

HOUSE COMMITTEE ON COMMERCE SUBCOMMITTEE ON LABOR

June 14, 1993      Hearing Room D 8:30 a.m.      Tapes 136 - 138

MEMBERS PRESENT:                      Rep. John Watt, Chair

Rep. Lee Beyer Rep. Michael Payne

Rep. Charles Starr

Rep. Bob Tiernan

STAFF PRESENT: Marilyn Johnston, Committee Administrator Kristina  
McNitt, Committee Assistant

MEASURES CONSIDERED: HB 3111      HB 2355 HB 2045      HB 2348

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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. [--- Unable To Translate  
Graphic ---]

TAPE 136, SIDE A

CHAIR WATT: Calls the meeting to order. (10:05 a.m.)

006 PUBLIC HEARING ON HB 3111 Witnesses: Diana Godwin, Oregon  
Physical Therapists

008 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: explains  
provisions of bill and presents preliminary staff measure summary, -2  
amendments, fiscal and revenue statements (EXHIBIT A).

016 DIANA GODWIN, OREGON PHYSICAL THERAPISTS: testifies in favor of  
bill and -2 amendments

025 REP. WATT: would you explain amendments?

029 GODWIN: \_ will provide notice to affected health  
service providers (doctors) and health insurance providers when a  
disputed claims settlement is about to be completed.

\_ changes time for measuring date related to disputed claims  
settlements (proposed by SAIF for administrative

clarity)

030 REP. WATT: please direct us specifically

031 GODWIN: The second change mentioned is found on line 21 of page 2 of the electronically engrossed bill. The health provider must have billed the worker's comp. insurer prior to the date on which the terms of the settlement are agreed upon. Next delete lines 24 and 26, or all of sub B. This amendment limits bill to reimbursement directly to the medical service providers and not to the medical insurance providers.

050 REP. WATT: What is the reasoning for that?

051 GODWIN: If a self-insured employer has to reimburse their health insurance provider in a disputed claims settlement, they have essentially paid twice. They've already paid a monthly premium for regular coverage.

See next amendment on line 28 of page 2. This amendment prevents medical providers from receiving compensation for services that would not have been reimbursable if the claim had been compensable, i.e. palliative care, unnecessary surgery, excessive physical therapy treatments, etc.

079 REP. WATT: This indicates that the claim will be made at one-half the amount...

082 GODWIN: That is correct. It has always been that due to the realities of negotiating worker's comp. settlements. It doesn't mean we can not go back and attempt to claim the other one-half.

See next amendment on page two lines 29 and 30, again deleting references to health insurance providers. Also seen on line 32 and line 35.

The other change is adding Section 2 which specifies that the amendments take place on or after the effective date of act.

WORK SESSION ON HB 3111

107 MOTION: REP. TIERNAN MOVES THE -2 AMENDMENTS TO HB 3111.

VOTE: IN A ROLL CALL VOTE THE MEASURE CARRIES UNANIMOUSLY. MEMBER EXCUSED: PAYNE.

MOTION: REP. TIERNAN MOVES HB 3111 AS AMENDED TO THE FULL COMMITTEE WITH A DUE PASS RECOMMENDATION

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBER EXCUSED: PAYNE CARRIER: TIERNAN

PUBLIC HEARING ON HB 2355 Witnesses: Chris Davie, SAIF Representative Kevin Mannix, Salem Chris Moore, OTLA Chuck Tauman, OTLA

128 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: explains provisions of bill and presents preliminary staff measure summary, -6

and -7 amendments with accompanying fiscal and revenue impact statements (EXHIBIT B).

134 CHRIS DAVIE, SAIF CORP: testifies in favor HB 2355 and the -7 amendments. Reviews issue: when worker files comp claim and successfully recovers damages from responsible third party employer, the worker compensation employer has a lien against a portion of settlement. This bill addresses situation where worker files claim after settlement has already been made with third party.

The -7 amendments say if the settlement is made with third party before claim is filed or accepted by the workers comp insurer, then the damages recovered by worker can be offset against benefits paid by worker's comp. insurer.

These benefits are compensation due for time periods prior to acceptance of claim. 25 percent would be offset on any time loss paid after acceptance of claim, and any other amount still remaining would be offset dollar for dollar against any permanent disability award.

