

MINUTES

UNEMPLOYMENT COMPENSATION MODERNIZATION AND IMPROVEMENT COUNCIL

June 24-25, 2021
Room 112-N—Statehouse

Members Present

Representative Sean Tarwater, Chairperson
Senator Robert Olson
Senator Jeff Pittman
Senator Caryn Tyson
Representative Stephanie Clayton
Representative Susan Estes
Katie Givens (June 25)
Phil Hayes
Jake Miller
Jeff Oswald (June 24)
Amber Shultz
Shelbye Smith
Shawana Woods

Members Absent

Katie Givens (June 24)
Jeff Oswald (June 25)

Staff Present

Edward Penner, Kansas Legislative Research Department (KLRD)
Dylan Dear, KLRD
Elaina Rudder, KLRD
Matthew Willis, KLRD
Kyle Hamilton, Office of Revisor of Statutes
Charles Reimer, Office of Revisor of Statutes
Sky Westerlund, Committee Assistant

Conferees – June 24

Justin Stowe, Legislative Post Auditor
Amber Shultz, Secretary of Labor

Conferees – June 25

Mike Beene, Director of Workforce Development, Department of Commerce
Representative Kyle Hoffman, Chairperson, Joint Committee on Information Technology

John Yeary, Chief Counsel, Department of Administration

Others Attending

See attached lists for [June 24](#) and [June 25](#).

THURSDAY, JUNE 24 ALL DAY SESSION

Call to Order and Welcome

The Chairperson opened the Council meeting at 9:12 a.m.

Charles Reimer, Office of Revisor of Statutes, briefed the Council on its responsibilities under the provisions of the Kansas Open Meetings Act (KOMA). Council business takes place in a public meeting with notice given. The Council was cautioned not to discuss Council business in a group that could constitute a quorum and to be aware of conversations between meetings. Other provisions of KOMA were explained ([Attachment 1](#)).

Review of 2021 Senate Sub. for Sub. for HB 2196

Council member Phil Hayes used a PowerPoint presentation to explain the provisions of 2021 Senate Sub. for Sub. for HB 2196 ([Attachment 2](#)).

He explained Kansas' experience with fraudulent unemployment claims was no different than that of other states. He stated Kansas represented 9.5 percent of the claims in the United States, and an average of \$38.2 million was paid out each week. He stated suspicious claims were noted early on and spikes of identity theft and fraudulent attempts to gain unemployment compensation were identified as early as August 2020.

He said after multifactor authentication was implemented in January 2021, the unemployment payout each week decreased to an average of \$6.5 million. Part of the goal for the audit is to identify the true amount of fraud. Since January 30, 2021, the Department of Labor identified nearly 8.0 million fraud attempts.

Mr. Hayes stated the modernization of the Kansas unemployment insurance (UI) information technology system needs to ensure the system is modern, reliable, responsive, and modifiable. The implementation deadline is December 21, 2022. He discussed the system components, features and benefits considerations, and program integrity elements. He discussed the following items in detail:

- Temporary expansion of the Employment Security Review Board to handle anticipated appeals;
- Employment security rate table changes;
- Notification to recipients of unemployment benefits of their tax liability;

- Trust fund data reporting;
- The My ReEmployment Plan and work skills training;
- Work refusal provisions;
- Reporting job refusals;
- Unemployment rate thresholds for maximum benefits;
- Benefits Disqualification;
- Employer account protections;
- Federal relief aid transfers;
- Unemployment Insurance Trust Fund projections;
- Federal UI restrictions;
- The Shared Work Program; and
- Identification verification and partnership with law enforcement.

Members of the Council asked questions and Mr. Hayes responded.

The Chairperson thanked Mr. Hayes for the presentation.

Review of COVID-19 Unemployment Claims Audits

Justin Stowe, Legislative Post Auditor, addressed the Council ([Attachment 3](#)). Mr. Stowe stated his testimony would include a presentation on the February 2021 audit, an update on the audit to be released in August 2021, and request for proposal (RFP) recommendations.

Mr. Stowe said the February 2021 audit reviewed the response to fraud as a result of the COVID-19 pandemic. The audit priority was fraud occurring in the regular UI program. The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funded other programs to help people affected by the COVID-19 pandemic. The temporary programs included Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC). Funding for the temporary programs came from the federal government, and the eligibility conditions were different than those for the regular state UI program ([Attachment 4](#)).

