

HOUSE COMMITTEE ON
LABOR

Hearing Room
Tapes - 58

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: Public Hearing on Senate Bill 369

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

03 CHAIR WATT: Brings meeting to order at 1:34pm.

Public Hearing on Senate Bill 369

Witnesses: Governor John Kitzhaber
 Dr. Patrick Golden
 Scott Gallant
 Dr. David Noall
 Tom Cooney
 Dar Young
 Barb Fritz
 Dave Fiskum
 Dr. Bill Miller
 Karen McNammie
 Seige Shiratori
 Diana Godwin
 Bob Burles
 Wanda Benz
 Edith Grimshaw
 Randy Johnson
 B.J. Callman
 Judy Dottino
 Wonder Hall

James Hall
Allison Bugett
Chess Trethewy
Glen Lasken
Robert C.A. Moore
Chris Moore
Peter Preston
Irv Fletcher
Mary Bodkin

08 GOVERNOR JOHN KITZHABER, GOVERNOR OF OREGON, Testifies on Senate Bill 369
submitting written testimony [EXHIBIT A].

30 Since the 1990 reform there has been great cost savings.

41 Only the Errand case could possibly cause a crisis.

58 Let me discuss my views of the court cases that are the object of
discussion in Senate Bill 369.

72 Discusses the Errand case.

83 Notification, that the injured worker must also notify the insurance
company.

89 The use of drug and alcohol.

96 I do not like the preponderance of evidence.

101 The fourth part concerns questions around preexisting conditions.

122 Lets discuss the Burdess case, which has called the question of
preexisting conditions to light.

133 The language needs to be cleared up for the courts.

143 Objective findings as in the Robertson case, have been brought up in the
bill.

168 The sixth question is the Managed Care Organizations. Who pays when
they must first go into the MCO?

187 Permanent partial disability benefits, is the seventh section.

206 Payment of total temporary disability and earning potential. The Stone
case.

214 The ninth section is payment on permanent partial disability. The
Englund case is the case in question.

237 The tenth issue is the eligibility for retraining. The Farman case has
brought up this matter.

256 The eleventh issue is dispute resolution.

291 The twelfth issue is the stay of benefits.

304 The issue of reinstatement and return to work are the final issues.

316 Please refers to attachment A in [EXHIBIT A].

332 The Labor Management Committee came to agreement on eleven issues.
347 With more time they could reach agreement on more issues.
367 REP. BEYER: Will you provide the committee with suggested amendments?
369 GOVERNOR: Yes, and I am more than willing to discuss these issues.
385 REP. BEYER: I would like to see written amendments.
387 CHAIR WATT: We start work sessions on Wednesday, and I am very willing
to work very hard on this.
394 REP. MANNIX: I think there are more ramifications that we need to look
at, and they are not Mahonia Hall issues.
306 GOVERNOR: Yes, I agree with you.
411 REP. MANNIX: There has been reductions in injuries and deaths in the
workplace have gone down as an enhancement of safety issues. We should
continue to do this.
431 GOVERNOR: I would support anything to help that.
437 REP. MANNIX: I would like to emphasize the issue of workers coming to
the workplace under the influence.
446 GOVERNOR: I agree, that it is an issue I would like to address.

TAPE 54, SIDE A

46 DR. PATRICK GOLDEN, NEUROSURGEON: Testifies against Senate Bill 369.
Provides written testimony [EXHIBIT B].
79 Time is of the essence to treat an injured worker.
108 The definition of objective findings is a concern.
147 The concept of a compensable injury and a preexisting condition, this is
an extremely difficult situation.
171 Gives two analogies.
174 REP. BROWN: Are these concerning pre 1990 or current injuries?
180 GOLDEN: I am discussing both, this has always been a problem.
200 Continues with testimony.
241 REP. FAHEY: Have you had a worker who had their treatment cut short.
249 CHAIR WATT: Doctor, what if the blow to the head happened to someone
who did not have a shunt in the head?
261 GOLDEN: Responds.
270 CHAIR WATT: These kinds of things are extremely expensive for people
that pay the insurance. Things need to be fair to both sides. We do not
want to create a social welfare system with workers compensation.

286 GOLDEN: Responds.

295 CHAIR WATT: Are you saying that there needs to be more impute by the doctors?

298 GOLDEN: Yes.

306 REP. BEYER: Let me show you where that would be in the bill.

319 GOLDEN: I used it as an example of a preexisting condition.

325 Continues with testimony.

360 REP. FAHEY: Do you feel that injured workers get the best medical treatment? Do you get different pressure than from those getting paid under a different format?

