

**SENATE COMMITTEE ON PUBLIC AFFAIRS**

January 13, 1999 Hearing Room C

10:00 am Tapes 1-2

**MEMBERS PRESENT:** Sen. Gene Derfler, Chair

Sen. Joan Dukes, Vice-Chair

Sen. Eileen Qutub

Sen. Charles Starr

Sen. Thomas Wilde

**MEMBER EXCUSED:**

**STAFF PRESENT:** Brian E. Smith, Administrator

Rachel E. Halupowski, Administrative Support

**MEASURE/ISSUES HEARD:** Introduction of Committee Members Adoption of Committee Rules Invited Testimony on Workers' Compensation

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.

TAPE/#	Speaker	Comments
<b>TAPE 1, A</b>		
000	Chair Derfler	Opens meeting at 10:05 a.m. and introduces members of the Public Affairs Committee.
013		Introduces rules adoption. Staff presents <b>(EXHIBIT A)</b> .
014	Brian Smith	States what each number in the rules refers to.
<b>030</b>	<b>Sen. Wilde</b>	<b>MOTION:</b> Moves to <b>ADOPT</b> the proposed Committee Rules dated <b>01/13/99 (EXHIBIT A)</b> .

030		<p><b>VOTE: 3-0</b></p> <p><b>AYE: No objection vote, all members present vote Aye.</b></p> <p><b>EXCUSED: 2 ñ Dukes, Qutub</b></p>
032	Chair Derfler	<b>The motion CARRIES.</b>
034	Chair Derfler	Calls Bob Shiprack, Lisa Trussell and John Shilts to testify.
<b><u>WORKERSí COMPENSATION</u></b>		
057	Bob Shiprack	Executive Secretary of the Oregon State Building and Construction Trades Council. Co-Chairman of the Management Labor Advisory Committee. Presents <b>(EXHIBIT B)</b> and discusses interim work on Oregon Workersí Compensation system.
063	Shiprack	Explains the Management Labor Advisory Committee (MLAC). States they are having labor and management view Workersí Compensation to evaluate the system and give the evaluation to the legislature. Explains legislation, the sunset bill (LC 2484), and MLAC. States there were 19 sunsets from SB 369 (1993). States unanimous agreement on all but four sunsets.
		Discusses partial disability benefits. States not all of SB 369 was sunsetted, only 19 portions. States they are looking at all programs, which total 50, that are run by the Department of Consumer and Business Services and funded by the Workersí Benefit Fund. States the funds money comes from labor and management. States workers pay a portion of their own money to fund Workersí Compensation. States this is a work-day assessment.
		Discusses costs of programs and the need for the legislature to be aware of costs and issues.
		States he reviewed the department bills, believing most were introduced, but is unsure if they are Senate Bills or not. States the committee is still awaiting interest

		group bills.
131	Shiprack	Closes with the suggestion that legislation asks the right questions because MLAC has a lot of data in Oregon's system. States data system needs to be utilized. States need to fine tune system. Suggests that the committee get any data needed before making decisions.
164	Chair Derfler	Thanks Shiprack for testimony and has Lisa Trussell begin.
160	Lisa Trussell	Associated Oregon Industries and MLAC member. Discusses the review process: perception vs. reality. States insurance premiums have been reduced substantially, which reduces costs, while at the same time significant increases in monetary awards going to the injured worker. Explains that they are looking at another benefit increase in the near future.
		Recommends all existing language remain with a few modifications. States they have extended the exclusive remedy sunset and the partial disability increase sunset, as well as modified the vocational benefit issue. Explains changes on managed care organization and what happens when a contract ends.
205	Chair Derfler	Thanks them for their citizen testimony.
210	John Shilts	Manager, Benefits Section for Workers' Compensation Division, Department of Consumer and Business Services. Provides staff support to the Labor Management Advisory Committee, specifically the Benefits Medical Sub-Committee. Explains the different sunsets.
244	Chair Derfler	Suggests members interrupt with questions.
257	Shilts	Discusses permanent partial disability benefits. States Oregon has not been known for paying high benefits until recently.
		States the consensus of the committee reflects the success of earlier legislative reforms. States a sunset provision would revert

