

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 15, 2006 in Room 123-S of the Capitol.

All members were present except:

David Wysong- excused

Committee staff present:

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Kansas Association of Insurance Agents

Jeff Glendening, Kansas Chamber

Secretary Garner, Department of Labor

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2696-Workers compensation; administrative law judges, requirements, salary and application; establishing the workers compensation administrative law judge nominating and review committee** by introducing Helen Pedigo from the Revisors Office to explain the bill. Ms. Pedigo stated the bill was similar to a bill that was in the Committee last year. Ms. Pedigo reviewed the bill stating the requirements for an Administrative Law Judge with the Division of Workers Compensation would be redefined, they must be an attorney for five years, with one of those years being a work comp attorney. She also stated a review commission would be established to make selections of the Administrative Law Judges for the Division of Workers Compensation for a term of four years. After that four years they will be up for re-review for consideration of another four year term. The present ALJ's will have the option to become unclassified employees which will allow them a pay increase of 80% of the district court judges pay, which will be a substantial increase. Upon completion of Ms. Pedigo's review there was some discussion with the Committee on the present selection process for the Administrative Law Judges.

Chairperson Brownlee introduced Larry Magill representing the Kansas Association of Insurance Agents to give his testimony as a proponent for **HB 2696**. Mr. Magill presented written testimony. (Attachment 1) Mr. Magill stated this bill has labor and business on the same side. They worked on the bill for the last three years and came close last year. This bill addresses all the issues on the bill last year. He stated that in the past the decision of Administrative Law Judges is a hiring decision by the Secretary of the Department of Labor. ALJ's have been a classified service with no term limits. **HB 2696** is a fair and balanced approach for selecting and reviewing Administrative Law Judges. The bill allows the ALJ's to continue as classified employees at their current pay grade. If they choose to take the pay increase they must agree to a four year term, if they choose to unclassify and all new ALJ's will be subject to the bill's nomination and re-nomination process. He went on to explain about the budget and how the increase in pay would be funded; by an assessment on all paid workers compensation claims each year. That assessment is currently 2.67% and is capped at 3% of paid claims annually by insured and self insured business. He stated in essence, it would be business that would be footing the bill for a salary increase. The terms of the 10 Administrative Law Judges would be staggered to avoid all their terms expiring at once. The Workers Compensation system must be viewed as fair to all parties. They think this is a way to bring balance and accountability to the ALJ process and attract highly talented people in the bargain. He urged the Committee to pass this bill favorably.

Chairperson Brownlee introduced Jeff Glendening representing the Kansas Chamber to give his testimony as a proponent on **HB 2696**. Mr. Glendening presented written testimony. (Attachment 2) Mr. Glendening stated they are in support of the bill and hope it will make the Workers Compensation System much more fair and unbiased so that all parties have an equal chance. He urged the Committee to consider the bill favorably for passage.

Upon the conclusion of Mr. Glendening's testimony there was discussion with the Committee. Senator Kelly entered the discussion with a question regarding the appeals process. Mr. Magill stated the appeals process will not be affected with the passage of this bill. Senator Wagle entered in the discussion regarding the additional costs. Secretary Garner stated the assessment rate will go up. The nominating committee for the

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ALJ's was discussed.

Chairperson Brownlee called the Committee's attention to the written testimony of Wil Leiker representing the Kansas AFL/CIO as a proponent for **HB 2696**. (Attachment 3)

Chairperson Brownlee introduced Secretary Garner with the Department of Labor to give his testimony as a neutral party with concerns on **HB 2696**. Secretary Garner presented written testimony. (Attachment 4) Secretary Garner stated the bill will significantly increase the pay for the Workers Compensation Administrative Law Judges and would change the method for selecting judges. Secretary Garner has concerns he feels the Committee should be aware of. The increase in pay would impact the Department of Labor's budget by \$302,000.00. The division of Workers Compensation is funded by assessments on insurance carriers based on the amount of benefits they pay to injured workers each year. He also stated the Department of Labor has dedicated lawyers providing valuable services to the state at discount prices and feels they warrant similar attention regarding their pay. He stated there are other ALJ's working in different departments for the state and their pay is not addressed in this bill. He feels that the salaries for both groups should be considered.

