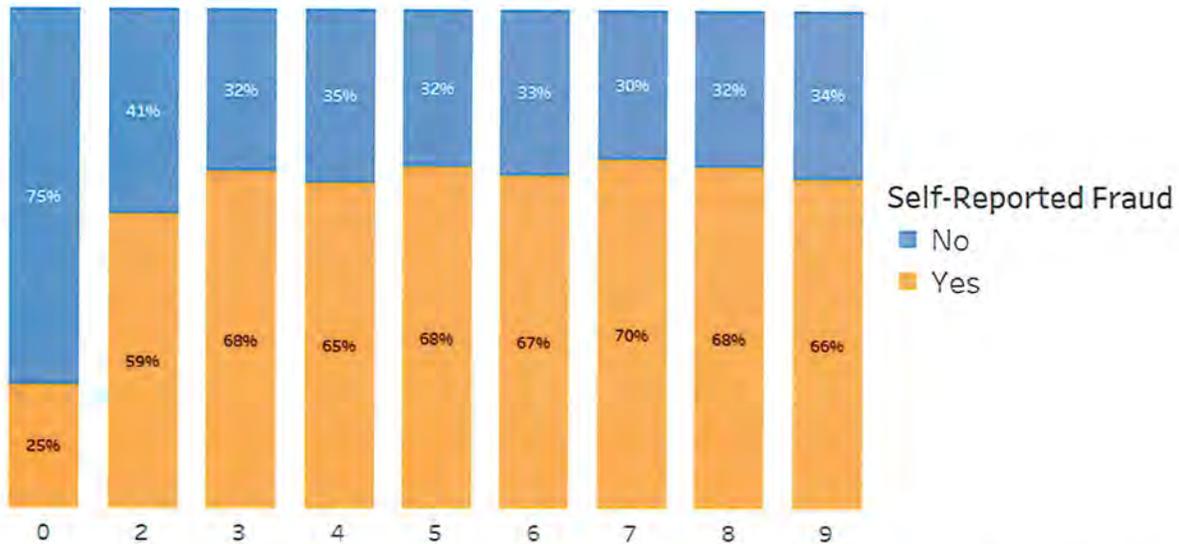
Figure 2



Scoring for Multiple Value Flags

For flags with multiple potential values (three claimants sharing an attribute, four claimants, five claimants etc.), we considered not only whether the claimant was flagged but also the value associated with the flag. As an example, one of the flags we created was to isolate email addresses which differed only by special characters, such as periods (for example, A.c.me@gmail.com, Ac.m.e@gmail.com, and A.c.m.e@gmail.com). If a claimant shared a similar email address with multiple other claimants, we assigned a score based on the number of claimants with that shared similar email address. In Figure 3 below, which represents the results of claimants who share a similar email address, the second bar represents claimants who share a similar email address with one other claimant or, said another way, a shared similar email address between two claimants. Within this subset of claimants, 59% had self-reported fraud, and a score of eight was assigned. For claimants in the rightmost bar, emails shared across nine claimants, 66% had self-reported fraud, and a score of 10 was assigned.

Figure 3



We noted that as the number of similar emails increased, illustrated by moving left to right in Figure 3 above, initially the percentages for self-reported fraud increased dramatically, and then seemed to level off around 66%. This led us to consider the fact that at a certain point, perhaps claimants at or above the threshold where it levels off could be potentially fraudulent. However, we analyzed additional data to support this hypothesis.

Egregious Flag Method

The goal of the egregious flag method was to identify specific potential fraud flags that, individually, appeared to flag claims with a high probability of potential fraud. We had two requirements for a flag to be considered an egregious flag:

- First, it had to intuitively make sense to be egregious. As an example, if three claimants had similar email addresses that differed only by special characters (for example, A.c.me@gmail.com, Ac.m.e@gmail.com and A.c.m.e@gmail.com), it seems likely that those three claimants would be potentially fraudulent.
- Second, the data had to support the decision. The following explains how we used the data available to us to determine whether to consider a potential fraud flag to be egregious.

We identified two subsets of claimants that we believed a reasonable person would agree would have a high probability of being potentially fraudulent, based on three unique combinations of potential fraud flags.

Egregious Claimant Subset #1

The first subset of claimants exhibited all three of the following attributes:

- 1) Claimant shared a bank account with nine or more other claimants
- 2) Claimant shared an email address with nine or more other claimants
- 3) Claimant had a vendor-defined IP address potential fraud score of at least a nine out of 10

This subset consisted of 599 claimants:

- 66% of these claimants had self-reported fraud, and the average claimant payments were \$1,666.
- 34% of these claimants had NOT self-reported fraud, and the average claimant payments were \$2,835.

Egregious Claimant Subset #2

The second subset of claimants exhibited all three of the following attributes:

- 1) Claimant shared a phone number with nine or more other claimants
- 2) Claimant shared an email address (excluding special characters) with nine or more other claimants
- 3) Claimant had a vendor-defined email potential fraud score of at least a nine out of 10

This subset consisted of 730 claimants:

- 70% of these claimants had self-reported fraud, and the average claimant payments were \$1,511.
- 30% of these claimants had NOT self-reported fraud, and the average claimant payments were \$2,449.

For these subsets, which we believe a reasonable person would agree have a high probability of being potentially fraudulent, 66% and 70%, respectively, of claimants had self-reported as fraudulent. This means between 30% and 34% of these claimants had a high probability of being potentially fraudulent but did NOT self-report as fraud.

Egregious Flag

We noted roughly the same percentage of claimants with self-reported fraud across these four subsets of claimants:

- 66% in the egregious claimant subset #1,
- 70% in the egregious claimant subset #2,
- 69% in the subset of claimants where three or more claimants shared an email address, after removal of special characters, and
- 67% in the subset of claimants where three or more claimants shared a bank account.

Based on this analysis, we believed it was reasonable to assume that, if an individual potential fraud flag isolated a subset of claimants where between 66% and 70% of those claimants had self-reported fraud and it intuitively made sense to consider the potential fraud flag as egregious, then there was a high probability that the claimants flagged by that test were potentially fraudulent.

Using this methodology, we identified two potential fraud flags which we considered to be egregious.

- 1) Three or more claimants with the same email address, after removal of special characters (for example, A.c.me@gmail.com, Ac.m.e@gmail.com, and A.c.m.e@gmail.com), which resulted in a subset of paid claimants whereby 69% of those paid claimants had self-reported fraud
- 2) Three or more claimants with the same shared bank account, which resulted in a subset of paid claimants whereby 67% of those paid claimants had self-reported fraud

We further considered whether a specific potential fraud flag was egregious purely based on the nature of the test, and identified one paid claimant with an invalid SSN, and nine paid claimants with a death date prior to their claim dates which we flagged as egregious.

