

PUBLIC HEARING TESTIMONY OF THE  
UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

KNEIP BUILDING  
700 GOVERNORS DRIVE  
PIERRE, SOUTH DAKOTA

TUESDAY, OCTOBER 10, 2006  
TIME: 9:50 A.M.

Chairwoman Roberts: What the public hearing entails is to review first of all the future fee system recommendations that were requested from the legislature. We have four alternatives as well as maintaining the current system and we just wanted to open it up for public comment. I think maybe Dawn if you have the alternatives we will put them up on the board and will briefly go through them.

Those are exhibits, the current system, and Dr. Brown if you would help us out by explaining what those four different alternatives are.

Dr. Brown – The current future fee system has a base and the base is the UI wage base which is UI or wages up to the first \$7,000 and so that would be the base of the current system. The contribution rate is a graduated rate and the rate is basically parallel to the UI contribution whereas the UI contribution rate runs from 0% to 7% and the future fee contribution rate would be 1/10<sup>th</sup> of that or 0% to .7% so it's a graduated rate structure.

Alternative One was to use the current wage base, the first \$7,000 of each employee, keep that the same, but replace it with a flat contribution rate and the rate that would achieve the same revenue of \$8.1 million would be a .4% contribution rate.

The second alternative is rather than use the UI wage base, the first \$7,000 per employee, use total wages that the employer reports and use the flat contribution rate. The flat contribution rate we would need to generate the same revenue would be much lower (because it includes total wages) so it would be .13%

Alternative three is to use total employment in the UI system and this would be the number of employees that are a part of the UI contribution system. And that would be a flat rate of \$28.03 per job and that would generate the current \$8.1 million in revenue.

The fourth alternative is use taxable sales as reported by the South Dakota Department of Revenue and the contribution rate there would be very small (.058%) and that applies to taxable sales which would raise the \$8.1 million in current revenue.

Those are the four alternatives as well as the current system that I examined.

Chairwoman Roberts: Thank you Dr. Brown. With that I am going to open it up for public testimony. If anybody wants to come forward please state your name and who you are appearing on behalf of and if you have suggestions, recommendations or comments on any of the five funding methods that are listed on the board and also if you have any comments on the proposed legislation that we talked about increasing that penalty from \$5 to \$25 per month.

Bob Miller: I represent the six investor owned electric utilities that serve the people of South Dakota. We are the folks that have one of the options for the 4,000% increase you can see you have my attention. You must understand in the utility business we don't have any unemployment. We are mostly zero rated and we are zero rated for a reason, we are paid very, very well. We have very little turnover. We like the future fund, it plays an important role in South Dakota and needs to be funded. It really ought to be a general fund if you get right down to the bottom line. You've got to quit messing around with it and stick it back in the general fund where it belongs. If you insist on funding it this way or the legislature insists on funding it this way, we are willing to pay more but am sure not going to sit here and advocate a 4,000% increase for my six companies. But if you need more, we'll do it, but let's be careful with those numbers. Thank you.

Chairwoman Roberts: Thank you. Questions?

David Owen: I think one of the philosophical tug-of-wars here we are going to have is this debate between saying "well if economic development is good for all things it isn't already funded this way, your point about general fund knowledge, then everybody ought to pay something." Here is the other philosophical end of that rope, and the question to you is if we are going to take businesses that have been paying zero and we are going to ask them to contribute, do you think those businesses would expect that new contribution to increase the amount of money used for economic development, or do you think they would like it being used to lower someone else's rate?

Bob Miller: They would love to see it increase the amount of money they expect.

David Owen: Do you think there's a difference in those two scenarios?

Bob Miller: Sure there is.

David Owen: Ok.

Bob Miller: We have to add one more factor, the utility industry, the vestor owned utilities are centrally assessed. We pay property tax like everyone else but we also pay property tax on ink in the bottle, poles in the yard, desks that we sit at. Our personal property that we all used to have is still paid by electric utilities. Those are the ones who pay it, the utility industry, so we get a good chunk into the property taxes. Thank you.

