

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 10, 2017

1:37 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Gabrielle LeDoux
Representative David Eastman
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Jonathan Kreiss-Tomkins
Representative Chuck Kopp
Representative Lora Reinbold
Representative Charisse Millett (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 69

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 69

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

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|----------|-----|---------------------------------|
| 01/20/17 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/20/17 | (H) | L&C, JUD |
| 02/06/17 | (H) | L&C AT 3:15 PM BARNES 124 |
| 02/06/17 | (H) | Heard & Held |
| 02/06/17 | (H) | MINUTE (L&C) |
| 02/10/17 | (H) | L&C AT 3:15 PM BARNES 124 |
| 02/10/17 | (H) | Moved HB 69 Out of Committee |

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| 02/10/17 | (H) | MINUTE (L&C) |
| 02/13/17 | (H) | L&C RPT 5DP 1NR |
| 02/13/17 | (H) | DP: SULLIVAN-LEONARD, STUTES, BIRCH, KNOPP, KITO |
| 02/13/17 | (H) | NR: JOSEPHSON |
| 02/22/17 | (H) | JUD AT 1:30 PM GRUENBERG 120 |
| 02/22/17 | (H) | Scheduled but Not Heard |
| 02/27/17 | (H) | JUD AT 1:00 PM GRUENBERG 120 |
| 02/27/17 | (H) | Heard & Held |
| 02/27/17 | (H) | MINUTE (JUD) |
| 03/10/17 | (H) | JUD AT 1:30 PM GRUENBERG 120 |

WITNESS REGISTER

ERIC CROFT, Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, offered testimony.

STEVE CONSTANTINO, Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, offered testimony.

ANDREW HEMENWAY, Retired Chair
Workers Compensation Appeals Commission
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 69, offered testimony.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, answered questions.

MARIE MARX, Director
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 69, answered questions.

KATHLEEN FREDERICK, Chief Administrative Law Judge
Office of Administrative Hearings

Department of Administration
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, answered questions.

ACTION NARRATIVE

[1:37:00 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:37 p.m. Representatives Claman, Fansler, Eastman, and Stutes [alternate sitting in for Representative Kreiss-Tomkins] were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 69-REPEAL WORKERS' COMP APPEALS COMMISSION

[1:37:34 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 69, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIR CLAMAN reopened the public testimony of HB 69.

[1:38:15 PM](#)

ERIC CROFT, Attorney, advised that he represents injured workers and offered testimony as follows:

I want to make three points about the commission. I do now practice law in -- representing injured workers so I've appeared before the board, and the commission, and the Alaska Supreme Court on those issues. And so I speak from experience. I still occasionally dabble in politics, as well.

The three points I'd like to make today. First, the commission's decisions over the last 11 years show a distinct and a clear bias against injured workers and

in favor of insurance companies. In my opinion, it is not a fair tribunal if you don't get a fair shot.

Second, the commission does not do very much work compared to other appeals courts, you get very little bang for your half a million bucks.

And third, the commission has not brought the uniformity and clarity to workers' compensation law that was promised. In fact, often the commission's decisions create more confusion than they resolve.

On the key point, the first point, that the commission's decisions are overwhelmingly in favor of insurance companies, I took the work that Mr. -- Commissioner Hemenway did, Andy Hemenway, where he looked at all the opinions that had -- of the -- published opinions of the commission, there are 229 of them. One hundred made it all the way to the Alaska Supreme Court, and by his count, 39 reached a substantive result as opposed to (indisc.) for want of prosecution, those sorts of things. So, he had counted 39 of those. I was able to find 36. I think those other 3 are unpublished older cases, I'm speculating there. But, it basically -- Commissioner Hemenway and I agree on that there's a -- about that number out there. Um, and I understand he testified before you and presented some -- information that there was a 50 percent affirmation of reversal rate.

