

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 2, 2006 in Room 241-N of the Capitol.

All members were present except:

Patricia Kilpatrick- unexcused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Kansas Association of Insurance Agents

Wil Leiker, Kansas AFL/CIO

Jeff Glendening, The Kansas Chamber of Commerce

Jim Garner, Secretary of Labor

Others attending:

See attached list.

The Chairman stated this was the last day for bill introductions by members and asked if anyone wished to request a bill.

Bill Yanek, Director of Government Relations, Kansas Association of Realtors, requested a bill relating to home inspections; requiring home inspector registration, certification and requiring insurance.

Emilie Burdette Rush, Office of Attorney General Phil Kline, Consumer Protection Division, requested a bill establishing requirements that debt collectors, operating to collect debts in Kansas, register with the Secretary of State, post a surety bond and register as a resident agent. Such act is to be part of the Kansas Consumer Protection Act.

The Chairman stated without exception the bills would be accepted.

The Chairman opened the hearing on **HB 2696 - Workers compensation; administrative law judge requirements, salary and applications; establishing the workers compensation administrative law judge nominating and review committee.**

Staff briefed the committee on **HB 2696**. Administrative law judges (ALJ's) shall have at least five years of experience as an attorney with at least one year of experience practicing law in the area of workers compensation. The annual salary shall be an amount equal to 80% of the annual salary paid by the state to a district court judge, other than a district court judge designated as a chief judge. Qualified applicants for a position of ALJ's shall be submitted by the director to the workers compensation ALJ nominating and review committee for consideration.

Larry Magill, Kansas Association of Insurance Agents, testified as a proponent to **HB 2696**. This is an outgrowth of a number of bills the last few sessions addressing this same issue. One area of the workers compensation act that was not reformed in 1993 was the process for selecting and reviewing ALJ's.

ALJ's 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. The 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%. 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 (Attachment 1).

Wil Leiker, Executive Vice President, Kansas AFL/CIO, testified as a proponent to **HB 2696**. This bill is in

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 2, 2006 in Room 241-N of the Capitol.

essence, identical to **SB 259**. The AFL/CIO supports a raise for the ALJ's. We are not convinced that a complete overhaul is needed. It is believed moving the salaries to a level more in tune with the job performed would attract more qualified applicants (Attachment 2).

Jeff Glendening, Vice President of Political Affairs, The Kansas Chamber, testified as a proponent to **HB 2696**. This measure changes the way workers compensation ALJ's are appointed, compensated, and reviewed. It is hoped this would make the workers compensation system much more fair and unbiased so that all parties have an equal chance (Attachment 3).

Jim Garner, Secretary of Labor, testified with concerns on **HB 2696**. This would significantly increase the pay of ALJ's and would create a new method of selecting them. Under this bill, ALJ's would have the option of becoming unclassified employees and their pay would increase to 80% of the annual salary paid to district court judges for a total pay of \$84,000. If all ALJ's took the option (and ultimately all ALJ's will come under the new system) the fiscal impact would be a \$302,000 burden.

It appears that the new proposed method of selecting ALJ's is patterned closely after the process for selecting members of the Workers Compensation Board of Appeals in K.S.A. 44-555c. A panel consisting of one member of the AFL/CIO and one member of the Kansas Chamber of Commerce and Industry reviews qualified applicants and nominates one to a vacated position.

There are problems with Section 2 (c) of the bill. This creates a new, unique type of state employee. The ALJ's would become unclassified employees but unclassified employees who can only be disciplined or terminated for cause. If they become unclassified employees, they should be treated as all other unclassified employees who are basically employees at will. This section needs attention and language reworked (Attachment 4).

The Chairman closed the hearing on **HB 2696**.

Representative Huntington requested a bill introduction that on real estate contracts there would be notification if there were sexual predators on the KBI list in the area of the real estate.

The Chairman stated without exception the bill would be accepted.

The meeting adjourned at 10:00 a.m. The next meeting will be February 6, 2006.

COMMERCE AND LABOR COMMITTEE

DATE February 2, 2006

NAME	REPRESENTING
Duane Simpson	KGFA-KARA
JEFF GRENWOLD	KANSAS CHAMBER
BILL YANEK	Kansas Assn of REALTORS
DANIEL MURILL	KAIN
BRIAN MALONE	KTLA
Emilie Buidette Rush	KS Atty Gen Office
Dennis Phillips	KSCFF
Ed Redman	KSCFF
John Ostrowski	KS AFL-CIO
Walt Leub	KS AFL-CIO
Jim McHaff	KS AFL-CIO
Ed Redman	KSE
Estelle Montgomery	Hein Law Firm
Callie Denton	KTLA

Testimony
Before the House Commerce & Labor Committee
On House Bill 2696
By Larry Magill
Kansas Association of Insurance Agents
February 2 , 2006

Thank you mister Chairman and members of the Committee for the opportunity to appear today in support of House Bill 2696 which changes the way workers compensation administrative law judges (ALJ's) are appointed, 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.

