

## SENATE COMMITTEE ON COMMERCE

January 27, 2005  
3:10 P.M.

Hearing Room C  
Tapes 5-6

**MEMBERS PRESENT:**     **Sen. Floyd Prozanski, Chair**  
                                  **Sen. Roger Beyer, Vice-Chair**  
                                  **Sen. Ginny Burdick**  
                                  **Sen. Charlie Ringo**  
                                  **Sen. Doug Whitsett**

**STAFF PRESENT:**       **Anna Braun, Committee Administrator**  
                                  **Karen Scofield, Committee Assistant**

**MEASURES/ISSUES HEARD:**  
                                  **Management Labor Advisory Committee - Informational Meeting**  
                                  **SB 140 - Public Hearing**  
                                  **SB 143 – Public Hearing**  
                                  **Introduction of Committee Measure – Work Session**

---

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

---

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 5, A</b>		
005	Chair Prozanski	Calls the meeting to order at 3:15 p.m. Opens informational meeting on Management Labor Advisory Committee (MLAC).
<b><u>MANAGEMENT LABOR ADVISORY COMMITTEE - INFORMATIONAL MEETING</u></b>		
015	Ken Hector	Co-Chair, Management Labor Advisory Committee's Independent Medical Examination Subcommittee (MLAC). Introduces himself. Gives background regarding findings of Independent Medical Examination subcommittee (IME). Submits written testimony ( <b>EXHIBIT A</b> ).
045	Lon Holston	Management Labor Advisory Committee's Independent Medical Examination Subcommittee (MLAC). Introduces himself. Discusses findings of IME. Discusses suggestion that Workers' Compensation Division should develop a certification process for IME physicians.
060	Hector	Discusses the concern of patients of having an observer in the room during exam. Discusses travel distance.
090	Hector	Continues. Discusses notice to the worker regarding the IME.
115	Holston	Discusses ways to better inform the worker of the process of the exam. Discusses need of patients to be prepared for the exam.
125	Hector	Discusses the need of the IME physician to have a complete set of records prior to the exam.
150	Holston	Discusses the importance of feedback on the process after completion. They plan to have the Workers' Compensation Division have a survey taken. They desire that a monetary penalty be charged for injured workers not showing up for exam.
180	Holston	Discusses suggestion that the physician go over the report with patient.
190	Hector	Discusses the need of the division to work on training for claims

		examiners and their plan to implement this. Recognizes that recommendations they discussed need more details, but will do this after legislative counsel drafts them. Concludes. Recognizes that workers' compensation division will need to continue to monitor the recommended changes and make adjustments as necessary.
235	Chair Prozanski	Reminds everyone that the witnesses are here for informational purposes only. Remarks that many bills will be introduced later at public hearings.
260	Sen. Whitsett	Asks the witnesses if they view that the Medical Examination Board has failed in reviewing and resolving complaints.
265	Holston	Answers question. Elaborates.
280	Sen. Whitsett	Inquires as to why a patient relationship is necessary for a claim to be investigated.
295	Holston	Explains that he is going off of testimony that came before the board only.
300	Sen. Whitsett	Inquires regarding the difficulty of travel for a specialist physician.
325	Holton	Answers that it is a complicated issue and is still being worked on.
335	Sen. Whitsett	Discusses the review of records.
340	Hector	Explains the background of review of records proposal.
365	Sen. Whitsett	Discusses Hector's answer.
370	Sen. Beyer	Inquires as to why Brad Witt is not here today.
375	Hector	Answers that Brad Witt has become a State Representative.
390	Chair Prozanski	Thanks witnesses. Inquires as to how many IME's a patient may be required to go through.
400	Hector	Answers that currently law allows three IME's.
405	Chair Prozanski	Asks for confirmation that they are not proposing a change to this number.
410	Hector	Confirms that they made no recommendation as to changing the number of IME's or attending physicians for the injured worker.
415	Sen. Beyer	Inquires as to who is considered a paid observer.
425	Hector	Explains that the observer would be a family member or close friend as opposed to someone who is being paid to be there.
435	Sen. Beyer	Inquires as to how that would be enforced.
445	Hector	Explains that the worker would have to identify to the physician who the person observing is.
455	Chair Prozanski	Asks for more information regarding areas that are still in discussion by the Bureau of Labor and Industries.
470	Chair Prozanski	Thanks witnesses for their time. Closes informational meeting on MLAC and opens public hearing on SB 140.

