

**AMENDMENT TO SUBCOMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER :

CHAIR :

I move to amend amendment SB1531 SUBPCS2  
Page 55 Section 13 Lines 11 1/2  
Of the printed Bill  
Of the Engrossed Bill

By inserting the language below and renumbering subsequent sections:

(see below)

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Susan Winchester \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 "SECTION 1. AMENDATORY 40 O.S. 2001, Section 3-102, as  
2 amended by Section 12, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2007,  
3 Section 3-102), is amended to read as follows:

4 Section 3-102. CONTRIBUTIONS.

5 A. Contributions shall accrue and become payable by each  
6 employer for each calendar year in which the employer is subject to  
7 this act, with respect to wages for employment. Such contributions  
8 shall become due and be paid by each employer to the Oklahoma  
9 Employment Security Commission for the Unemployment Compensation  
10 Fund in accordance with such rules as the Commission may prescribe,  
11 and shall not be deducted, in whole or in part, from the wages of  
12 individuals in the employer's employ.

13 B. In the payment of any contributions, a fractional part of a  
14 cent shall be disregarded unless it amounts to one-half cent  
15 (\$0.005) or more, in which case it shall be increased to one cent  
16 (\$0.01).

17 C. Each employer shall be notified of its contribution rate for  
18 a given calendar year on or before September 30 of the previous  
19 calendar year. The rate shall become conclusive and binding upon  
20 the employer unless within ~~twenty (20)~~ forty-five (45) days after  
21 the certified mailing of the notice of the contribution rate, to the  
22 employer's last-known address, the employer files a written request  
23 for a review and redetermination setting forth the employer's  
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1 reasons for the review. The Commission shall provide for a review  
2 and issue a determination to the employer.

3 D. Within fourteen (14) days after the date of mailing of the  
4 notice of the determination, the employer may file with the  
5 Commission at the address prescribed in the notice the employer's  
6 specific written objections to the contribution rate so determined.  
7 The matter will be heard upon those specific written objections by a  
8 representative appointed by the Commission. The decision shall be  
9 made in writing and notice shall be mailed to the employer. The  
10 employer may appeal to the district court by filing a petition for  
11 review with the clerk of that court within thirty (30) days after  
12 the date of mailing stated upon the notice of decision.

13 SECTION 2. AMENDATORY 40 O.S. 2001, Section 3-111, as  
14 last amended by Section 17, Chapter 176, O.S.L. 2006 (40 O.S. Supp.  
15 2007, Section 3-111), is amended to read as follows:

16 Section 3-111. SUCCESSOR AND PREDECESSOR EMPLOYERS.

17 A. Any employing unit, whether or not an employing unit at the  
18 time of the acquisition, which acquires substantially all of the  
19 trade, organization, employees, business, or assets of any employer  
20 (excepting in such case any assets retained by that employer  
21 incident to the liquidation of the employer's obligations) and who  
22 continues the operations of the predecessor employer as a going  
23 business, shall be determined to be a successor employer. The  
24 successor employer shall ~~acquire~~ keep the current merit rating

1 ~~account of the predecessor employer, including the predecessor's~~  
2 ~~actual contribution and benefit experience, annual payrolls, and~~  
3 ~~contribution rate, and shall not acquire the merit rating account of~~  
4 ~~the predecessor employer. The successor employer shall also become~~  
5 ~~jointly and severally liable with the predecessor employer for all~~  
6 ~~current or delinquent contributions, interest, penalties and fees~~  
7 ~~owed to the Oklahoma Employment Security Commission by the~~  
8 ~~predecessor employer.~~

9       Written notice of all current or delinquent contributions,  
10 interest, penalties and fees owed to the Commission by the  
11 predecessor employer shall be provided to the successor employer by  
12 the predecessor employer prior to the sale of the business. Failure  
13 to give such notice may subject the predecessor employer to a  
14 penalty as specified by the rules of the Commission.

15       Any remuneration for services covered by the Employment Security  
16 Act of 1980 or other state unemployment compensation acts paid by  
17 the predecessor employer shall be considered as having been paid by  
18 the successor employer. The initial determination regarding whether  
19 or not an acquiring employer will become a successor to a  
20 predecessor account shall be made by the Commission or its duly  
21 authorized representative and notice of this determination shall be  
22 delivered to the acquiring employer or mailed to his or her last-  
23 known address, by certified mail.