378 GOLDEN: Yes.

416 REP. BEYER: What about the current operation under MCO's, are your suggestions adequately challenged?

433 GOLDEN: The main problem is fighting the administrative procedures which they are allowed to operate under.

454 Peer review language in the original bill would give the MCO's a broad control.

TAPE 53, SIDE B

39 REP. SNODGRASS: What is the percentage of you practice is workers compensation?

45 GOLDEN: Thirty-five percent are spinal problems.

46 REP. SNODGRASS: Who are your medical collages?

52 GOLDEN: Basically other neurosurgeons.

52 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION. Testifies on Senate Bill 369 providing written testimony [EXHIBIT C].

89 Continues with discussion of Senate Bill 369.

105 DR. DAVID NOALL: Testifies on Senate Bill 369.

113 Compensation has many of the same properties of addictive drugs.

139 Doctors cannot authorize payment because they do not know what work the employer has for the worker.

152 The wording that says the doctor authorizes payment should be changed.

186 Page four, line thirty-five, section three, exceptions on preexisting conditions.

207 I have concerns about the objective findings language.

299 REP. BEYER: On the objective findings, are you saying it is good or bad language?

241 CHAIR WATT: Reads the section of the bill in question.

245 NOALL: I would like to add physical lab or radiographic findings in the bill there.

254 REP. BEYER: Scott, could your people give us some suggested language. I find it laborious and confusing.

261 GALLANT: Responds.

272 REP. BEYER: Its is not an easy thing when you get in to spinal situations, according to doctors that have talked to me about this language.

284 NOALL: Responds.

306 REP. BEYER: I do not want to endorse a system that has a person that says they are hurting, but the pain cannot be proved.

322 NOALL: Responds.

327 REP. FAHEY: People are second guessing the specialists. When it comes time to settle the claim the bring in someone else to make the determination.

354 TOM COONEY, ATTORNEY FOR THE AMERICAN MEDICAL ASSOCIATION: Testifies on Senate Bill 369.

370 Objects to the fee schedule change.

380 I propose amendments to the language in the fee schedule language.

401 CHAIR WATT: Goes over the language again.

421 CHAIR WATT: Have you talked to anyone in the department about this yet. I would like to do that.

437 REP. BEYER: Are these national costs?

434 GALLANT: These codes are used nationally.

449 COONEY: I would like to discuses the term peer review.

TAPE 54, SIDE B

55 Continues with testimony on Senate Bill 369.

66 I want the peer review committee's tasks spelled out more specific.

95 The physicians are left out there hanging if the Director does not review medical decisions.

115 The medical judgments should be made by the physician, I would like that to be part of the bill.

142 I do not like where the Director can break the confidentiality of the

peer review.

159 REP. SNODGRASS: What percentage of your work is workers compensation cases?

163 NOALL: Twenty to thirty percent.

174 DAR YOUNG, RN: Testifies in favor of Senate Bill 369. Provides written testimony [EXHIBIT D].

231 Shows overheads on what the occupational health nurse's position is.

290 Continues with testimony.

319 Shows a slide to discuss preexisting conditions.

363 Continues with testimony.

367 CHAIR WATT: What are your concerns with SB 369?

371 YOUNG: Shows another slide on preexisting condition.

421 Continues with testimony.

449 BARB FRITZ, RN: Testifies in favor of Senate 369, providing written testimony [EXHIBIT E].

TAPE 55, SIDE A

50 Uses the overhead projections to show a flow chart on workers compensation.

80 Continues with testimony.

90 DAVE FISKKUM, SISTERS OF PROVIDENCE HEALTH SYSTEM: Testifies on Senate Bill 369.

125 DR. NEWBURG, PRACTICES OCCUPATIONAL MEDICINE: Testifies in favor of Senate Bill 369.

131 For the most part the MCO legislation has streamlined medical care.

155 The language of worsening should be changed.

170 I like the language that facilitates speeding up knowledge about ones claim.

184 DR. BILL MILLER, VANTAGE MCO: Testifies on Senate Bill 369.

205 The state should allow the MCO's to handle the disputes.

235 Discusses the peer review process.

255 REP. FAHEY: Do you think it is important that you use like people for peer review?

257 MILLER: Yes.

270 REP. FAHEY: Why have the same type of doctor on the committee?

272 MILLER: Gives statement.

278 KAREN MCNAMME, VANTAGE CARE: Provides more of a definition of an MCO.
293 Supports the change in the dispute resolution language.

