

SENATE COMMITTEE ON COMMERCE

March 08, 2005
3:10 P.M.

Hearing Room C
Tapes 28 - 30

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 Scoffield, Committee Assistant

MEASURES/ISSUES HEARD:
 SB 311 – Public Hearing
 SB 386 – Public Hearing

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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 28, A		
005	Chair Prozanski	Calls the meeting to order at 3:20 p.m. Announces that SB 944 will not be heard today and will be carried over. Opens public hearing on SB 311.
<u>SB 311 – PUBLIC HEARING</u>		
025	Anna Braun	Committee Administrator. Provides an overview of SB 311. Introduces proposed -1 amendments to SB 311 (EXHIBIT A).
040	Chair Prozanski	States that the -1 amendments were received before the start of the meeting. Asks witnesses to give testimony on what they know and not to be concerned with having a complete understanding of the -1 amendments.
050	J.L. Wilson	Co-Chair, Management Labor Advisory Committee (MLAC). Testifies in support of SB 311.
075	John Shilts	Administrator, Workers Compensation Division - Department of Consumer and Business Services (DCBS). Discusses and submits written testimony in support of SB 311 and -1 amendments (EXHIBIT B). Suggests that Bob Shiprack testify regarding SB 311.
110	Chair Prozanski	States that after the witnesses at the stand finish testifying, Bob Shiprack can come up.
115	Shilts	States that the -1 amendments to SB 311 contain several recommendations from MLAC from the original SB 311, which was a committee bill from the Senate Interim General Government committee.
170	Shilts	Continues testimony. Summarizes and concludes.
220	Ken Hector	Member, MLAC. States that he served as a co-chair on the subcommittee for SB 311. Testifies in support of SB 311.
245	Chair Prozanski	Asks if Bob Shiprack should testify now.
250	Shilts	Answers, it would be helpful.
255	Bob Shiprack	Co-chair, MLAC. Comments that the need for SB 311 is long

		overdue. Testifies in support of SB 311.
280	Sen. Whitsett	Asks Hector if the bill will allow DCBS to sanction physicians.
285	Hector	Responds.
290	Sen. Whitsett	Expresses concern that the agency is impinging upon duties that the Board of Medical Examiners has traditionally performed.
300	Hector	Remarks that the Board of Medical Examiners is the appropriate body to deal with regulatory and disciplinary matters with physicians. States that the Workers Compensation Division will not be dealing with medical treatment.
330	Sen. Whitsett	Comments that the Independent Medical Examiner is making a diagnosis and is therefore practicing medicine.
338	Hector	Remarks that he cannot disagree with that.
340	Chair Prozanski	Clarifies that SB 311 substitutes DCBS to oversee the regulations of how the Independent Medical Examinations (IME) are conducted and that items regarding medical treatment will stay with the Board of Medical Examiners.
350	Hector	Answers, yes.
352	Chair Prozanski	Re-states clarification.
370	Shilts	Comments that Chair Prozanski understands correctly, but clarifies that if a complaint was brought to the Workers Compensation Division regarding an examination they would investigate and decide if a referral to the Board of Medical Examiners would be necessary. Discusses sanctions.
410	Chair Prozanski	Asks if there is anything under SB 311 or existing regulations that would keep an injured worker from going directly to the Board of Medical Examiners and filing a complaint if they had been mistreated.
420	Shilts	Responds, no there is not. Comments that employees do not know where to go with complaints.
430	Chair Prozanski	Clarifies that SB 311 will assist individuals to know their rights.
440	Shilts	Answers, yes.
445	Sen. Whitsett	Inquires if the information could be made available without the SB 311.
450	Shilts	Responds that he thinks they have authority under administrative rule, but would like to get back to the committee.
TAPE 29, A		
025	Chair Prozanski	Refers to -1 amendments and inquires regarding what type of notice the worker receives in relation to their appointment.
033	Shilts	Responds.
040	Chair Prozanski	Asks Shilts to address the fiscal impact to SB 311.
042	Shilts	Remarks that they do not have the fiscal impact statement yet from the Legislative Fiscal office. Discusses the efforts of DCBS to determine the fiscal impact to their department. Discusses potential fiscal impacts to DCBS.
095	Sen. Beyer	Comments that many parts of SB 311 are made into rule and that they should be statute instead.
110	Wilson	Answers that a clean sanction for physicians and injured workers could not be agreed upon and it was best resolved by rule.
120	Sen. Beyer	Responds. Discusses confusion of the definition of IME. Asks for clarification of what IME stands for.
130	Wilson	Responds.
135	Sen. Beyer	Discusses need of clarification.
140	Wilson	Remarks that this was not discussed.
145	Chair Prozanski	Clarifies that Wilson is with MLAC

