

HOUSE COMMITTEE ON LABOR

March 25, 1997 Hearing Room E

8:30 A.M. Tapes 44 - 45

MEMBERS PRESENT:

Rep. Steve Harper, Chair

Rep. Mike Fahey, Vice-Chair

Rep. Chris Beck

Rep. Dan Gardner

Rep. Bill Markham

Rep. John Minnis

MEMBER EXCUSED: Rep. Ron Sunseri

STAFF PRESENT:

Cara Filsinger, Administrator

Linda Spaulding, Administrative Support

MEASURE/ISSUES HEARD:

SB 116A Public Hearing and Work Session

SB 117A Public Hearing and Work Session

SB 118 Public Hearing

SB 119A 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.

Tape/#	Speaker	Comments
TAPE 44, A		
005	Chair Harper	Calls the meeting to order at 8:33 a.m. Opens public hearing on SB 116A.
<u>SB 116A - PUBLIC</u>		

<u>HEARING</u>		
013	Mary Neidig	Administrator, Workers' Compensation Division (WCD), Department of Consumer and Business Services (DCBS) Says Senate Bills 116 through 119 were drafted for governor's package and have been reviewed by Management Labor Advisory Committee (MLAC); explains all except SB 118 were amended in Senate. SB 118 has proposed amendments.
028	Mary Dora	Interim Manager, Benefits Section Explains provisions of SB 116A: * reduces disputes between insurers * clarifies which parties may appeal closures of disputed claims * ensures appropriate determinations of disability
090	Rep. Minnis	Asks intent of the bill.
091	Dora	Answers bill requires all responsibility or pro-rata issue claims be submitted to department for closure rather than insurers having ability to close.
103	Glen Lasken	Attorney, Sisters; Chairman, Workers' Compensation Section, Oregon State Bar (EXHIBIT B) Provides perspective for Senate bills before committee. Says SB 116A addresses illusory problem; has potential for harm. Opposes SB 116A.
143	David Wilson	Attorney, Liberty Northwest Insurance Company; Chair-elect, Workers' Compensation Section, Oregon State Bar Opposes SB 116A.
149	Chair Harper	Asks clarification of statement that bill is unnecessary.
151	Lasken	Replies he has not seen evidence of serious harm; however, bill restricts rights of insurers to process claims.
161	Rep. Minnis	Asks if concerns are reduced by language in lines 19 and 20 that gives all parties the right to reconsideration and appeal.
165	Wilson	Answers insurers are doing good job closing claims with little appeal. Says appeals will continue whether or not statute is amended.
175	Rep. Fahey	Asks if there is advantage to speedy closures for all parties.
180	Wilson	Replies SB 116A does not change number of closures except in pro-rata claims.
185	Lasken	Comments additional litigation would result if Workers' Compensation Board or Court of Appeals shifts responsibility for claim closure to

		another employer with ensuing dispute.
201	Rep. Markham	Asks if bill was introduced by MLAC.
203	Chair Harper	Answers bill brought by DCBS.
210	Chris Davie	SAIF Corporation; says SAIF has no problems with SB 116A.
219	Chair Harper	Closes public hearing on SB 116A. Opens work session on SB 116A.
<u>SB 116A - WORK SESSION</u>		
223	Rep. Minnis	MOTION: Moves SB 116A to the floor with a DO PASS recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Gardner, Sunseri
	Chair Harper	The motion CARRIES. REP. HARPER will lead discussion on the floor.
240	Chair Harper	Closes work session on SB 116A. Opens public hearing on SB 117A.
<u>SB 117A - PUBLIC HEARING</u>		
244	Rep. Fahey	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. GARDNER to be RECORDED as voting AYE on SB 116A.
248	Chair Harper	VOTE: Hearing no objection, declares the motion CARRIED.
253	Mary Neidig	States SB 117A is sponsored by WCD, amendments proposed by MLAC.
259	Greg Malkasian	Manager, Compliance Section, WCD (EXHIBIT C) Explains importance of SB 117-A. States intent is to assure that names of complainants and alleged violators are held confidential in the course of investigations conducted by WCD.
306	Malkasian	Discusses three specific issues: * name of complainant always be held confidential