**SB 140 – PUBLIC HEARING**

**TAPE 6, A**

050	Anna Braun	Committee Administrator. Provides an overview of SB 140.
060	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Discusses and submits written testimony in support of SB 140 ( <b>EXHIBIT B</b> ). Provides background on the purpose of drafting the bill.
075	Christine Hammond	Administrator, Wage and Hour Division, BOLI. Discusses the state of New Jersey's labor department and their process for funding their wage and hour program, which is similar to what SB 140 proposes. Discusses support of SB 140.
110	Gardner	Continues to explain SB 140 in more detail. Explains that they do

not desire this bill to apply to the prevailing wage part of their law . Clarifies that it is not written with the intent to fine a prime contractor for actions of a subcontractor.

140 Sen. Whitsett Inquires as to where in SB 140 the items Gardner discussed are found.

150 Gardner Answers that they plan to make amendments regarding these items because they are not clearly exempted.

160 Sen. Whitsett Asks where this program will be funded from.

165 Gardner Discusses the funding structure.

175 Sen. Whitsett Clarifies that it would give them the option to fund part of their services out of the money obtained.

180 Gardner Confirms that it does. It also allows them from ten to twenty-five percent (10-25%).

185 Sen. Beyer Inquires as to what civil penalties apply.

190 Gardner Answers that there are several current civil penalties, but this will be an administrative fee paid by each violator.

195 Sen. Beyer Inquires if civil penalties currently go in a general fund.

197 Gardner Answers that yes, except for prevailing wage, violations go in a prevailing wage fund.

200 Sen. Beyer Inquires regarding current financial consequences for employers who fail to pay employees.

215 Gardner Answers that they have penalties for those employers who have fired an employee and fail to pay final wages.

220 Annette Talbott Deputy Commissioner, BOLI. Clarifies that they currently have a penalty for final wages, but that this bill is to assist people who are currently still working for an employer.

235 Gardner Confirms that penalty wages go to the employee directly, not the Bureau.

240 Sen. Beyer Inquires as to a list of what violations incur civil penalties.

242 Gardner Offers to return the requested information to the committee.

245 Sen. Whitsett Asks for clarification between the definition of a fee and fine.

247 Gardner Explains that an administrative fee is for cost of actual work and a fine is a penalty.

260 Sen. Whitsett Clarifies that the administrative fee they would collect would be restricted to the actual costs of the Bureau.

265 Gardner Answers that it could be structured from anywhere from ten to twenty-five percent (10-25%).

285 Lisa Trussell Associated Oregon Industries (AOI). Discusses opposition and concerns to SB 140. Discusses plans to meet with BOLI to address these concerns.

310 Jessica Harris Associated General Contractors (AGC). Discusses support of SB Adamson 140. Submits statute ORS 279C.825 (**EXHIBIT C**).

345 Chair Prozanski Closes public hearing on SB 140. Opens public hearing on SB 143.

**SB 143 - PUBLIC HEARING**

355 Anna Braun Committee Administrator. Gives overview of SB 143.

365 Dan Gardner Commissioner, Bureau of Labor and Industries (BOLI). Submits and discusses written testimony in support of SB 143 (**EXHIBIT D**). Provides an example of an employee who was forced to work off the clock.