... So, continuing ... um, I -- I have no reason to -- to doubt that, that appears to fit what I found. Um, but I asked a slightly different question, that is how often does the commission rule for or against injured workers and how often do they get it right? Um, out of those 36 decisions, I -- I took out some of the decisions that weren't directly on workers' rights, that is -- there was a sheriffs case that I was actually involve with about whether there were gay -- whether a gay couple had rights under the Act. That's something the commission has no jurisdiction over. And, a Titan case where the employer was fined for failing to get compensation insurance. So, ticking off those that aren't on insurance company versus employee benefits, there's ... um, 31 decisions in this universe left. And, I've attached, as I said, the attachment characterizes them by whether the

employee or the insurance company was suc -- ah, was successful. In these cases the commission ruled in favor of insurance companies over 85 percent of the time. I think, more like 87 percent. But, the real number is how often were they were right. That is, were the insurance companies in -- in -- in the right place 87 percent of the time? In the 13 cases where the insurance company's position were confirmed later by the Alaska Supreme Court, the commission got all those right, that is, they are very good at spotting when the insurance company should win.

[1:42:38 PM](#)

But, in the 18 cases where the employee's legal position was correct, was later found by the Alaska Supreme Court, the commission still ruled in favor of the insurance company over 80 percent of the time. That is, even when the Supreme Court later says that the employee position was correct. It's still overwhelming that the commission rules against them. The board and the Supreme Court are much more balanced in terms of their results, the commission is not. And just to reconcile that with -- with Mr. Hemenway's finding that there was about a 50 percent affirmation of reversal rate, I just suggest that when you have a commission that so consistently rules on one side, they can be right at 50 percent of the time if they always say -- or almost always say basically the same position. It's like if somebody flipped a coin and I just yelled "heads" every time, I would end up being right -- being right about half the time. But, I wouldn't be exercising much discretion.

MR. CROFT, in response to Chair Claman, advised he was testifying on his own behalf.

[1:44:23 PM](#)

MR. CROFT continued his testimony as follows:

I'll just summarize the other two points then. I listed that the commission doesn't do much work. That is, in the last eight months, I counted up, they've only done seven opinions, and over the last five years their average is just over one a month. That's much less than the criminal court of appeals, which does

have three attorneys as opposed to one attorney on the commission. But, even there, they're turning out 14 to 15 opinions a month, or four to five for each attorney who can write those opinions, as opposed to less than one. So, you're getting five times the production out of the attorneys who work for the criminal court of appeals than you are from a commissioner.

And, finally. I listed the fact that the commission decisions often create more confusion than they resolve. I listed the Hudak [v. Pirate Airworks, Inc.] and Thurston v. Guys with Tools, a great case name if nothing else. And, particularly emphasize that the Adamson [v. MOA] case that I was involved with where the commission, within a week, issued two contradictory legal standards for stays on appeal. And, the Alaska Supreme Court had to bring them both together, consolidate them, and establish the law.

So with that I just say that the commission has a decided bias against injured workers in favor of insurance companies. There's not -- they don't do a lot of work for the money you spend, and they have not provided the clarity that we had hoped.

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REPRESENTATIVE EASTMAN noted that he appreciated Mr. Croft's research and said that he suspected the research had probably gone back prior to the start of the commission. He asked the results, as far as a weight toward or against insurance companies prior to these types of cases coming to the commission.

MR. CROFT responded that his research did not extend to when the superior court had jurisdiction because he ran out of time just doing this. He related that he was a member of the legislature when this commission was established and one of the main arguments was that it would bring uniformity and clarity. That argument had not been accomplished, although, he related that there was a manner in which to craft a way to "get that out of the current court," he said. To directly answer Representative Eastman's question, he related that he was unsure of bias prior to the creation of the commission.

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REPRESENTATIVE EASTMAN referred to Mr. Croft's experience as an attorney working in this area of law, and asked whether he had any experience that would inform what he would expect that number to be.

