TRANSCRIPT OF A MEETING

OF THE

STATE OF NEVADA

DEPARTMENT OF EMPLOYMENT TRAINING AND REHABILITATION

EMPLOYMENT SECURITY DIVISION

SMALL BUSINESS WORKSHOP

Monday, October 12, 2009

10:00 a.m.

Live Meeting:

Legislative Building
401 S. Carson Street, Room 2135
Carson City, Nevada 89701

Video Conference To:

Grant Sawyer Building
555 E. Washington Ave., Room 4412E
Las Vegas, Nevada 89101

A P P E A R A N C E S

Staff: Cynthia Jones
Tom Susich, Esq.
Bill Anderson
David Schmidt
Donna Clark
Steven Bauder
Art Martinez

Public: (None Participating)

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MS. JONES: Good morning. My name is Cindy Jones, and I serve as the Administrator of Nevada's Employment Security Division.

This Small Business Workshop is being conducted in compliance with NRS 233B.0608 to solicit public comment on a proposed amendment to the unemployment insurance contribution or tax schedule regulation in Nevada Administrative Code, Chapter 612.270, in accordance with NRS 233B.061.

Mr. Bauder, was proper notice of this meeting given in accordance with Nevada Revised Statutes 233B.061?

MR. BAUDER: For the record, Steven Bauder, Management Analyst for Employment Security Division. All notices were posted as required, including at public libraries, ESD offices, and on the Internet.

MS. JONES: Thank you. And, Mr. Bauder, were any written comments submitted in response to this posting?

MR. BAUDER: The Division received three written comments, and they have been made available to the public at this workshop.

MS. JONES: Okay. Thank you very much.

Okay. To begin this workshop, I'd first like to introduce; next to me is our Employment Security Division Senior Legal Counsel, Tom Susich.

And our first presentation will be by Bill Anderson, the Department's Chief Economist, to provide an Economic Projections and Overview presentation.

MR. ANDERSON: Thank you, and good morning. For the record, my name is Bill Anderson, Chief Economist with the Research and Analysis Bureau in the Department of Employment, Training and Rehabilitation.

Ms. Jones, last Tuesday at the Employment Security Council meeting, I provided a rather lengthy economic overview that set up the discussion for the Council's deliberations with respect to recommending an unemployment insurance tax rate.

With your permission, in the interest of time, I will offer a very brief overview of that presentation. Hard copies are available here. And I'm sure anybody listening on line can have arrangements made to have those handouts e-mailed to them as well.

MS. JONES: Certainly, Mr. Anderson.

And the full presentation that Mr. Anderson provided last Tuesday is available with all the other documents.

Please proceed, Mr. Anderson.

MR. ANDERSON: Thank you. Again, Bill

Anderson, for the record.

Taking a very broad look at the economy, I would characterize current conditions as unprecedented, in all honesty. We -- we're, essentially, in unchartered waters here.

This recession has hit at the core of Nevada's economy. Essentially, there are three driving forces, in their simplest form, that's impacting the economy. Number one, problems in residential real estate markets and construction. Related to that, number two, problems in credit markets, which have brought commercial developments almost to a standstill. And then, third, weakness in consumer spending. And those three forces, essentially, hit at the core of Nevada's economy. It's no different than a recession that might impact the auto industry and its impact on the industrial Midwest, or a recession that impacts agriculture and its impacts on the agricultural Midwest.

Here, in Nevada, we've really felt the impacts of this recession. As a result, our unemployment rate for the month of August is 13.2 percent. That far exceeds the 9.7 percent rate in the nation as a whole; again, further evidence that we've taken a very hard hit during this economic downturn.

The same is true on the employment front. So far this year, job losses in Nevada have averaged about 5.9 percent each month relative to a year ago. That's almost double the 3.7 percent loss in the nation as a whole.

So this recession's different in Nevada. We're really feeling the impacts. And our estimates are that it will take us a while to emerge from this recession. Typically, Nevada comes out of recessions relatively quickly. But this time around, we have some concerns, mainly as they pertain to continued weakness in consumer spending. And we think that Nevada's economy might lag for the next year or two.

Specifically, in terms of the unemployment rate, we think that when the books are closed on 2009, we're going to end up with an average unemployment rate just in excess of 12 percent. We look for the jobless rate to peak in 2010, when it will average 14.4 percent. And then, finally, we will embark on a very modest or gradual recovery. And in 2011, we're looking for an unemployment rate of about 12.8 percent.

And with that, I'll conclude my remarks.

MS. JONES: Okay. Thank you very much, Mr. Anderson.

Our next presenter is David Schmidt, who is an Economist with the Department's Research and Analysis

Bureau, who will provide a review of Nevada's Unemployment Insurance Trust Fund.