Shawn Lyons: Madam Chairman, members of the Council I am Shawn Lyons, SD Retailer's Association. It is a privilege for me to give my first testimony before this

group. Obviously my predecessor Mr. Wheeler was an intricate player, and in some cases for some of you, a fly in the ointment with this council. Actually Wheeler is backing up the bus right now with our members. I look forward to working with this council and give this account on the changes in the UI system and in this case the future fund. Before I address the issue of the future fund this way, I want to publicly thank Don Kattke, that was before he proposed legislation. Don participated in a series of UI seminars that we held around the state last spring to talk about the changes that came out of the 2006 legislative session. They were very informative and productive, I think in large part because of Don's knowledge and in a lot of cases, patience, in explaining the system of unemployment insurance and how things are impacted by it. I would like to touch on the proposal of the session before I get into the future fund market. Maybe this is an olive branch if you will. Obviously we're not real crazy about the idea of a \$25.00 fee. It seems to me that if you want to talk about incentivizing and providing care for these folks, and Mr. Owens thoughts about giving everyone a lap top, maybe we should do that. It does seem like if you want to do a \$25.00 fee, that's not much of an incentive in terms of submitting those reports electronically. I would however like to offer, if it is any assistance, obviously our newsletter goes out to 5,500 small business owners and other interested individuals around the state and that might be one way of at least getting some public awareness out there about the penalty tax. I am amazed when we do articles about UI. It must be a full moon because we get a lot of calls. Maybe that will be helpful. I don't know that that entirely solves your problem but at least a step in the right direction. I am going to try to keep my remarks brief regarding the proposed change in the future fund. We appreciate the opportunity to be included in this public dialogue with respect to what you're going to recommend to the Governor and eventually on to the legislature. The small business community, we recognize the fact that economic needs have proverbial toolboxes with respect to bringing in economic development into our communities and as I spent five years doing economic development in a little town east of here called Huron it is important to have those tools at the disposal of the Governor. It is also important to recognize there is a direct and indirect beneficiary of the future fund and in a lot of cases I look at our membership. While there are those industries that would perhaps directly benefit the infrastructure or the financing of a project, in the case of a lot of our businesses we're hoping that eventually it will be the trickle down theory of maybe shopping in a store or eating in a restaurant or staying at one of our hotels. There's no question that there's an indirect tangible benefit there. But in a lot of cases in smaller communities around the state, those projects that benefit from the future fund, you're not going to see any Isabelle, South Dakota and asking those interested to perhaps consider a higher contribution or even a contribution at all to the future fund. It may be a bit of a stretch. It would obviously be our hope that the council might maintain the status quo of how UI relates to the future fund and how it's financed. I have a lot of respect for Dr. Brown as a graduate of the Harvard of the Midwest, for writing some interesting proposals. The fourth one I don't like so much though Doctor. Actually, I guess if you look at that proposal particularly it does seem like there are a lot of other methods of taxation in this state that might get left off the radar screen if you left that one as your opportunity. If you look at the system, and we think it is important that everybody pay their fair share, but then having said that, then the system needs to be fair and that means maybe you look at how the future fund is financing and who is eligible to apply for it. In

the past economic development and retail haven't necessarily walked hand in hand, one has gone down this track and one has gone down the other and we're not necessarily advocating that the future fund be opened up to retail projects, but if you're asking for everybody to take a fair share in the future fund then that might be a consideration. And frankly another thing to consider overall is whether or not you continue going down the same track of having the future fund tied to UI at all. Back 20 years ago that seemed the logical idea at the time. Now in this day and age maybe you look at another system and maybe you frankly look at who you ask everybody to be a contributor of the future fund. Maybe there's a cap or a tenure of how long those systems are some philosophical questions obviously and it's a hot potato for you folks. We want to be part of that discussion, but do think that the status quo, particularly if you think about coming off the major changes that we just did in last session, it might be a little bit premature. I understand that the legislation called for this study. I think it's a good thing but I think it may be a bit premature. I'd be happy to answer any questions.