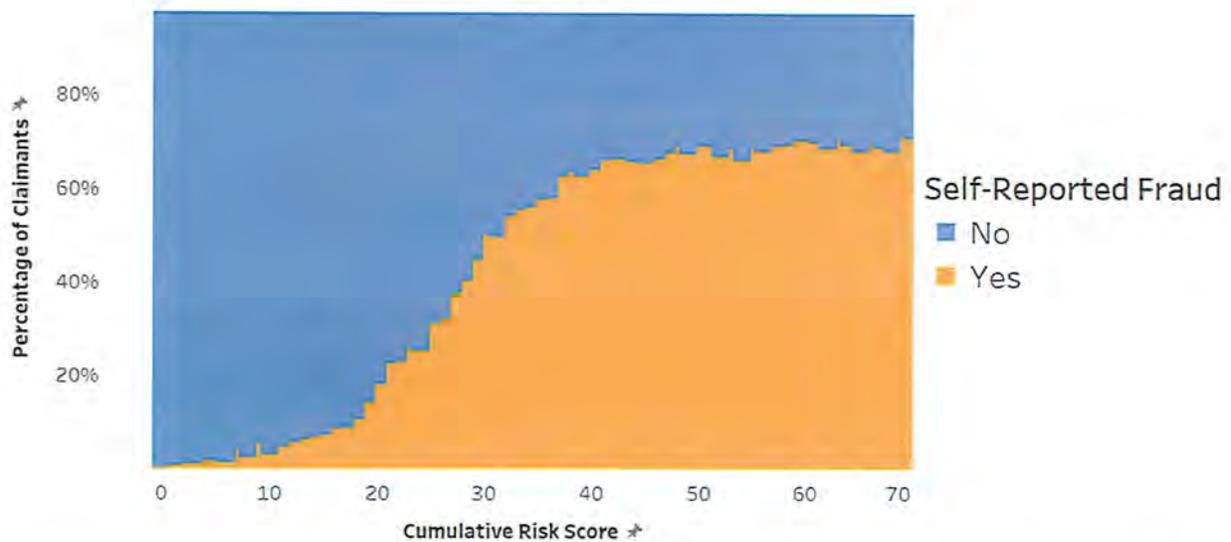
Machine Learning Method

While the egregious flag method was focused on finding a single potential fraud flag that was very predictive of fraud by itself, the machine learning approach was focused on finding unique combinations of potential fraud flags with high predictive value. We trained the model by showing it claimants that had self-reported fraud as well as those that did not have self-reported fraud and asking the model to try to find combinations of flags within the self-reported fraud population that also existed in the population without the self-reported flag.

Cumulative Risk-Score Method

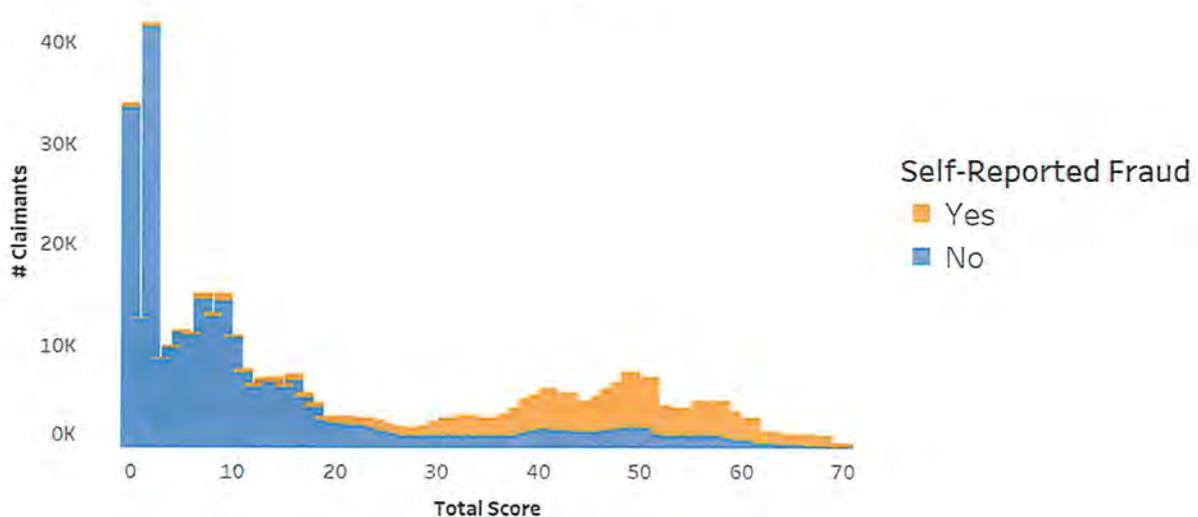
The cumulative risk-score method simply summed up the scores from the potential fraud flags associated with a claimant. Claimants over a certain threshold were determined to be potentially fraudulent. We judgmentally selected a threshold of 40, based on a data-driven approach. First, we noted the average cumulative risk-score for claimants with self-reported fraud was 40. Second, we used data visualization software to help us better understand the distribution of claimants across the various risk score thresholds, focusing once again on the percentage of self-reported fraud claimants relative to the other claimants initially. In Figure 4 below, orange represents claimants with self-reported fraud, and blue represents claimants who did not self-report fraud. On the leftmost side, at a risk score of zero, there is a very small orange bar which indicates approximately 1% of claimants with a risk score of zero had self-reported fraud. On the rightmost side, at a risk score of 70, there is a very large orange bar which indicates approximately 71% of claimants with a risk score of 70 had self-reported fraud. This distribution levels off at a risk-score of approximately 40.

Figure 4



While Figure 4 above shows the percentage breakdown of claimants at each risk score, Figure 5 below shows the breakdown of the number of claimants at each risk score, which provides helpful context.

