

MINUTES

UNEMPLOYMENT COMPENSATION MODERNIZATION AND IMPROVEMENT COUNCIL

September 8-9, 2021
Room 582-N—Statehouse

Members Present

Representative Sean Tarwater, Chairperson
Senator Robert Olson
Senator Jeff Pittman (September 9)
Senator Caryn Tyson
Representative Stephanie Clayton
Peter Brady
Phil Hayes
Jake Miller
Jeff Oswald
Shelbye Smith
Shawana Woods
Senator Marci Francisco, appointed substitute member for Senator Jeff Pittman (September 8)
Representative Marty Long, appointed substitute member for Representative Susan Estes
Connor Cross, appointed substitute member for Katie Givens

Members Absent

Senator Jeff Pittman (September 8)
Representative Susan Estes
Katie Givens

Staff Present

Edward Penner, Kansas Legislative Research Department (KLRD)
Dylan Dear, KLRD
Victoria Potts, KLRD
Elaina Rudder, KLRD
Matthew Willis, KLRD
Kyle Hamilton, Office of Revisor of Statutes
Jason Long, Office of Revisor of Statutes
Charles Reimer, Office of Revisor of Statutes
Nancy Fontaine, Committee Assistant (September 9)
Sky Westerlund (September 8)

Conferees – September 8

Matt Etzel, Principal Auditor, Legislative Division of Post Audit

Tom Day, Director, Legislative Administrative Services
John Mulvaney, Jr., Director, CBIZ
Mike Beene, Director of Workforce Development, Kansas Department of Commerce

Others Attending

See attached list for [September 8](#); no other attendees present on September 9.

WEDNESDAY, SEPTEMBER 8 ALL DAY SESSION

Call to Order and Explanation of Pre-Bid Conference Procedure

The meeting was called to order at 10:07 a.m.

Chairperson Tarwater welcomed three substitute members. Senator Francisco was substituting for Senator Pittman, and Representative Long was substituting for Representative Estes. Conner Cross was substituting for Katie Givens.

Chairperson Tarwater stated the pre-bid conference would begin after a presentation of the Performance Audit Evaluation from the Legislative Division of Post Audit.

Pre-Bid Conference – Presentation of Performance Audit Evaluation and the Kansas Department of Labor’s Response to COVID-19 Unemployment Claims (Part 2)

Matt Etzel, Principal Auditor, Legislative Division of Post Audit, presented to the Council. Mr. Etzel stated the purpose of the audit was to determine the reasons for the significant delays getting both federal and state unemployment benefits to recipients during the pandemic. He stated the rapid program changes, historically high unemployment claims, and an ill-equipped computer processing system created the delays in claims processing through the pandemic ([Attachment 1](#)).

He said the computer system was established in the 1970s as a mainframe and utilizes older, lesser-used coding, which has created challenges for Kansas Department of Labor (KDOL) operations. Challenges include a dwindling pool of information technology (IT) staff who are familiar with the coding and difficulties integrating modern systems with the mainframe operation. This has resulted in a piecemeal system requiring staff to work on multiple systems for each claim. Mr. Etzel said these challenges were exacerbated by the temporary unemployment programs set up by the federal government. Specialized staff were necessary to work through the problems of establishing a new program using outdated IT infrastructure. For example, a coding issue made it appear that claimants were no longer eligible for benefits, when, in fact, they were eligible. Another example of errors occurred when claimants were shifting between unemployment programs. Further strain was caused by the dramatic increase of claims. The agency went from 3,000 initial claims in February 2020 to 66,000 by the end of March 2020.

Federal funding for staff is based on the state's previous year unemployment rate. The 2019 unemployment rate in Kansas was 3.0 percent, resulting in low federal funding for staff. The call center had 32 fully trained customer service representatives in April 2020. The agency received 12.5 million calls in April 2020. Staff from other agencies and divisions were brought in, but the agency reported responding to about 1 percent of the calls in April 2020.

