

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 17, 2005 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Susan Kannarr, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Bryce Benedict, Workers Compensation ALJ, testifying as private citizen
Terry Leatherman, KCCI
Bill Curtis, Kansas Association of School Boards
Larry McGill, Association of Insurance Agents
Jack Rickerson, Director, Personnel Services for the Department of Administration
Secretary Garner

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by introducing Helen Pedigo to explain the **SB 259**. Ms. Pedigo stated that **SB 259** sets qualifications, compensation and a selection procedure for administrative law judges within the Division of Workers Compensation. (Attachment 1) Ms. Pedigo suggested that the Committee might amend the bill to address the classified and unclassified employee.

Upon completion of Ms. Pedigo's explanation there was discussion on classified and unclassified employees and the salary ranges. There was discussion on where workers comp is today and what this bill would be changing. The director currently appoints the ALJ. The Committee also discussed how to make the Workers Comp ALJ's accountable.

Upon conclusion of the discussion with the Committee, Chairperson Brownlee opened the hearing on **SB 259** by introducing Bryce Benedict, who is currently a Workers Compensation ALJ, testifying as a private citizen. Mr. Benedict presented written testimony. (Attachment 2). He offered proposed changes to K.S.A. 75-5708 which were included in his written testimony. He stated these changes address the issues of increase in pay and accountability.

There was some discussion with Mr. Benedict in regard to the percentage of pay increase. Mr. Benedict indicated the Administrative Law Judges had discussed 90% among themselves. The Committee had discussed 80%. There was discussion on the current pay for ALJ's. Mr. Bryce stated a higher rate of pay would attract more qualified people to the job. Chairperson Brownlee indicated the sub-committee of the Compensation Advisory Council had agreed to 80% of a District Court Judge's salary.

Chairperson Brownlee introduced Terry Leatherman with the Kansas Chamber of Commerce. Mr. Leatherman stated even though the Kansas Chamber is supportive of **SB 259**, they are principally interested in how the amount of litigation can be reduced and look forward to legislation that will reduce the need for ALJ's rather than raising their pay. He stated the Kansas Chamber supports injecting greater accountability into the ALJ system and would welcome additional measures be developed. Because this bill moves towards greater involvement of interested parties and accountability for judges, the Kansas Chamber is pleased to support **SB 259**. Mr. Leatherman presented written testimony. (Attachment 3)

Upon conclusion of Terry Leatherman's testimony there was discussion on the fiscal note for this bill. The costs for increasing salaries and additional benefits. There was discussion on paying additional benefits and salary increases out of the Workers Compensation Fee Fund.

Chairperson Brownlee introduced Bill Curtis, Associate Executive Director with the Kansas Association of

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 17, 2005 in Room 123-S of the Capitol.

School Boards to give his testimony. Mr. Curtis stated the Kansas Association of School Boards is in support of **SB 259** with some concerns and offered some changes in his written testimony. (Attachment 4) His main concern is the methods of selection and retention of the administrative law judges as proposed in **SB 259**. He feels it is inappropriate to return to a system of using the AFL-CIO and Chamber of Commerce to select.

Following Mr. Curtis' testimony, there was discussion with the Committee. The Committee asked KCC I for data indicating the number of ALJ rulings that have been appealed and the dispositions of these cases. Mr. Leatherman stated he would produce that data and get it to the Committee members. This data would validate the fact that a pay increase would attract more qualified judges.

Chairperson Brownlee referred the Committee to written testimony by Larry Magill of the Kansas Association of Insurance Agents. In Mr. Magill's written testimony he urged the Committee to take this opportunity to improve a critical aspect of the workers compensation system and vote in favor of **SB 259**. (Attachment 5)

Chairperson Brownlee introduced Jack Rickerson, Director of the Division of Personnel Services for the Department of Administration. Mr. Rickerson stated the Department of Administration is a neutral party but would like to commit on **SB 259**. Action should not be taken based on a need to recruit and retain qualified Workers Compensation ALJ's. Also, they have concerns that moving these employees to the unclassified service would violate the holding of *Darling v Kansas Water Office*. (Attachment 6)

There was discussion on job classes with Mr. Rickerson. The Committee discussed the fact **SB 259** is to increase the pay and the experience. Discussion on the number of attorneys for the state and if they were classified or unclassified followed. The Department of Administration believes they can find qualified judges without a pay increase and stated the ALJ turnover rate is very low. Senator Wagle directed a question to Mr. Rickerson, asking how many attorneys the state employed. Mr. Rickerson stated there were approximately 125 classified attorneys. He also stated the Governor was looking at giving an increase in salary. Senator Wagle had a concern regarding this bill, she stated **SB 259** singles out one group of state attorneys and will be leaving out many other state attorneys who deserve a pay increase also. She stated for an example the Revisors office attorneys are extremely underpaid and overworked. The discussion continued on the pay increase and changing ALJ's from classified to unclassified.

With no others to testify on **SB 259**, Chairperson Brownlee closed the hearing.

Chairperson Brownlee announced that the meeting for tomorrow would start at 8:00 a.m.

Chairperson Brownlee recognized Senator Jordan to explain amendment on SB 138. After explaining the amendment, Senator Barone moved to accept the amendment and Senator Emler seconded. Motion carried. Senator Schodorf made a motion to move the bill out favorably as amended. Senator Kelly seconded. Motion carried.

Chairperson Brownlee called the Committee's attention to Secretary Garner's written testimony on **SB 259**. (Attachment 7)

Meeting was adjourned at 9:30 a.m. with the next meeting scheduled for Friday, February 18, 2005 at 8:00 a.m. in room 123S.