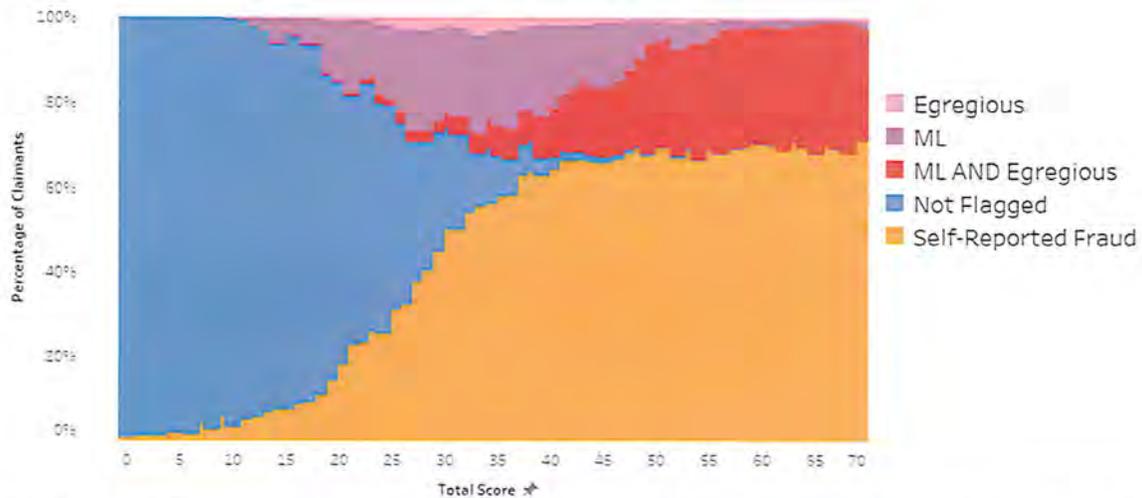
Figure 5



Combination of All Methods

Starting with the self-reported fraud claimants as our baseline in Figure 4 above, we then layered in the claimants flagged by our egregious flag and machine learning methods. These independent methods produced very similar results in the higher cumulative risk score levels, as shown in red below, and while there was overlap between these two methods in the lower cumulative risk scores, there were also some claimants flagged by one method and not the other, which is expected since one identifies a single flag which is consistent with potential fraud, and the other identifies combinations of flags consistent with potential fraud.

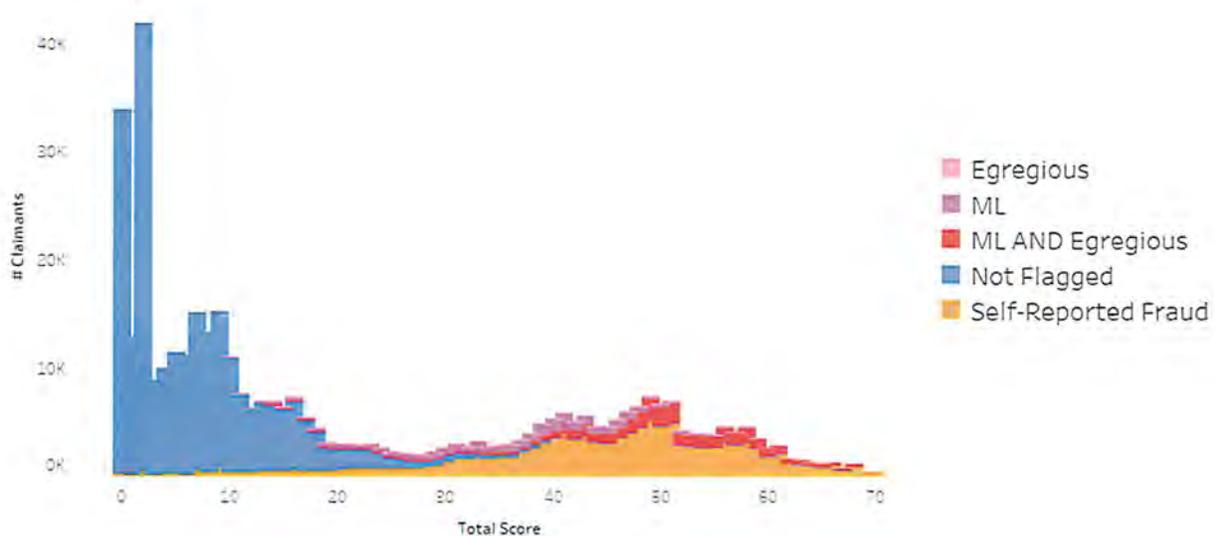
Figure 6



The secondary feature of Figure 6 above is that it further supports our earlier conclusion that a cumulative risk score of 40 is appropriate as a cutoff for our cumulative risk score method, as there are very few claimants not already flagged as potentially fraudulent at a score of 40 or above, as shown by the blue area in the graphic above.

While Figure 6 above shows the percentage breakdown of claimants at each risk score, Figure 7 below shows the breakdown of the number of claimants at each risk score, which provides helpful context.

Figure 7



Taking these approaches together, including the self-reported fraud flag, we have estimated the total payments to potentially fraudulent claimants to be between \$486 million and \$511 million. The low end of the range includes claimants with self-reported fraud and/or claimants identified by our machine learning method. The high end of the range includes these same claimants plus claimants flagged by the egregious flag method and/or the cumulative risk-scoring method and is the figure we will use throughout the remainder of this report. We noted the average cumulative risk score for potentially fraudulent claimants not self-reported as fraud was 39, which is consistent with the average risk score for claimants with self-reported fraud of 40. The average of total payments to potentially fraudulent claimants who had not self-reported fraud was \$4,057, which is slightly higher than the average of claimants with self-reported fraud of \$2,439. This aligns with expectations, as we understand that KDOL was stopping payments to self-reported fraud claimants as well as claimants that had other patterns consistent with fraud, so we would expect the average of payments to claimants who did not have a self-reported fraud to be higher, resulting in an overall higher average.

Of the \$511 million potentially fraudulent payments, approximately \$310 million related to state programs, and \$201 million related to federal programs.

Of the \$511 million potentially fraudulent payments, approximately \$436 million was paid before the implementation of the multifactor authentication requirement implemented by KDOL, and approximately \$75 million was paid after.

Of the claimants identified as potentially fraudulent, approximately 98.5% filed their claim(s) via the internet, and approximately 1.5% filed their claim(s) by phone. Of the claimants not identified as potentially fraudulent, approximately 81.7% filed their claim(s) via the internet, and approximately 18.3% filed their claim(s) by phone.

Of the \$511 million potentially fraudulent payments, approximately 87.4% were paid by direct deposit, and approximately 12.6% were paid by prepaid debit card. Of the payments not identified as potentially fraudulent, 75.3% were paid by direct deposit, and approximately 24.7% were paid by prepaid debit card.

Legitimate Claims Following Potentially Fraudulent Claims

Our analysis utilized individual claim level detail for purposes of flagging potentially fraudulent claims, but, ultimately, a claimant was determined to be potentially fraudulent or not. KDOL raised concerns that this would tend to overstate the potential fraud because there were instances where legitimate claimants filed for unemployment only to discover that a fraudulent claim had previously been filed utilizing their personal information. Therefore, our analysis would categorize all payments to this claimant as potentially fraudulent when only a portion should be categorized as potentially fraudulent. While it is not possible to determine an exact dollar amount that follows this pattern since we do not have the self-reported date for all potentially fraudulent claims and we cannot say definitively that all new claims paid after a self-report were legitimate, we have developed an approach to provide some insight into the magnitude of this situation.