169 REP. TIERNAN: Do you have any problems with the -6 amendments?

176 DAVIE: Yes, we do. The -6 amendments deal with a separate issue, really. It fundamentally changes the way third party claims are administered today.

190 REP. TIERNAN: I recall some testimony that indicated when a worker injury involved a third party, the rates for the insuring employer were driven up even though he was not involved with the accident or injury. Why can't a safeguard be worked into bill for the insuring employer?

208 DAVIE: If either the worker or the insured employer thinks there may have been a third party involved, the costs of the claim continue to be charged to the employer but there is an attempt to recover from the third party. If there is a recovery by the insurance company then that recovery is offset against the claim costs. The -6 amendments say you never charge that cost to the employer.

230 REP. TIERNAN: My point is that as long as there is a pending claim that states a third party may be responsible, the insured employer's rates should not be increased until it is resolved.

244 DAVIE: I understand. Once a suit has been filed you don't charge the extra cost to the employer until the whole thing is settled. I don't think the words of the -6 amendments actually address that.

248 REP. TIERNAN: Let's work on that.

251 REPRESENTATIVE KEVIN MANNIX, SALEM: testifies in favor of HB 2355 and the -7 amendments with the following verbal changes worked out in conjunction with the OTLA: on page 2 line 21, remove the phrase "for time periods". Delete "acceptance" and insert "filing". On line 22 add the word "and". Delete lines 23 and 24, and change sub c to sub b.

This bill is meant to deal with those rare situations where a worker has a valid worker's comp claim but files a civil third party case instead and then later files a worker's comp claim. In this situation there is no way for the insured employer to get a lien, or falls in line

behind many other dedicated obligations.

Urges Rep. Tiernan not to pursue -6 amendments due to the involvement of sensitive rate issues.

381 CHRIS MOORE, OREGON TRIAL LAWYERS ASSOCIATION: speaks to bill and states that the -6 amendments might base the rate question upon any recovery made and actually paid to the worker's compensation carrier - have the rates reflect the extent to which that occurs.

TAPE 137, SIDE A

003 CHUCK TAUMAN, OTLA (BENNET & HARKMAN): confirms compromise submitted by Rep. Mannix to the -7 amendments was agree upon and is supported.

009 REP. TIERNAN: Who has not concurred with proposal here?

010 TAUMAN: I don't believe SAIF has yet stated a position on Rep. Mannix's verbal changes to the -7 amendments.

012 REP. TIERNAN: Please summarize the differences between the -7 as machine engrossed vs the -7 as verbally amended.

015 TAUMAN: Two major differences; one is the replacement of the word "acceptance" with the word "filing" which allows the worker to keep more of the money but allows insurance carrier to have lien rights on future benefits.

The second change, the elimination of subsection b, would disallow an addition that would authorize carrier to take up to 25 percent of the worker's time loss benefits.

PUBLIC HEARING ON HB 2348 Witnesses: Representative Eldon Johnson, Medford Geof Guilfooy, DIF Larry Young, Worker's Comp. Bruce Miller, SAIF Don Schellengburg, Oregon Farm Bureau Brad Witt, OR AFL-CIO Frank Biehl, West. Assoc. Pulp & Paper Workers Pat Galligher, SAIF

036 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: brings bill to committee and submits the preliminary staff measure summary, and revenue and fiscal impact statements (EXHIBIT C).

041 REPRESENTATIVE ELDON JOHNSTON, DISTRICT 21 MEDFORD: testifies in favor of bill and the -1 amendments. Believes bill would change the way assessments are collected from a cents per day approach to a fraction per hour. Accounting now is difficult for business. Would support bill going farther by establishing both a floor and a ceiling regulating the total amount of reserve funds. Rate collected could then be adjusted annually.

097 REP. WATT: Regarding that, there is concern in the business community that this bill hands more control to DIF. Is it your intention that the department specifically lay out by rule that the director may not raise or transfer funds at his/her discretion?

108 GEOFF GUILFOY, DEPARTMENT OF INSURANCE AND FINANCE: The intention is that this would not be an arbitrary allocation and that

there would be criteria by which the department measures what the financial needs are based upon actuarial analysis and projected cash flow balances.

112 REP. WATT: Specifically by rule? This bill comes to us from the labor management review committee with unanimous opposition. Are you going to run the -1 amendments by them? Is there an intention to do so?