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1       ~~B. Any employing unit, whether or not an employing unit at the~~  
2 ~~time of the acquisition, which acquires substantially all of the~~  
3 ~~trade, employees, organization, business, or assets of an employer,~~  
4 ~~at one or more separate and distinct establishments and who~~  
5 ~~continues the acquired operations of the predecessor as a going~~  
6 ~~business, shall acquire that portion of the experience rating~~  
7 ~~account of the predecessor employer that is applicable to the~~  
8 ~~establishment or establishments, if the employing unit, immediately~~  
9 ~~after the acquisition, is an employer; provided, however, that the~~  
10 ~~employing unit shall not acquire a portion of the experience rating~~  
11 ~~account unless written application therefor is received by the~~  
12 ~~Commission within one hundred twenty (120) days after the date of~~  
13 ~~the acquisition together with evidence sufficient for the Commission~~  
14 ~~to determine which portion of the experience rating account of the~~  
15 ~~predecessor is applicable to the acquired operations, and the~~  
16 ~~Commission finds that the transfer will not tend to defeat or~~  
17 ~~obstruct the object and purpose of the Employment Security Act of~~  
18 ~~1980; and provided further, that the portion of the experience~~  
19 ~~rating account so transferred, including the taxable payrolls and~~  
20 ~~benefit wages, shall not thereafter be used in computing an~~  
21 ~~experience rating contribution rate for the transferring employer.~~  
22 ~~For the purpose of this subsection a separate and distinct~~  
23 ~~establishment means all operations conducted by an employer at one~~

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1 ~~business location which is readily identifiable as a separate~~  
2 ~~business organization.~~

3       ~~C.~~ If the Commission finds that any report required to complete  
4 a determination of contribution rate has not been filed or if filed  
5 is incorrect or insufficient, and any such fact or information has  
6 not already been established or found in connection with some other  
7 proceeding pursuant to the provisions of the Employment Security Act  
8 of 1980, an estimate may be made of the information required on the  
9 basis of the best evidence reasonably available to it at the time.  
10 Notice shall be given of the determination as provided for  
11 contribution rate in subsection C of Section 3-102 of this title and  
12 the employer may appeal therefrom as provided in subsection D of  
13 Section 3-102 of this title.

14       ~~D.~~ C. A determination made under this section may be appealed  
15 pursuant to the provisions of Section 3-115 of this title.

16       SECTION 3.        AMENDATORY        40 O.S. 2001, Section 3-115, as  
17 last amended by Section 8, Chapter 354, O.S.L. 2007 (40 O.S. Supp.  
18 2007, Section 3-115), is amended to read as follows:

19       Section 3-115.    APPEAL OF DETERMINATIONS.

20       A. If a determination is made by the Oklahoma Employment  
21 Security Commission on any aspect of an employer's account, and a  
22 method of appeal or protest of the determination is not set out in  
23 the statute or rule under which the determination was made, the  
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1 employer may appeal or protest the determination under the procedure  
2 set forth in subsection B of this section.

3 B. 1. All determinations affecting an employer account must be  
4 made by the Commission in writing in a Notice of Determination and  
5 mailed to the employer, by certified mail, at the employer's last-  
6 known address with the mailing date and appeal rights set out in the  
7 document.

8 2. Within ~~twenty (20)~~ forty-five (45) days after the mailing of  
9 the Notice of Determination as provided for in paragraph 1 of this  
10 subsection, the employer may file with the Commission, or its  
11 representative, a written request for a review and redetermination  
12 setting forth the employer's reasons therefor. If any employer  
13 fails to file a written request for review and redetermination  
14 within ~~twenty (20)~~ forty-five (45) days, then the initial  
15 determination of the Commission shall be final, and no further  
16 appeal or protest shall be allowed.

17 3. If a written request for review and redetermination is  
18 filed, the Commission shall provide for a review and issue a Notice  
19 of Redetermination in the matter. The employer may appeal the  
20 redetermination by filing a written protest within fourteen (14)  
21 days of the date of the mailing of the Notice of Redetermination.  
22 If the employer fails to file a written protest within the time  
23 allowed, the redetermination of the Commission shall be final and no  
24 further appeal or protest shall be allowed.

1           4. Upon the timely filing of a written protest, the Commission  
2 shall provide for an oral hearing de novo to allow the employer to  
3 present evidence in support of the protest. The Commission or its  
4 representatives shall, by written notice, advise the employer of the  
5 date of the hearing, which shall not be less than ten (10) days from  
6 the date of the mailing of the written notice. At the discretion of  
7 the Commission, this hearing shall be conducted by the Commission,  
8 or by a representative appointed by the Commission for this purpose.

9           5. Pursuant to the hearing, the Commission or its  
10 representative shall, as soon as practicable, make a written order  
11 setting forth its findings of fact and conclusions of law, and shall  
12 mail it, by certified mail, to the employer at the employer's last-  
13 known address with the mailing date and appeal rights set out in the  
14 document.

15           6. The employer or the Commission may appeal the order to the  
16 district court of the county in which the employer has its principal  
17 place of business by filing a Petition for Review with the clerk of  
18 the court within thirty (30) days after the date the order was  
19 mailed to all parties. If the employer does not have a principal  
20 place of business in any county in Oklahoma, then the Petition for  
21 Review shall be filed with the Oklahoma County District Court. All  
22 appeals shall be governed by Part 4 of Article 3 of the Employment  
23 Security Act of 1980. If the employer fails to file an appeal to  
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1 the district court within the time allowed, the order shall be final  
2 and no further appeal shall be allowed.”

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