MR. CROFT answered that a mix would be anticipated, and in the 18 decisions where the Alaska Supreme Court eventually ruled for the employee, it was roughly equal that the board decided one way or the other. Therefore, he noted, the board was getting some of those that should have gone the way of the employees wrong, even at the board level. He referred to the category of pro se individuals, unrepresented by counsel, who represent themselves because they believe they have a case, but they just don't and are just wrong about their case. On the pro se employee side, they have to wait a long time to receive any relief and if they take a case that is not meritorious to the board, they often will not take it any further. Unless, he commented, it is one of those difficult pro se individuals who believe they have a case, but they don't.

[1:49:52 PM](#)

STEVE CONSTANTINO, Attorney, said he is an attorney in Anchorage and was speaking on his own behalf. He advised that he has practiced law in Alaska since 1981, and was later appointed as the commissioner's designee and chaired workers' compensation hearings. During the course of his practice, he said he saw many meritorious cases where employees couldn't get an attorney so he left the board and opened a private practice representing injured workers. At the time the Workers' Compensation Appeals Commission was created, he testified before committees at the behest of Governor Walter Murkowski, and opposed the creation of the commission and continues to oppose it for many of the reasons Mr. Croft outlined within his extensive research. He referred to his personal practice, and anecdotal experience, and related that some of the problems with the creation of the commission was that it was created to streamline the process and the commission's decisions were binding legal precedent. In his experience, he pointed out, when the defense receives a favorable decision from the commission and changes the law in a way that favors insurance companies, the insurer will approach him with a settlement offer the injured worker, who has been denied benefits for years, just can't refuse. As a consequence, insurance companies are buying favorable binding precedent on the Workers' Compensation Board. Subsequently, when those decisions, in another case, finally get in front of the Alaska

Supreme Court they are often overruled and reversed, and the law is then clear. He pointed out that this system was created wherein insurers have an incentive to buy the precedent the appeals commission creates. For the record, he stressed, these are majority decisions between one attorney - a commissioner, and two lay members; therefore, effectively, lay individuals are creating legal precedent. He expressed that he was unaware of another situation in Alaska's jurisprudence where that takes place.

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MR. CONSTANTINO pointed out that no fiscal note was attached to this bill, except to reduce the cost of the commission. He further pointed out that at the time the commission was created, the Alaska Supreme Court expected a flood of appeals and the legislature funded a separate position for a clerk of the Alaska Supreme Court to focus their attention on workers' compensation appeals. He offered that that flood never appeared because injured workers could not get through the system to get to the Alaska Supreme Court. He then remarked that his preference is for the superior court to hear these matters, and that he understands the separation of powers issues.

[1:55:18 PM](#)

ANDREW HEMENWAY, Retired Chair, Workers Compensation Appeals Commission, said he is the [most recent] retired chair of the Workers' Compensation Appeals Commission and was chair for approximately 18 months, and that he was testifying on his own behalf. Prior to being chair, he explained that he was in private practice, and was an administrative law judge (ALJ) within the Office of Administrative Hearings. He stated that he would not be speaking to the financial aspect of the appeals commission, or to the pros and cons in terms of whether workers or insurance companies are more or less likely to succeed. Frankly, he said, in his view that was primarily a function of who the chair was, and that anyone in that position would have a mind set and that mind set would carry over into the kinds of decisions issued. He agreed that many of the cases the commissions hears are from injured pro se individuals who believe they have a good case, but the reality is that they don't, and they bring it up on appeal. Which, he pointed out, does contribute to the high rate of reversal for the employee.

MR. HEMENWAY referred to precedent, and said that he appreciates there is a downside to that, but there is also an upside of

predictability. Mr. Croft indicated that the commission was not (indisc.) in that regard and, Mr. Hemenway pointed out that no other court is either, as occasionally there will be inconsistent decisions. The case Mr. Croft mentioned where there were inconsistent decisions in a short time, he explained that there were two different chairs of the commission, and one ruling was issued by a pro tem chair and the other ruling was issued by the chair, and they were somewhat different. He said he agreed that is a problem because different commission decisions shouldn't be issued and they are supposed to be binding on the commission.