Mr. Stowe stated most of the fraud occurred in the federal PUA program due to how the program was structured, as it required less documentation from applicants. He noted those who steal identities from large data breaches, such as the 2014 eBay breach, likely figured out how to use stolen identities to file fraudulent claims. Mr. Stowe said the claims were paid out in debit

cards or *via* direct deposit, which are very liquid forms of payment, and this creates difficulty in catching those filing fraudulent claims. He said the Federal Bureau of Investigation is involved, but there may not be much chance to recover funds.

Mr. Stowe indicated the Kansas Department of Labor (KDOL) was not prepared to identify the fraud, because the fraud detection in place was outdated and the system became overwhelmed. In response, KDOL set up two fraud detection programs, including a 72-hour hold on issuing benefits and a public campaign to identify fraud. By December 2020, about 157,000 out of 650,000 claims filed were identified or reported as fraudulent. He said by January 2021, the agency had set up an identity verification system that could combat the fraud. Claimants were sent to a third-party website and asked questions based on their credit history that only they should have been able to answer. Mr. Stowe went on to describe possible ways those committing fraud were overloading the State's regular UI program and making it more difficult for employers to contest possible fraudulent claims.

Mr. Stowe discussed the State's unemployment trust fund, which was used to pay for the regular state UI program. The trust fund balance dropped from about \$1.0 billion in January 2020 to about \$247 million as of the end of January 2021. He went on to state of the roughly \$2.6 billion paid out from both state and federal unemployment benefits, the audit identified a preliminary estimate of up to \$600 million (24 percent) that may have been fraudulent. KDOL preliminary estimates were closer to about \$300 million in potential fraud. Mr. Stowe stated KDOL provided a response to the audit, and the response was included in the audit report.

The conferee responded to questions from Council members.

Mr. Stowe concluded this part of his presentation, stating the August 2021 audit will use more traditional methods of audit procedures, including using automation to search for patterns of suspicious activity in claims. He stated the audit should yield better estimates and more sophisticated results. This audit is confidential until presented to the Legislative Post Audit Committee.

Break

The Chairperson recessed the Council for a short break and to pick up the box lunches. The Council was reconvened at 11:45 a.m.

Recommendations Regarding RFPs for an Independent Audit

Mr. Stowe returned to address the Council. His recommendations would regard auditing mechanisms and administrative issues and would not be about the scope of the independent audit.

The recommendations included:

- Staying within the State's procedures for issuing RFPs, noting since the independent audit will be paid through KDOL that there may be specific Executive Branch procedures to follow;

- Determining if a pre-bid conference will be held;
- Determining how bids will be evaluated and by whom;
- Giving attention to the qualifications of auditors and potential conflicts of interest;
- Considering the auditing firm's security protocols;
- Considering the possible need for background checks;
- Determining any required data-sharing agreements that may be needed;
- Referring to 2021 Senate Sub. for Sub. for HB 2196 for the scope of audit; and
- Considering audit standards the Council wants.

Mr. Stowe noted there would be some overlap of the independent audit and the audit to be released in August by the Legislative Division of Post Audit.

Mr. Stowe responded to questions from the Council members.

Discussion ensued.

The KDOL budget includes \$250,000 for the Council's independent audit.

Department of Labor Status Updates

Amber Shultz, Secretary of Labor, gave a presentation to the Council ([Attachment 5](#)).

She provided updates, as requested by the Council, regarding:

- The system upgrade, which is in active procurement process, and bids are being evaluated;
- The backlog of claims, defined as claims more than three weeks old based on the date the claim is received to adjudication; in August 2020, the backlog was about 25,000 cases. She said at this point, there is no backlog in the regular program, and the PUA program has several hundred in backlog. The fraud backlog cases are far more complicated, and law enforcement is involved;
- The My ReEmployment Plan, which was launched, on time, on June 23 in collaboration with the Department of Commerce; and
- The process for job refusal, which was in place prior to the pandemic. She said more information would be presented on the next day of the meeting.

The Secretary responded to questions from members of the Council.

Peter Brady, Deputy Secretary, KDOL, also responded to questions about long-term unemployed persons. Mr. Brady said the agency defines a long-term unemployed person as someone who has been disengaged from the workforce for 26 weeks, which is the maximum number of weeks to receive regular unemployment benefits. He said about 40 percent of claimants are long-term unemployed, and they currently receive only federal benefits.

A request was made for information about the process and standards used to adjudicate job refusals.

Secretary Shultz continued her presentation. Since March 15, 2020, her agency has paid out over 4.6 million weekly claims totaling over \$3.0 billion between the regular state program and the federal pandemic assistance programs.