For self-reported fraud, we have the date of the reported fraudulent claim. If a claimant with self-reported fraud subsequently filed a claim and you assume that claim was legitimate, then any subsequent payments would presumably be legitimate as well. The total of such payments was approximately \$25 million.

We previously calculated payments to claimants who had self-reported fraud to be \$282 million, which represents 55% of the total payments to potentially fraudulent claimants of \$511 million. If we assume the same proportion of payments for legitimate claims in the population of self-reported fraud claimants to the total population of potentially fraudulent claimants, we can estimate that \$45 million ($\$25 \text{ million} / 55\%$) of the total \$511 million could have potentially been for legitimate claims following fraudulent claims. If these payments were legitimate, that would reduce our estimated potential fraudulent claim range to between \$441 and \$466 million.

Evaluating the Effectiveness of KDOL Fraud Flags

As described in the Overview of Data section of this report, we received a file which identified 350,137 claimants as having been flagged as potentially fraudulent by KDOL. When we isolate to claimants flagged by both FORVIS and KDOL, there is an overlap of \$382 million of payments.

In addition to flagging \$382 million of claims which were also flagged in our analysis, the KDOL flag identified an additional \$345 million of payments as potentially fraudulent. The average cumulative risk score for this subset of claimants was 19, which is considerably below the average of 40 we noted for claimants with self-reported fraud. The average total payments to claimants in this subset was \$12,084, which is well above the average of claimants with self-reported fraud of \$2,439. Taking these two pieces of information together, it appears many of these claimants were likely legitimate and should not have been flagged.

Therefore, it appears that while the KDOL was effective at flagging potentially fraudulent claimants, it flagged a number of likely legitimate claimants as well.

Evaluating the Impact of Waiving the One-Week Waiting Period

We understand that prior to March 30, 2020, a one-week waiting period was required to give KDOL more time to adjudicate and investigate potential issues with a claim. However, during most of the scope period, this requirement was waived. To assess the potential impact of this decision, we isolated claimants that met certain criteria consistent with a claimant that might not have been paid had this waiting period been in effect. Specifically, we assumed that if a claimant met all of the following criteria, then it is possible that KDOL might have identified the claimant as potentially fraudulent and stopped issuing payments during the one-week waiting period.

- 1) Claimant had received only a single payment.
- 2) The benefit period begin date on the claim was six days prior to the first claim week date associated with the single payment, indicating waiver of the one-week waiting period (rather than 13 days which was normal before the waiver).
- 3) The single payment occurred within seven days of the claim week date. This seemed like a reasonable assumption since most payments happened within seven days, and this is the same number of days as the waiting period. For payments that were delayed longer than seven days, presumably payment would have been stopped regardless of whether the one-week waiting period was in effect.
- 4) KDOL had flagged the claimant as potentially fraudulent, suggesting that the reason there was only a single payment to the claimant was that KDOL may have stopped payment as opposed to the claimant having stopped filing additional claims.
- 5) We had identified the claimant as potentially fraudulent in this report.

A total of approximately \$15 million was paid to claimants meeting all of these criteria, and as such, might have been avoided but for the waiver of the one-week waiting period.

Employer Analytics

We examined the claim counts by employer in 2015 through 2019 compared with January 2020 through March 2022. First, we identified employers with no claim activity noted prior to 2020 but at least one claim between January 2020 and March 2022. Of the 1,536,416 claims we were able to match between the individual claim level data and the summary level employer data, 712,324, or 46%, matched this pattern. The average score for these claimants was 25, which is the same as the overall population average of 25 and well below the self-reported fraud average of 40. Next, we identified employers with at least twice as many claims during January 2020 through March 2022 as compared with 2015 through 2019. There were 711,463 claims, or 46%, associated with these employers. We searched for correlations between the percentage change between these two periods and risk scores but did not note any strong correlations. The average score for these claimants was 22. We also noted that analyzing specific employer claims prior and during the pandemic was difficult as not all types of employers were impacted the same during the pandemic.

Improper Payments

We obtained detail of overpayments by claimant from KDOL. We have summarized this detail in Figure 8 below, by category of overpayment. The totals below were labeled as “Total Due” in the spreadsheet provided to us. The left column provides totals which include claimants which we have identified in this report as potentially fraudulent. The right column provides totals which exclude those claimants.

Figure 8

OVERPAYMENT REASON	Total Including Flagged Claimants	Total Excluding Flagged Claimants
Attributing earnings to wrong week	\$ 6,966.64	\$ 5,828.00
Bank pay award	\$ 87,344.84	\$ 87,344.84
Clerical or CSR/Adjudicator error	\$ 1,023,133.64	\$ 934,724.14
Concurrent filing against two states	\$ 296,901.47	\$ 287,805.46
EDP program error	\$ 947.20	\$ 947.20
Error in computing weekly or maximum amount	\$ 375.00	\$ 375.00
Failure to act on disqualifying information	\$ 224,689.52	\$ 202,051.52
Illegal alien	\$ 910,134.79	\$ 797,837.07
Inadequate search for work	\$ 555,855.29	\$ 539,987.29
Incorrect reason for separation	\$ 23,355,720.03	\$ 19,200,337.31
Incorrect reporting of base period wages	\$ 1,150,196.74	\$ 963,642.12
Incorrect reporting of weeks of work	\$ 8,934.68	\$ 7,630.68
Keypunch error	\$ 60,887.00	\$ 60,821.00
Not elsewhere classified-attributable to agency	\$ 5,186,734.12	\$ 4,654,946.00
Not elsewhere classified-attributable to the claim	\$ 5,457,605.71	\$ 3,639,391.18
Not elsewhere classified-attributable to the emplo	\$ 75,872.12	\$ 74,122.12
Payment after failure to report	\$ 8,258,258.38	\$ 6,911,550.66
Reasonable assurance	\$ 305,514.64	\$ 254,826.64
Refused to accept suitable work	\$ 1,340,886.91	\$ 1,246,157.40
Reporting of business owner wages	\$ 1,440.00	\$ 1,440.00
Reversal (JAVA)	\$ 2,049,892.86	\$ 1,943,105.86
Reversal (other than JAVA)	\$ 9,797,735.94	\$ 9,038,723.84
Unable or unavailable for work	\$ 7,166,966.64	\$ 5,943,150.75
Underreporting of wages	\$ 318,837.56	\$ 304,976.39
Unreported Worker's Compensation	\$ 101,329.30	\$ 100,353.30
Unreported irregular separation	\$ 2,413,010.42	\$ 2,005,585.58
Unreported pension	\$ 462,936.52	\$ 412,129.84
Unreported vacation/holiday pay/severance	\$ 2,837,994.54	\$ 2,437,573.72
Unreported wages	\$ 3,630,478.66	\$ 3,216,741.96
Multiple Reasons	\$ 638,804.38	\$ 618,059.14
	\$ 77,726,385.54	\$ 65,892,166.01

Passwords and Security Phrases

We asked for passwords and security phrases associated with claimants to use in our analysis but were told by KDOL that they are no longer retained by KDOL at the advice of a security audit they had undergone.