316 SEIGI SHIRATORI, OREGON ASSOCIATION OF NATUROPATHIC PHYSICIANS:
Testifies on Senate Bill 369. Provides written testimony [EXHIBIT F].

327 Feel that they were left out of the primary care physician definition.

366 DIANA GODWIN: REPRESENTING PHYSICAL THERAPISTS: Testifies on Senate
Bill 369.

384 BOB BURLES, OREGON INDEPENDENT PRACTICE OF PHYSICAL THERAPISTS:
Testifies on Senate Bill 369.

413 The current bill works.

449 I do lots of claim reviews for many other companies.

457 The way the objective findings is worded now works very well, I like the
OMA's amendment in this area.

TAPE 56, SIDE A

50 GODWIN: Discusses disputed claims.

87 Continues with testimony on Senate Bill 369.

102 CHAIR WATT: We stand in recess until 6:00pm. The committee is in
recess at 4:00pm.

108 Reconvenes the public hearing on Senate Bill 369 at 6:10pm.

118 WANDA BENZ, WIFE OF AN INJURED WORKER, Testifies against SB 369.

141 Continues discussing her husband's claim and the problems they are
having.

191 Continues with testimony.

207 CHAIR WATT: Isn't it safe to say that your problems are more with the
insurance companies than your opposition to the bill?

209 BENZ: Responds.

241 EDITH GRIMSHAW, INJURED WORKER: Testifies against SB 369 with written
testimony [EXHIBIT G].

261 RANDY JOHNSON, INJURED WORKER: Testifies against SB 369 with written
testimony [EXHIBIT H].

279 There were changes that were needed back in 1990 that still have not
been made.

314 Chiropractors are very beneficial.

359 The Oregon State Court of Appeals has now opened the way for law suits
against the state.

400 Continues with testimony.

450 BJ CALLMAN, INJURED WORKER AND REPRESENTATIVE OF THE PUBLIC CHOICE IN HEALTH CARE COALITION: Testifies against Senate Bill 369. Provides written testimony [EXHIBIT I].

TAPE 55, SIDE B

50 Continues with testimony.

91 I sought alternative care on my own.

103 CHAIR WATT: If that particular amendment were included, would you then support the legislation?

105 CALLMAN: I am not sure.

118 JUDY DOTTINO, INJURED WORKER, Testifies against Senate Bill 369 with written testimony [EXHIBIT J].

168 Continues with testimony.

203 I believe the new definition of gainful occupation is very narrow.

256 Injured workers have a horrendous time dealing with the system.

300 The penalties against the insurers are not enforced.

350 Continues with testimony.

367 REP. BROWN: Did you actually have any treatments by the chiropractor?

370 DOTTINO: Yes I did, but I never got all twelve.

370 REP. BROWN: Did you have any treatments with acupuncture?

372 DOTTINO: I did.

373 REP. BROWN: Did either one of those relieve your pain?

373 DOTTINO: Absolutely.

397 WONDER HALL, INJURED WORKER: Testifies against Senate Bill 369.

417 I did not get prompt treatment.

461 The surgery I had was done outside of the system and would have been impossible to get through the system.

465 JAMES HALL, HUSB AND OF INJURED WORKER: Testifies against Senate Bill 369.

TAPE 56, SIDE B

50 All along the system has over ruled the medical decisions or made other decisions in my wife's case.

96 The existing system is very rude.

149 We have observed first hand very immoral and low actions on the parts of the Division.

155 CHAIR WATT: Have you worked with the workers compensation ombudsman?

157 HALL: Yes.

195 CHAIR WATT: We are hear to answer questions. We are hear to make policy. This is not the place to help you.

218 ALLISON BUGETT, INJURED WORKER: Testifies against Senate Bill 369.

226 Let me read a letter I wrote to my state legislator.

243 Let me give you some background on my case.

285 The care that helped me would not be available under current law.

309 You are made to feel like a criminal when you have an injury.

330 CHESS TRETHERY, OREGON STATE BAR, WORKERS COMPENSATION SECTION: Testifies on Senate Bill 369 with written testimony [EXHIBIT K].

370 Let me go through the items that we have decided to take a position on.

407 I see a problem because the Department and the Board are full of political appointees.

440 The referees should still have the Employees Relation Board protection.

479 The better title for them should be administrative law judges.

TAPE 57, SIDE A

48 We have some concerns about the dispute resolution process.

82 GLEN LASKEN, MEMBER OF THE OREGON STATE BAR WORKER'S COMPENSATION SECTION: Testifies on Senate Bill 369.

85 I will speak on claims disposition agreements.

113 If this bill were to pass as is, and allow claimants to release the right to attorneys fees, that claimant is going to have a difficult time finding an attorney.