146	Wilson	Answers, yes.
147	Chair Prozanski	Clarifies that Hector and Shiprack are with MLAC also.
148	Hector	Answers, yes.
150	Chair Prozanski	Clarifies that the witnesses are comfortable with administrative rule and will let the committee know if it is working or if any further steps need to be taken.
155	Wilson	Responds.
165	Chair Prozanski	Comments on the efforts of everyone to work together.
170	Wilson	Responds.
172	Hector	Remarks that they have participated throughout the rule process and will continue to work together.
175	Sen. Whitsett	Asks how many valid complaints are received by DCBS per biennium regarding the quality or validity of an Independent Medical Examination.
178	Shilts	Offers to return information.
205	Stuart Schoen	Citizen, Oregon. Discusses personal experience as an injured worker and having an IME. Discusses reporting discrepancies in IME's.
230	Chair Prozanski	Asks S. Schoen to read SB 311 and the -1 amendments and submit written testimony with his suggested changes to the IME process.
240	S. Schoen	Asks to receive of copy of SB 311 and the -1 amendments.
245	Chair Prozanski	Directs S. Schoen where to obtain copies of the documents.
255	Jackie Schoen	Citizen, Oregon. Discusses experience assisting her husband, Stuart Schoen, through the IME process.
275	Chair Prozanski	Remarks that the legislature heard from witnesses with similar experiences to the Schoens in the recent interim and this is why they are moving forward and that SB 311 was drafted.
290	David Allen	Citizen, Oregon. Discusses personal experience as an injured worker who went through the IME process.
390	Allen	Continues testimony.
420	Prozanski	Comments on understanding of Allen's testimony.
430	Allen	Comments on workers not knowing where to go if they have a complaint.
TAPE 28, B		
030	Ken Wells	Citizen, Portland, Oregon. Discusses personal experience as an injured worker.
075	Chair Prozanski	Inquires if Wells has specific comments relating to SB 311.
080	Wells	Discusses SB 311.
100	Ernest Delmazzo	Executive Director, Oregon Injured Workers Alliance. Discusses problems with the IME system. Submits written testimony (EXHIBIT C) and informational packet (EXHIBIT D) in support of SB 311.
145	Chair Prozanski	Asks Delmazzo if he has comments regarding the -1 amendments to SB 311.
150	Delmazzo	Responds. Discusses problems with injured workers having to travel long distances to IME's.
180	Chair Prozanski	Asks Delmazzo to submits comments to the -1 amendments in writing.
182	Delmazzo	Continues testimony.
185	Chair Prozanski	Invites Delmazzo to submit his comments in writing in the interest of time.
190	Delmazzo	Concludes testimony.
220	Chair Prozanski	Discusses plans for SB 311.

230 Linda Barno Co-Chair, Oregon Self-Insurers Association Legislative Committee. Testifies in support of SB 311. Comments that they have not had time to review the -1 amendments to SB 311.

270 Chair Prozanski Asks Barno to submit comments in writing regarding the -1 amendments to SB 311.

280 Chris Davie State Accident Insurance Fund Corporation (SAIF). Testifies in support of SB 311.

290 Hasina Squires Independent Medical Examination Association. Discusses and submits written testimony in support of SB 311 (**EXHIBIT E**).

340 George Goodman Counsel, Independent Medical Examination Association. Addresses the -1 amendments to SB 311. Discusses suggestions for revision to SB 311.

TAPE 29, B

005 Scott Gallant Oregon Medical Association (OMA). Testifies regarding SB 311.

070 Chair Prozanski Asks Gallant's position on SB 311.

075 Gallant Comments that the bill as currently amended needs significant improvement and definitive clarity on what it means.

090 Chair Prozanski Asks if Gallant or anyone from OMA has participated in the process of drafting SB 311.

092 Gallant Answers, yes.

092 Chair Prozanski Asks if Gallant's concerns were raised during the process.

093 Gallant Responds.

096 Chair Prozanski Inquires if Gallant has participated in the most recent discussions.

100 Gallant Answers that his associate has attended the MLAC meetings.

101 Chair Prozanski Asks if Gallant and the OMA are going to continue to participate in the process.

102 Gallant Answers, yes.

104 Whitsett Asks Gallant how many complaints have been logged regarding IME's.

106 Gallant Offers to return information.

111 Chair Prozanski Asks Gallant about complaints against physicians.

120 Gallant Asks for clarification of the question.

122 Chair Prozanski Clarifies his question.

130 Gallant Responds.

150 Chair Prozanski Asks that the OMA look at the appeal process.

155 Gallant Responds.

158 Chair Prozanski Calls the meeting to a recess.

The following testimony was submitted for the record without public testimony:

Jason P. Heuser Intergovernmental Affairs Manager, City of Eugene, Oregon. Submits written testimony in opposition to SB 311 (**EXHIBIT F**).