NORMAN J. FURSE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR



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E-mail: Revisor'sOffice@rs.state.ks.us

To: Senate Commerce Committee
From: Helen Pedigo, Assistant Revisor
Date: February 17, 2005
Re: SB 259 Administrative Law Judges

The bill sets qualifications, compensation and a selection procedure for administrative law judges within the Division of Workers Compensation.

- Applicants must have five years experience, one practicing in the workers compensation area of the law.
- An annual salary is set at 80% of that of a district court judge plus expenses.
- Administrative law judges must devote full-time to the duties of the office and may have no private law practice during their term in office.
- The Director of Workers Compensation receives all applications and screens them for the minimum qualifications set out above. Those applications that meet the minimum qualifications then go to a nominating committee, consisting of two members, one each selected by the AFL-CIO and KCCI. Each group selects their respective replacement when a vacancy occurs on the nominating committee. The committee reviews the applications and, with unanimous agreement, submits a name to the Director of Workers Compensation, who may appoint or reject the applicant. If the applicant is rejected, the nominating committee reconvenes and nominates another applicant for the position.
- An administrative law judge may serve a term of four years and may be reappointed. Appointments to vacancies serve the remainder of the original term. Following completion of a term, administrative law judges, who wish to be considered for another term, shall be deemed to have met the qualifications for the position and shall be considered for nomination by the nominating committee.
- Administrative law judges are subject to the authority and direction of the Director of Workers Compensation
- The bill amends present law so that assistant directors and administrative law judges are in unclassified service.

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Attachment 1-1

**Testimony before the Senate Commerce Committee
Bryce Benedict, Administrative Law Judge**

1273 Oakley
Topeka, Kansas, 66604

(785) 357-7953 (home)
(785) 296-7012 (work)

February 17, 2005

Chairman Brownlee and Members of the Committee:

I am here as a private citizen and not as an official representative of either the Department of Labor or its Administrative Law Judges. I wish to offer brief comments on Senate Bill 259.

The primary effect of Senate Bill 259 would be to have Administrative Law Judges (ALJs) serve terms of four years instead of serving until they resign, retire or are fired. In connection with this SB 249 allows for a raise in pay which would make the ALJ position attractive to experienced attorneys. I believe this is a workable bill if certain changes are made.

SB 249 does not clearly explain what would happen to incumbent ALJs if this law is passed. The ten incumbent ALJs have civil service protection. If the intent of SB 249 is that on its taking effect the incumbent ALJs will be discharged or be put into the unclassified service then SB 249 is unconstitutional. This issue came before our Supreme Court in the case of Darling v. Kansas Water Office, 245 Kansas 45, 774 P. 2d 941 (1989) where personnel changes almost exactly identical to that proposed by SB 259 were held unconstitutional.

The ALJs have discussed for some time how to secure a raise in pay, accede to the request for term limits, and yet not run afoul of Darling. Attached you will find a proposed modification to K.S.A. 75-5708. This proposal allows incumbent ALJs to voluntarily opt in to a term of office; as this would be voluntary Darling would not apply. An ALJ who did not opt in would see no change in his or her classification, but upon his or her leaving office the replacement ALJ would serve for a term. Support among the ALJs for this is not unanimous. Three have indicated they would not give up civil service protection, and a fourth was unsure. Six said they would opt for terms as that is defined by the proposed statutory language. The proposed statutory language contemplated a salary equivalent to 90% of that of a district court judge while SB 259 has the salary at 80%; it is unknown whether the lower figure would affect the desire of any incumbent ALJs to opt in to a term.

On a minor note Section 2 (b) of SB 249 states ALJs and assistant directors shall be in the unclassified service. An ALJ serving a term remains in the classified service, as he or she does not serve at the pleasure of the Secretary.

Senate Commerce Committee
2-17-05
Attachment 2-1

75-5708. Division of workers compensation, establishment and administration; director of workers compensation, assistant directors, administrative law judges; appointment, compensation, qualifications. (a) There is hereby established within and as a part of the department of ~~human resources labor~~ a division of workers compensation. The division shall be administered, under the supervision of the secretary of ~~human resources labor~~, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of ~~human resources labor~~ and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of ~~human resources labor~~, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

(b) The director of workers compensation may appoint two assistant directors of workers compensation and also may appoint not to exceed 10 administrative law judges. Such assistant directors and administrative law judges shall be in the classified service *except to the extent provided in subsection (d)*. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

(c) Assistant directors and administrative law judges shall be selected by the director of workers compensation, with the approval of the secretary of ~~human resources labor~~. Each appointee shall be subject to either dismissal or suspension of up to 30 days for any of the following:

- (1) Failure to conduct oneself in a manner appropriate to the appointee's professional capacity;
- (2) failure to perform duties as required by the workers compensation act; or
- (3) any reason set out for dismissal or suspension in the Kansas civil service act or rules and regulations adopted pursuant thereto.

No appointee shall be appointed, dismissed or suspended for political, religious or racial reasons or by reason of the appointee's sex.

(d) Administrative law judges appointed after the effective date of this section shall serve a term of office of four years. Each administrative law judge so appointed shall receive an annual salary in an amount equal to 90% of the salary prescribed by law for a district judge.

(1) Administrative law judges appointed before the effective date of this section shall serve a term of office of four years and receive an annual salary in an amount equal to 90% of the salary prescribed for a district judge if the administrative law judge within sixty (60) days of the effective date of this section notifies the director in writing that the administrative law judge elects to serve an appointed term of office rather than an appointment in the classified service. The term of office for an administrative law judge who elects a term of office shall begin on the date the written election is received by the director.