Mr. Etzel reviewed the fraud update. He made the distinction that fraud is a legal term and only courts can determine if fraud occurred. In the audit, the term fraud was used as a way to identify claims that showed suspicious characteristics, including imposter fraud. Imposter fraud occurred when a fraudster used a stolen identity to apply for benefits. Kansas paid approximately \$2.8 billion in unemployment benefits from January 2020 through February 2021. Of that, approximately \$1.7 billion came from federal funds, and \$1.1 billion came from the State's funds for regular unemployment. The audit estimated approximately \$700.0 million may have been paid for fraudulent claims, which is about 25 percent of the total number of claims filed. Of the \$700.0 million, \$343.0 million was from the temporary federal programs and \$344.0 million from the regular state unemployment program. Approximately \$2.0 billion in potentially fraudulent claims were not paid. Mr. Etzel reviewed the KDOL response to the audit.

Discussion ensued.

Pre-Bid Conference – Review of Answers to Previously Submitted Questions

Tom Day, Director, Legislative Administrative Services, addressed the Council. Mr. Day reviewed the timeline. The Request for Proposal (RFP) was posted on August 2. By August 4, it had been sent to 41 companies across the country. Questions from bidders were accepted and responses were issued. Additional questions on the RFP will be accepted through September 14. The RFP closes on September 24. Mr. Day referred to the document titled Questions and Answers. He reviewed each of the questions and the responses ([Attachment 2](#)).

Discussion ensued.

Chairperson Tarwater noted the Council did not have any objection to the responses provided.

Concern was raised regarding the five-year lookback to identify fraud, as part of the current RFP. After discussion, the Council determined without objection to remove the five-year lookback for vendors.

Mr. Day said the written responses will be posted on the legislative website, and the recording of the Council meeting will be available before the end of the day.

Chairperson Tarwater called for a short recess at 12:50 p.m. The Council reconvened at 1:13 p.m.

Pre-Bid Conference – Questions and Answers from Potential Bidders Concerning the Request for Proposal

John Mulvaney, Jr., addressed the Council. He was there on behalf of one of the bidders, CBIZ, and he serves as Director of the White Collar and Government Investigation Department of the company. He asked two questions:

- Has an analysis been done to determine the ultimate destination regarding the distribution of funds and to the group location of such data?
- How many hours went into the two audit reports conducted by the Legislative Division of Post Audit?

The responses were that a preliminary analysis has been done, which reviewed the routing numbers, prepaid debit, and direct deposit of funds and that approximately 6,000-7,000 hours, inclusive of all staff activity, were put into the two audits.

The bidder had no further questions.

My ReEmployment Plan Update

Mike Beene, Director of Workforce Development, Kansas Department of Commerce, provided an update to the Council. Approximately 60,000 jobs are posted on the website, up from 50,000 in July. Jobs include positions in retail, trades, hospitality, technical, agriculture, wholesale, and manufacturing. Almost 15,000 individuals have completed the requirements for the program, which consists of establishing an account and posting their resume on KANSASWORKS. Approximately 2,000 persons have confirmed jobs and 88 are participating in job training. Mr. Beene noted persons who come into the office tend to take advantage of the support services the program offers. As of August, there were 420 job refusals with 68 having good cause. Benefits were denied to 354 persons.

Council members asked several questions, and the conferee responded.

KDOL Update

Peter Brady, Deputy Secretary, KDOL, provided an update to the Council. He stated the temporary federal unemployment programs ended September 4. He stated the next two weeks will begin to show the impact on workload at the agency. Plans are underway to reduce use of resources. Work is focused on finishing up the federal programs, preparing for modernization, and working through appeals.

The agency is also planning and preparing for issuing 1099s, which are due for distribution in January 2022. Kansas is one of the first six states to engage with multidisciplinary teams of experts from the United States Department of Labor, known as “Tiger Teams,” to determine how to improve services. The program is funded through the American Rescue Plan Act.

Several Council members asked questions, and the conferee responded.

Approval of Minutes

Chairperson Tarwater turned to the draft minutes.

Edward Penner, Kansas Legislative Research Department, noted Shawana Woods was present on July 12, and Senator Francisco requested additional language regarding her advice to the Kansas Department of Revenue and their response be added to the minutes of July 23. The corrections will be made.