MR. SCHMIDT: Thank you very much. Again, for the record, my name is David Schmidt, and I'm an Economist with the Research and Analysis Bureau of DETR.

I'm here to talk about the Trust Fund, and I'm also going to provide a brief version of the presentation that was given at the Employment Security Council last Tuesday. As with Mr. Anderson's presentation, a full copy is also available.

The Unemployment Insurance System was established following the Great Depression in 1935 to help stabilize the economy. Since 1935, 1937, when it was established in Nevada, our recessions have been shorter, and we haven't really faced a recession quite like the one that we have this time around.

Heading into this recession, Nevada's Unemployment Insurance Trust Fund was well prepared. We had the 18th strongest trust fund out of all of the states, and we were solvent by both state and federal measures.

This is the longest recession since the establishment of the Unemployment Insurance System. The two prior recessions, the longest, were 16 months each, and the current recession through September has been 22 months.

As Mr. Anderson said, the unemployment rate has been high. It's been the highest that we've seen on the history of measuring the unemployment rate, with 13.2 percent in August. And we expect that to continue to go up next year. That'll drive claims activity higher. And that will increase the benefit payments that we can expect to pay out of the Trust Fund.

One slide that's worth bringing up is the -- this slide which shows the revenues and the benefit payments from the Trust Fund. It's slide 13 as was presented at the Employment Security Council. And it shows that the incredible surge that we've seen in benefit activity, growing from just over 200 million during the boom years a few years back, to over one billion in 2009. That surge in benefit payments has led to direct decline in the Unemployment Trust Fund, from over $800 million to where we expect to borrow about $200 million in 2009.

I'm skipping a few slides to move ahead to the financial numbers here.

In 2009 the solvency calculation that's laid out in NRS 612.550 was calculated to be $787 million. This is a recommended solvency level, which would represent one year's worth of benefit payments at the highest rate of activity that was seen over the last 10 years. We multiply four factors together, the covered employment, the highest risk ratio in the last 10 years, the highest duration of benefits in the last 10 years, and the average weekly payment that's the most current number available. Multiplying those together, we do get that solvency requirement.

We expect to end September 30th with about $60 million. This is 92 percent below the level that was laid out in NRS 612.550. That gives us a solvency multiple at the bottom of the slide of .08, or 8 percent, and the average high cost multiple, which is the federal solvency measure, of 5 percent, .05.

This slide shows you that this does leave us 92 percent below the solvency target, according to the state solvency measure, and it leaves us at 5 percent, again, of the federal level.

This slide shows the four options that were presented to the Employment Security Council, including the rate that was recommended by the Council to the Administrator of 1.33 percent. For 2010, you can see that this leaves us with an expected solvency level of negative 1.9 billion, with an estimated requirement of 1.1 million and borrowing of approximately 800 million.

This is a long-term problem for the state. If we were to keep the same tax rate moving forward, over the next four years we would expect to bring in about $1.3 billion in unemployment contributions. Over the same time period, we expect to pay out about $3.8 billion in benefits.

So that creates a $2.5 billion shortfall, which the state will need to address at some point through a combination of state unemployment taxes or federal, FUTA, offset credit reductions. These are, essentially, an increase in the federal unemployment tax by the federal government and would be imposed in the second year of borrowing. Excuse me. And those -- that would represent an additional burden on employers of approximately $21 per employee per year that the federal government uses to offset the loans that we take out.

This slide shows you the average tax rate in place since 1950 in the state and the benefit cost rate. This is the estimated tax rate that would be required in order to pay for all benefits that are paid out in a given calendar year. You can see, in 2009 we do have a large increase in our benefit obligations. And by keeping the tax rate constant, moving forward, this will eventually pose a deficit that the state will need to repay.

As of September 29th, 22 states have had to borrow money in order to continue paying unemployment benefits. This slide shows those states that have had to borrow. In addition to Nevada, Virginia expects to begin borrowing in order to pay benefits during October of 2009. So Nevada is clearly not alone in the need to borrow in order to pay benefits. However, Nevada is the state that has the highest unemployment rate by far at the point where we will begin borrowing in order to pay those benefits.

This chart shows that two states had to begin borrowing with unemployment rates of less than five percent, that most states were in the 6 to 10 percent range in their unemployment rate when they began borrowing, including Michigan, which was at 7.3 percent unemployment rate when they began to borrow. But Nevada has an unemployment rate in August of 13.2 percent, and it's the only state with an unemployment rate of even 11 percent when they began borrowing.

This helps to show that the Unemployment Trust Fund in Nevada was managed well. We had a strong reserve. And it took a significant recession in order to get us to the point where we had to begin borrowing in order to pay benefits.