119 REP. JOHNSON: Had not considered doing so but certainly could.

124 REP. WATT: Is there a fiscal for the -1 amendments?

126 REP. JOHNSON: The SMS indicates conservative figures. A smaller carrier has indicated to me a savings of one million dollars per biennium for themselves alone.

My one concern is allowing the director to set the standards by rule. The committee might want to set this statutorily.

152 REP. TIERNAN: Will changing the assessment from a daily to an hourly rate result in an overall increase?

159 REP. JOHNSON: No. There is no net collection increase. There will be a few winners and losers...

163 GUILFOY: Looking at page three of the handout (EXHIBIT D) Basically all employers currently pay 14 cents per day for every day an employee works. Employees themselves also contribute 14 cents per day. This money is allocated to various legislatively mandated programs.

This bill changes how this money is collected. Insurance companies will no longer be responsible for handling this money which should save them approximately 2 million dollars annually. This bill will also enable DIF, the Employment Division and the Department of Revenue to development a combined collection form.

As a business person these changes mean when you remit unemployment taxes, your cents per day assessments, and your quarterly withholdings, you can do it all on one form and send it to one place. It should save our departments money and save business money.

Finally, this bill gives us the ability to ensure that reserves are properly funded. Currently there are reserves in some funds that are excessive.

213 REP. WATT: You're saying that the -1 amendments limit what is collected. When you get to that cap how does that affect the people who pay? Will that amount be adjusted? 220 GUILFOY: The bill gives some responsibility and authority.

222 REP. WATT: Show me that language.

223 GUILFOY: Line 6 on page 2 of the electronically engrossed bill. It requires that the director by rule determine how these funds are placed in reserves. The director must consider factors such as fund balances, estimated expenditures, and revenues.

235 REP. WATT: Show me in the bill where it says if the reserve fund

reaches a set cap that there will be a savings to employer and employee assessments.

239 GUILFOY: It doesn't actually say that. What it does is set a cap of a maximum of 2 cents per hour. That is the most that can be collected. What will happen is if we don't need the two cents then we'll collect something less than that.

245 REP. WATT: Where does it say that?

248 GUILFOY: It doesn't say that we will drop our rate. The intent is that you don't collect more money than needed.

250 REP. WATT: You can see where I'm going. We're collecting cents-per-day. We are going to 4 cents-per-hour. The employer who may be paying overtime will be paying more out. That is the disparity Rep. Johnson mentioned.

307 GUILFOY: Other changes; the Employment Division's way of calculating work weeks to work hours. This is being addressed in another bill so we will propose an amendment to remove it from this one.

318 REP. WATT: Lines 30, 31 and 32 will be deleted?

320 LARRY YOUNG, DEPUTY ADMIN. WORKER'S COMP. DIVISION: Section 3 of the machine engrossed copy can be taken out. Section 4 would stay in but Sections 5 and 6 would also be deleted. This assumes HB 2132 maintains itself.

The worker's comp statutes with regard to collection of this assessment will also be slightly changed. This bill must redefine who a subject employer is in order to be consistent with the Employment Division. See page four of handout (exhibit c).

347 REP. TIERNAN: What is this Center for Research for Occupational and Environmental Toxicology?. What is it, what does it do, and why are we putting it in statute?

361 YOUNG: See page 7 of machine engrossed bill. CROET was established by the 1985 Session to investigate and do research on occupational diseases. It is part of Oregon Health Sciences University. Currently the program is partly funded with 1/2 a cent of the cents-per-day money which is matched by an equal amount from the premium assessment paid by employers. This amendment changes the funding from cents-per-day to cents-per-hour.

386 REPRESENTATIVE JOHNSON: At the time there was a trade off. The Callahan Center was a bottomless money pit and was to be closed. There was an agreement by the Legislature to provide funding at two million dollars for conducting occupational health related research at the Health Sciences University in exchange for closing the Callahan Center. The center was costing 4 1/2 million dollars a year.

TAPE 136, SIDE B

005 REP. WATT: We paid two million dollars to close something we continue to fund? And you're asking for 1/16 vs 1/28 of a cent now?

009 REPRESENTATIVE JOHNSON: The idea was to have a centralized rehab center but it cost millions of dollars and just didn't work. Closing it

was a political decision that came with a pledge to provide 2 million dollars in research.