Chairwoman Roberts: Thank you. Are there questions?

David Owen: Let me put the same question to you that I did for Mr. Miller. For the members that are paying zero, if you were restructuring this, and with the guys in fairness that are contributing something, do you think they would see a difference in contribution increase in the future funds or whether it kind of leveled the playing field with other people, or would they care about that?

Shawn Lyons: I'm not sure, David, that in a lot of cases that they would care. I think fairness is obviously what everybody is looking for and fairness is in the eye of the beholder. The same thing our members recognize, and in a lot of communities in the state if it weren't for the future fund there wouldn't be economic development, but fairness is always in the eye of the beholder. It does seem, I guess I would take note of a recent news article I just read where there may be other funds available at the state's disposal where they might be able to do some backfill in case of a couple projects, and talking about this where we've got another little pot of money sitting out there.

David Owen: One more question. It seems to me that I'm watching more and more chambers in medium-size towns as part of their economic development effort looking at holes in their retail community to try to recruit some retailers and when I started my career with chamber work, my God that would have got me run out of town, tarred, feathered and hanging below a rail. Is your sense that some of these communities are trying to fill a retail mix that can sustain economic viability and your industry more comfortable with that than they have been?

Shawn Lyons: It is a catch 22 and there are obviously some communities in the state where the city maybe has a major incentive for a large retailer to come in on Main Street and you might be scratching your head at that one a little bit because you wonder where that same assistance was for your business when you got started. And that's the thing to keep in mind with respect for the future, you have these two businesses here that did it on their own and this business here comes along, it doesn't seem quite fair for the future

fund to be involved in that mix. I think more communities are right, they are taking a look at retail mix but there is a lot of other factors such as a lot of things to consider such as retail and services sector.

Chairwoman Roberts: Any other questions for Shawn? If not, thanks Shawn.

Audrey Ricketts: I represent South Dakota's Rural electric Cooperatives and our cooperatives are very proud employers and they take good care of their employees. We have employees and our unemployment rate is basically zero and that's because we have no turnover, we provide a good salary, we provide good benefits. We have forty year employees working for us and we take pride in that. I think one of the things that we've also as cooperatives have done continuously is support economic development. That's not something that we take lightly and we have set up READ which is an economic development fund that many of our cooperatives use, we also have set up another program where encourages value added ag so they can borrow against their capital credit in order to go out and do economic development so that's not something that's new to them or something that foreign to them. There are leaders out there in small rural communities and we're very proud of that. We would recommend too the status quo. We're not the ones paying into it but we're also not the one taking out. If we have to consider another option maybe an additional for those people that have a zero balance a monetary fee being assessed to them annually just to help fund future fund but I don't think we support any one of the four offers they have put on the table.

Chairwoman Roberts: Questions?

David Owen: Just to be consistent, if we were going to come up with a fee so that the zero rate people can throw something in do you think your members would want the pot to get bigger or see that it as a way to lower rates.

Audrey Ricketts: No, futures fund get bigger.

Chairwoman Roberts: Thank you very much.

Deb Mortenson: I am with Associated General Contractors and I am here this morning to represent the contractor and supplier members of our organization and I think that when the whole question of revamping the unemployment system arose in the last couple of years we did develop a very good partnership with you people and we came to a good understanding. We have developed a relationship that we want to continue. We do support the future fund and we want continue to work with you to find an equitable solution to this question. Currently we're not here in favor of one proposal or the other, we are pleased to see that the advisory committee is considering those solutions that do link from using unemployment contributions. Our members frankly have a hard time understanding why their unemployment contributions are used from the futures fund. So generally what we like to see is an expansion of the phase from the futures fund specifically we are also in favor of a proposal that would bring more employers into contributing.

Chairwoman Roberts: Any questions?