Comparison between 2020 and 2021

Total payments in 2020 and 2021 were \$2,507,087,871 and \$839,771,851, respectively. These totals are broken down by program in Figure 9 below.

Figure 9

Program	2020	2021
UI REGULAR	\$ 979,770,296	\$ 319,533,891
EB	\$ 11,898,953	\$ 1,658,337
MEUC	\$ -	\$ 85,380
PUA	\$ 177,615,809	\$ 36,730,814
FPUC	\$ 1,226,085,098	\$ 318,339,932
PEUC	\$ 110,859,636	\$ 161,838,230
TRA	\$ 858,079	\$ 1,585,267
	\$ 2,507,087,871	\$ 839,771,851

The number of claims in 2020 and 2021 were 1,030,801 and 472,442 respectively. There were 669,759 claimants with one or more claims in 2020 but none in 2021. There were 335,976 claimants with one or more claims in 2021 but none in 2020. There were 65,738 claimants with claims in both 2020 and 2021.

There were 222,375 claimants who received at least one payment in 2020 but none in 2021. There were 120,754 claimants who received at least one payment in both 2020 and 2021. There were 70,514 claimants who received at least one payment in 2021 but none in 2020.

KDOL Progress on implementation of program integrity elements

FORVIS was asked to assess KDOL's progress on implementing the program integrity elements and guidance issued by the United States Department of Labor and the National Association of State Workforce Agencies. The following integrity elements and guidance are included along with a brief assessment of KDOL's progress in these areas. Our assessment of these areas is based on discussions with KDOL personnel.

A. *Social security administration cross-matching for the purpose of validating social security numbers supplied by a claimant.*

KDOL performed procedures related to validating social security numbers (SSN) both prior to and during the pandemic. During the height of the pandemic, KDOL staff continued to perform procedures around SSN verification, testing that ordinarily would have been done during the one-week waiting period. We understand from our discussions with KDOL, that the ability to keep up with all fraud testing elements was challenging due to the unprecedented volume of claim filings.

KDOL is currently in the process of implementing Pondera Solutions (Pondera), a fraud detection software that utilizes advanced data analytics to identify potential fraud. Pondera will utilize data, including SSN data to better automate the Department's fraud detection capabilities going forward.

B. *Checking of new hire records against the national directorate of new hires to verify eligibility.*

We understand from our discussions with KDOL that this procedure has been in place throughout the pandemic. Similar to SSN cross-matching procedures, KDOL's ability to sustain its fraud detection capabilities during the height of the pandemic was impacted by the significant growth in claim filings.

C. *Verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program.*

We understand from our discussions with KDOL, claimants are required to acknowledge their immigration status on their unemployment insurance claim application. Depending on the claimants' responses in their application KDOL follows up. KDOL also relies on the fact that employers are required to check immigration status. KDOL does not currently utilize any external data to verify immigration status.

D. *Comparison of applicant information to local, state, and federal prison databases through incarceration cross-matches.*

Prior to and since the beginning of the pandemic, KDOL has been utilizing data from the Kansas Department of Corrections to identify potentially fraudulent claims. One limitation on the data was that KDOL had been provided with prison release information but had not been incorporating that information into its process or saving that data beyond a three-week retention period. This could have led to falsely flagging an individual if they had been released from prison and became eligible for unemployment insurance. We made KDOL aware of this limitation, and we have been told they have begun retaining prison release information on a go forward basis. KDOL has not had access to federal prison records, but we understand that with the implementation of Pondera, KDOL will now have access to federal prison databases to supplement its searches within the state of Kansas.

E. *Detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas.*

- We understand from our discussions with KDOL that currently and historically, KDOL has not been able to develop an automated process for identifying possible claimants filing inappropriately in multiple states. KDOL utilizes ICON and Integrity Data Hub (IDH) to search for possible problematic claims. ICON utilizes data from the State Wage Record

Exchange System to identify claimants with wages paid in other states. When a claimant files on-line there is no automated check against filings in other states. This is a system limitation KDOL will rectify during modernization. The claimant application does require claimants to note if they have filed in other states. A yes response to that question results in additional research; however, the approach to flagging claimants that have filed in multiple states is manual.

F. Identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States.

KDOL has not fully developed its approach to incorporating IP address testing into its fraud analytics program. KDOL currently has procedures to block payment on claims with foreign IP addresses.

G. Use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems and other assets provided by the unemployment insurance integrity center.

As discussed above, KDOL is in the process of implementing Pondera which will allow KDOL to improve its ability to perform proactive data mining and data analytics to assist with detecting and preventing the payment of fraudulent claims. Pondera will streamline KDOL's process to monitor claims and utilize third party data sources to enhance its ability to identify fraudulent claims.

Assessment of the KDOL Phone System

We obtained policies and procedures for phone contacts, read the Legislative Post Audit reports, and inquired of management on processes in place during the Period. There were significant delays in phone response times due to the substantial volumes of calls placed to KDOL because of the new legislation and benefits. KDOL onboarded personnel from other departments and agencies to assist with responding to the significant increase in the volume of calls during the early days of the pandemic. According to our inquiry, the hold times could be well over an hour during the peak call periods. Due to the wait times experienced to contact a customer service person, it is highly unlikely that fraudulent callers would wait on-hold and answer the CSR questions and successfully file a fraudulent claim. We ascertained that KDOL made enhancements subsequently to increase the number of verification questions to increase the reliability of a valid claim. Our data analysis above indicates that, although there were a significant number of claims initiated by phone, the potentially fraudulent claims were more likely to have been filed online. As noted above, 98.5% of the potentially fraudulent claims identified were filed via the internet, and approximately 1.5% were filed by phone.

Leadership and Personnel Changes at KDOL

KDOL has experienced significant leadership changes throughout the Period. KDOL provided the following timeline with respect to the leadership positions at the Department.

