

HOUSE COMMITTEE ON
LABOR

Hearing Room
Tapes - 43

MEMBERS PRESENT:

Rep. John Watt, Chair
Rep. Lee Beyer, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Mike Fahey
Rep. Lynn Lundquist
Rep. Lynn Snodgrass

STAFF PRESENT:

Aaron Felton, Committee Counsel
Paula Gilmer Purcell, Committee Assistant

MEASURES HEARD: Informational Meeting on House Bill 369
 Work Session on House Bill 2541
 Work Session on Senate Bill 46

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

02 CHAIR WATT: Brings meeting to order at 1:30

Informational Meeting at SB 360

20 REPRESENTATIVE KEVIN MANNIX, SPONSOR OF SB 369: Discuss SB 369 by section. Starting with section fourteen.

51 We define what is a gainful occupation. It is the minimum wage. We have taken it from the administrative rules and put it in the statute.

69 CHAIR WATT: Is it safe to say you drafted this not to take people on permanent partial disability and make them take a minimum wage job.

74 REP. MANNIX: That is correct.

80 -Continues to expand on the definition of gainful occupation.

89 CHAIR WATT: To some degree the point of this legislation was to return to concepts of Mahonia Hall. Our jobs as policy makers is not to just react to things but work to solve problems that will come up in the future. Do you agree with that?

102 REP. MANNIX: This bill will do more than return to Mahonia Hall.

116 CHAIR WATT: Does the committee have any questions?

120 REP. BROWN: Has a question about the Tee vs. Albertsons court case.

133 REP. MANNIX: Responds to Rep. Brown's question about what is regular employment and suitability.

162 REP. BROWN: People then could get permanent partial disability?

166 CHAIR WATT: Yes.

167 CHAIR WATT: Rep. Brown did that answer help you?

170 REP. BROWN: A little.

176 REP. UHERBELAU: Is the not withstanding language concept honored in other parts of the bill?

191 REP. MANNIX: Yes you still can, but if there is a combination, that is different. But you need to look at rating a disability. That is always a big question.

221 REP. UHERBELAU: What you said then was SB 369 would not change anything. The work injury would have to be the major cause. You do not have to do a balancing act with the injury and the pre-existing condition.

239 REP. MANNIX: If it is on the job, it is on the job.

265 REP. UHERBELAU: I am still not clear on your answer.

263 REP. MANNIX: Continues with explaining major contributing cause language.

320 REP. FAHEY: What if they prove that the pre-existing condition caused the accident?

324 REP. MANNIX: Gives an explanation.

356 -Goes back to section thirteen and using a handout [EXHIBIT A]. Provides an explanation of the benefit charts.

411 REP. BROWN: What did you use to establish guidelines? Did you use child support guidelines?

420 REP. MANNIX: We tried to make a stab at it.

432 -Continues on with his discussion.

463 We have added the language, that if a child over 18 drops out of school, they are no longer entitled to benefits.

TAPE 42, SIDE A

45 Continues with discussion of benefits.

64 Burial benefits are increased.

71 REP. BROWN: Why not use the same definition in ORS 107.108 which is used for children who are over 18 and have dropped out of school?

79 REP. MANNIX: Sounds good to me.

83 REP. LUNDQUIST: The children's benefits have been raised, but why not the spouses?

89 REP. MANNIX: Benefits for children were too low.

93 -Continues with section fifteen.

113 -Sub-section three concerning temporary disability and total disability.

147 REP. UHERBELAU: The addition of, or loses does not help the partially disabled person.

158 REP. MANNIX: I disagree. This is in the alternative.

168 JERRY KEENE, ATTORNEY AT LAW: What was unclear was that if the three day waiting period applied to the worker who only lost part of their wages.

183 REP. MANNIX: And it clears up the fourteen days.

186 REP. UHERBELAU: The language you have added says you do not pick it up for those three days.

193 KEENE: That is current law.

197 REP. MANNIX: Continues with a discussion of the bill. Sections sixteen and fifteen.

227 -Earning power vs. wages.

244 KEENE: It raised the possibility of what one could make in benefits. The Stone case has caused many problems.

267 REP. MANNIX: Continues with section seventeen.

297 -Waxing and waning symptoms of an injury.

305 REP. UHERBELAU: Who is going to qualify the waxing and waning.

311 REP. MANNIX: This is to address a court case that said you had to address it every time.

326 CHAIR WATT: Could you break that down for us.

331 KEENE: You ask the Doctor at the time of the last closure.

361 CHAIR WATT: Please describe a ten percent disability and a ninety percent disability.

373 REP. MANNIX: Gives an explanation.

406 CHAIR WATT: Who assigns the percentage?

428 REP. BEYER: You say that waxing and waning is to be expected?

439 REP. MANNIX: Responds.

465 REP. BEYER: If this goes on for years how do you know if it is waxing and waning or worsening of the injury.

466 REP. MANNIX: Responds:

TAPE 41 SIDE B

44 REP. LUNDQUIST: Is this just an informational section?

48 REP. MANNIX: The whole point is to force common sense.

59 REP. UHERBELAU: Waxing and waning have not been taken in part of this situation. The question I have is that we are now bringing this into when we decide what kind of disability the person is getting? How do you articulate it.