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Attachment 2-2

(2) *At the expiration of each administrative law judge's term of office, the director shall receive applications for the administrative law judge position.*

(3) *The director shall determine if an applicant meets the qualifications for administrative law judge described in subsection (b). Qualified applicants for the administrative law judge position shall be submitted by the director to the workers compensation board nominating committee established according to K.S.A. 44-555c and amendments thereto.*

(4) *The workers compensation board nominating committee shall consider all applicants for the administrative law judge position submitted by the director, and nominate a person qualified for the administrative law judge position. The workers compensation board nominating committee shall be required to reach unanimous agreement on any nomination for administrative law judge.*

(5) *With respect to each person nominated, the director either shall accept the person nominated by the nominating committee for the administrative law judge position for which the nomination was made, or shall reject the nomination and request that the nominating committee nominate another person for that position.*

(6) *Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.*

(7) *Following the completion of a term of office, administrative law judges who wish to be considered for reappointment to the position of administrative law judge shall be deemed to have met the qualification requirements for appointment to the administrative law judge position and shall be considered for reappointment by the workers compensation board nominating committee.*

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Attachment 2-3

Legislative Testimony

Bill: SB 259

Date: February 17, 2005

**Testimony before the Kansas Senate Committee on Commerce
By: Terry Leatherman, Vice President of Public Affairs**

Madam Chairperson and members of the Committee:

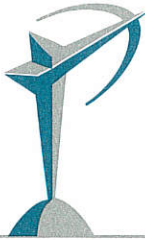
My name is Terry Leatherman. I am the Vice President of Public Affairs for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain the reasons behind our general support for the change proposed in SB 259. First and foremost, the Kansas Chamber applauds the motive behind the legislation to improve the professionalism of the state's workers compensation legal structure. Specifically, please consider these comments on elements of SB 259.

- The Kansas Chamber concedes there is a relationship between the quality of work one might expect and the rate of pay associated with that position. The significant pay raise proposed in SB 259 will hopefully lead to a talented pool of lawyers seeking and hoping to retain Administrative Law Judge positions.
- SB 259 embraces the current nomination/selection process utilized for the Kansas Workers Compensation Appeals Board. This process is structured to take bring diverse parties, the Kansas Chamber and the Kansas AFL-CIO, together to recommend jointly. Hopefully, it produces ALJ's that would be fair to both.
- SB 259 proposes Administrative Law Judges serve terms in office, rather than civil service employment. We feel this brings greater accountability to the judges. Further, we appreciate the page 4 provision in hopes it permits the Division of Workers Compensation to retain authority for an appropriate employer-employee relationship.

The Kansas Chamber has not aggressively advocated for ALJ pay raises. There are several reasons why.

Senate Commerce Committee
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Attachment 3-1



**THE KANSAS
CHAMBER**

The Force for Business

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- First and foremost, when Kansas Chamber members tell us their workers compensation concerns, they talk about the need for clarifying preexisting condition law or the challenge they face with the state's work disability definition, not the amount of money paid to ALJ's.
- It is important to note the pay increase in this bill require additional dollars. Kansas employers will solely pay for the higher salaries in SB 259 through the assessment paid annually to the Kansas Division of Workers Compensation.
- Finally, when we look at the system's legal structure, ^{Even though} the Kansas Chamber is principally interested in how we can reduce the amount of litigation. We look forward to legislation that will reduce the need for ALJ's rather than raising their pay.

The Kansas Chamber supports injecting greater accountability into the ALJ system, and would welcome additional measures be developed. Because this bill moves towards greater involvement of interested parties and accountability for judges, the Kansas Chamber is pleased to support SB 259. Thank you for the opportunity to comment on this legislation and I would be happy to answer any questions.

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The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.



Testimony on SB 259
before the
Senate Committee on Commerce

by

Bill Curtis, Associate Executive Director
Kansas Association of School Boards

February 17, 2005

Madam Chair, members of the committee, thank you for the opportunity to appear today and testify on SB 259. My name is Bill Curtis and among my duties at the Kansas Association of School Boards is serving as the administrator of the workers compensation pool that was formed by the association in 1987. The pool currently has 183 members with approximately 43,000 covered employees, a payroll of just over \$1 billion and an annual premium of about \$9.7 million. We appear as a proponent of the bill as we are certainly in favor of a measure which we believe will improve the quality of the judges that adjudicate the workers compensation system in Kansas. I might add that the association had a similar experience several years ago with hearing officers for due process hearings for teachers. Until the pay was raised for these officers, the available list and quality was found wanting. The system worked much better in our opinion, once the rate of pay was raised.

However, we do raise an objection to the methods of selection and retention of the administrative law judges as proposed in SB 259. It seems most inappropriate to us that we would once again return to a system of using the AFL-CIO and Chamber of Commerce to select so important a cog in the process. Remember, these are the same participants that have brought a stalemate to the process of suggesting solutions to legislative problems within the workers compensation system.

I apologize for not having more specific details for an alternative solution to selecting and retaining administrative law judges for workers compensation. However, permit me to suggest that if we are tying pay to district court judges, then perhaps we could also tie selection to the district court judge selection process. Enclosed are the statutes pertaining to the selection of district court judges. They are included not as a definite proposal, but as an example. There will undoubtedly need to be some adjustments to fit the workers compensation system, but I would think that the selection of ALJs by their peers would instill a bit more confidence than a process that limits participation to only two people. Thank you for allowing the Kansas Association of School Boards the time to express its views on this subject.