170 Chair Prozanski Calls meeting back to order. Closes public hearing on SB 311 and opens public hearing on SB 386. States that SB 573 and SB 935 will be carried over to March 15, 2005. States that SB 944 will not be heard today and will also be carried over.

SB 386 – PUBLIC HEARING

Anna Braun Committee Administrator. Submits -1 amendments to SB 386 (**EXHIBIT G**).

217 J.L. Wilson Co-Chair, Management Labor Advisory Committee (MLAC). Testifies in support of SB 386.

265 Bob Shiprack Co-Chair, MLAC. Testifies in support of SB 386.

300 John Shilts Administrator, Workers Compensation Division – Department of Consumer and Business Services (DCBS). Discusses and

		submits written testimony in support of SB 386 and -1 amendments (EXHIBIT H).
345	Shilts	Discusses -1 amendments to SB 386. Comments that sections 2 and 4 are sunset provisions and mirror the language in sections 1 and 3.
TAPE 30, A		
020	Shilts	Concludes testimony.
038	Sen. Burdick	Asks how page 1, line 6 of the -1 amendments would rule out a scenario discussed by Shilts of someone working but for a short period of time.
045	Shilts	Remarks that the definition of gainful would be changed.
055	Chair Prozanski	Asks if Lisa Trussell wanted Wilson to speak on her behalf.
060	J.L. Wilson	Remarks that Trussell wanted him to convey the outstanding issues.
061	Ken Hector	Member, MLAC. Testifies in support of SB 386. Discusses points that are unresolved.
075	Chair Prozanski	Asks if MLAC wants issues resolved before the bill moves forward.
080	Hector	Responds. States that they hope to resolve all items at their upcoming meeting on March 17, 2005.
090	Sen. Beyer	Comments on need for clarification of Hector's comments.
095	Chair Prozanski	Clarifies understanding of Hector's remarks.
100	Hector	Comments that MLAC understands SB 386 will move forward while they resolve the outstanding issues.
102	Linda Jefferson	Co-Chair, Oregon Self-Insurers Association Legislative Committee. Discusses and submits written testimony in support of SB 386 (EXHIBIT I). Comments that they have discussion items that they have presented to MLAC and will continue to work with them.
120	Sen. Beyer	Asks if Jefferson will support the SB 386 if the committee moves forward while the bill is still being finalized.
127	Jefferson	Answers, yes.
135	Jim Egan	Attorney, Oregon Trial Lawyers Association (OTLA). Discusses and submits written testimony in support of SB 386 (EXHIBIT J). Comments that they are in favor of moving the bill forward.
200	Dan Holden	Workers Compensation Administrator, City County Insurance Services (CIS). Testifies regarding SB 386. Remarks that they opposed the bill because it is not in a proper form to be moved forward, but they are in favor of MLAC continuing to work on the bill as it moves forward.
215	Chris Davies	State Accident Insurance Fund Corporation (SAIF). Testifies in support of SB 386. Comments on neutral position to SB 386 because it is a work in progress.
230	Ernest Delmazzo	Executive Director, Oregon Injured Workers Alliance. Testifies in support of SB 386. Comments on the need of the bill. Discusses desire for revisions to SB 386.
290	Chair Prozanski	Asks Delmazzo to put his recommendations in writing. Closes public hearing on SB 386. Comments on future plans for the bill. Adjourns the meeting at 5:28 p.m.

EXHIBIT SUMMARY

A. SB 311, -1 amendments, staff, 5 pp

- B. SB 311, written testimony, John Shilts, 3 pp**
- C. SB 311, written testimony, Ernest Delmazzo, 32 pp**
- D. SB 311, informational packet, Ernest Delmazzo, 12 pp**
- E. SB 311, written testimony, Hasina E. Squires, 2 pp**
- F. SB 311, written testimony, Jason P. Heuser, 1 p**
- G. SB 386, -1 amendments, staff, 4 pp**
- H. SB 386, written testimony, John Shilts, 3 pp**
- I. SB 386, written testimony, Linda Jefferson, 2 pp**
- J. SB 386, written testimony, Jim Egan, 8 pp**