[1:58:02 PM](#)

MR. HEMENWAY noted two beneficial points to the current structure, and referred to the longer amount of time it would take to receive a final decision from the superior court as opposed to the appeals commission. He explained that within the rules set up in the superior court and the appeals commission, it takes about the same amount of time in either body to get the paperwork completed. He pointed out that the difference is that the superior court calendaring depends on priority cases and the workers' compensation cases will not be a priority. Also, the superior court judge has six months to render a decision and the appeals commission has thirty days.

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MR. HEMENWAY related that the second benefit would be how much handholding pro se individuals would receive from the appeals commission versus the superior court. He offered his opinion that the appeals commission does a much better job of making sure pro se individuals understand what they need to do in order to complete their appeal, and that they have the ability to get the necessary paperwork in.

MR. HEMENWAY remarked that there are two alternatives available rather than simply sending it back to the superior court and changing back to its previous structure. The first alternative would be to use the Office of Administrative Hearings in some capacity as the decision body as there are any number of different structural ways the Office of Administrative Hearings could take it up. He suggested possibly moving this position into the Office of Administrative Hearings, changing the way the chair was appointed, or something similar.

MR. HEMENWAY said the second alternative would be, in the event the process went back to the superior court, the legislature could have the superior court decisions have the same effect as appeals commission decisions, and make them binding precedent. He commented that the Alaska Court System did indicate it was open to the idea of trying to develop some type of expertise within the court system by working with the presiding judges. He suggested that the legislature could have an impact on that thought and direct that the cases be heard in the same venue, which would limit the number of judges hearing them. He further suggested a letter of intent indicating that the legislature hopes for that type of approach or something that would lead to expertise at the superior court level. Lastly, he related, money was put into the court system's budget to provide that expertise in this area, and he was unaware whether that funding was still available.

2:01:48 PM

REPRESENTATIVE LEDOUX asked the advantages and disadvantages of utilizing the Office of Administrative Hearings.

MR. HEMENWAY advised that the Office of Administrative Hearings currently has approximately 10 administrative law judges, and the judges are similar to the court system's trial judges. Administrative law judges provide due process hearings for a wide variety of agencies, "they don't right now have any -- any role as an appellate body," where the fact finding had been accomplished and all it would do was appellate work. The advantage, from his perspective having worked in both areas, was that the Office of Administrative Hearings has a good reputation across the board as being impartial. He explained that it has many different types of hearings, and that office was not perceived as being particularly favorable to one side or the other. He suggested the possibility of the appeals commission's chair being appointed by the chief administrative law judge, of which might take the potential for political influence out of it, if that was a concern. The advantage would be the impartiality, and also there would be a fiscal savings because there would be economies of scale. He explained that the appeals commission was not always a fulltime position because the cases ebbed and flowed. In the event it was in the Office of Administrative Hearings and there was a period of time with less than fulltime work, the chair of the appeals commission could work on other matters, as well. Lastly, if it was in the Office of Administrative Hearings, it could roll in the appeals commission's fulltime staff person because it probably doesn't

really require more than a halftime person if a structure was set up with other staff available to work on it. The advantage would be money and impartiality. The downside was that the Office of Administrative Hearings does not currently have anyone with workers' compensation appeals [expertise] but it could develop expertise over time. Although, he pointed out, the superior court doesn't have that expertise either.

[2:04:57 PM](#)

REPRESENTATIVE LEDOUX asked, based upon his experience as an administrative law judge, whether the Office of Administrative Hearings would be able to do this job without hiring additional administrative law judges, and staff.

MR. HEMENWAY responded that Representative LeDoux would have to speak with the chief administrative law judge because it depends upon their case load. He said he would guess that they would need a position to do this work, and it may not necessarily be a fulltime staff position.

[2:06:16 PM](#)

REPRESENTATIVE EASTMAN inquired as to the number of years Mr. Hemenway looked at workers' compensation issues.

