

Draft Minutes of the  
Employment Advisory Council  
Department of Workforce Services, 140 East 300 South, Salt Lake City  
**December 10, 2014 – 3:00 – 4:30 p.m.**

<b>Council Members Present:</b>	John Chindlund	Employer Representative, Prince, Yeates & Geldzahler	
	David Davis	Employer Representative, Utah Retail Merchants Assn.	
	Todd Bingham	Employer Representative, Utah Manufacturers Assn.	
	Greg Diven	Employer Representative, OCM, Inc.	
	Dale M. Cox	Employee Representative, Utah State AFL-CIO	
	Tony Montano	Employee Representative, Utah State AFL-CIO	
	Dan Peay	Employee Representative, United Steelworkers, AFL-CIO	
	Diane Lewis	Employee Representative, Laborer's Local #295	
	Kit Morgan	Employee Representative, Operating Engineers, Retired	
	Matt Minkevitch	Public Representative, Executive Director, the Road Home	
	Dee Rowland	Public Representative	
	<b>Council Members Excused:</b>	Raylene Ireland	Public Representative
		Richard Thorn	Employer Representative, Assoc. of General Contractors
<b>DWS Staff Present:</b>	Bill Starks	UI Director	
	Geoffrey Landward	DWS Deputy Director	
	Michelle Beebe	UI Assistant Director	
	Jody McMillan	Chief, UI Contributions	
	Bradley Salmond	UI Program Manager	
	Nathan Harrison	Finance Director	
	Mike Miller	Chief, UI Contributions	
	Bethany Hyatt	Public Information Officer, DWS	
	Kathy Bounous	Appeals Director	
	Justin Williams	UI Claims Manager	
	Karen Tao	UI Sr. Business Analyst	
Cathleen McKenzie	UI Program Specialist		
Mary Gehman	Support Staff Supervisor, Minutes		

Agenda Item	Discussion
Welcome and Approval of Minutes	<p>Geoffrey Landward, DWS Deputy Director, called the meeting to order at 3:03 p.m. Jon Pierpont, DWS Executive Director will not be in attendance as he has another commitment. Mr. Landward turned the meeting over to Bill Starks. Mr. Starks introduced new Employee Representative Kit Morgan. Mr. Morgan stated he recently retired, worked in the heavy construction industry, spent the last 12 years working for the Operating Engineers Local Union, runs a small business on the side and is happy to be involved with this Council.</p> <p>Mr. Landward called for a motion to approve the Minutes from the September 5, 2013 meeting. <b>Motion:</b> Dave Davis motioned to approve the Minutes as written, Dan Peay seconded the motion and the Minutes were approved unanimously.</p>
DWS Organizational Changes	Mr. Starks reported he is retiring on December 23 <sup>rd</sup> . He introduced new UI Director, Michelle Beebe.
Council Appointments and Vacancies	Mr. Starks stated there are currently two vacancies. If anyone knows individuals who can fill these vacancies, contact Michelle Beebe at 801-526-9575 or <a href="mailto:mbeebe@utah.gov">mbeebe@utah.gov</a> . Mr. Starks thanked three members who recently agreed to serve four more years: Greg Diven, Dan Peay and Matt Minkevitch.
Open Meeting Training	Ms. Beebe provided training on the Open Meetings Act (Attachment A).
Update on UI Trust Fund & 2015 Tax Rates	Mr. Starks stated as of December 1, 2014, the UI Trust Fund Balance was \$828 million which is only \$27 million short of the all-time high. It is projected the balance will be over \$940 million by June 30, 2016 which is more than the Maximum Adequate Reserve. (Attachments B-G).
Discussion on The Comprehensive Unemployment Benefits System (CUBS) Funding	<p>Mr. Starks reported Utah's current software platform is very clunky and not very reliable. A decision was made in 2012 to move the Comprehensive Unemployment Benefits System (CUBS) to a .net platform which is web based. (Attachment H)</p> <p><b>Discussion</b></p> <p>Mr. Davis asked if there was anyplace else we could have put the \$20.3 million, if not in the Trust Fund? We could have started appropriating it right away as many states did. The majority of states sent it to prop up their trust funds and some used on modernization projects. Mr. Davis reiterated that when the \$21 million was given, it was for the purpose of modernization. These funds can be used for any purpose allowed under the Reed Act. Utah only plans on spending approximately \$2 million per year, if more is needed, SBR grant money will be used first. Mr. Davis asked if we take money from the Trust Fund, would the Legislature need a Fiscal Note, or do they have to just say it is okay? Mr. Landward stated this process will be worked through the Fiscal Analyst. No fiscal note would need to be attached. Mr. Davis stated it seems like a reasonable way to use the money.</p>