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Attachment 4-1

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20-2903

Chapter 20.--COURTS

Article 29.--NONPARTISAN SELECTION OF JUDGES OF THE DISTRICT COURT

20-2903. District judicial nominating commission; establishment; composition; chairperson, appointment, duties; purpose of commission. (a) There is hereby established in each judicial district a district judicial nominating commission, which shall consist of an equal number of lawyers and non-lawyers. The lawyer members of each nominating commission shall be elected as provided in K.S.A. 20-2904, and the non-lawyer members shall be appointed as provided in K.S.A. 20-2905. The chairperson of the commission shall be a justice of the supreme court or a district judge who is not a judge in such judicial district, to be appointed by and serve at the pleasure of the chief justice of the supreme court. It shall be the duty of the chairperson to preside at all meetings of the commission, but he or she shall not be entitled to vote.

(b) The purpose of the district judicial nominating commission shall be to nominate persons for appointment to the office of judge of the district court in a judicial district. Any person so nominated shall have the qualifications prescribed by law for such office, and shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the district court will be the best qualified therefor.

History: L. 1974, ch. 137, § 3; L. 1976, ch. 145, § 97; Jan. 10, 1977.

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Attachment 4-2

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20-2905

Chapter 20.--COURTS

Article 29.--NONPARTISAN SELECTION OF JUDGES OF THE DISTRICT COURT

20-2905. Same; nonlawyer members; numbers; qualifications; appointments; certification. (a) The appointments of nonlawyer members of a district judicial nominating commission shall be made as follows:

(1) In a judicial district consisting of a single county, each member of the board of county commissioners of such county shall appoint one nonlawyer to serve as a member of the nominating commission.

(2) In a judicial district consisting of two counties, the board of county commissioners of each such county shall appoint two nonlawyers to serve as members of the nominating commission.

(3) In a judicial district consisting of three or more counties, the board of county commissioners of each such county shall appoint one nonlawyer to serve as a member of the nominating commission.

Each nonlawyer member of the nominating commission shall be a qualified elector of the county from which such member is appointed.

(b) All appointments of nonlawyers to serve as members of the first district judicial nominating commission of a judicial district shall be made and certified to the clerk of the supreme court on or before February 15 of the year following the general election at which the nonpartisan selection of judges of the district court is approved. Thereafter, all appointments of nonlawyers to serve for full terms on the commission shall be made and certified to the clerk of the supreme court on or before February 15 of the year in which such terms of office commence.

History: L. 1974, ch. 137, § 5; L. 1976, ch. 145, § 99; L. 2003, ch. 99, § 12; July 1.

Testimony
Before the Senate Commerce Committee
On Senate Bill 259
By Larry Magill
Kansas Association of Insurance Agents
February 17, 2005

Thank you madam Co-Chairwoman, mister Co-Chairman and members of the Committee for the opportunity to appear today in support of Senate Bill 259 which changes the way workers compensation administrative law judges (ALJ's) are appointed, the way they are reviewed and compensated. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas including workers compensation. Our members are free to represent many different insurance companies.

One area of the workers compensation act that we did not try to reform in 1993 was the process for selecting and reviewing administrative law judges. Not because there weren't concerns expressed by management and members of the insurance industry that the judges tended to always side with the injured workers, but because no one could come up with a better system to replace the current one. Under the present arrangement, ALJ's are in the classified service.

Everyone had agreed in the past that it made no sense to replace the current process with one that had the ALJ's serving at the pleasure of the Governor for fear that decisions would swing like a pendulum with every changing of the guard in the Governor's office. However, in 1993's reforms, the legislature created an Appeals Panel composed of judges nominated by labor and business. Each nominee has to be approved by both sides, guaranteeing in theory, that they will be impartial. And the Appeals Judges serve a term of four years and then must be re-nominated. That gives both sides an opportunity to evaluate performance and weigh the known, the incumbent, against the unknown, any possible successor. The Appeals Panel judges are compensated the same as District Court judges.

Now, eleven years later, we have an opportunity to step back and see how the Appeals Panel system of selecting judges is working. And from what I can tell, it appears to be working quite well.

For the last two years, the ALJ's appealed to the Workers Compensation Council to recommend a substantial raise in pay. Currently they are making approximately \$56,000 and the proposal was to raise that to approximately \$80,000 or 80% of a District Court judge's pay. It has been pointed out that a student just out of law school who graduated near the top of the class could expect to start at close to that figure. Yet our ALJ's have years of legal experience and usually years of experience as Administrative Law Judges.

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The ALJs' salaries are paid with an assessment on business through their workers compensation claims expense. It is part of the budget of the Division of Workers Compensation, which is funded by an assessment on all paid workers compensation claims each year. That assessment is currently about 2%. In essence, it would be business that would be footing the bill for a salary increase for ALJ's of approximately 43%. That is substantial by any measure.

But for that kind of increase, there must be greater accountability and an option to review performance and not reappoint those that are not balanced in their approach to the system. That seems to be a fair bargain.

Last year we proposed something similar to this to the House Commerce & Labor Committee.

The Workers Compensation system must be viewed as fair to all the parties. Any attempt to tilt the scales one way or the other is not likely to succeed. We think this is a way to bring balance and accountability to the ALJ process and attract highly talented people in the bargain. We urge the committee to take this opportunity to improve a critical aspect of the workers compensation system.