		<p>* party being investigated be apprised of nature of investigation</p> <p>* parties to investigation be fully informed of findings and reasons for findings</p>
327	Malkasian	Says clarifying amendments provide confidentiality when conducting investigations; language consistent with Insurance Division and OR-OSHA.
333	Rep. Markham	Requests repeat of last sentence.
334	Malkasian	Repeats bill language is consistent with confidentiality provisions currently in statute for Insurance Division and OR-OSHA.
351	Lasken	<p>Opposes SB 117-A. Expresses two-fold concern: (EXHIBIT D)</p> <p>* bill address problem that is illusory</p> <p>* non-discoverability of investigation materials</p> <p>Questions need for the bill; rules that govern claimants are in statute provisions.</p>
407	Wilson	Agrees; expresses concern there is no discovery of material.
433	Malkasian	Says language amends public records law. Reiterates concern is for confidentiality of name of complainant.
TAPE 45, A		
042	Malkasian	Says if action is taken by division following investigation, information is available through discovery for purpose of defending alleged violator.
047	Chair Harper	Asks for clarification on "neither the complaints nor the investigatory material would be subject to disclosure."
049	Malkasian	Clarifies if penalty action is taken and party requests a hearing, information is available under discovery.
063	Lasken	Says language could be drafted to ensure disclosure.
077	Rep. Markham	Asks if language change would destroy intent of bill.
079	Lasken	Answers affirmatively. Says current language requires party to enter litigation and have a hearing in order to access material.
096	Malkasian	Refers to language pg. 3, line 24 which keeps confidential identity of person making complaint with regard to workers' compensation.
117	Chair Harper	Confirms intent of bill is to protect confidentiality of complainant.
118	Neidig	Answers affirmatively; intent is to allow name of original complainant or person against whom complaint is made to be released at any point during investigation. Says MLAC amendments protect confidentiality during investigation; language mirrors rules of OR-OSHA.
		Oregon State Industrial Union Council, Chair, Committee Safety,

141	Diane Rosenbaum	Health, and Workers' Compensation (AFL-CIO). Supports SB 117A.
173	Lasken	States he would support SB 117A if amended to withhold names of complainant and person in noncompliance.
192	Chair Harper	Asks clarification that director will establish procedures for keeping identify of parties confidential.
195	Lasken	Says problem is confidentiality of investigation material.
205	Rep. Fahey	Asks if he has a problem with rules of OR-OSHA.
207	Lasken	Replies he only considers legislation as it affects workers' compensation clients.
222	Rep. Beck	Asks if cases of complainant's name withheld, but nature of complaint was made public; complainant's name would be public knowledge.
229	Lasken	Replies complainant's identity would be hidden in small company; issue is one of noncompliance on part of employer.
236	Rep. Beck	Expresses concern that employee's identity in small company would be difficult to conceal.
248	Lasken	Says employees who talk among themselves leave themselves open to discovery.
259	Rep. Beck	Asks for clarification of process from filing, ruling, and hearing.
269	Lasken	Replies SB 117A provides for discretion of director to allow information to be made public.
274	Malkasian	Says attempts are made under current procedures maintaining confidentiality of complainant. Describes process division follows for conducting investigations.
290	Rep. Beck	Confirms when employer is dissatisfied with conclusion a hearing follows.
293	Malkasian	Agrees a hearing could result from the process.
309	Chair Harper	Closes public hearing on SB 117A. Opens work session on SB 117A.
<u>SB 117 - WORK SESSION</u>		
313	Rep. Fahey	MOTION: Moves SB 117A to the floor with a DO PASS recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Minnis, Sunseri
		The motion CARRIES.

	Chair Harper	REP. BECK will lead discussion on the floor.
324	Chair Harper	Closes work session on SB 117A. Opens public hearing on SB 118.
<u>SB 118 - PUBLIC HEARING</u>		
336	Mary Neidig	Administrator, WCD explains SB 118 passed out of Senate without amendments.
348	Mari Miller	<p>Manager, Dispute Resolution, WCD (EXHIBIT E)</p> <p>Address key points of written testimony (EXHIBIT E, p. 3). Explains intent for cost avoidance. Lists how SB 118 (with amendments) supports Oregon Benchmark goals:</p> <ul style="list-style-type: none"> * improves government efficiency * eliminates waste * reduces litigation
397	Miller	States SB 118 protects administrative rule; clarifies in statute there can be only one reconsideration which gives both parties opportunity to make their cases.
404	Miller	Clarifies claim closures have never involved multiple reconsiderations. Describes how multiple reconsiderations create confusion.
TAPE 44, B		
032	Miller	Describes scenario of injured worker with permanent disability; explains process of 60-day appeal period to file reconsideration. Says -1 amendment assures that worker may take full time line or sooner. Says amended version is approved by MLAC; asks committee to pass bill.
082	Lasken	Says amendments pose significant change; asks to provide written analysis following consult with Oregon Bar Workers' Compensation Section (EXHIBIT F).
102	Linda Love	<p>Oregon Workers Trial Lawyers</p> <p>Explains significance of changes in law prohibiting worker from submitting evidence at hearing following reconsideration order from insurer. Says amendments lengthen time period worker can participate for full 60 days. Questions amendments with respect to express waiver; opposes waiver deemed to have occurred with passage of time but only if party expressly waives.</p>
149	Miller	Says waiver during administrative proceedings requires that it be a written informed consent.