Deb Mortenson: Yes, we have a few employers who are zero.

David Owen: Oh, I know you do. But again, for those zero rates or for the others it seems to me that the advocacy we've heard from your group to this point would want those zero rates, you know the presumption that we sent the good doctor after is we want to come out with the same amount of money. Well that's going to take the new money and lower everyone else's rates. So I assume that's what you're looking for, for the new money as opposed to have the future fund just get bigger.

Deb Mortenson: When we were discussing this with our members we made a point of making sure that our zero rate was more involved too.

David Owen: So you'd like to see the extra money used to bring higher down higher rates.

Bob Riter, Jr.: I didn't hear Deb, are you with the highway division.

Deb Mortenson: Highway Heavy Utilities, yes.

Bob Riter, Jr.: And do you think that currently contribution rates highway have paid are in any way kind of an offset of the lowness of those rates or the reasonableness of those rates is somewhat of an offset against the fact that they are making contributions to the futures fund maybe in excess of what they think they ought to make?

Deb Mortenson: I think what stymies my people most is that that is the basis for the futures fund contribution what they pay in. So I think that is the biggest concern, is generally speaking, they have no problem paying it. But as I mentioned before, even our zero base have no problem stepping up to the plate because they do believe in the futures funds, economic development and it's a good thing for the industry of course, but just to them not the best method to fund the futures fund.

Chairman Roberts. Further questions?

Paul Aylward: Does that mean then that you support some other method than these?

Deb Mortenson: That is correct.

Paul Aylward: Such as?

Deb Mortenson: Just generally speaking I don't have the answers, my people don't have the answers, they would just like you to look at a method of broadening the base to draw more in.

Paul Aylward: Such as funding it through the general fund versus the UI system?

Deb Mortenson: Correct.

Chairman Roberts: A couple of the alternatives do broaden the base to all employers.

Deb Mortenson: At this time we're not going to say one way or another.

Chairman Roberts: Further questions?

David Owen: I would try to think out loud because I think I've arrived at this point where I think it's justifiable to ask people who have had claims to pay in the future fund while we don't others. And it is rationale, you know this isn't one you're going to agree with necessarily and to be honest with you, your industry represents an exclusion from it. The people that are zero rates haven't put folks out looking for jobs and the people who've had layoffs have and so to a certain extent they're funding the safety net that helps those employees find future jobs. I'm comfortable with that. Where your industry poses a challenge to that philosophy is the fact that you're cyclical, you're not really putting people out in the workforce looking for jobs but you're using a system to stabilize your workforce. So they're not on your payroll, they are being benefited by this unemployment system and we can talk all day about whether that's an intentional or unintentional use of the system. But it does make you different in the sense that you lay people off for a period of time and then you bring them back. We're complicit in that, we don't even ask them to go find jobs so we understand that cyclical nature and that may make this whole thing philosophically different to me and until you get into specifics and some balancing elements but I do appreciate you being here.

Chairman Roberts: Further questions? Any follow-up comments or anything on the proposed legislation for the department?

Deb Mortenson: No, not at this time.

Chairwoman Roberts: Ok, thank you very much. Anybody else interested in testifying? If not, then we will close the public hearing and open it up to council discussion. Hearing closed at 10:25 a.m. Let's have committee discussion.

Mark Merchen: For purpose of discussions I would make a motion. If seconded, I'd be glad to make it, that Secretary's Roberts and Benda forward Dr. Brown's report, associated future fee committee minutes and public hearing testimony to the legislature as information without a recommendation.

Chairwoman Roberts: Is there a second?

David Owen: Second.

Chairwoman Roberts: Discussion.