She said KDOL administers two unemployment programs: the Regular Unemployment Benefits and the Extended Benefits Program, for which the U.S. Department of Labor (USDOL) determines availability based upon unemployment rates.

The federal government created five temporary unemployment programs in response to COVID-19: PUA, FPUC, Pandemic Emergency Unemployment Compensation, Mixed Earner Unemployment Compensation, and Lost Wages Assistance, which was administered through the Federal Emergency Management Agency (FEMA).

Secretary Shultz noted some of these programs have expired, and others will expire in September 2021. She discussed the basic process to make a claim, as well as eligibility and benefits. Claimants must be available and able to work. Benefits are calculated based on employment history of four of the last five calendar quarters. Mr. Brady added details on requirements of eligibility for regular unemployment.

Secretary Shultz gave an overview of the fraud and stated KDOL systems had not been breached. She said the agency is bound by federal requirements for security and requirements of the State's Office of Information Technology Services. The Secretary responded to questions and said the agency has witnessed identity theft and other high-level schemes to obtain fraudulent benefits.

She said KDOL has taken steps to combat fraud, including:

- Coordinating information technology resources to improve overall security;
- Using identification verification through credit reporting;
- Using a fraud detection application;
- Tripling the size of KDOL's Fraud and Investigation Unit;
- Establishing a 72-hour hold for PUA;
- Using specialized technology to block abusive internet activity;
- Working with federal and state law enforcement to prosecute fraud;
- Launching a website to report fraud; and
- Using USDOL recommendations for identity verification.

The Secretary spoke about the employer support program and three programs to help people reenter the workforce. She discussed the timeline of the agency's modernization efforts

that began in 2002, but action was not taken until significantly later. She provided information on the current modernization plan, which was created in 2019. She the agency is currently evaluating the bids for the project.

Discussion continued and the Secretary and Deputy Secretary responded to questions.

Break

The Council was recessed for a short break and was reconvened at 3:13 p.m.

Council Discussion

The Chairperson opened a discussion about compensation for the members of the Council.

Senator Olson moved, and Senator Tyson seconded, to the extent that non-legislators are eligible and permitted by statute, that Council members will be paid as equivalent to what legislators are paid for usual interim participation. The motion carried.

The Chairperson opened discussion on the ongoing reports issued by KDOL. The reports are due to the Council by the 15th and 30th of each month. Council members discussed the items they would like to see in the reports. Suggestions included:

- Call center metrics on an ongoing basis;
- Dates of the oldest flagged claimants;
- The number of persons who are qualified for unemployment benefits and how many are owed money;
- The number of active cases that are being investigated for fraud and other details (e.g., whether identity theft is involved, perpetrator location).
- Adherence to the statutorily defined timelines;
- What is needed for the personnel side of the modernization effort, not just the technology side;
- The ongoing number of persons who are flagged for fraud, the number of claimants denied, and what the fraud is and how it is flagged;
- The number of claimants waiting for final determination;
- What the surge capacity is on an ongoing basis and how surge capacity would utilize tier one and tier two staff levels;

- How KDOL is uncovering fraud (it was noted this topic may need to be discussed in a closed session);
- How the UI process works for claimant and employer, from the start all the way to the adjudication process;
- Issues claimants are having with the interface on the agency website;
- Information about security; and
- The number of calls about technology problems and the number of calls about claims issues.

Council discussion continued with a request for forms, notices, information and regulations, and the process a claimant goes through to apply for and obtain unemployment benefits. It was noted such a presentation may need to be conducted in a closed session.

Adjourn

The Chairperson noted the next day of the meeting would be June 25. Additional Council meetings are scheduled for July 12-13 and July 21-22. With no further business, the Council was adjourned at 3:44 p.m.

FRIDAY, JUNE 25 ALL DAY SESSION

My ReEmployment Plan Presentation

The Chairperson opened the meeting at 9:15 a.m.

Mike Beene, Director of Workforce Development, Department of Commerce, discussed the My ReEmployment Plan Program. The program is part of the KANSASWORKS system. To participate in the program, a claimant must receive three consecutive weeks of UI payments, including any benefits from the temporary federal programs. Once notified, the claimant has seven days to submit a current resume into the KANSASWORKS system and complete a job search form. If these requirements are not completed, regular unemployment benefits are suspended. Mr. Beene said KDOL and Department of Commerce systems will be able to communicate to implement the program ([Attachment 6](#)).

He said the My ReEmployment Program was launched, as scheduled, on June 23. KDOL anticipates the initial list will be between 15,000 and 30,000 claimants, and 13,065 emails have already been sent out. Mr. Beene stated some emails have come back and he anticipated about 10 percent of claimants will need to be notified through the U.S. Postal Service.