House Bill 2696 is an outgrowth of a number of bills the last few sessions addressing this same issue. You have heard from Judge Moore, an Administrative Law Judge from Salina, on this issue and it has been discussed a number of times by the Workers Compensation Council. We worked with the Kansas Chamber and a number of interested businesses on the draft during the interim.

The feedback I have received from attorneys who specialize in Workers Compensation cases, agents and insurers, is that there is no more important area of reform of the workers compensation system, than this proposal.

The issue was held up last year in the Senate due to concerns over constitutional issues surrounding changing classified employees to unclassified that are addressed below.

Fair and Balanced Approach

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. The system needs to be viewed by both sides as fair and balanced.

In 1993's reforms a new concept was added when 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, thirteen 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.

Constitutional Issues

We feel that this bill addresses the constitutional concern in a very positive way. There is a Kansas Supreme Court case involving the legislature switching Water Authority employees to the unclassified service that essentially said you can't take the classified employee's "property right" away by switching them to the unclassified service.

HB 2696 addresses that concern by allowing all the existing ALJ's to continue as classified employees at their current pay grade. If they choose to take the pay increase from approximately \$56,000 per year to 80% of the District Court judge pay or approximately \$80,000+ per year, they must agree to a four year term and a renomination process every four years. Every existing ALJ is guaranteed one four year term, if they choose, and all new ALJ's will be subject to the bill's nomination and renomination process.

For the last two years, the ALJ's appealed to the Workers Compensation Council to recommend a substantial raise in pay. It has been pointed out that a student just out of law school who graduated near the top of their class could expect to start at close to the \$56,000 figure in Kansas. Yet our ALJ's have years of legal experience and usually years of experience as Administrative Law Judges.

Greater Accountability

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.

In 2004 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 our workers compensation system.

Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



President
Mark Love

Executive Secretary
Treasurer
Jim DeHoff

Executive Vice
President
Wil Leiker

Executive Board

*Paul Babich
Doris Branham
Mike Brink
Kurt Chaffee
Herb Dicus
Rick Greeno
David Han
Tom Harkness
Hoyt Hillman
Larry Horseman
Jim Keele
Lloyd Lavin
Jerry Lewis
Emil Ramirez
Steve Rooney
Rory Schaffer
Richard Taylor
Brian Thompson
Dan Woodard*

Re: HB 2696
Hearing Held February 2, 2006

Chairman Dahl and Members of the Committee on Commerce & Labor

My name is Wil Leiker, the Executive Vice President of the Kansas AFL-CIO. Today, I appear on behalf of the Kansas AFL-CIO and the Kansas Coalition for Workplace Safety (KCWS) of which I am a member.

HB 2696 is, in essence, identical to SB 259 on which the Kansas AFL-CIO previously testified. The Kansas AFL-CIO and KCWS support in principle HB 2696. More particularly, the organizations support a raise for the administrative law judges. We are not convinced that a complete overhaul of the appointment process is necessary. Quite frankly, we believe that simply moving the salaries to a level more in tune with the job performed would attract more qualified applicants. However, if it is determined that a change is necessary, the procedure outlined in HB 2696 is acceptable. As you are aware, the appointment process contained in HB 2696 draws on the successful appointment process for members appointed to the Appeals Board.

Unfortunately, HB 2696 fails, as did its predecessor SB 259, to address the conflict between sitting judges who are part of the civil service system and the newly appointed judges. Under this proposal, newly appointed judges would be paid substantially more than the current judges, and would not be part of the civil service system. It is our understanding that it is unconstitutional to have co-employees in state government performing identical services for different rates of pay. That is the problem we see presented by HB 2696.

When SB 259 was debated, the AFL-CIO offered an amendment to potentially cure the constitutional issue. Basically, the current administrative law judges, if they so desire, would be transferred to a similarly classified position thereby protecting their property rights. This would be done by the Secretary of Labor within one year from the closure of a sixty day election period. In short, the sitting administrative law judges would be permitted to continue in the civil service system (in a different position) without interruption of pay or benefits.

Thank you for this opportunity to present our thoughts to your Committee.

I will stand for questions.

Respectfully yours,

A handwritten signature in cursive that reads "Wil Leiker".

Wil Leiker



Comm Labor
2.2.06
Atch #2

Legislative Testimony

HR 2696

February 2, 2006

**Testimony before the Kansas House Commerce and Labor Committee
By Jeff Glendening, Vice President of Political Affairs**

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you today as a proponent of House Bill 2696. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber. This measure changes the way workers compensation administrative law judges are appointed, compensated, and reviewed

HB 2696 allows all current ALJ's to choose between two career paths. The first option allows them to continue as classified employees at their current pay rate. However, if the judges wish to take the increase in salary from approximately \$56,000 per year to 80% of the District Court judge salary, they must agree to a four year term and the renomination process at the end of each term.