		benefit levels back to earlier years, and finds this unacceptable.
279	Sen. Dukes	Asks how close Oregon is to the national level concerning benefit levels.
284	Shilts	States the MLAC Committee recommends the sunset be appealed, and promote increases in current benefits to bring Oregon up to the national level. States there is a projected estimate of 9.6% of an increase needed for scheduled and unscheduled benefits to reach the 1999 benefit levels. Explains that if the sunset is not repealed, benefits will revert to levels in section 17 of SB 369, and will be significantly below the national level.
		Explains that rates established during this session would be part of a bill. Recommends review of sunset by 2004. States discussions and debates have taken place over why have sunsets at all. Explains the need for the committee to look at the sunsets now and then again in 2004.
330	Sen. Starr	Asks about the 2004 date, and the ability of the 2003 Legislature to look at it.
336	Chair Derfler	Asks if the sunset will revert Oregon back to the SB 369 level.
340	Shilts	States the sunset will put Oregon back to the current levels.
344	Chair Derfler	Clarifies the sunset will set Oregon back to a 9.6% reduction of benefits. States he doesn't understand why it is necessary to follow up with a sunset review.
349	Shilts	States, presently, when workers return to their regular job, determination of compensation is based on impairment only. States prior law included impairment, age, and education. States this is still true for workers with unscheduled disabilities. Explains that repealing the sunset will maintain the status quo. Explains that in some cases it may be fair to base compensation on more than just impairment. States there were no proposals acceptable to the committee, thus they recommend a repeal of the sunset.

		States the sunset in regard to Managed Care Organization (MCO) issues. Explains workers with existing claims be enrolled under a new MCO unless it is found medically detrimental to the worker. States the statute allows the worker who is not medically stationary to be treated by their regular physician, especially if moving to a new MCO is detrimental to the worker.
423	Chair Derfler	Asks who decides what is medically detrimental.
424	Shilts	States the attending physician decides what is medically detrimental. States the committee recommends the repeal of this sunset. Explains that some MCOs go out of business with new ones coming into business, and changes may happen, geographically, reflecting issues with workers.
		States the need for an amendment to address the requirement that the worker remain subject to the MCO until claim closure, even after the contract expires or terminates. States an amendment would add language about keeping the attending physician, if physician qualifies.
477	Chair Derfler	Asks if the sunset adds provisions to the law.
<b>Tape 2, A</b>		
042	Shilts	States it does.
		Addresses the 100-mile limit agreed by the committee. Recommends a repeal of the sunset that would remove the 100-mile limit.
		Explains injured workers of non-compliant employers are still subject to the rules of the MCO. States the committee recommends repeal of this sunset because the Department of Consumer and Business Services and claims agents have no provisions for having workers enrolled in an MCO.
		Defines areas where a majority of the review committee members must be licensed physicians. States the law sets up criteria for

		participation.
078		States the testimony received <b>(EXHIBIT B)</b> shows that the status quo is working well, and recommends the repeal of the sunset.
081	Sen. Dukes	Asks if the majority of physicians are licensed by the Board of Medical Examiners, then who is the minority.
089	Shilts	States he does not know the answer, but will find out for committee. States he remembers some discussion on that topic, but the information is not available at this time.
		Addresses disputes regarding process, especially confidentiality of data during the process. States the process of reviewing physicians is done by physicians, and they have members of a review committee look over the physicians' work. Explains that a review panel may ask a worker to undergo an examination so the panel can review the physician during the examination.
130		States the committee recommends repealing the sunset, to protect confidentiality.
134	Chair Derfler	Asks about the reasons for necessity of physician protection.
137	Shilts	States physicians who review other physicians want confidentiality, due to relationship and liability issues for the physicians.
		States the particular issue is not causing any harm. States if the sunset goes through it would cause physicians in the review process a great deal of concern.
153	Sen. Dukes	Asks if there are concerns about the attending physicians during the review or simply concerns about the attending physicians.
160	Shilts	States the managed care process was reviewed in the contract.