The state will be responsible for paying interest on any loans we take out from the federal government in order to pay those benefits. The current interest rate's approximately 4.6 percent. And over the course of a year, the interest rate expense would be about $11.4 million for every $250 million in borrowing that the state does.

Obviously, these forecasts are difficult, because we don't have a good historical precedent to guide the numbers that we use here. We expect significant pressure on employment still, and this could interact interestingly with the extended benefit programs that are currently in place. It's entirely possible that people will be on the extended benefit programs and won't have base periods moving forward. So the unemployment rate could remain high, while benefit obligations may actually fall.

And, finally, because of the large number of states that have been borrowing, with up to 40 states expected to borrow during this recession, there's a great deal of uncertainty about whether the federal government will offer any relief to states and to state trust funds in order to help offset the costs of this recession.

And, with that, I'll conclude my remarks.

MS. JONES: Thank you, Mr. Schmidt. Very well said.

It is significant to point out that it did take the most significant recession that Nevada's experienced since the beginning of this program over 75 years ago to break this Trust Fund. So I think that the Trust Fund, with the help of all parties involved, has been managed well over time.

I'd like to move on now to the next item on the agenda, which is a Tax Schedule Explanation. And, then, that is also followed with the Small Business Impact. Both are being presented by Donna Clark, the Employment Security Division's Chief of Contributions. Thank you.

Donna.

MS. CLARK: Good morning. For the record, my name is Donna Clark, and I serve as the Chief of Contributions for the Unemployment Insurance Program.

The purpose of this Small Business Workshop is to discuss the Unemployment Insurance Tax Rate Schedule for Calendar Year 2010. The state law requires the Administrator to set the tax rates each year by adopting a regulation. A public hearing will also be held prior to the adoption of the regulation. The hearing has been tentatively scheduled for December 7th, 2009.

Bill Anderson talked to you about the economic conditions. David Schmidt discussed the condition of the Trust Fund and the forecast for next year. I'm now going to provide an overview of how the Unemployment Insurance Tax System works and how the average tax rate is developed.

The Unemployment Insurance Program is a joint federal/state partnership. The way this partnership works is the Federal Unemployment Tax Act, or FUTA, imposes a payroll tax on all employers at a rate of 6.2 percent of each employee's wages up to $7,000. This equates to a federal payroll tax cost of $434 per employee per year.

If, however, a state maintains an unemployment insurance system approved by the U.S. Secretary of Labor, employers are allowed to offset 5.4 percent of the federal unemployment tax, so that they actually pay at a rate of 8/10ths of one percent, thereby reducing the cost of the federal tax to $56 per employee per year. This is the cost, as Mr. Schmidt mentioned, that would increase by $21 per year once borrowing does occur, two years after borrowing occurs.

The 8/10ths of one percent that employers pay to the federal government is passed back to the states to cover their administrative costs for the State Unemployment Insurance Program. The funds are also used to build a federal reserve from which states may borrow, if necessary, to pay benefits.

The State Unemployment Tax, or SUTA, that we are considering here today, is deposited into a Trust Fund which can only be used to pay benefits to unemployed workers. It cannot be used for any other purpose. The tax is paid entirely by employers. There is no deduction from an employee's paycheck. The tax rates will vary based on the employer's previous experience with unemployment. And under federal law, these funds must be deposited with the U.S. Treasury and cannot be invested in any other manner. That fund does earn interest.

In Nevada, the rate for all new employers is 2.95 percent of taxable wages. In 2010, the taxable wage base or taxable wage limit per employee will be $27,000. Employers pay at the new employer rate of 2.95 percent for approximately three and a half to four years, until they are eligible for an experience rating.

Once eligible for experience rating, an employer's rate can range from .25 percent to 5.4 percent, depending on their previous experience with unemployment. There are 18 different tax rates. The annual rate schedule adopted only applies to experience rated employers. It has no impact on new employers.

Out of approximately 59,000 employers, more than half, or 59 percent, of all employers are eligible for an experience rating, while the balance pay at the standard rate of 2.95 percent of taxable wages.

The standard rate established by federal law is 5.4 percent. Rates lower than 5.4 percent can be assigned only under an experience rating system approved by the Secretary of Labor.

The intent of any experience rating system is to assign individual tax rates based on an employer's potential risk to the Trust Fund. Basically, those employers with high employee turnover and a greater cost of the fund pay higher rates than those with low employee turnover.

Nevada, along with a majority of the states, uses a reserve ratio experience rating system. Under the reserve ratio system, the Employment Security Division keeps separate records for each employer to calculate their reserve ratio each year. In the formula displayed here, we add all of the contributions paid by the employer and subtract the benefits charged. The result is then divided by the average taxable payroll to establish the employer's reserve ratio. Contributions are the quarterly taxes paid by the employer, and benefits charged are the employer's portion of unemployment benefits paid to former employees. The purpose of this method is to put large and small employers on equal footing, without regard for industry type.