The Administrative law judges have appealed to the Workers Compensation Council for a substantial pay raise. Despite years of service, these judges are currently being paid about the same as a recent law school graduate.

ALJ's are paid through a budget at the Division of Workers Compensation, which is funded each year by an assessment on all paid workers compensation claims. The salary increase, which is approximately 43%, would be funded by business. For this large of an increase, we believe there must be greater accountability for these judges and have the ability to not reappoint those that are not performing.

Our hope is that this will make the workers compensation system much more fair and unbiased so that all parties have an equal chance. Thank you for your time and we urge the committee to consider this bill favorably for passage.

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.

Comm-Labor
2-2-06
Atch # 3



The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org



KANSAS

DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony Concerning 2006 HB 2696
House Commerce and Labor Committee
2 February 2006
Jim Garner
Secretary of Labor

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear and to allow me to share some thoughts and concerns on House Bill 2696. This bill would significantly increase the pay of Workers Compensation Administrative Law Judges (ALJ's) and would create a new method of selecting these ALJ's. The issue of pay and selection are policy matters within the discretion of the Legislature. However, I do have responsibility to share some information I believe will be helpful as you consider this piece of legislation.

1. Fiscal impact. Currently ALJ's are at pay grade level 33 employees within the state's classified system. Current pay is from \$54,000 to \$69,000. Under this bill, ALJ's would have the option of becoming unclassified employees and their pay would increase to 80% of the annual salary paid to district court judges for a total pay of \$84,000 (District Judges are currently paid a little over \$105,000). If all ALJ's took the new option (and ultimately all ALJs will come under the new system) the annual budget impact would be \$302,000.

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. State law has capped the assessment rate at 3% of benefits paid by such carriers (KSA 74-713). This assessment rate has not been adjusted since 1961. The Agency continues to face increased expenses for operating the division of Workers Compensation within this cap. Pay increases for employees, increases in employees benefit costs and the recent decisions to move some expenses from state general funding to fee funds have placed additional mandates on workers compensation fee funds. As these increase costs

continue, it becomes more difficult for the agency to operate within the 3% assessment cap. If House Bill 2696 is enacted it will place a new and additional \$300,000 burden of expenses for funding the Workers Compensation system. If you choose to work this bill, you should be mindful of the pressure these increasing mandates will have on the operating costs of the Workers Compensation system and the impact they will have on the assessment cap.

2. Checks and Balances – It appears that the new proposed method of selecting ALJ's is patterned closely after the process for selecting members of the Workers Compensation Board of Appeals in KSA 44-555c. A panel consisting of one member of the ALF-CIO and one member of the Kansas Chamber of Commerce and Industry reviews qualified applicants and nominates one to a vacated position.

In KSA 44-555c (f) (1), the Secretary of Labor has the responsibility of reviewing the nominee and accepting or rejecting the recommendations of the panel. However in HB 2696 Section 1 (f) (1), the Secretary must appoint the person nominated without any review. This eliminates any checks or balance on the part of a non-public body in appointing public employees.

I take the responsibility set on the KSA 44-555c (f) seriously. After nominees are recommended by the nominating committee, I conduct interviews with these individuals. It allows me to address issues of timeliness of decisions; adequacy of agency support for the board; reports of public compliments or concerns and other matters.

If you choose to work this bill, I strongly urge you to include language identical to that found in the law concerning the selection of members of the Workers Compensation Board of Appeals to allow for at least some level of review and check on this non-elected nominating committee. KSA 44-555c(f)(1) states:

With respect to each person nominated, the Secretary either shall accept and appoint the person nominated by the nominating committee to the position [. . .] for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. 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.

3. Classified vs. Unclassified?? There are problems, in my opinion, with Section 2(c) of the bill. It creates a new, unique type of state employee. Under this bill, the ALJs will become unclassified employees but unclassified employees who can only be disciplined or terminated for cause. If they are to become unclassified employees, they should be treated as all other unclassified employees who are basically employees at will. In addition, the language in Section 2(c) actually removes the job protections provided in that section from those ALJs who chose to remain in the classified service. If you do work this bill, this section needs attention and language reworked.

4. Other similarly situated employees. I very much appreciate the issue of pay for our Workers Compensation ALJs. We have dedicated lawyers providing a valuable service to the state at discount prices. However, this is not an issue just for Workers Compensation ALJs. Within the Kansas Department of Labor, we have other dedicated and talented lawyers providing similar duties and who warrant similar attention regarding their pay. Our Unemployment Insurance hearing officers are classified as pay grade level 31 employees with a range of pay between \$48,000 to \$62,700. This bill will simply widen the disparity in pay between these two types of lawyers in state service. In addition, there are ALJs in the Department of Administration whose pay is not addressed in this bill.

In conclusion, the decision on classification and selection of these AJL's are matters I leave for your deliberations. However, I want to make you aware of the fiscal and other impacts of this legislation.

Thank you for the opportunity to appear and share my comments and concerns on this matter.