	<p><b>Motion:</b> Mr. Davis motioned the Council take a position of supporting the appropriation of \$6 million of the \$21 million UI Modernization dollars that went into the Trust Fund be pulled back out for our technology needs. Dee Rowland seconded the motion and the motion carried.</p>
<p>Potential Legislation for 2015</p>	<p>Mr. Starks referred to the <i>Workforce Services Amendments</i> Bill. (Attachment I)</p> <ul style="list-style-type: none"> <li>• Once a quarter, DWS attends a Worker Misclassification Enforcement Council meeting established nearly four years ago. Members include DWS, a representative from the Tax Commission, the Attorney General’s Office, the Department of Commerce and the Labor Commission;</li> <li>• This Council submits an Annual Report (Handout J) to the Governor’s Office and the Legislature. These agencies leverage resources to identify misclassified workers. When DWS conducts audits, and finds significant differences of misclassification, we share with agency reps from the Council. Usually, if an employer is violating one of DWS’ laws, they are violating other laws. The US Department of Labor (USDOL), Wage and Hour, has been attending these meetings regularly;</li> <li>• Although DWS is 100% funded by the USDOL, we are not currently allowed to share confidential information with the Wage and Hour division. They have approached DWS asking for information obtained as a result of our audits as these employers may be violating Wage and Hour laws. The only way we can share information with them is through a statutory change. Peter Asplund has drafted this bill;</li> <li>• From a Department perspective, we don’t have any objections to this sharing. It is broad enough, the information could be expanded to other information but initially, all DWS plans to do is share our audits with them. If it proves to be useful for them, we would take it from there. A Memorandum of Understanding (MOU) would need to be executed which would include safeguards.</li> </ul> <p><b>Discussion</b></p> <ul style="list-style-type: none"> <li>• Mr. Davis asked if this would be spelled out in the Code? He is concerned about protecting the data. He referred to SB 281, Debt Collection. He knows we narrowly tailored that as best we could but it feels like another opening of the door to this data that employers are providing;</li> <li>• Would this subject employers to additional Federal audits? Mr. Starks believes that is what they would use this for. The whole purpose behind the Enforcement Council is to leverage our resources, so agencies are not going in blindly instead conducting more focused, targeted audits. For the past ten years, we have been receiving a 1099 file from the IRS which we use to target employers for audit. This levels the playing field for employers. The target would be unscrupulous employers. Mr. Starks stated the USDOL has not shown an interest in our no difference audits. Their interest is where we have identified employers who have misclassified workers;</li> <li>• Mr. Diven worries about the possibility of someone hacking into it and is concerned that the USDOL could wind up sharing this information with someone else. Mr. Starks stated there are redisclosure agreements that prevent this from happening. Mr. Davis added employers feel they are giving this to DWS for UI purposes and don’t understand this information may be passed on;</li> <li>• Mr. Starks stated providing this information is as simple as handing over a folder;</li> </ul>

- Mr. Diven asked what is Wage and Hour doing now? Mr. Starks replied they are going off other tips and matches. Mr. Davis asked if Wage and Hour can get all the information they want such as Federal tax returns. Do they have an MOU with the IRS? Mr. Starks doesn't have an answer.

**Motion:** Dee Rowland motioned this Council support the recommendation on the Workforce Services Amendment. Matt Minkevitch seconded the motion.

- Mr. Starks reported DWS is neutral and doesn't have any objections to this Bill;
- Mr. Bingham asked why is DWS bringing this before the Council if they are not formally suggesting the Council support? Who is the passion behind this?
- Mr. Davis added this doesn't help Utah Unemployment. This is a favor to Wage and Hour to make their jobs easier. Will the MOU allow us to share more information with them than the Bill indicates? The Statute will allow much more than that, however we can limit the MOU to just providing the audit information;
- Mr. Davis believes if he were asked to vote today, it would probably be no. In the meantime, he supports members of the Council working on a solution;
- Mr. Morgan added he believes it should be limited to only audits for non-compliance;
- Mr. Davis stated it would be more persuasive and compelling to take a position and support it if DWS and the Governor's office was supporting it and not indifferent. If they aren't pushing it, why should the Council push it? What would motivate the Governor to support this?
- Mr. Davis stated he would be more comfortable if the scope of the MOU was narrowed;
- Ms. Beebe reported information shared from members of the Enforcement Council to DWS has resulted in \$811,000 in past due contributions being assessed. Currently, we don't get any information from the Wage and Hour division. According to the CFR, if we provide information, they have to reimburse us or have a Reciprocal Agreement to share information in place. Mr. Cox added he isn't comfortable with this until all members agree.

**Motion: Ms. Rowland withdrew her motion.**

Mr. Davis stated maybe we could sit down, and see if there is something we could do that would work. It would help a lot if DWS or the Governor were supportive. Mr. Cox added he is interested as to how much money is brought into the Department as a result of sharing this information. Ms. Beebe will facilitate a sub group with the USDOL, Mr. Davis, Ms. Rowland and Mr. Cox. **There was no motion today.**

Update on SB  
281 Debt  
Collection Info  
Amendments

(Attachment K)

Adjourn

Mr. Montano motioned to adjourn, Mr. Morgan seconded the motion and all were in favor. The meeting adjourned at 4:36 p.m.

DRAFT