

CORRECTED
SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 187

As Amended by House Committee on
Commerce, Labor and Economic Development

Brief*

SB 187, 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 new Nominating Committee would have seven members. The following state official and groups would nominate members to serve:

- Secretary of Labor (Secretary);
- Kansas Chamber of Commerce;
- National Federation of Independent Businesses;
- Kansas AFL-CIO;
- Kansas State Council of the Society for Human Resource Management;

*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>

- Kansas Self-Insurers Association; and
- The Secretary 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.

From the persons first nominated, the Governor would appoint three members to two-year terms and four members to four-year terms. The Governor would appoint subsequent members to four-year terms. 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 Nominating Committee, the respective nominating source would have 30 days to nominate another person.

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

Workers Compensation Administrative Law Judges

The bill would increase the annual salary for unclassified ALJ positions, from 75 percent to 85 percent of the annual salary paid to a district judge.

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

The reappointment process for an ALJ who has served a four-year term would be revised by the bill. An incumbent ALJ would submit an application to the Director of Workers Compensation. The application would be forwarded to the

Secretary unless the new Nominating Committee decided, by a two-thirds majority vote, to not forward the application. Under current law, an incumbent ALJ wishing to be reappointed is considered directly by the ALJ Nominating and Review Committee.

The current ALJ Nominating and Review Committee comprises two members. The Secretary 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. The Secretary has the discretion to accept or reject the applicant.

Worker Compensation Appeals Board

Under current law, the Workers Compensation 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 rename the Board, calling it the Worker Compensation Appeals Board.

The current Nominating Committee for the Workers Compensation Board consists 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 Nominating Committee would submit nominees for the Governor's consideration. The Governor could choose not to appoint any of the nominees; in that case, the new Nominating 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. The Board consists 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, who represents the general public.

Background

Representatives of the Kansas Self-Insurers Association, the Kansas State Council Society for Human Resource Management, the Kansas Chamber, and the National Federation of Independent Business provided proponent testimony at the House Committee hearing. According to their testimony, the bill would provide for more representation for employers and employees. Proponents contend the current selection processes favor nominees who are the least objectionable and not necessarily the most qualified.

A retired ALJ, one of the original members of the Workers Compensation Board, and representatives of the Kansas Association for Justice and the Kansas AFL-CIO spoke in opposition to the bill. Opponents noted that prior to 1993, when the current selection process was established, ALJs were political appointments. Courts of law did not defer to the ALJ decisions, and there was unnecessary litigation. Opponents contend the current system is apolitical. Opponents expressed concern that, if the hearing process becomes prejudicial against injured employees, workers may seek relief through Medicaid or other cash assistance programs.

In addition to making technical amendments, the Senate Committee on Commerce amended the bill by deleting the proposed changes to the size of the Workers Compensation Appeals Board's hearing panels, from three members to two members.

The Senate Committee of the Whole amended the bill to stagger the terms of the first seven members appointed to the new Nominating Committee.

The House Committee on Commerce, Labor and Economic Development made technical amendments to the bill.

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