167	Sen. Dukes	Asks if anyone can generate a review of Workersí Compensation cases.
170	Shilts	States the typical practice is not to ask for the review. Explains who can instigate a review.
179	Sen. Dukes	Asks if the committee recommendations are sealed.
180	Shilts	States the recommendations are confidential.
185	Sen. Qutub	Asks if the reviews of the MCOs produced harm to an injured worker.
193	Shilts	Believes that previous meetings held had discussed the research showing the reviews as being unrelated to the injured worker.
205	Sen. Qutub	Asks for clarification of issues discussed in those meetings.
210	Shilts	States he was not part of that system, but he can get back to Senator Qutub with examples at a later date.
		States the definition of the statute is not scheduled for the sunset.
		Explains the Director of Consumer and Business Services has the authority to do audits. States the committee recommends repealing that sunset.
		Addresses compensation issues, as well as issues with workers who are enrolled in a Managed Care program before the claim is accepted. Discusses current statute. States most insurers wait until the claim is accepted before enrolling the worker. States testimony is split on this issue. Explains the insurers would have others, not Workersí Compensation pays for it. Addresses who is responsible for costs, according to current statute.
291	Chair Derfler	States there are problems with this issue. States he didnít realize there was an issue between the MCO and enrolling injured workers. Expresses the need to address MCO and injury questions in another bill.

313	Sen. Dukes	Asks if there is a simpler version.
314	Chair Derfler	Verifies opportunities and rules of MCO.
319	Sen. Dukes	Asks if the committee is running into problems from doctors due to Workersí Compensation.
324	Chair Derfler	States the issue is not with the doctors but with the insurance companies.
336	Sen. Dukes	Asks if physicians are getting paid.
338	Chair Derfler	States that if the employer does not have a healthcare plan and the worker is denied benefits, it is the worker who is responsible to pay the bill.
342	Sen. Dukes	Asks if there is a regular medical system and Workersí Compensation split.
353	Chair Derfler	States insurers understand the need to get into treatment as soon as possible. States there needs to be more clarification on this subject.
357	Shilts	Discusses wage, temporary total, and partial disability issues. States the committee found that using wage and injury calculations are consistent with calculations for temporary partial and total disability. States workers receive a percentage of their wages. Gives an example of temporary partial disability.
401		Gives an example of a determination prior to SB 369. States the example may instigate litigation, due to the need to obtain work history.
<b>Tape 1, B</b>		
07	Sen. Dukes	Gives an example of a teacher working at a temporary summer job.
10	Shilts	Agrees with the specific example. Addresses an earlier question raised, and issues that will need to be looked at in the future. Requests to



		repeal these sunsets.
027	Sen. Dukes	Asks about injuries during league games or volunteer work.
032	Shilts	States there is an assumed wage for volunteers, therefore not all volunteers are excluded from Workersí Compensation.
037	Sen. Dukes	Asks about compensation for a specific example.
040	Chair Derfler	Gives a compensation example using the House Committee and nursing homes as being excluded from Workersí Compensation.
044	Sen. Wilde	Asks what kind of work employees with limitations can do on the side, which can lead to issues of what is safe or not safe. States this does not set a good precedence for defining Workersí Compensation.
057	Sen. Qutub	States the employer should not insure employees for time not spent on the job.
064	Shilts	Explains wage issues in regard to Aggravation Wage for vocational eligibility benefits. States there are provisions to retain the current practice of returning wages at the time of the disability, but there are exceptions. Explains there is a "stay of compensation" that is pending appeal in vocational matters.
		States MLAC vocational services are planned while a decision is waiting to be appealed. Explains wages were on hold until the appeal. States over the last two years, holding wages until appeal affected 15 people each year.
113		States that over half of the workers during a "stay of compensation" are settling their claims. Gives examples of what workers are doing. Recommends changing the statute for "stay of benefits." Explains the need for vocational evaluation and authorized training plans. States that during an outcome of appeal some vocational plans may actually be formulated.
140	Chair	Asks what is the average amount of