Secretary of Labor

- Secretary of Labor Delia Garcia's last official day in office was Friday, June 19, 2020.
- Ryan Wright, Deputy Chief of Staff, Governor's Office was interim Secretary of Labor from June 22, 2020, through December 21, 2020.
- Brett Flaschbarth, then Deputy Secretary of KDOL, was named Interim Secretary of Labor from December 22, 2020 through January 27, 2021. Mr. Flaschbarth resigned his position as Deputy Secretary effective June 19, 2021.
- Amber K. Shultz was appointed Secretary of Labor beginning January 27, 2021 and remains Secretary to the present day.

Deputy Secretary of Labor

- Peter Brady was Deputy Secretary of Labor from August 2, 2020 through August 12, 2022. Prior to his role as Deputy Secretary, Peter was Director of Industrial Safety and Health.
- Keith M. Tatum was hired as Deputy Secretary of Labor beginning May 2, 2022 and remains in that role.

Chief of Staff

- Sandy Johnson was hired as Chief of Staff beginning April 18, 2021.

Chief Information Officer

- John Cahill, Chief Information Officer departed KDOL May 3, 2020.
- Bill Periman, Chief Information Officer was in this role from July 1, 2020 to November 13, 2020.
- Kelly Johnson was Interim Chief Information Officer from December 31, 2020 through February 20, 2021, and Chief Information Officer from February 21, 2021 through June 25, 2022.
- Doug Eamigh has been interim Chief Information Office from June 26, 2022 to the present.

Recommendations

Automated Potential Fraud Flagging Process

KDOL utilized a mixture of automated and manual procedures to identify potentially fraudulent claims during the scope period. We recommend KDOL implement automated processes to identify potentially fraudulent claims. We understand that KDOL is currently in the process of implementing Pondera, a fraud detection software that utilizes advanced data analytics to identify potential fraud.

Track Specific Reasons for Potential Fraud Flag

KDOL used a generic flag for claims suspected to be potentially fraudulent during the scope period. This limited our ability to analyze the effectiveness of their potential fraud flagging process and did not allow us to analyze the specific types of fraud flags that could have been used. We recommend identifying the specific reasons why claims were flagged as potentially fraudulent. This will allow KDOL to assess the effectiveness of individual potential fraud flag and identify patterns and possible trends, including potential emerging fraud schemes.

Analyze Effectiveness of Specific Potential Fraud Flags

In addition to tracking the specific reasons for potential fraud, we recommend KDOL periodically analyze these specific potential fraud flags to assess their effectiveness, at some meaningful interval, but not less frequently than annually. This assessment should consider the predictive capability of the specific potential fraud flags relative to claims determined to be fraudulent. KDOL should also develop new fraud flags periodically to address emerging fraud schemes.

Continue Use of Kansas Unemployment Insurance Fraud Reporting Tool

We recommend continuing the use of the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/>. Even the best analytics cannot identify all potentially fraudulent claims and augmenting those procedures with the ability to self-report fraud is helpful to not only identify potential fraudulent claims, but also have data which can be used to evaluate the effectiveness of existing analytical procedures and identify potential new analytical procedures.

Create a Process to Identify New Analytical Procedures

In an ever-changing world where fraudsters are constantly inventing new ways to circumvent controls, being vigilant and identifying new analytical procedures to identify new schemes is advised. We recommend studying the self-reported fraud claims and other claims which were not flagged by analytics to gain an understanding of the nature of the claim to determine whether a new analytic should be developed to catch similar potentially fraudulent claims. In addition, we recommend holding recurring meetings with other state unemployment agencies to share fraud prevention techniques.

Retain and Utilize Kansas Department of Corrections Prison Release Date

KDOL did not retain the prison release date for state incarceration records during the scope period to determine whether a claimant had simply been incarcerated at some point prior to the claim filed date, or whether the claimant was incarcerated as of the date of the claim filed date. We recommended, and have been told, that KDOL has since began retaining the prison release date.

Documentation of Procedures

Once new procedures have been implemented, we recommend these procedures be documented which will help to keep KDOL team members synchronized, improve consistency during periods of turnover, enhance training and allow third parties, such as auditors, to have greater clarity and understanding of the procedures KDOL has implemented. This documentation should be updated periodically, and information about which procedures were implemented on which dates, modified on which dates, and discontinued on which dates should be retained.

Training

Leveraging the documented procedures described above, training of new employees should be conducted to ensure consistency of application of procedures. Training should be periodic and should incorporate lessons learned from the pandemic and updated to incorporate emerging fraud schemes.

Attachment A – Scope of Work From the Request for Proposals

Scope of Work – Base Bid

FORVIS shall understand the effects on the Kansas Department of Labor and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020 through March 31, 2022, and the response by the Kansas Department of Labor to such fraudulent claims and improper payments during that period.

The scope of services shall include:

- 1) An assessment of systems with access to the payment and processing of claims, forensic endpoint images related to the claims and the external perimeter housing the claims systems, as well as an assessment of the Kansas Department of Labor's response to claims. (Due May 1, 2022)
- 2) The amounts and nature of improper payments and fraudulent claims, fraud processes and methods and the possibility of recovery of any improper payments. The term "improper payment" means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements and includes any payment to an ineligible recipient. Distinguish improper payment from fraudulent claims. Compile, assess and evaluate a statistically significant, projectable, and time-line controlled sample of State Unemployment Insurance Trust Fund funded programs of fraudulent claims and improper payments. Statistically significant and projectable sampling shall be made for each quarter of calendar years 2020 and 2021, and the first quarter of calendar year 2022. (Due September 1, 2022)
 - a. Address whether such improper payments were made pursuant to pandemic-related federal unemployment compensation programs or the state's traditional unemployment compensation program.
 - b. Address whether such claims were made prior to or after the implementation of multi-factor authentication methods by the Kansas Department of Labor.
 - c. Assessment of the frequency of claimant profile password changes, PIN resets and whether common PINs are allowed (1111, 1234, etc.).
 - d. Assessment of the claimant payment method used for such claims and payments.
 - e. Assessment of the amount of such payments that may have been avoided if the unemployment waiting week had not been waived as of March 31, 2020.
 - f. Assessment of the factors used by the Kansas Department of Labor to flag a claim for fraud and the effectiveness and accuracy of each such factor.
- 3) An assessment that provides likelihood of a data breach within the Kansas Department of Labor, being a contributing factor to any fraudulent payments, improper network architecture allowing a potential breach to have occurred and a timeline of relevant events. Examine additional possible avenues for which fraudulent activities could have occurred within the Unemployment Insurance Program to include, but not limited to, the human factor related to fraud and data breaches. This assessment should include a review of whether the Kansas Department of Labor had controls to ensure staff were properly background checked and trained in IT security to ensure the security of sensitive unemployment insurance information and whether those controls followed during the COVID-19 pandemic. (Due September 1, 2022)
- 4) Information on the progress regarding the secretary's implementation of all program integrity elements and guidance issued by the United States Department of Labor and the National Association of State Workforce Agencies (due September 1, 2022). Those elements include:
 - a. Social security administration cross-matching for the purpose of validating social security numbers supplied by a claimant.