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2-17-05
Attachment 5-2

**Testimony to the Senate Committee on Commerce
Regarding Senate Bill 259
February 17, 2005**

**Presented by Jack Rickerson
Director, Division of Personnel Services
Department of Administration**

Good morning. The Department of Administration wishes to advise the Committee on a couple of points associated with Senate Bill 259.

First, the proposed action should not be taken based on a need to recruit and retain qualified Workers Compensation Administrative Law Judges. We believe the current salary level for Workers Compensation ALJ's to be competitive and fair, and that the state can recruit and retain with that salary level. We also believe that an increase in salary for Workers Compensation ALJ's could be problematic because employees in other attorney job classes could make a credible argument for a similar adjustment due to comparable work. Finally, we believe the state has more pressing needs in the area of salary upgrades and that the limited resources we have should be spent elsewhere.

Second, we recommend that if the Legislature does decide to proceed with this adjustment, that there be a provision that safeguards the status of current employees. The 1989 *Darling v. Kansas Water Office* case identified an employee's classified status as a property right. We have concerns that moving these employees to the unclassified service would violate the holding of that case.

Thank you for this opportunity.

Senate Commerce Committee

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Attachment 6-1



KANSAS

DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

**Testimony submitted to the
Senate Commerce Committee
Concerning S.B. 259
Secretary Jim Garner, Kansas Department of Labor
17 February 2005**

Chairpersons Brownlee and Jordan and Members of the Committee:

I submit these comments today on SB 259 at the request of Chairperson Brownlee. SB 259 would set specific employment standards for Workers Compensation Administrative Law Judges, increase the annual salary of these positions to 80 percent of the annual salary of state district court judges and change the method in which these positions are filled to be similar to the process currently used to select Workers Compensation Board of Appeals judges.

I will be the first to acknowledge that the State of Kansas is getting some very good talent at bargain prices. The legal talent reflected in our ALJs is overall of a high standard. And yes, we are able to get this talent at salaries much less than these individuals could receive in the private sector. However, this is true of many public servants in state government. There are many people working in state government who earn less in salary than they could in the private sector. Specifically, I must note that Unemployment Insurance Appeals hearing officers are paid at two pay grades lower than the Workers Compensation ALJs. If we are to look at salaries for one of these groups of attorneys, we ought to look at salaries for the other groups as well.

However, over the last several months the Governor's office has worked with representatives of employee organizations to develop recommendations on recruiting and retaining quality state employees. The emphasis has been on determining adequate salary adjustments for hard-to-fill positions and groups of employees with high turnover rates. Currently, the turnover rate in the ALJ classification is not nearly as drastic as some other classifications, such as the nearly 60 percent turnover rate for developmental disability direct care workers. While I obviously believe Workers Comp Administrative Law Judges play a significant and important role in state government, I anticipate that if there is any adjustment in pay this year, it would be for other important classifications that have the highest turnover rates. I support the Governor's worthy efforts to first focus on service delivery positions we cannot, but must, fill.

2-17-05

The Division of Personnel Services within the Department of Administration recently compiled a study of turnover rates by job classifications in state public service. I have attached portions of this report for your information. The report shows that for the fiscal years 1999-2003 the turnover rate to ALJs was zero. For this same period, the turnover rate for Health Care Assistants was 69%. For fiscal year 2004, the report shows that we had a turnover of one ALJ (8.7% of the 12 individuals in this classification). For the same period, the turnover rate for Mental Health Aide Trainees was 50.63% and for Developmental Disability Technical Trainee, 58.18%.

Senate Bill 259 also changes the way vacancies in Workers Compensation Administrative Law Judge positions are filled. Currently, in the event of a vacancy these classified positions are filled in accordance with Department of Administration personnel civil service regulations. Under SB 259, a nominating committee composed of two members, selected by the Kansas AFL-CIO and the Kansas Chamber of Commerce and Industry, shall submit a nomination by unanimous consent to the Secretary of Labor. The Secretary shall accept the nomination or reject it and ask the committee to nominate another person for the position.

This provision is identical to the current method in which vacancies on the Workers Compensation Board of Appeals are filled. I would leave it to the wisdom of the committee to determine whether to adopt this method for filling these particular positions.

In conclusion, I would love to come before you and strongly support the case for increased salaries for Workers Compensation ALJs and many other professionals in state service. However, the fact remains that there are other critical job classifications in state service with extremely high turnover rates that demand immediate attention. The administration is committed to addressing these classifications this year in order to prevent further negative impact to public services.

Thank you for the opportunity to share these thoughts regarding Senate Bill 259.