	Derfler	time to appeal.
146	Shilts	States the in 1996 it was 142 days, and in 1997 it was 117 days. States attorneys, workers, and insurers keep the process of appeal lengthy, and MLAC has no solutions on how to shorten the process.
162	Chair Derfler	Explains that more settlements occur because of the length of time to appeal.
167	Shilts	Reminds the chair this issue is a second appeal.
172	Chair Derfler	Reiterates the time of appeal could not be shortened.
179	Shilts	Discusses exclusive remedy issues, and the narrowed range of compensable claims. Uses the example of someone suing an employer for damages because they were not compensable by law at the time. Explains the SB 369 revision of the Act to a state system is the only recourse for claimants, even if not compensable. States the Supreme Court has not yet addressed the issues constitutionality.
		Cites <u>Smothers vs. Gresham Transfer</u> . States there is insufficient evidence of denial, and the need to determine constitutionality of the current statute, which is beyond the capability of the committee.
227	Sen. Dukes	Asks if it can be assumed that denied claims have potential to litigate.
238	Shilts	Responds that workers are denied claims by not meeting standards. States there was a study of denial letters to track the potential to litigate, but the study was inconclusive. Explains they cannot rely only on denial letters because the letters are not specific. States he places low stock in this study, and believes there needs to be more extensive research.
272	Sen. Dukes	Clarifies up to 25% of workers will be denied access to litigation.
280	Shilts	States he would be cautious about

		Senator Dukes clarification.
288	Sen. Dukes	Asks if the denial letters are too broad.
293	Shilts	Discusses different types of letters. States the issues resulted in leaving the current language in place, and the need to do a study for revisions. Expects to maintain current sunset until 2004.
330	Chair Derfler	Thanks John Shilts for his testimony. Invites Charles Cheek to testify.
340	Charles Cheek	Deputy LC Counsel. LC 2484 drafter <b>(EXHIBITS C &amp; D)</b> .
		Discusses the technical issue of exclusive remedy provisions, which were "...repealed and reenacted exactly with the extended sunset date." <b>(EXHIBIT C)</b> . States the repeal and reenactment were done for technical and editorial reasons for the ORS. States Chapter 656 is unwieldy as it stands, and without the changes the result would be a second small print version to be added to the ORS. Discusses sections one through six of the bill <b>(EXHIBIT D)</b> .
<b>Tape 2, B</b>		
013	Cheek	States rational of the sunset running its course, the bill expiration, and the need to maintain today's current benefit level. Discusses sections eight and nine of the bill which establishes the potential for the current increase to be considered by this session, and allows it to be temporary until 2004. Discusses section ten of the bill which addresses the provisions regarding the MCO attending physician. States this section allows the attending physician to continue to treat the injured worker, upon expiration of an MCO contract, if the attending physician agrees to the terms of any subsequent contract. States section 11 provides for exemptions in regard to vocational services and benefits awarded.
040	Chair Derfler	Gives thanks for testimony. Adjourns meeting at 11:30 am.

Submitted By, Reviewed By,

Rachel E. Halupowski, Brian E. Smith,  
Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ Proposed Committee Rules, staff, 2 pp**

**B ñ LC 2484, written summary, Bob Shiprack, Lisa Trussell, John Shilts, 7 pp**

**C ñ LC 2484, written summary, Charles J. Cheek, 3 pp**

**D ñ LC 2484, draft summary, staff, 19 pp**

**E ñ MLAC Final Report, staff submitted, 59 pp**