In the sample on this slide, the employer paid $6,000 in contributions, had $2,000 in benefit charges, with an average taxable payroll of $40,000, which gives him a reserve ratio of a positive 10 percent. The higher the ratio, the lower his tax rate will be. If an employer has received more benefit charges than he has paid in taxes, his reserve ratio will be negative, and he will generally have a higher tax rate.

Now, to the detailed schedule for the recommended average rate. This chart listed as slide number six of the tax schedule handout shows the result of an estimated average tax rate of 1.33 percent. The Employment Security Council is recommending that the Administrator of the Employment Security Division maintain the 2009 average tax rate of 1.33 percent for calendar year 2010.

In setting the schedule, the 18 different tax rates displayed in the third column of the schedule does not change. These tax classes are fixed by statute. Rather, the law requires the Administrator to designate the ranges of reserve ratios to be assigned to each tax rate. By doing so, the number of employers in each of the tax rates is changed, which increases or decreases the average tax rate and, of course, the total estimated revenues.

The law also requires that the increments between the reserve ratios must be uniform. In this recommended schedule, the ranges are from positive 5.2 percent to negative 17.2, with increments of 1.4 between each of the reserve ratios. In other words, if an employer's reserve ratio is positive 5.2 or better, he gets the lowest rate of .25. So in our previous example, where the employer had a positive reserve ratio of 10 percent, he would get the lowest rate. An employer with a reserve ratio of less than negative 17.2 would get the highest rate of 5.4. And the rest fall somewhere in between.

In this particular chart of -- with an average tax rate of 1.33 percent, approximately 55 percent of eligible employers are in the lowest rate of .25 percent. There are 35,116 eligible employers, which we estimate will generate 249.04 million in revenue to the Unemployment Insurance Trust Fund. To that, we add the estimate for employers not eligible for experience rating, 64.61 million, for a total revenue of $313.65 million and an average rate of 1.33 percent for the unemployment tax.

As a note, you'll notice that there is an additional .05 percent tax for the career enhancement Program, which is a separate state training tax set by statute. This is being provided for informational purposes only and is not included in the projected revenue amounts.

In compliance with the Nevada administrative procedures, the Employment Security Division must estimate the impact of any proposed regulation on small businesses. As mentioned in the previous tax schedule presentation, the tax methodology used by the Nevada Unemployment Compensation Program is based on an experience rating system approved by the U.S. Department of Labor. Having a federally approved rate system allows employers an offset credit of 5.4 percent against the 6.2 percent federal unemployment tax. This is a savings of approximately $480 million per year to Nevada employers in their federal taxes.

Nevada's reserve ratio system is designed to ensure that employers are equally rated based on their individual experience with unemployment, regardless of size or industry type. As previously mentioned, the Employment Security Council recommended no change in the average unemployment insurance tax rate of 1.33 percent.

With no change to the average tax rate, the direct impact on each individual business will vary, based solely on each employer's experience record with the unemployment compensation system.

Therefore, the Employment Security Division of the Department of Employment, Training and Rehabilitation finds that the recommended Tax Rate Schedule for Calendar Year 2010 does not increase the economic burden upon small businesses.

Thank you. This completes my presentation.

MS. JONES: Thank you, Ms. Clark.

I'd like to open the hearing now for public comment. Do we have anybody in southern Nevada who would like provide any public comment regarding this proposed regulation?

MR. MARTINEZ: For the record, Art Martinez, auditors refill, Las Vegas Field Audit Office.

MS. JONES: Good morning, Art.

MR. MARTINEZ: There are no public -- Good morning. There are no public comments at this time.

MS. JONES: Okay.

MR. MARTINEZ: Thank you.

MS. JONES: Thank you very much.

And I'd like to open the Carson City room for public comment.

Seeing or hearing none, I'd like to adjourn this meeting. Thank you to everyone who participated, and a special thanks to the staff members who provided the presentations.

And the regulation adoption hearing is still tentatively scheduled for December 7th. Keep an eye on the DETR website or the legislative website for the posting of that meeting.

Thank you.

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(The Small Business Workshop concluded at 10:26 a.m.)

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TRANSCRIBER'S CERTIFICATE

I, SHANNON L. TAYLOR, do hereby certify:

That I was provided by the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division, Contributions Section, with a CD containing a Small Business Workshop of the Nevada Employment Security Council held on Monday, October 12, 2009, and that I thereafter transcribed, to the very best of my ability, the contents of said Small Business Workshop on said CD;

That the foregoing transcript, consisting of pages 1 through 22, is the transcription of the above-noted Small Business Workshop;

DATED at Carson City, Nevada, this 19th day of January, 2010.

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SHANNON L. TAYLOR
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