Chairperson Brownlee opened the floor for questions from the Committee. Senator Barone has questions regarding the \$302,000.00 fiscal note from Secretary Garner. He inquired if that included benefits and the Secretary stated it did. Senator Reitz asked if other attorneys working for the State were concerned and upset about the unclassification of the ALJ allowing them a pay raise. Secretary Garner stated that there was an ongoing issue because the work comp ALJ's already are two pay grades higher. There was discussion regarding the number of other attorneys in the system. Senator Kelly entered into the discussion asking if there are other ALJ's other than in the work comp system. Secretary Garner stated there were but he did not know how many. Chairperson Brownlee entered into the discussion asking how could they evaluate the work load of the work comp ALJ's to any other ALJ's that are on the same level. Secretary Garner stated he did not know. She stated that the work comp ALJ's may have more responsibilities than the other ALJ's. Senator Wagle entered into the discussion asking Secretary Garner if it would help with the other issues of the other ALJ's not in the work comp system, to change the pay from 80% of the district court judges to 75% of the district court judges. Secretary Garner stated that would have to be a policy change with the decision being made by the Committee.

Chairperson Brownlee stated she has asked the Revisor to look into giving the work comp ALJ's the power of contempt to the bill. The reason being when the ALJ's make a ruling there are some insurance carriers that still refuse to pay for workers injuries. Chairperson Brownlee recognized Senator Reitz. Senator Reitz asked the Chair to please define a little better. Helen Pedigo representing the Revisors' office stated that presently the ALJ's do not have that power. Senator Reitz asked what the next step would be if the ruling of the ALJ's was not followed. Senator Emler entered and stated he thought they could go to district court and he felt the ALJ's would need indirect contempt powers, not direct contempt powers. Dick Thomas from the Division of Workers Compensation, entered into the discussion stating there were two things they could do. They can file for penalties from that same ALJ; that ALJ can issue penalties for not abiding by the order. The second thing they can do is to file with the Insurance Commissioners Office; they have the power to access fines for failure to abide by an order. Chairperson Brownlee stated she is trying to figure the best way to motivate the insurance companies who do not follow the orders issued by the ALJ's. She asked how well the present system was working. Mr. Thomas stated there are time limits and the process should work quickly. Senator Emler has concerns regarding the claimant incurring additional fees to pay. Mr. Thomas stated there could be additional expenses. Senator Emler has concerns if the claimant is out additional charges. Mr. Thomas stated he would have to check on the procedure and get back with the Committee. Senator Reitz stated this issue should be clarified whether the claimant should have to pay additional charges to get the work comp carrier to pay.

With no further questions or discussion, Chairperson Brownlee closed the hearing on **HB 2696**.

Chairperson Brownlee opened the hearing on **HB 2569-Workers compensation fund; duties of commissioner of insurance** by introducing Kathie Sparks from Legislative Research to review the Joint Committee on Economic Development's report on the Workers Compensation Fund Oversight Committee. (Attachment 5) Ms. Sparks stated the Joint Committee reviewed the activities of the Statutory Workers

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compensation Fund Oversight Committee and studied the need for its continued existence. The Joint Committee on Economic Development recommends the repeal of the Workers Compensation Fund Oversight Committee and recommends the Kansas Insurance Department assume the responsibilities for reporting the fund balance, working with contracted actuarial services and assigning other duties as appropriate. This recommendation comes after a review of the statutory requirements of the Workers Compensation Fund Oversight Committee, coupled with the fact that this Committee has not had a meeting since fall of 1999.

Upon the completion of Ms. Sparks review, Chairperson Jordan introduced Jarrett Forbes from the Insurance Commissioner's Office to give his testimony as a proponent of **HB 2560**. Mr. Forbes did not present written testimony. He stated the Oversight Committee has not met for a number of years and that the bill would require that the Insurance Commissioner present to the Legislature a report which they currently do voluntarily. He stated the Insurance Commissioners Office does not see a problem with making that mandatory.

Chairperson Brownlee closed the hearing on **HB 2560** . Chairperson Brownlee recognized Senator Jordan. **Senator Jordan made a motion to pass the bill out favorably and put on the consent calender. Senator Emler seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to **HB 2772-Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes** and to the proposed amendment dated March 15, 2006. (Attachment 6) Chairperson Brownlee stated Ms. Sparks memo shows there are already significant penalties in place. Chairperson Brownlee explained the proposed amendment. Chairperson Brownlee recognized Secretary Garner to explain his chart on the present statute on penalties and rates. (Attachment 7) Secretary Garner asked the Committee to include updating the rate of penalties in this bill.

Upon the conclusion of Secretary Garner's review of the present rates and penalties, there was discussion with the Committee. Several members joined the discussion on the present penalties and fines along with the number of investigations the Department of Labor has done regarding this issue. Secretary Garner stated that over 1200 cases for misclassification in the construction industry were investigated last year.

Senator Wagle made a motion to accept the proposed amendment dated March 15, 2006. Senator Jordan seconded. Motion carried.

Senator Jordan made a motion to move the bill out favorably as amended. Senator Schodorf seconded. Motion carried.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for March 16, 2006 at 8:30 a.m. in room 123S.