Mark Merchen: Madam Secretary, think economic development is an interesting topic in and of itself as an economic development professional and for purpose of full disclosure I've yet to see very many politicians run without supporting economic development. But when we get into the mechanics of what it is I find that very few people understand what happens. Reality is that Secretary Benda and the Governor have multiple tools to advance that cause, just one of them is the futures fund and I think that it's important to understand that in the process of getting jobs created whether it's a local entrepreneur or it's a company coming from outside one of those tools is an executive tool and that's what this futures fund is. There are discussions that go on, there's timeliness, there's opportunities that only a futures fund probably can fit in. Many of the other tools are very much process driven, they require board action, they take a lot more time, they're much more public and with all these different tools there are absolutely multiple sources of funding. Most of the tools are funded in a broad-based way in a general fund. One of them is funded through the unemployment insurance system and I think that's basically our debate is that the right way to do it. I've been a new member of this committee and I would thank the staff and the other board members for helping me understand the unemployment insurance system but as I've taken the opportunity to explain to be a good informed member, the unemployment system as I understand it is a safety net for South Dakota workers whose job is temporarily displaced as a result of 1. that individual employer's business has a down-turn and has to lay that person off or the larger economy has a down-turn and we have to lay off multiple people, that's why we created the unemployment insurance system. It seems appropriate to me when you take in the context of multiple tools and multiple sources that that employer group who's got people unemployed could contribute towards helping create jobs in an environment so that when that person is displaced there's a robust economy and environment and employer's who are offering jobs and this is just one way of doing it. So not all the taxes and fees that we pay in the state are proportionally equal it never will be that way. A wealthy family in South Dakota probably pays more real estate taxes and sales taxes than does a middle income family or a low income family. But they drive on the same streets, they have the same security needs, it's never quite proportional and I just am of the opinion that this is such a broad-based topic that it really takes legislative action and there will be debate in front of committees and I think that this committee and the staff and the secretaries have done exactly what the legislature asks, threw out some alternatives and if they are to be debated I think the legislature is well able to take that debate out there and a lot of these topics other than fairness will come to light and that's probably the better place to decide what should or shouldn't be done. I again thank the staff and Dr. Brown for a very detailed report but I think its information and I would suggest that we just offer it in that context.

Chairwoman Roberts: Thank you. Further discussion?

David Owen: I'll end up where Secretary Roberts started a year and a half ago. We started to talk about messing around with wage base and rates and I was one saying look if you think we can go through this conversation and not go into that future fee you're nuts. And there was some resistance on this basis, that's beyond the scope of the



unemployment insurance, that's a parallel tax and I understood that it was part of the political experience, it was going to be part of the dialogue. Having gone through that I'm at the same place you are. I give Representative Peters credit so the increase in wage base didn't cause a windfall to the future fund. That was a proper move. At this point, I think we're back where we're saying what we know will work. The UI trust fund is on a better course, we've examined as the law requires what the options are. There are a number of parties who can pick that up and go forward and there's going to be some contention among that and they have a good guy to do that because of our excellent report and I think we lay it on the table and we all just run like hell.

Chairwoman Roberts: Further discussion?

Homer Harding: I think Mark makes a very good point and I appreciate the manner in which he put it forward. Would it be appropriate though to add on there's an alternative to spend the money out of the general fund? Would it be appropriate to add that or do we just forward Dr. Brown's report?

Mark Merchen: I would just say that if that's the case that bill will come forward with the legislature. The committee will debate that question, it'll be kicked around on the floor and in the hallways and that will be determined. I think that's the job of the legislature and the appropriate committee to determine.

Rob Anderson: I think it might be fair in keeping with Homer's comments and Mark's motion that at least my recollection is 3 of the 4 people who made comments mentioned, or at least raised the question, is it appropriate to continue to fund the future fund this way? Maybe the money should come from the general fund. We can just recite that in our report and it might accomplish what Homer asked.

Mark Merchen: Well my motion says that all the minutes and testimony go forward and if somebody wants to dig into it, right there is some excellent testimony and the source of it. We're not restricting that be conveyed. It's right there in the public testimony.

Paul Aylward: I'm going to lean to support the motion but I think it's important that even though this is a parallel tax, and maybe not a part of the unemployment system, that it was born from those funds and those funds at one time were dedicated to the unemployment system and because of a healthy fund some of those dollars that were intended for the unemployment fund were diverted to another purpose. That's my only point but I will probably support this motion.