168	Rep. Markham	Asks Ms. Love if she is concerned with testimony with respect to administrative rule.
170	Love	Says she is less nervous since Ms. Miller's testimony; prefers to see "written" in front of "waived" in the bill.
176	Chair Harper	Closes public hearing SB 118. Opens public hearing SB 119-A.
SB 119-A - PUBLIC HEARING		
189	Mary Neidig	Administrator, WCD, explains SB 119A was originally proposed by WCD.
197	Mari Miller	Manager, Dispute Resolution, WCD (EXHIBIT G) Presents talking points (EXHIBIT G, pp. 3, 4).
312	Rep. Minnis	Expresses concern that medical arbiters receive most of their income from these examinations.
325	Miller	Replies SB 119 does not specifically deal with qualifications of medical arbiters; WCD's recruitment comes from attending physician pools. Says division investigates complaints brought against physician.
384	Rep. Minnis	Refers to article in <u>Willamette Week</u> with respect to competency relevant to physicians as medical arbiters.
393	Miller	Explains department randomly selects physicians depending on exam location. WCD has quality assurance program with arbiter process.
TAPE 45, B		
011	Rep. Minnis	Asks if opinion of medical arbiter is binding.
012	Miller	Answers opinion is not binding; medical arbiter used to resolve disputes over medical findings.
023	Rep. Minnis	Asks if medical arbiter consults with original physician.
024	Miller	Replies no; they receive complete medical records to use in examination.
031	Rep. Fahey	Asks how division views insurance doctors who may be more conservative in findings than original physician.
042	Miller	Explains rating of the attending physician of permanent disability is used to initially close claim.
071	Rep. Minnis	Asks need for bill if 95 percent of cases injured party requests arbiter.
079	Miller	Clarifies 95 percent of requests for reconsideration are injured workers; says high number of injured workers request exams by medical arbiters. The number who fail to go to arbiter exam is about ten percent. Bill addresses workers who do not cooperate and risk suspension of benefits.

104	Rep. Minnis	Asks why process not done by administrative rule.
105	Miller	Explains statute stipulates reconsideration order in 18 working days and within 60 days for medical arbiter. Statute requiring suspension of benefits for failure of injured worker to cooperate did not provide for additional time to allow for rescheduling of examinations.
117	Rep. Gardner	Asks who determines the need for medical arbiter.
126	Miller	Answers director <u>shall</u> order medical arbiter exam if either party or WCD determines problem with impairment findings used to close the claim.
134	Rep. Gardner	Asks if medical arbiter used in contested cases.
136	Miller	Replies no; impairment used to close claim is not always basis for reconsideration.
141	Rep. Gardner	Asks how often division does not go with medical arbiter's decision.
143	Miller	Answers she does not have that information; arbiter's report may not be used exclusively.
150	Rep. Gardner	Asks for confirmation that high percentage uses medical arbiter's decision.
151	Miller	Presumes a figure of over 50 percent.
158	Chris Davie	SAIF Corporation Supports concepts in SB 119A; offers proposed amendment (EXHIBIT H) that provides clarifying language.
184	Miller	States WCD has no objection with amendment language proposed by SAIF.
223	Lasken	Supports concept of allowing department additional time to reschedule medical examinations and complete reconsideration. Submits proposed amendments that address concerns (EXHIBIT I).
254	Miller	Says current statute and bill provide that benefits cannot be suspended unless good cause. Suggests presenting amendments to MLAC.
319	Chair Harper	Advises Mr. Lasken to return with official amendment drawn by Legislative Counsel.
327	Rep. Beck	Asks clarification on reconsideration process.
336	Miller	Answers reconsideration process is administrative review process, not hearing process. Explains process.
352	Rep. Beck	Asks if insurer requests new medical arbiter.
359	Miller	Replies no, this is misconception. Insurer may request medical arbiter because of vested interest when injured worker calls for reconsideration.
375	Chair	Requests pictorial presentation of arbitration process to aid committee's

	Harper	understanding.
379	Rep. Minnis	Asks if WCD has statistics on number of physicians who earn more than 50 percent of income as medical arbiters.
385	Miller	Answers no.
389	Rep. Fahey	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow Rep. Minnis to vote NO on SB 117A.
	Chair Harper	Hearing no objection, declares the motion CARRIED.
396	Chair Harper	Closes public hearing on SB 119A. Adjourns the meeting at 10:18 a.m.

Submitted By, Reviewed By,

Linda Spaulding, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 116A, written testimony, Mary Dora, 4 pp

B - SB 116A, written testimony, Glen Lasken, 1 p

C - SB 117A, written testimony, Greg Malkasian, 5 pp

D - SB 117A, written testimony, Glen Lasken, 1 p

E - SB 118, written testimony, Mari Miller, 3 pp

F - SB 118, written testimony, Glen Lasken, 1 p

G - SB 119A, written testimony, Mari Miller, 4 pp

H - SB 119A, written testimony, Chris Davie, 1 p

I - SB 119A, written testimony, Glen Lasken, 1 p