

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2558

As Amended by House Committee on
Commerce and Economic Development

Brief*

HB 2558, as amended, would revise provisions of the Workers Compensation Act pertaining to the administration of the State Workers Compensation Self-Insurance Fund. References to the Secretary of the Department of Administration would be changed to the Secretary of the Department of Health and Environment.

The bill also would revise the appeals process by which administrative law judges (ALJs) within the Department of Labor's Division of Workers Compensation may be changed due to a conflict of interest. Under current law, if an ALJ denies a request to disqualify the ALJ's self from a case, a party may appeal the decision by filing an affidavit with the district court in the county in which the injury occurred. The bill would require the affidavit to be filed with the Director of Workers Compensation instead, who then could reassign the case. The Director's decision could be appealed to the Court of Appeals.

The bill would clarify that an injured worker may seek compensation from the Workers Compensation Fund when an employer has an insufficiently funded letter of credit.

In order to be consistent with the provisions of 2011 Sub. for HB 2134, the bill would delete the requirement that proceedings for compensation must start within one year after the death of the employee or within 200 days after the accident, medical, or disability payment. The legislation

*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>

enacted last year requires proceedings to commence within 30 days.

The State Workplace Health and Safety Program would be the responsibility of both the Department of Health and Environment and the Department of Labor's Industrial Safety and Health Division instead of the Department of Administration.

The Secretary of Labor, instead of the Director of Workers Compensation, would be responsible for estimating the expenses for the administration of the Workers Compensation Act.

Background

The Department of Labor testified as a proponent, saying the bill was clean-up legislation that reflected current administrative and operational practices. In response to a series of State Supreme Court decisions, the Legislature enacted 2011 Sub. for HB 2134, which revised significant portions of the Workers Compensation Act. The Department stated the proposed change to the appeals process would allow for a more efficient way to mediate ALJs' conflicts of interest. The Kansas Self-Insurers Association also spoke as a proponent.

The Kansas Association for Justice and the Kansas AFL-CIO spoke as opponents. Opponents contend the current recusal process for ALJs provides the correct balance of flexibility and fairness.

The House Committee on Commerce and Economic Development amended the bill to:

- Authorize the Court of Appeals to hear an appeal regarding a decision made by the Director of Workers Compensation regarding an ALJ's conflict of interest;

- Clarify that an injured worker may seek compensation from the Workers Compensation Fund when the employer has an insufficiently funded letter of credit; and
- Delete the remaining reference to the previous time limitation of 200 days after the accident or payment (or one year in a case resulting in death) to commence compensation proceedings.

According to the fiscal note provided by the Division of the Budget, the bill, as introduced, would have no fiscal effect.