Bob Riter, Jr.: Question. I like Mark's motion too but I like what Homer is talking about and I'm curious if your motion on Dr. Brown's proposals doesn't mention, I don't think anyway, the general fund as an alternative so if we just submit this proposal even with the testimony, we haven't really submitted that as another alternative other than as people who testified recommended. Was that your intention?

Mark Merchen: My intention is, I think, that the legislature rightfully asks the secretaries to submit a report. This advisory board was to comment and facilitate and I think that's been done and I think that ultimately this is a legislative act and if you take this source away then the legislature would have to determine how to replace. That's a whole set of discussions. We're not a committee of the legislature. We are here to talk about unemployment insurance I guess that would be my view about that. I think if that's a debate it should come forward in the appropriate process unless we want into that debate and I think that's the option of the committee.

Chairwoman Roberts: Just to clarify, all of the testimony, including the comments here, are going to be included in the report.

Mark Merchen: That's my motion that that be forwarded.

Bob Riter, Jr.: Just looking at the annual report we adopted it says...

Chairwoman Roberts: Okay, we're talking about the Benda/Roberts report that is going to be submitted November 15, 2006.

Bob Riter, Jr. Okay, so to be consistent I suppose our report, the UI report to the Governor, says that we recommend that the current system as well as all four of Dr. Brown's alternatives be considered, we didn't mention anything about the general fund in our report.

David Owen: It seems to be that the good summary of public testimony we've had would highlight that. Virtually everybody at the witness table mentioned the general fund and I guess the one thing that keeps me from thinking that we ought to gin it up anymore is the economic and political reality that I mean it was a threat last session. You know these people are saying well maybe we ought to mess around with future fee, I used to say well do you want to get rid of it? They say no. I say well you got \$7 million to appropriate to it? Hell no! I mean hell, those realities change in an election so I think a good reference to it will fit the political reality. It's an interesting idea. In an ideal world that's where the money comes from.

Mark Merchen: I think that debate would happen in a committee process. If there's appropriate support for making changes then the debate will ensue because there's lots of issues here about how you take it away, how you replace it again. Back to my point, it is one tool, it's one source in a multiple set of tools with multiple sources and if you go into that debate, and maybe it should be, there will be lots of topics I don't think this board even explored them all. We've done what we were supposed to do. Submit a very intelligent report with alternatives. I'm sure that Dr. Brown weighed a number of things before he came up with 4 instead of 8 and I think that's a report that stands on its own.

Chairwoman Roberts: Further discussion on the motion?

Homer Harding: I don't want to delay anything further. Are we going to be required from the legislative session to take a position on this if we're giving the report?

Chairwoman Roberts: The annual report says everything that the Unemployment Insurance Advisory Council was requested to do.

Mark Merchen: My motion is specific without recommendation.

Chairwoman Roberts: Further discussion?

Paul Aylward: Could I hear the motion again?

Mark Merchen. The motion is Secretaries Roberts and Benda forward Dr. Brown's report, associate future fee committee minutes, and public hearing testimony to the legislature as information without recommendation.

Chairwoman Roberts: Further discussion on the motion? Does everybody understand it?

Mark Merchen: I just want to make one point. I meant to say that we didn't like number 4 and so that's in the minutes. I think that's as far as we went in terms of commenting.

Chairwoman Roberts: Further discussion? If not then all in favor of the Merchen motion say aye, those opposed nay. Secretary call the roll.

Carol Hinderaker – Aye

Robert Anderson – Aye

Homer Harding – Aye

Bob Riter – Aye

David Owen – Aye

Paul Alward – Aye

Mark Merchan – Aye

Pam Roberts – Aye

Chairwoman Roberts: Thank you. Is there anything else that anybody wants to bring to the committee, this advisory council? If not, thank you very much for all of your hard work.