Jeff Oswald moved, and Senator Olson seconded, to approve the minutes from the July 12-13 meeting, as amended; the July 22-23 meeting, as amended, and the July 26 meeting. The motion carried. Senator Francisco, Representative Long, and Connor Cross abstained.

Adjourn

The Council will meet next on September 9 at 9:30 a.m. Chairperson Tarwater adjourned the Council at 2:05 p.m.

THURSDAY, SEPTEMBER 9 ALL DAY SESSION

KDOL Unemployment Compensation Modernization Bidder Product Demonstration

Chairperson Tarwater called the meeting to order at 9:40 a.m.

The Council was scheduled to have product demonstrations from two KDOL unemployment compensation modernization bidders. Chairperson Tarwater indicated, however, he received an email late the day before from Will Lawrence, the Governor's Chief of Staff, with an attached letter from Rick Beattie, the Director of Procurement and Contracts, Kansas Department of Administration. In the letter, Mr. Beattie recommended the Council not hold vendor demonstrations due to possible issues with confidentiality provisions to which each bidder is bound, as well as concerns that the demonstrations could seriously increase the risk that unsuccessful bidders might challenge the process ([Attachment 3](#)).

Chairperson Tarwater expressed concern with the timing of the letter and said he felt the intention to have these demonstrations had been well known. Jason Long, Office of Revisor of Statutes, indicated there is no specific statute or provision addressed in the letter that prohibits vendors from making presentations before the Council. However, there is RFP protocol the Department of Administration follows through all its procurement actions, so there are likely steps the Council would need to take to facilitate these presentations. The Department of Administration would have to provide information on what its requirements would be.

Charles Reimer, Office of Revisor of Statutes, said that 2021 Senate Sub. for Sub. for HB 2196 included language that the Council is part of the procurement process.

Chairperson Tarwater indicated the letter had further delayed the process. There are only two companies left and they have already presented to the Department of Administration and KDOL. He said he also felt the RFP process was rushed.

Discussion ensued among members. One member indicated the Governor has been supportive of the modernization plan and felt the Council should have all four companies come in if it meant avoiding procurement problems and the risk of lawsuits. Another member agreed with the Chairperson's position and expressed concern with the letter coming so late.

In response to a question from a Council member, Mr. Long indicated there are some additional steps that would likely need to be taken by the Department of Administration, but the Council could then move forward with demonstrations from all four companies.

In response to a question from a Council member, Mr. Reimer indicated there is no language in statute indicating the Council is in charge of procurement. The member felt the Council has to abide by the process and avoid spending taxpayer dollars to fund legal suits. Discussion ensued.

Senator Pittman moved, and Senator Olsen seconded, to direct staff from the Office of Revisor of Statutes to work with the attorneys from the Department of Administration to minimize lawsuit risks so the Council can proceed with product demonstrations from either the top two companies or all four of them. Discussion ensued.

Chairperson Tarwater moved, and Mr. Hayes seconded, a substitute motion to ask the Department of Administration and Rick Beattie to come to the Council and explain what it would take to allow for a transparent process to take place and allow this Council to weigh in.

Some Council members expressed concern with the substitute motion further delaying the process, and there was support for combining the two motions to avoid delays.

Chairperson Tarwater withdrew his substitute motion; Mr. Hayes withdrew his second.

Chairperson Tarwater moved, and Senator Pittman seconded, a new substitute motion to have staff from the Office of Revisor of Statutes work with the attorneys at the Department of Administration to expedite a position in order to have a demonstration from the four companies, and to have the Secretary of Administration and Rick Beattie attend the next meeting to explain what happened. The motion carried.

Chairperson Tarwater indicated he intended to continue with the plan to have the next Council meeting on September 16 and, tentatively, 17.

Adjourn

Chairperson Tarwater adjourned the meeting at 10:30 a.m.

Prepared by Sky Westerlund (September 8)
and Nancy Fontaine (September 9)

Edited by Matthew Willis

Approved by the Committee on:

October 25, 2021

(Date)