Council members asked questions and Mr. Beene responded.

A request was made for the Council to receive a copy of the letter that is sent to eligible claimants and the form used for the My ReEmployment plan.

Department of Labor Modernization Discussion

The Chairperson confirmed the RFP for the UI system modernization project was distributed to the Council members ([Attachment 7](#)). A spreadsheet with nine project categories was also distributed ([Attachment 8](#)).

Representative Hoffman, Chairperson of Joint Committee on Information Technology, and John Yeary, Chief Counsel for the Department of Administration, joined the Council meeting. Representative Hoffman reported on the Procurement Committee. The Committee consists of himself; Kelly Johnson, KDOL; and Richard Beattie, Department of Administration. The Committee met on June 24, and the next meeting will be on July 13. Four vendors have submitted bids, which are being evaluated.

A question was asked about the interaction between the Procurement Committee and the Council. Representative Hoffman's response was the Council works with the Secretary of Labor, who in turn is working with the Procurement Committee to meet the requirements in the statute. The Council will confirm the requirements of Section 2 of the statute have been met. The deadline is the end of August.

A request was made for a master sheet of the various deadlines as specified in 2021 Senate Sub. for Sub. HB 2196.

The Council members asked questions and the conferees responded.

Break

The Chairperson recessed the Council for a break. The Council reconvened at 10:33 a.m.

Council Discussion

The Chairperson opened discussion on the Report on Process by Which Individuals File Claims and Receive Unemployment Compensation Benefits.

A request was made for the list generated on the previous day of the meeting of what the Council wanted in the reports from KDOL. Staff from the Kansas Legislative Research Department (KLRD) distributed the list ([Attachment 9](#)).

The Chairperson asked Secretary Shultz if any items posed a burden to produce. Mr. Bradey responded that obtaining certain and specific data using the mainframe is challenging.

Discussion ensued.

Senator Olson moved, and Jake Miller seconded, to include items with flexibility for certain items, in addition to statutory defined items for the bimonthly report issued by KDOL. The motion carried.

Edward Penner, KLRD, briefed the Council regarding interim reports that are completed by KLRD staff.

The Council members discussed topics to include in the reports. It was noted some items in the interim reports are required by statute.

A request was made for clarification of any statutory restrictions about whether agencies can share data.

Discussion continued.

Senator Olson moved, and Mr. Hayes seconded, to authorize staff to put together a report based on the discussion and give leeway to attach reports from KDOL on user experience and add updates as needed. The motion carried.

The Chairperson turned the discussion to RFPs for the independent audit. Justin Stowe, Legislative Post Auditor, joined the discussion ([Attachment 10](#)).

Discussion ensued about the process and timeline of the independent audit.

The Chairperson asked the Council to identify items it would like to see in the independent audit. Suggestions included:

- The amount of fraud and improper payments;
- Types of fraud (e.g., foreign or local and scheme types of fraud);
- How fraudulent claims were paid;
- Determination of whether KDOL data was compromised;
- Pre- and post-pandemic multifactor authentication;
- The number of fraudulent claims not subject to the waiting week;
- Any other fraud identified by the audit; and
- Recommendations for internal controls.

The Council was recessed for lunch.

Council Discussion

The Council was reconvened at 12:12 p.m.

Discussion continued.

The Chairperson said the next steps will be to assemble the RFP for the independent audit and ensure alignment with Section 2 of the statute.

John Yeary, Department of Administration, distributed the following information to the Council:

- Modernization Requirements Response Sheet ([Attachment 11](#));
- UI Requirements ([Attachment 12](#));
- UI System Integrations and Conceptual Data Model ([Attachment 13](#));
- Program Performance and Technical Performance Service Level Measures ([Attachment 14](#));
- Cost Sheet ([Attachment 15](#));
- UI Modernization Project Major Milestones and Deliverables ([Attachment 16](#));
- RFP Amendment – April 9, 2021 ([Attachment 17](#));
- RFP Amendment 2 – May 3, 2021 ([Attachment 18](#));
- RFP Amendment 3 – May 18, 2021 ([Attachment 19](#));
- Key Deliverable Description ([Attachment 20](#)); and
- State of Kansas Event Details ([Attachment 21](#)).

Adjourn

The Chairperson said the next meetings will be July 12-13 and July 21-22. With no further business, the Council was adjourned at 1:35p.m.

Prepared by Sky Westerlund

Edited by Matthew Willis

Approved by the Committee on:

July 23, 2021

(Date)