Senate Commerce Committee

2-17-05

Attachment 7-2

External Statewide Turnover by Job Class
FY 1999 - 2003

Job Code	FY03 Job Title	Average FY03 Employee Count	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Statewide Turnover Rate Per Fiscal Year			13.07%	13.01%	13.47%	12.50%	12.68%
4265A1	Accountant I	132	7%	3%	7%	7%	6%
4000A1	Accountant II	131	6%	15%	12%	4%	7%
4001A1	Accountant III	91.5	10%	3%	3%	7%	5%
4002A1	Accountant IV	69	2%	2%	2%	1%	6%
4003A1	Accountant V	10	0%	0%	0%	13%	0%
4004A1	Accounting Specialist	211.5	7%	15%	9%	10%	7%
4005F1	Active Treatment Program Dir	2	0%	0%	0%	0%	0%
8370F1	Activity Specialist I	47.5	20%	2%	19%	8%	13%
8371F1	Activity Specialist II	11	7%	0%	23%	0%	9%
8292F1	Activity Therapist I	32.5	3%	9%	6%	12%	6%
8293F1	Activity Therapist II	11.5	0%	0%	7%	7%	9%
7234F1	Activity Therapy Technician	23	12%	12%	22%	32%	22%
1071K2	Administrative Assistant	1245.5	0%	0%	0%	16%	17%
4006D3	Administrative Law Judge	12	0%	0%	0%	0%	0%
4268K1	Administrative Officer	134	7%	7%	10%	8%	5%
1073K2	Administrative Specialist	1287	0%	0%	0%	9%	8%
7260A4	Adult Training Center Manager	0	0%	0%	0%	0%	0%
7117F2	Adv Regstrd Nurse Practitioner	1.5	0%	0%	0%	0%	0%
8372A2	Advertising Coordinator	0.5	0%	0%	0%	0%	0%
8294C3	Agricultural Assistant	15.5	35%	10%	100%	31%	45%
8205C3	Agricultural Inspector I	32	19%	29%	12%	16%	13%
8206C3	Agricultural Inspector II	34	8%	10%	3%	9%	6%
8207C3	Agricultural Inspector III	16	6%	6%	0%	0%	0%
8343C3	Agricultural Technician	20.5	5%	14%	0%	20%	20%
4008D2	Alcohol/drug Abuse Prog Cons	2	40%	0%	25%	0%	0%
8212F3	Animal Facility Inspector	3.5	0%	0%	0%	18%	57%
8295F3	Animal Science Technician I	37.5	8%	10%	17%	10%	21%
8296F3	Animal Science Technician II	25.5	4%	4%	17%	4%	4%
4295P2	Applications Prog/An I Trainee	0	20%	0%	0%	0%	0%
1709P2	Applications Prog/Analyst I	13.5	0%	0%	12%	0%	22%
1710P2	Applications Prog/Analyst II	60	18%	13%	15%	7%	3%
1711P2	Applications Prog/Analyst III	144	11%	6%	4%	7%	1%
1712P2	Applications Prog/Analyst IV	75	7%	6%	4%	4%	5%
1701P2	Applications Programmer I	6	0%	0%	0%	0%	0%
1702P2	Applications Programmer II	3.5	0%	0%	0%	55%	0%
4012E1	Archaeologist II	6	25%	0%	0%	0%	0%

Senate Commerce Committee

Attachment 7-3



Division of Personnel Services

ARP; FY99-03

Turnover Rates and Retirements for Classified, Regular employees by Job Class. All Job Classes are included. Job Class Titles and Employee Counts are as of July 2003 (End FY 03)

External Statewide Turnover by Job Class
FY 1999 - 2003

Job Code	FY03 Job Title	Average FY03 Employee Count	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Statewide Turnover Rate Per Fiscal Year			13.07%	13.01%	13.47%	12.50%	12.68%
8361E2	Graphic Designer III	13.5	7%	17%	8%	0%	0%
8013E2	Graphic Designer Senior	20	0%	0%	0%	11%	5%
8361E2	Graphic Designer Specialist	13.5	0%	0%	0%	7%	22%
3264M1	Grounds Maintenance Super I	8.5	21%	7%	7%	10%	0%
3265M1	Grounds Maintenance Super II	14	0%	14%	24%	0%	0%
8333F1	Health Care Assistant	119.5	40%	28%	34%	85%	69%
8302F1	Health Care Technician I	1	0%	0%	0%	67%	100%
8308F1	Health Care Technician II	2	0%	0%	0%	0%	0%
8231A3	Health Facility Surveyor I	66.5	13%	29%	12%	22%	24%
8203A3	Health Facility Surveyor II	13.5	26%	18%	27%	0%	15%
8204A3	Health Facility Surveyor III	8	13%	0%	13%	0%	0%
3082N3	Highway Maintenance Supervisor	146	4%	5%	6%	4%	5%
4296L1	Highway Patrol 2nd Lieutenant	30.5	4%	18%	6%	7%	3%
8123L1	Highway Patrol Captain	7.5	20%	15%	0%	14%	13%
1015L1	Highway Patrol Captain	11	0%	0%	0%	0%	0%
8122L1	Highway Patrol Lieutenant	3	14%	14%	0%	0%	0%
1014L1	Highway Patrol Lieutenant	32.5	0%	0%	0%	0%	0%
8124L1	Highway Patrol Major	2	0%	25%	25%	0%	0%
1016L1	Highway Patrol Major	2	0%	0%	0%	0%	0%
1200L1	Highway Patrol Master Trooper	61.5	9%	12%	5%	6%	7%
8121L1	Highway Patrol Sergeant	19.5	20%	7%	5%	7%	5%
1012L1	Highway Patrol Trooper	78.5	0%	0%	0%	0%	3%
1023L1	Highway Patrol Trooper I	73.5	27%	15%	31%	11%	11%
1024L1	Highway Patrol Trooper II	29.5	4%	4%	4%	0%	7%
1011L1	Highway Patrol Trooper Trainee	13.5	0%	0%	0%	0%	7%
4259E1	Historian	0	200%	0%	0%	0%	0%
4075E1	Historic Preservation Spec II	3	0%	0%	29%	0%	0%
4077E1	Historic Site Curator I	7.5	13%	11%	0%	0%	13%
4078E1	Historic Site Curator II	2.5	0%	40%	80%	0%	40%
4079E1	Historic Sites Administrator	0	0%	0%	0%	0%	0%
1882C1	Hlth Or Environ Planning Cons	7.5	17%	0%	0%	27%	53%
1884C1	Hlth Or Environ Prog Analyst	24.5	9%	7%	11%	4%	16%
4080A6	Human Resource Prof I	33.5	12%	12%	3%	14%	12%
4082A6	Human Resource Prof II	62.5	14%	11%	12%	5%	14%
4083A6	Human Resource Prof III	45	3%	3%	9%	7%	2%
4084A6	Human Resource Prof IV	9	0%	0%	0%	13%	11%