81 REP. MANNIX: I don't think there is anything in the bill that would force it.

96 REP. BROWN: It seems subjective to me.

105 REP. MANNIX: That is why I think that moving this to symptoms would help.

123 REP. BEYER: Is it rule or common practice that you go back to the originating Doctor.?

129 REP. MANNIX: States what is common practice.

136 There is a tendency to defer to the attending Doctor. But they might take a specialist over a General Practitioner.

144 REP. BEYER: Is this one of the sections that tries to change a court case?

148 REP. MANNIX: Yes.

151 REP. UHERBELAU: Don't you see this increasing litigation?

161 REP. MANNIX: In the short time yes, long term no.

180 REP. UHERBELAU: I think as a nurse, this will cause more.

185 REP. FAHEY: Can you tell us the reasons for each of these changes.

191 REP. MANNIX: Yes I will.

199 REP. LUNDQUIST: If you just take out the greater the permanent disability the greater the waxing and waning, you would be better off.

222 REP. MANNIX: Continues with section eighteen.

293 CHAIR WATT: It appears to me the tiers have changed. That has caused the awards to change.

301 REP. MANNIX: Concurs that that is correct.

320 CHAIR WATT: Is that formally known as indexing? If this bill passes there would be no more indexing. Would the legislature look it next time.?

Why do you feel this needs to be included and the awards be increased?

352 REP. DERFLER: Explains why

359 REP. MANNIX: Expands on Derfler's explanation.

384 CHAIR WATT: I predict a huge impact. Where do the dollars come from?

399 REP. MANNIX: Premiums.

396 REP. FAHEY: Why the two year sunset?

401 REP. MANNIX: Gives an explanation.

419 CHAIR WATT: Given this issue, when the 1990 reforms passed did you know it would result in a lowering of the premiums? Was there a guarantee?

441 SEN. DERFLER: He responds to question.

TAPE 42, SIDE B

64 REP. BEYER: The current award system has an indexing system and the bill will have it continue with the death benefits. Does it work?

74 SEN. DERFLER: Practically yes, politically no.

87 REP. BEYER: Why separate the benefit schedules?

84 REP. MANNIX: That is a good question. The fatals are less amounts of money.

90 REP. BEYER: Then why don't you sunset the whole act in two years.

94 REP. MANNIX: I disagree. Practically that is not a good idea, it would be very dangerous.

109 REP. BEYER: You make a good point.

147 By unseating the whole thing, it would make the whole thing much more balanced.

154 KEENE: By getting rid of the indexing we are giving them more money.

188 REP. BEYER: The sunseting smacks to me as a hold hostage clause. Won't this make a lot less people get any kind of award. Now you can give them more of an amount of the award.

226 REP. MANNIX: Responds. I just want to get an increase in benefits. Very few injured workers are going to be effected by this bill if it passes.

261 SEN. DERFLER: I take acceptation to say that we are taking money away from the injured workers.

271 CHAIR WATT: I have heard exaggerations from both sides.

293 REP. MANNIX: Continues with section twenty-one.

320 REP. MANNIX: Responds.

331 REP. BEYER: Under what circumstances would an employer lump sums.

338 REP. MANNIX: Responds.

346 REP. DERFLER: Back payments of child support.

391 REP. MANNIX: Continues with the discussion.

430 -Time loss check would be adjusted to the country you moved to.

440 REP. FAHEY: What if you go north where it is more expensive.

453 REP. MANNIX: There would not be an incentive to increase it.

469 REP. BROWN: Would you not create two classes of workers?

470 REP. MANNIX: We make no difference between citizen and alien.

TAPE 43, SIDE A

49 REP. MANNIX: Continues with discussion of the bill.

55 REP. UHERBELAU: The old one was looked at twice a year, why change it to once a year:

63 REP. MANNIX: Explains.

70 CHAIR WATT: Lets close this informational meeting.

Closes Informational Meeting on Senate Bill 46

Opens Work Session on House Bill 2541

95 MOTION: REP. BEYER: Moves to ADOPT HB 2541 with a DO PASS recommendation.

97 VOTE: 7-0 MOTION PASSES
AYE: Beyer, Brown, Carpenter, Fahey, Lundquist, Snodgrass, Watt
NO: None

100 CHAIR WATT: House Bill 2541 pass, with a do pass recommendation to the floor. Rep. Lundquist, will you carry the bill.

105 REP. LUNDQUIST: Yes.

Opens Work Session on Senate Bill 46

109 FELTON: Gives a discussion of Senate Bill 46.

117 CHAIR WATT: Any Discussion?

119 MOTION: REP. BROWN: Moves to ADOPT SB 47 with a DO PASS recommendation.

212 VOTE: 7-0 MOTION PASSES
AYE: Brown, Carpenter, Fahey, Lundquist, Snodgrass, Beyer, Watt
NO: None

Submitted by, Reviewed by,

Paula Gilmer Purcell Aaron Felton
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Charts showing changes in benefits and awards, submitted by committee