**TAPE 5, B**

010 Gardner Continues. Discusses benefits of SB 143. Discusses the desire for the bill to be a deterrent to employers.

020 Sen. Beyer Asks for an example in Oregon.

025	Gardner	Explains that employees do not come to the Bureau in many instances. If there are several employees they will get together and hire an attorney in a class action law suit. Nationally there are several examples.
030	Sen. Beyer	Inquires if they have not actually received several complaints regarding this at the Bureau.
035	Christine Hammond	Administrator. Wage and Hour Division, BOLI. Answers that many wage claims they receive are regarding employers' failure to pay employees for all hours worked.
040	Sen. Beyer	Asks for a number of the claims they received in the last year.
045	Hammond	Offers to look back on past claims, but cannot think of a specific example. Offers to return specific statistics.
055	Sen. Beyer	Inquires as to burden of proof for a willful repeated violation.
060	Annette Talbott	Deputy Commissioner, BOLI. Answers that there was a bill last session that addressed this issue. Answers Beyer's question.
070	Chair Prozanski	Asks for citation.
072	Talbott	Provides citation (OAR 839-001-0410 (4)).
075	Chair Prozanski	Asks for clarification regarding definition.
080	Talbott	Answers clarification.
083	Chair Prozanski	Inquires regarding negligence.
085	Talbott	Answers that negligence is not in this realm and not the terminology that they use within this statute.
100	Sen. Beyer	Asks for definition regarding repeatedly.
105	Talbott	Answers that she is not aware of a current definition for repeatedly.
110	Chair Prozanski	Agrees that clarification is needed.
115	Gardner	Discusses BOLI's strategy to make this part of their technical assistance unit for employers to inform employers of this law.
125	Chair Prozanski	Inquires if BOLI's website notifies of changes in law.
130	Talbott	Answers that yes, they use website to notify employers of many differences in the law. Explains the duties of the technical assistance unit in more detail.
150	Sen. Whitsett	Provides an example and inquires as to what procedures BOLI would take.
160	Hammond	Answers question regarding example.
180	Sen. Whitsett	Asks for clarification from Hammond's answer.
185	Hammond	Answers clarification.
190	Chair Prozanski	Asks for more information regarding Hammond's answer.
192	Gardner	Offers to send materials to committee.
195	Chair Prozanski	Asks for an overview from the Bureau at a later date.
205	Lisa Trussell	Associated Oregon Industries (AOI). Discusses opposition and concerns related to SB 143. Discusses plan to meet with BOLI regarding these concerns.
230	Steve Lanning	Political Director, Oregon AFL-CIO. Discusses and submits written testimony in support of SB 143 ( <b>EXHIBIT E</b> ). Discusses examples of companies in Oregon that failed to pay wages.
270	Sen. Beyer	Inquires if law is regarding public employers.
275	Gardner	Answers that it would apply to all employers.
280	Chair Prozanski	Closes public hearing on SB 143. Opens work session for introduction of committee measure.

**INTRODUCTION OF COMMITTEE MEASURE - WORK SESSION**

285	Anna Braun	Committee Administrator. Introduces LC 1288 ( <b>EXHIBIT F</b> ).
290	Anna Braun	Submits written testimony on behalf of Robert Russell in support of LC 1288 ( <b>EXHIBIT G</b> ).

300

**Sen. Beyer**

**MOTION: Moves LC 1288 BE INTRODUCED as a committee bill.**

**VOTE: 4-0-1**

**EXCUSED: 1 - Ringo**

**Chair Prozanski**

**Hearing no objection, declares the motion CARRIED.**

305

Chair Prozanski

Closes work session and adjourns meeting at 4:35 p.m.

## **EXHIBIT SUMMARY**

- A. Workers' Compensation, Management Labor Advisory Committee (MLAC) Report, Ken Hector and Lon Holston, 5 pp**
- B. SB 140, written testimony, Dan Gardner, 3 pp**
- C. SB 140, statute, Jessica Harris Adamson, 1 p**
- D. SB 143, written testimony, Dan Gardner, 8 pp**
- E. SB 143, written testimony, Steve Lanning, 2 pp**
- F. Introductions, LC 1288, Staff, 7 pp**
- G. Workers' Compensation, Proposal to MLAC, Robert Russell, 2 pp**