MR. HEMENWAY answered that he does not have a great deal of workers' compensation experience, and related that he worked in the Alaska Supreme Court for five years at the beginning of his career. One of his responsibilities was administrative appeals and working on all of the workers' compensation appeals that came through the Alaska Supreme Court. He related that in private practice he worked with several attorneys who worked primarily in workers' compensation law and he was exposed through that. He specified that he does not have a real depth of experience in that area and that his primary experience was administrative law in general, and working as an administrative law judge.

[2:07:29 PM](#)

CHAIR CLAMAN presented a situation wherein someone was before the Office of Administrative Hearings and they didn't like the result, he asked whether they would then directly appeal to the Alaska Supreme Court, or stop at the superior court and then appeal to the Alaska Supreme Court.

MR. HEMENWAY explained that the appeals go to the superior court from the Office of Administrative Hearings. In the event the decision was to send these cases to the Office of Administrative Hearings, he said he assumed the committee would want to eliminate the superior court and go straight to the Alaska Supreme Court as they do now. In the event cases were sent straight to the Office of Administrative Hearings without some sort of special provision to bypass the superior court, then the committee would be adding another layer of process, which was probably not in anyone's best interest.

[2:08:35 PM](#)

CHAIR CLAMAN asked how long he worked in the Office of Administrative Hearings.

MR. HEMENWAY responded that he started when the office was established in 2005, so ten years.

CHAIR CLAMAN then asked how long he [chaired] the workers' compensation appeals commission.

MR. HEMENWAY answered, 18 months.

[2:09:39 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, said she was available for questions.

REPRESENTATIVE EASTMAN quiered as to whether the court system could handle these types of cases in the Office of Administrative Hearings (OAH) without or with minimal increases to staffing and resources.

MS. MEADE answered that the court system would not require additional staff to handle these cases and, accordingly, it submitted a zero fiscal note. She said she could not speak for the Office of Administrative Hearings about the fiscal impact of handling these cases. Although, the previous testifier testified that the Office of Administrative Hearings would be able to handle appeals, and that his supposition was with additional staff. Her understanding, she offered, was if these cases went to the Office of Administrative Hearings they would not go to the superior court and would go to the Alaska Supreme Court; therefore, the court system would not have a fiscal impact from that decision either.

[2:11:23 PM](#)

MARIE MARX, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), said she was available for questions.

CHAIR CLAMAN, in response to Representative Eastman's question whether the current chair of the Workers' Compensation Appeals Board would be testifying, pointed out that it would be better to ask the prior chair to testify because with the discussion being about taking the current chair's job away it was probably not the best idea, and that he only recently became chair.

[2:12:43 PM](#)

REPRESENTATIVE EASTMAN noted that the discussion was around whether it would be beneficial to move some of these cases to the Office of Administrative Hearings, and asked her thoughts.

MS. MARX opined that the administration's position is that this was a policy call. She opined that sending only workers' compensation cases with a full due process evidentiary hearing at the administrative level, appeal to another administrative function, didn't make sense, and no other administrative type of proceedings do that. She explained that, except for workers' compensation cases, administrative appeals move from a full evidentiary due process hearing to the superior court to the Alaska Supreme Court.

[2:14:20 PM](#)

REPRESENTATIVE EASTMAN asked her thoughts about having an administrative law judge look at the case, and from there bypass the superior court.

CHAIR CLAMAN pointed out that the committee had not suggested that as the alternative, and rather that it was an idea being discussed.

MS. MARX explained the system set up for administrative appeals as follows: a due process hearing at the administrative level, appeal to [the superior] court, appeal to the Alaska Supreme Court. She opined that that is how things flow for administrative appeals and she did not understand why workers' compensation would be treated differently.

MS. MARX agreed that workers' compensation was complicated, but so are family legal issues, mental health courts, and many other complicated areas of law, and that she could not understand why workers' compensation would have a special rule. She further reiterated her understanding that workers' compensation cases would move from the Workers' Compensation Board, appeal to the Office of Administrative Hearings, skip the superior court, and appeal to the Alaska Supreme Court, of which would be the only type of administrative appeal that would do that.