138 REP. BROWN: I have a problem about the investigator being able to depose the claimant without the lawyer being present. I find that very wrong. How do you feel about it?

145 LASKEN: The Bar could not take a position on that. From the claimants perspective, the provision has wording in it saying the claimant's lawyer is to be notified. But the way the language is written, it could bar the attorney.

165 TRETHERY: We cannot take a position on that, but I can appreciate why that could be abused.

180 ROBERT C.A. MOORE, ATTORNEY: Testifies against Senate Bill 369. I bring two of my clients with me so they may speak with you.

193 CHRIS MOORE, ATTORNEY: Testifies against Senate Bill 369. Provides written testimony [EXHIBIT I].

207 There is a benefit problem with the unscheduled disability.

210 The same with temporary partial disability.

260 Continues with testimony.

265 REP. BEYER: Chris, are you saying that we have that problem under the existing law?, or will have that under SB 369?

268 MOORE: We do have that problem now to the extent that a medical dispute is resolved before the Department of Consumer and Business Services. Right now however, there is an option that you can go to them or request a hearing and go to the Hearings Division. Most people, if they have an attorney will choose to go to the Hearings Division.

305 REP. BEYER: That is the opposite of what I thought it would have been.

307 PETER PRESTON, PRESIDENT OF THE OREGON WORKER'S COMPENSATION ATTORNEYS:

That system of dispute resolution has not been tested as well through the courts.

318 MOORE: Continues with his testimony.

368 Continues discussing sections he feels are of concern.

404 If you are not careful you are going to exclude people from coverage.

419 I prefer major cause as the need for treatment.

458 REP. BROWN: In terms of practical realities, what happens to workers that you represent that do not get compensated as a result of having a preexisting condition? Do they have insurance or do they go onto the Oregon Health Plan?

466 MOORE: Three things could happen to them.

484 PRESTON: Temporary partial disability and permanent partial disability have been addressed in the bill. But we do not feel they have been addressed properly.

TAPE 58, SIDE A

53 REP. BEYER: Do you have this in writing?

55 PRESTON: I do not.

58 REP. BEYER: I feel that it would be better if the committee had something in writing to look at when we go into a work session.

66 REP. BROWN: On the Stone case, I think I heard the Governor say he supports the language in Senate Bill 369 regarding this issue. Do you know if that is true, and did I hear you say would not support the language?

74 PRESTON: It is the other language that is interspersed in the bill that address permanent partial disability that causes the concerns I have.

88 I do not think that it is right for a health care provider to provide MCO coverage to their employees.

110 IRV FLETCHER, OREGON AFL-CIO: Testifies on Senate Bill 369.

128 We are in support of the Governor's recommendations.

136 I believe that the program has succeeded better than we expected after
1990.

144 Rates have gone down four times since 1990.

167 MARY BOTKIN, AMERICAN FEDERATION OF FEDERAL STATE AND MUNICIPAL
EMPLOYEES: Testifies on Senate Bill 369.

181 We were strong supporters of the 1990 reforms.

185 We would also support going back to the 1197 principles.

200 We have strong concerns about the objective findings language.

240 CHAIR WATT: Adjourns meeting at 8:10pm.

Submitted by, Reviewed by,

Paula Gilmer Purcell	Aaron Felton
Committee Assistant	Committee Counsel

EXHIBIT SUMMARY:

A - Testimony on Senate Bill 369, submitted by Governor John Kitzhaber

B - Testimony on Senate Bill 369, submitted by Dr. Patrick Golden

C - Testimony on Senate Bill 369, submitted by Scott Gallant

D - Testimony on Senate Bill 369, submitted by Dar Young

E - Testimony on Senate Bill 369, submitted by Barb Fritz

F - Testimony on Senate Bill 369, submitted by Seigi Shiratori

G - Testimony on Senate Bill 369, submitted by Edith Grimshaw

H - Testimony on Senate Bill 369, submitted by Randy Johnson

I - Testimony on Senate Bill 369, submitted by B. J. Callman

J- Testimony on Senate Bill 369, submitted by Judy Dottino

K - Testimony on Senate Bill 369, submitted by Chess Trethewy

L - Testimony on Senate Bill 369, submitted by Chris Moore

M - Testimony on Senate Bill 369, submitted by Arthur W. Stevens III

N - Testimony on Senate Bill 369, submitted by William J. Knight

O - Testimony on Senate Bill 369, submitted by Celia Nunez-Brewster