Division of Personnel Services
SHARP; FY99-03

Turnovers and Retirements for Classified, Regular employees by Job Class. All Job Classes are included. Job Class Titles and Employee Counts are as of July 2003 (End FY 03)

Senate Commerce Committee

2-17-03

Attachment 7-4

Turnover By Job Code
FY 2004

Job Code	Job Title	Begin Count	# Retirements	# Terms Involuntary	# Terms Neutral	# Terms Voluntary	Total	End Count	Avg	% Turnover
4265A1	Accountant I	132	4	1	0	7	12	151	141.5	8.48%
4000A1	Accountant II	131	1	0	1	4	6	121	126	4.76%
4001A1	Accountant III	88	6	0	1	4	11	89	88.5	12.43%
4002A1	Accountant IV	69	2	0	0	1	3	67	68	4.41%
4003A1	Accountant V	11	1	0	0	2	3	11	11	27.27%
4004A1	Accounting Specialist	218	0	3	0	11	14	204	211	6.64%
4005F1	Active Treatment Program Dir	2	0	0	0	0	0	0	1	0.00%
8370F1	Activity Specialist I	46	0	1	0	0	1	49	47.5	2.11%
8371F1	Activity Specialist II	10	0	0	0	0	0	11	10.5	0.00%
8292F1	Activity Therapist I	33	0	0	0	3	3	38	35.5	8.45%
8293F1	Activity Therapist II	10	0	0	0	0	0	13	11.5	0.00%
7234F1	Activity Therapy Technician	20	0	0	0	3	3	26	23	13.04%
1071K2	Administrative Assistant	1179	30	15	3	110	158	1151	1165	13.56%
4006D3	Administrative Law Judge	12	0	1	0	0	1	11	11.5	8.70%
4268K1	Administrative Officer	139	3	0	0	3	6	146	142.5	4.21%
1073K2	Administrative Specialist	1277	24	5	1	66	96	1276	1276.5	7.52%
7117F2	Adv Regstrd Nurse Practitioner	3	0	0	0	0	0	3	3	0.00%
8372A2	Advertising Coordinator	1	0	0	0	0	0	1	1	0.00%
8294C3	Agricultural Assistant	14	0	3	0	5	8	17	15.5	51.61%
8205C3	Agricultural Inspector I	32	1	1	0	5	7	30	31	22.58%
8206C3	Agricultural Inspector II	34	1	0	0	0	1	34	34	2.94%
8207C3	Agricultural Inspector III	16	1	0	1	0	2	15	15.5	12.90%
8343C3	Agricultural Technician	19	1	0	0	0	1	15	17	5.88%
4008D2	Alcohol/drug Abuse Prog Cons	2	0	0	0	0	0	0	1	0.00%
8212F3	Animal Facility Inspector	3	0	0	0	0	0	4	3.5	0.00%
8295F3	Animal Science Technician I	36	0	0	1	3	4	39	37.5	10.67%
8296F3	Animal Science Technician II	26	1	0	0	1	2	23	24.5	8.16%
1709P2	Applications Prog/Analyst I	12	0	0	0	0	0	9	10.5	0.00%
1710P2	Applications Prog/Analyst II	59	0	0	1	4	5	59	59	8.47%
1711P2	Applications Prog/Analyst III	147	1	0	0	9	10	147	147	6.80%
1712P2	Applications Prog/Analyst IV	75	2	0	0	3	5	76	75.5	6.62%
1701P2	Applications Programmer I	6	0	0	0	0	0	5	5.5	0.00%

Division of Personnel Services
SHARP; 10/21/2004
Turnover FY 2004
Turnover by Job Code_sorted (2) FY 2004, JC only - alpha; KYS