- b. Checking of new hire records against the national directorate of new hires to verify eligibility.
- c. Verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program.
- d. Comparison of applicant information to local, state, and federal prison databases through incarceration cross-matches.
- e. Detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas.
- f. Identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States.
- g. Use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems, and other assets provided by the unemployment insurance integrity center.

Scope of Work – Additional Items

- 1) Assessment of the phone system used by the Kansas Department of Labor to respond to claimant and assist claimants in filing claims.
- 2) Assessment of the number of unique individual claimants receiving benefits by unemployment compensation program in 2020 and 2021 and the total number of claims, and amount of benefits, paid to each individual.
- 3) Assessment of the employer claim counts and charges for the five years preceding 2020 and claims in 2020 and 2021, with an examination of employers showing large increases in 2020 and 2021 to determine how many fraudulent claims were not flagged for fraud. Assess fictitious employer scheme fraud claims for the five years preceding 2020 and including 2020 and 2021. Fictitious employer schemes may include, but not limited to, creation of fictitious companies, use of post office box addresses, no actual employees, business operations or normal business expenses.
- 4) Make recommendations for future Unemployment Insurance Systems and Practices.
- 5) Assess and note timeframes of leadership and personnel changes at the Kansas Department of Labor. Assess administration changes, and whether policies, security, protocols, and guidelines changed. Assess crucial milestones and the impact they had on fraudulent and improper payment claims. Assessment and notation of timeframes and crucial milestones shall be for the period between March 15, 2020, and March 31, 2022.

FORVIS

130 E. Randolph Street, Suite 1900 / Chicago, IL 60601

P 312.288.4653 / F 312.288.4672

forvis.com

Sean Tarwater, Chairperson
Unemployment Compensation Modernization and Improvement Council
300 S.W. 10th Ave., Ste. 551
Topeka, KS 66612

Dear Mr. Tarwater:

Thank you for the opportunity to provide investigation services for the Unemployment Modernization and Improvement Council (the Council) in connection with the effects on the Kansas Department of Labor (KDOL) and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020 through March 31, 2022. For our analysis, we relied upon information provided to us in the form of electronic unemployment insurance claims files, documents, as well as conversations and interviews with relevant parties. This first supplement to our report, which was dated September 1, 2022, is based on work completed to date. We anticipate issuing another supplement to our report in early 2023 which will contemplate claims from April 1, 2022 through December 31, 2022.

Our services were provided in accordance with the Statement on Standards for Forensics Services promulgated by the American Institute of Certified Public Accountants and, accordingly, do not constitute a rendering by **FORVIS, LLP** (FORVIS) or its partners or staff of any legal advice, nor do they include the compilation, review, or audit of financial statements. Because our services were limited in nature and scope, they cannot be relied upon to discover all documents and other information or provide all analyses that may be of importance in this matter. We were asked to analyze certain designated files, data, and information and, based on the scope of work, we identified matters discussed in this report, including an estimate of potential fraudulent payments based on data analytics procedures. This is a factual report of our findings, and we do not make a determination on if specific claims are fraudulent or comment on legal culpability.

This first supplement to our report, which was dated September 1, 2022, is the property of FORVIS and has been prepared solely for use by the Council and should not be used by any other party or for any other purpose, without our written permission in each specific instance.

The validity of this report is predicated on the extent to which full, honest, and complete disclosure was made by all parties. We reserve the right to supplement this report if additional information becomes available.

FORVIS, LLP

FORVIS, LLP



Robert R. Sprague, CPA

First Supplement to Fraud Investigation Services Report for Unemployment Compensation Modernization
and Improvement Council on Behalf of the Kansas Legislature ("Council")

September 1, 2022

Calculation of Total Net Estimate of Potentially Fraudulent Claims Including LWAP, plus Improper Payments and
Clarification of Total Payments Amount

	Low		High
Initial Estimate of Potentially Fraudulent Claimants (Excludes LWAP)	\$ 486,000,000	\$	511,000,000
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$	(45,000,000)
Net Estimate of Potentially Fraudulent Claims	\$ 441,000,000	\$	466,000,000
PLUS: Estimate of Potentially Fraudulent LWAP Claims	\$ 10,000,000	\$	11,000,000
PLUS: Improper Payments	\$ 66,000,000	\$	66,000,000
LESS: Estimate of Potentially Fraudulent Claims before March 15, 2020	\$ (2,000,000)	\$	(2,000,000)
Total Net Estimate of Potentially Fraudulent Claims Including LWAP, plus Improper Payments	\$ 515,000,000	\$	541,000,000

Total Payments per the Report	\$ 3,554,882,327
Less: LWAP Payments	\$ (130,565,088)
Total Payments Net of LWAP Payments	\$ 3,424,317,239
Less: Payments on or after 1/1/2020 pertaining to Claims Filed before 1/1/2020	\$ (22,099,743)
Total Payments pertaining to Claims Filed on or after 1/1/2020 (Excluding LWAP Payments)	\$ 3,402,217,496

First Supplement to Fraud Investigation Services Report for Unemployment Compensation Modernization
and Improvement Council on Behalf of the Kansas Legislature ("Council")

September 1, 2022

Breakdown of Federal vs State Programs and Before or After MultiFactor Authentication

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate of Potentially Fraudulent Claimants	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -
Net Estimate of Potentially Fraudulent Claims	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

Federal vs State Programs

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate				
Federal Programs	\$ 180,000,000	\$ 201,000,000	\$ 10,000,000	\$ 11,000,000
State Programs	\$ 306,000,000	\$ 310,000,000	\$ -	\$ -
Initial Estimate	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000

Reduction for Legitimate Claims Following Potentially Fraudulent Claims

NOTE: Low and High are the same because these are all based on self-reported fraud (this analysis required a self-reported fraud date) which is included in both low and high

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Federal Programs	\$ (27,000,000)	\$ (27,000,000)	\$ -	\$ -
State Programs	\$ (18,000,000)	\$ (18,000,000)	\$ -	\$ -
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -

Net Estimate

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Federal Programs	\$ 153,000,000	\$ 174,000,000	\$ 10,000,000	\$ 11,000,000
State Programs	\$ 288,000,000	\$ 292,000,000	\$ -	\$ -
Net Estimate	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

Before or After MultiFactor Authentication

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate				
Before MFA	\$ 412,000,000	\$ 436,000,000	\$ 9,000,000	\$ 10,000,000
After MFA	\$ 74,000,000	\$ 75,000,000	\$ 1,000,000	\$ 1,000,000
Initial Estimate	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000