[2:16:12 PM](#)

REPRESENTATIVE LEDOUX said that, theoretically, if it was to be treated like everything else, wouldn't it start out in the superior court and then to the Alaska Supreme Court.

MS. MARX responded that that was a policy call, and she unsure whether it was her place to make comments on behalf of the administration since it hadn't been raised as an issue and hadn't been discussed. She related that having the workers' compensation board perform full due process evidentiary hearings had been in place probably since statehood and changing that process would probably need a lot of input from all of the stakeholder groups. She continued that it was established that there would be one member of labor, one member of industry, and a fulltime hearing staff member that chairs, and it works on the board level.

[2:17:58 PM](#)

REPRESENTATIVE LEDOUX clarified that she wasn't suggesting actually starting at the superior court level, in that Ms. Marx had explained why the legislature might now want to use the Office of Administrative Hearings. She related that she thought Ms. Marx commented that workers' compensation should not be treated differently from anything else. She clarified that she was just commenting that if it wasn't treated differently than anything else, why not just start at the superior court level.

MS. MARX clarified that she meant, once there had been a full due process evidentiary hearing at the administrative level, possibly the Office of Administrative Hearings, is where she said the administrative process should be the same for those agencies. Although, she explained the Office of Administrative Hearings is not the only panel that takes fact finding full due process hearings, and that the board does also.

[2:19:35 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 69.

[2:19:44 PM](#)

CHAIR CLAMAN agreed with Representative LeDoux's suggestion of hearing from someone from the Office of Administrative Hearings.

[2:20:31 PM](#)

The committee took an at-ease from 2:20 p.m. to 2:50 p.m.

[2:50:10 PM](#)

CHAIR CLAMAN advised that the committee had been joined by Chief Administrative Law Judge, Kathleen Frederick.

[2:50:28 PM](#)

REPRESENTATIVE LEDOUX asked Ms. Frederick, in the event the workers' compensation appeals commission was transferred to the Office of Administrative Hearings, whether this would be something it would have the ability and expertise to do, whether that would be within the purview of its jurisdiction, and whether she would require additional staff and additional judges to do this sort of thing.

[2:51:23 PM](#)

KATHLEEN FREDERICK, Chief Administrative Law Judge, Office of Administrative Hearings, explained that the Office of Administrative Hearings (OAH) is an independent (indisc.) to agency called the central panel, with approximately 26 in the country. She said she was aware of approximately seven who work on workers' compensation appeals. While OAH primarily does hearings de novo, it also occasionally does appeals, and in fact, last night it sent out a decision in an appeal from an entity that was a board. Therefore, she related that it is something OAH could do, and in fact it is done in other states as well. Historically, in 2014 under the part of the administration, there was a move to handle the workers' compensation appeals in that manner, she offered.

[2:52:21 PM](#)

REPRESENTATIVE LEDOUX asked what happened with that move.

MS. FREDERICK advised that the administration changed, and at the time a white paper was procured in conjunction with a retiring chair, pre-dating Mr. Hemenway. The retiring chair thought there would be a cost savings to roll this into OAH when "he was out of there." The administration then changed and the Department of Labor & Workforce Development preferred to go in a different direction.

[2:53:02 PM](#)

REPRESENTATIVE LEDOUX noted that presumably either the Office of Administrative Hearings or the Department of Labor & Workforce Development has that white paper.

MS. FREDERICK advised that Ms. Marx and she have that white paper. At the time there was an enormous amount of money going to the facility of the workers' compensation appeals commission. At that time, a view of the chair was that there would be a substantial space savings because it was occupying over 1800 feet in the building at 6th and K, and their lease costs were approximately \$50,000 a year. Also, it wouldn't need the same number of staff because a judge could pick up the workers' compensation appeals work in addition to working on other cases if it was less than fulltime.

[2:54:24 PM](#)

REPRESENTATIVE LEDOUX surmised that if the Office of Administrative Hearings was to take over and do this type of work, whether additional judges and/or additional staffing would be necessary.