Turnover By Job Code
FY 2004

Job Code	Job Title	Begin Count	# Retirements	# Terms Involuntary	# Terms Neutral	# Terms Voluntary	Total	End Count	Avg	% Turnover
4521R2	Custodial Supervisor	85	6	1	0	4	11	85	85	12.94%
4522R2	Custodial Supervisor Sr	36	0	0	0	1	1	37	36.5	2.74%
4519R2	Custodial Worker	195	6	4	2	27	39	156	175.5	22.22%
1203R1	Dairy Foods Assistant	2	0	0	0	0	0	2	2	0.00%
4240P2	Data Center Manager	3	1	0	0	0	1	2	2.5	40.00%
1757P2	Data Control Supervisor	1	0	0	0	0	0	1	1	0.00%
1764P2	Data Control Technician II	3	0	0	0	0	0	3	3	0.00%
1765P2	Data Control Technician III	10	0	0	0	0	0	9	9.5	0.00%
1768P2	Data Proc Oper Mgr I W/o S S	1	0	0	0	0	0	1	1	0.00%
1769P2	Data Proc Oper Mgr II W/S S	1	0	0	0	0	0	1	1	0.00%
1773P2	Database Programmer/Analyst I	1	0	0	0	0	0	1	1	0.00%
1774P2	Database Programmer/Analyst II	3	0	0	0	0	0	3	3	0.00%
1777P2	Database Programmer/Analyst III	6	0	0	0	0	0	8	7	0.00%
8303F1	Dental Assistant	2	0	0	0	0	0	2	2	0.00%
2028F2	Developmental Disbly Unit Dir	4	0	0	0	0	0	4	4	0.00%
7016F2	Developmentl Disability Tech I	392	1	11	1	36	49	392	392	12.50%
7022F2	Developmntl Disability Tech II	74	0	0	0	4	4	77	75.5	5.30%
7017F2	Developmntl Disbly Specialist	18	0	0	0	0	0	17	17.5	0.00%
7015F1	Developmntl Disbly Tech Trainee	28	0	9	0	7	16	27	27.5	58.18%
8304R1	Dietetic Technician	1	0	0	0	0	0	0	0.5	0.00%
8305R1	Dietitian I	6	0	0	0	2	2	6	6	33.33%
8306R1	Dietitian II	10	0	0	0	1	1	11	10.5	9.52%
8307R1	Dietitian III	2	0	0	0	0	0	3	2.5	0.00%
2001E1	Director Of Reference Library	1	0	0	0	0	0	1	1	0.00%
8144D2	Disability Determin Prog Mgr	3	0	0	0	0	0	0	1.5	0.00%
8140D2	Disability Examiner I	8	0	0	0	1	1	0	4	25.00%
8141D2	Disability Examiner II	38	1	0	0	2	3	0	19	15.79%
8142D2	Disability Examiner III	11	0	0	0	0	0	0	5.5	0.00%
8143D2	Disability Examiner IV	11	0	0	0	0	0	0	5.5	0.00%
8214A3	Disease Intervention Spec	4	0	0	0	1	1	4	4	25.00%
1783P2	Documentation Technical Writer	3	0	0	0	0	0	2	2.5	0.00%
8216K1	Driver License Examiner	11	1	0	0	3	4	7	9	44.44%

Senate Commerce Committee

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Attachment 7-6

Division of Personnel Services

SHARP; 10/21/2004

Turnover FY 2004

Turnover by Job Code_sorted (2) FY 2004, JC only - alpha; KYS

formerly MR Trainee

Turnover By Job Code
FY 2004

Job Code	Job Title	Begin Count	# Retirements	# Terms Involuntary	# Terms Neutral	# Terms Voluntary	Total	End Count	Avg	% Turnover
3057N3	Mechanic	24	0	0	0	4	4	23	23.5	17.02%
3058N3	Mechanic Senior	10	0	0	0	1	1	8	9	11.11%
3056N3	Mechanic's Helper	3	0	0	0	0	0	4	3.5	0.00%
8191E2	Media Production Director	3	0	0	0	1	1	3	3	33.33%
8192E2	Media Production Technician	11	0	0	0	3	3	10	10.5	28.57%
1207K1	Medical Record Administrator	5	0	0	0	0	0	0	2.5	0.00%
1204K1	Medical Record Supervisor	1	0	0	0	0	0	2	1.5	0.00%
1206K1	Medical Record Technician	2	0	0	0	0	0	0	1	0.00%
7019F1	Mental Health Aide	208	1	12	0	33	46	221	214.5	21.45%
7018F1	Mental Health Aide Trainee	44	0	2	0	18	20	35	39.5	50.63%
7024F2	Mental Health Specialist	47	0	0	0	14	14	75	61	22.95%
8355C3	Metrologist	1	0	0	0	0	0	1	1	0.00%
8173C3	Microbiologist I	4	0	0	0	0	0	4	4	0.00%
8174C3	Microbiologist II	22	0	0	0	3	3	21	21.5	13.95%
8175C3	Microbiologist III	5	0	0	0	1	1	6	5.5	18.18%
4239P2	Microcom Sys Supp Tech I	13	0	0	0	2	2	17	15	13.33%
1824P2	Microcom Sys Supp Tech II	39	0	0	0	0	0	41	40	0.00%
1823P2	Microcom Sys Supp Tech III	44	0	0	0	4	4	38	41	9.76%
1822P2	Microcomputer Sys Support Mgr	3	0	0	0	0	0	4	3.5	0.00%
1027L1	Motor Carrier Inspection Sgt	9	1	0	0	0	1	9	9	11.11%
7666L1	Motor Carrier Inspector I	9	0	0	0	1	1	7	8	12.50%
7667L1	Motor Carrier Inspector II	30	1	0	0	1	2	32	31	6.45%
8127L1	Motor Carrier Inspector III	29	0	0	0	2	2	32	30.5	6.56%
4101E1	Museum Assistant	2	0	0	0	0	0	4	3	0.00%
4102E1	Museum Exhibits Director	2	0	0	0	0	0	2	2	0.00%
4073E1	Museum Exhibits Technician	1	0	0	0	0	0	2	1.5	0.00%
4103E1	Museum Specialist	6	0	0	0	1	1	6	6	16.67%
2166L1	Natural Resource Officer I	0	0	0	0	1	1	72	36	2.78%
2167L1	Natural Resource Officer II	0	0	0	0	0	0	10	5	0.00%
2168L1	Natural Resource Officer III	0	0	0	0	0	0	11	5.5	0.00%
2169L1	Natural Resource Officer IV	0	1	0	0	0	0	8	4	25.00%
1826P3	Network Control Supervisor	2	0	0	0	0	0	2	2	0.00%

Senate Commerce Committee

Attachment 7-7

Division of Personnel Services

SHARP; 10/21/2004

over FY 2004

Turnover by Job Code_sorted (2) FY 2004, JC only - alpha; KYS