Reduction for Legitimate Claims Following Potentially Fraudulent Claims

NOTE: Low and High are the same because these are all based on self-reported fraud (this analysis required a self-reported fraud date) which is included in both low and high

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Before MFA	\$ (3,000,000)	\$ (3,000,000)	\$ -	\$ -
After MFA	\$ (42,000,000)	\$ (42,000,000)	\$ -	\$ -
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -

Net Estimate

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Before MFA	\$ 409,000,000	\$ 433,000,000	\$ 10,000,000	\$ 11,000,000
After MFA	\$ 32,000,000	\$ 33,000,000	\$ -	\$ -
Net Estimate	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

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November 28, 2022

Legislative Coordinating Council
Kansas State Capitol
300 W 10th Ave.
Topeka, KS 66612

Dear Members of the LCC:

Pursuant to New Section 6(d) of chapter 92 of the 2021 Session Laws of Kansas, I am writing to certify the dollar amount of improper payments estimated by the audit performed on the Department of Labor, as required by New Section 1(g)(1) of Chapter 92 of the 2021 Session Laws of Kansas.

After reviewing the audit provided to me by the Unemployment Compensation Modernization and Improvement Council (UCMIC), as well as the first supplement to the audit also provided to me by the UCMIC, I hereby certify a total amount of \$357.9 million identified as improper payments. This total amount is a combination of the \$292.0 million in net fraud estimates as identified in the first supplement to the audit, as well as \$65.9 million in non-fraud overpayments contained in the original audit dated 09/01/2022. It is important to note that the \$65.9 million in non-fraud overpayments were not all paid from the state's unemployment trust fund, so the impact to the state's trust fund would likely be below \$65.9 million.

Attached to this certification you will find a copy of the audit that was provided to me by the UCMIC, the first supplement to the audit, and the report from the UCMIC addressed to the Division of the Budget. Please feel free to contact me should you have any questions or require further information.

Sincerely,



Adam Proffitt
Director of the Budget

cc: J.G. Scott, Director of the Kansas Legislative Research Department

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Report of the Legislative Budget Committee to the Legislative Coordinating Council

CHAIRPERSON: Senator Rick Billinger

VICE-CHAIRPERSON: Representative Troy Waymaster

OTHER MEMBERS: Senators J.R. Claeys and Tom Hawk; Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe-Moore

CHARGE

The Committee is charged with reviewing reports and certifications of the dollar amount of improper payments from the unemployment insurance system and recommending to the Legislative Coordinating Council an amount to transfer from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.

December 2022

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Report to the Legislative Coordinating Council

Recommendations:

While the Committee has received the audit on improper payments that have occurred with the Unemployment Trust Fund, it is the determination of the Committee that of the second tranche of \$250.0 million allocated through 2021 Senate Sub. for Sub. for HB 2196, a transfer of \$107.9 million is necessary to further replenish unemployment insurance funds impacted by the public health emergency and to meet the intended purposes of the American Rescue Plan Act (ARPA) – Coronavirus State and Local Fiscal Recovery Fund (SLFRF) as established in the U.S. Treasury. As stated in U.S. Department of the Treasury’s Final Rule dated January 27, 2022:

In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

This funding is critical for the ongoing recovery from the public health pandemic, support of those who are or will become unemployed, and mitigating any additional tax burdens on Kansas employers as they recover from the economic downturn associated with the COVID-19 pandemic.

Proposed Legislation: None.

BACKGROUND

Section 1 of 2021 Senate Sub. for Sub. for HB 2196 (HB 2196) requires the Unemployment Compensation Modernization and Improvement Council (Council) to select an independent firm to conduct an audit examining the effects on the Department of Labor and the unemployment insurance system of fraudulent claims and improper payments from March 15, 2020, to March 31, 2022. (KSA 2022 Supp. 44-771)

Section 6 of HB 2196 (KSA 2022 Supp. 75-5745) requires the Council to report the dollar amount of improper payments determined by the audit provided for in Section 1 to the Division of the Budget. The statute also authorizes the Legislative Coordinating Council to authorize transfer of funds from the Legislature Employment

Security Fund to the Employment Security Fund of the Department of Labor, upon recommendation from the Legislative Budget Committee (Committee). The amount transferred may not exceed the certified improper payment amount.

HB 2196 Section 6 further provides for a transfer of funds from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor on the basis of the amount of improper payments made from April 1, 2022, through December 31, 2022, as determined by the Secretary of Labor.

Unemployment Compensation Modernization and Improvement Council

The Council selected FORVIS to conduct the audit and received a report from FORVIS at a meeting held on September 7, 2022 (Attachment A). The Council requested certain additional information from FORVIS necessary to determine the dollar amount of improper payments and received this information at a meeting held on September 19, 2022 (Attachment B).

The Council concluded the audit of the Department of Labor had determined the amount of improper payments from the Employment Security Fund from March 15, 2020, to March 31, 2022, to be \$358.0 million.

The Council also noted \$250.0 million of federal coronavirus relief aid had been transferred to the Employment Security Fund and recommended an additional \$108.0 million of federal coronavirus relief aid be transferred to the fund.

The Council further recommended an additional \$20.0 million of federal coronavirus relief aid be retained for a future transfer to the Employment Security Fund to account for improper payments occurring from April 1, 2022, to December 31, 2022. The exact amount of this transfer would be certified by the Secretary of Labor at a later date.

The Council reported its conclusions to the Division of the Budget on September 19, 2022.

Division of the Budget

The Director of the Budget certified \$357.9 million identified as improper payments by the audit and reported that amount to the Legislative

Coordinating Council on November 28, 2022 (Attachment C).

That amount includes \$292.0 million in net improper payment estimates (Attachment B) and \$65.9 million in non-fraud overpayments (Attachment A). The Director of the Budget noted the \$65.9 million in non-fraud overpayments were not all paid from the Employee Security Fund and that the impact on the State's trust fund would likely be less than that amount.

COMMITTEE ACTIVITIES

As part of its meeting on December 19, 2022, the Committee received an update on the certified improper payment amount from the Director of Legislative Research (Director). The Director provided an overview of HB 2196 and the amount certified by the Director of the Budget. The Director noted that, of the \$357.9 million total, \$250.0 million of federal coronavirus relief aid had already been transferred to the Department of Labor Employment Security Fund, leaving an amount up to \$107.9 million for the Committee to take action on.

Responding to questions from the Committee, the Director indicated the Department of Labor Employment Security Fund had a balance between \$1.0 billion and \$1.1 billion as of the date of that meeting.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended the transfer of \$107.9 million from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.