MS. FREDERICK opined that there would not be a need for additional staffing because OAH would have ample staff to handle it. She said she needs to look further because her information was about three years old, and look at the commission's current caseload, the hours involved, things of that nature, and then look at the statistics here to see whether it could be done in-house. Sometimes OAH has had judges with some workers' compensation experience such as administrative law judges Andrew Hemenway and Rebecca Pauli. Currently, she said she did not believe there was anyone with that kind of background. Although, she pointed out that the office handles 66 different types of case areas and they all have had to come to speed in various areas, and it is something they do pretty well.

[2:55:55 PM](#)

REPRESENTATIVE LEDOUX surmised that her office wouldn't necessarily have to hire someone for their workers' compensation expertise. When comparing the two entities, she remarked that it wasn't thought there was a judge with workers' compensation background at the superior court, and that Ms. Frederick wouldn't necessarily have to hire someone just because no one currently had background in workers' compensation.

MS. FREDERICK explained that in the event an agency asked whether they could handle a certain type of case, they sent a person to a training program to come up to speed in that particular area of law. She noted that, currently, the statute requires someone to be employed by the commission and have a fulltime job. In the event a person was brought in, trained, and skilled in workers' compensation, that part of the statute would require revising. Her understanding was that the case load of workers' compensation ebbs and flows and it, currently, is not a fulltime position. There are savings for positions worked under 29 hours per week, such as not paying benefits, she said.

[2:57:57 PM](#)

REPRESENTATIVE LEDOUX requested a copy of the white paper.

MS. FREDERICK said she would have to check with (indisc.) to see whether it was for public dissemination because it was under a prior administration and she was unsure of the rules. Assuming she can turn it over, she said she would be happy to do so.

MS. MARX opined that it was an administrative policy type paper, Ms. Frederick forwarded it to her, and she forwarded it to the commissioner. She said barring any unforeseen circumstances about not being able to distribute the white paper to the public, she would be happy to provide it to the committee.

MS. FREDERICK noted that she was unsure whether it could be distributed because it was a thinking paper in a prior administration, and she wanted the committee to be aware that the facts at that time may have changed.

[2:59:30 PM](#)

CHAIR CLAMAN asked for clarification that in the event this function for appeals from the workers' compensation board were to be assigned to the Office of Administrative Hearings, Ms. Frederick wouldn't need to hire any additional judges, but whether she thought she may need to hire support staff that would develop expertise.

MS. FREDERICK articulated that she would not need more staff, but she wanted to take a closer look at the amount of the workload the commission currently has to make sure it could be absorbed without any additional staff. The other function that came up back then, was that originally the chair was a range 27, and they have a specialty judge category that is a range 25. At the time the talk was to revise the range 27 position because that is a director's position down to a range 25. She related that numerous issues would go into this pot and on such short notice she had to think through all of them and be prepared to answer a bit better.

[3:01:29 PM](#)

CHAIR CLAMAN said the committee would hold the bill, get the white paper from the administration, and Ms. Frederick could get the information she needs to provide answers to the questions the committee posed.

CHAIR CLAMAN asked Ms. Frederick whether she could provide written answers to the questions posed to her today, rather than at a hearing.

[3:02:26 PM](#)

MS. FREDERICK asked for clarification that the question would be whether they would need additional staff, and whether they would need an additional ALJ.

CHAIR CLAMAN agreed, and he noted that Ms. Marx would provide access to the caseload of the workers' compensation appeals commission over the last few years.

CHAIR CLAMAN advised that the committee would wait on the written answer from Ms. Frederick and then schedule the bill in due course. He noted that if, as a result of that, there is a kind of interest in exploring more of this alternative to try to figure that out before the hearing and have an amendment offered if that is the direction the committee wants to go.

3:03:35 PM

REPRESENTATIVE EASTMAN commented that he was interested in reading the white paper, and hoped that if it was prepared at the taxpayer's expense, that the committee could get a copy of it.

[HB 69 was held over.]

3:04:07 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.