

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 413

As Amended by House Committee on
Commerce and Economic Development

Brief*

SB 413, as amended, would replace the Workers Compensation Administrative Law Judge (ALJ) Nominating and Review Committee and the Workers Compensation Board Nominating Committee with a new entity that would be named the Workers Compensation and Employment Security Boards Nominating Committee. The new Committee would make nominations pertaining to positions in the Workers Compensation Division, the Workers Compensation Review Board, and the Employment Security (Unemployment Insurance or UI) Board of Review. Under current law, the Division and the two boards are organized within the Department of Labor.

The bill also would change qualifications for positions appointed to the Workers Compensation Division and its Review Board.

The new Committee would have seven members. The following state official and groups would nominate members to serve:

- The Secretary of the Department of Labor;
- The Kansas Chamber of Commerce;
- The National Federation of Independent Businesses;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The Kansas AFL-CIO;
- The Kansas State Council of the Society for Human Resource Management;
- The Kansas Self-Insurers Association; and
- The Secretary of Labor would nominate one member from either an employee organization, as defined by KSA 75-4322, or a professional employees' organization, as defined by KSA 72-5413.

The Governor would appoint each member to a four-year term. No member would serve longer than two consecutive terms. If the Governor chose not to appoint a person, the same nominating source would replace the selection by the same process. If a vacancy were to occur on the new Committee, the respective nominating source would have 30 days to nominate another person.

The new Committee would meet as needed. A two-thirds majority of the new Committee would be required to approve an action.

Workers Compensation Administrative Law Judges

In order for an attorney to become an ALJ in the Workers Compensation Division, the bill would increase the minimum experience of practicing in workers compensation law from one year to five years.

If there was a vacant ALJ position, the new Committee would nominate a person from a list of qualified applicants provided by the Director of the Workers Compensation Division. The Secretary of Labor would have the discretion to appoint or reject a nomination. In the latter case, the new Committee would nominate another person for the vacancy.

The reappointment process for an ALJ who has served a four year term would be revised. An incumbent ALJ would submit an application to the Director of Workers Compensation. Under current law, an incumbent ALJ wishing to be reappointed is considered directly by the ALJ Nominating and Review Committee.

The ALJ Nominating and Review Committee is comprised of two members currently. The Secretary of Labor is required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce. Using a list of qualified applicants provided by the Director of Workers Compensation, the Nominating and Review Committee makes a unanimous nomination to the Secretary of Labor. The Secretary has the discretion to accept or reject the applicant.

Worker Compensation Review Board

Under current law, the Worker Compensation Review Board reviews the decisions, findings, orders, and awards made by the ALJs. The five members of the Workers Compensation Board are required by statute to have a minimum of seven years experience practicing law in Kansas.

The bill would require a minimum of five years out of the seven to be practiced in workers compensation law. When hearing cases, the Workers Compensation Board's minimum panel size would increase from two members to three. The Board's actions would require the written approval of a majority comprised of a minimum of three members hearing the case.

The current Nominating Committee for the Workers Compensation Board is comprised of two members. The Secretary of Labor is required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce.

UI Board of Review

With regard to a vacancy on the UI Board of Review, the new Committee would submit a list of three nominees for the Governor's consideration. The Governor could choose not to appoint any of the nominees. In which case, the new Committee would nominate another person for the vacancy. Appointees would continue to require confirmation by the Senate. Board members would be limited to serving two consecutive terms.

Under current law, the UI Board of Review hears appeals arising from disputed UI claims. It is comprised of three members appointed to four year terms. The Kansas AFL-CIO and the Kansas Chamber of Commerce each nominate three persons to the Governor. The Governor then appoints one from each list. After Senate confirmation, the two Board members agree upon the selection of the third member, representing the general public.

Background

The National Association of Professional Employer Organizations, the Kansas Association of Insurance Agents, an in-state PEO firm, and an employer-client spoke in favor of the bill. PEOs provide a spectrum of human resource management services to other employers, typically smaller businesses. Proponents stated the bill would provide small businesses the guidance and legal certainty that a PEO with whom it contracted would be able to perform. The Insurance Agents Association also recommended an amendment to specify that insurance be obtained from an admitted carrier and a licensed person.

The Kansas AFL-CIO and the Association for Justice spoke against the bill. Opponents were concerned that the registration framework implied certain criteria had been met by a PEO. Opponents also noted the bill did not provide employer-clients or covered employees with protection from fraud or a PEO's insolvency.

The Senate Committee on Commerce amended the bill to:

- Specify that in addition to the relationship with covered employees as specified in the introduced bill, the co-employment relationship with an employer-client also would not require a PEO to be regulated by a governmental entity for occupational licensing purposes;
- Change the criterion for filing statements of PEO ownership from 25 percent equity to 15 percent;
- Establish fees and create a new fund;
- Increase the maximum civil penalty from \$1,000 to \$10,000; and
- Change the effective date to January 1, 2014.

The House Committee on Commerce and Economic Development amended the bill by deleting its contents, which would have required professional employer organizations (PEOs) to register with the Department of Labor, and inserting the text contained in HB 2531 as it was approved by the House. The single substantive change that the House made to HB 2531 was to limit the tenure in office for UI Board of Review members to two consecutive four-year terms.

According to the fiscal note provided by the Division of the Budget, in consultation with the Department of Labor, initial administrative start-up costs would be estimated to cost \$29,393 in FY 2013. Since the introduced version of SB 413 did not specify a funding source, the Department assumed the money would be appropriated from the State General Fund. Annual, ongoing costs are estimated to be \$10,390 annually. The Department would anticipate an increase in litigation over enforcing provisions of the Employment Security Act (Unemployment Insurance or UI), but the agency does not anticipate a change in UI revenues.

According to the fiscal note prepared by the Division of the Budget, HB 2531, as introduced, would have no fiscal impact on the Department of Labor.