013 REP. WATT: Are we being asked to extend that pledge now? Is this why it has a subsequent referral to revenue?

017 REP. JOHNSON: Yes, you are.

018 GUILFOY: We are not changing anything. This bill just recognizes the fact that we are going from a cents-per-day to a cents-per-hour assessment. The same amount of money will flow to the center.

The only other change is that we are asking the center to give us an annual report of how the money is used.

020 REP. WATT: Page 7, line 26 and 27. Why are we going from a 1/28th of a cent to a 1/16th of a cent deduction from worker wages?

024 YOUNG: That is a miscalculation on our part. When we originally designed this bill we figured that 1/28th was equal to 1/2 a cent that they were... the correct calculation is 1/16th of a cent.

036 REP. WATT: If we're repealing Section 17, Chapter 770, would it be possible to use the exact same language? The difference is that sub a says \$750,000 from Worker's Reemployment Reserve and we're changing that to a calculation, correct?

042 YOUNG: No. The \$750,000 was a onetime expenditure.

049 REP. WATT: What year was that?

050 YOUNG: 1985.

052 REP. WATT: In 1985 we paid \$750,000. Haven't paid them any more since then?

052 YOUNG: No, then the funds switched over to the 1/2 cent calculation. Our intent was to get the same number of dollars but change from the cents-per-day to the cents-per-hour basis. We made a mistake with the 1/28th figure. Our amendment here is to change that to 1/16th.

068 REP. TIERNAN: I feel I'm being asked to vote on something I've not even known existed, I don't know what they do that the Federal Government doesn't already do, and I'm being requested for a permanent funding mechanism.

080 GUILFOY: We are not asking for anything different from what the law currently provides.

090 REP. WATT: If we were to delete Sections 7, 8, and 9 of this bill, what would happen?

092 REPRESENTATIVE JOHNSON: I hope this doesn't hang up the bill. Perhaps these concerns can be addressed in a separate bill.

098 REP. WATT: Then why are they mixed in here? Does this bill do two things? I'm feeling more uncomfortable the more I hear about this

bill.

105 YOUNG: The only reason it was brought in at all is due to the change from cent-per-day to cents-per-hour.

110 REPRESENTATIVE JOHNSON: There really are no other changes in this bill.

111 REP. WATT: In looking at section 17, sub b reads...

122 GUILFOY: It is the same amount of dollars. 1/16th per hour is the same as a 1/2 a cent-per-day. It produces the same amount of revenue.

123 REP. WATT: Okay, I understand that. But what if Sections 7, 8 and 9 weren't in here, it doesn't change the assessment? 131 YOUNG: No, it would probably increase it by, I can't even imagine.

135 REP. WATT: Section 770 deals with the center for occupational disease. What is the need for changing it from the center to the worker's comp portion? We are repealing 770 and moving it to 656. Why?

140 GUILFOY: This original bill was brought into the statute as chapter law. It does away with the chapter law reference and makes it a permanent section within the ORS.

145 REPRESENTATIVE JOHNSON: There is an advisory committee now that already receives an annual report.

151 REP. WATT: What is the annual assessment that goes to this?

153 GUILFOY: 2.5 - 2.7 million, annually.

157 REP. WATT: I would like to find out what these people do.

166 BRUCE MILLER, INSURANCE UNDERWRITER SAIF CORP: Testifies in favor of HB 2348. Testimony is summarized in (EXHIBIT E).

225 REP. WATT: Your presenting this as an administrative burden being released to DIF. Have you projected annual savings?

230 MILLER: I can't really say. We do have one employee who deals with these issues full time.

241 DON SCHELLENBERG, OREGON FARM BUREAU: testifies in opposition to the bill with several concerns

\_ increased paper work (especially for hourly and piece rate workers) \_ questions amount of money collected when changing from a cents-per-day basis to a cents-per-hour one

260 REP. WATT: Have you been talking to people from the department? It says on the back of the DIF handout (exhibit D) that this bill would not affect agricultural employers whose payroll is less than \$20,000 in a calendar quarter, or one that employs less than 10 individuals for 346 days per calendar year. Sounds like a good deal to me. Do you want to continue here?

285 SCHELLENBERG: Thank you.



292 BRAD WITT AFL-CIO: testifies to bill, suggests that the several  
'reserve' bills that have been introduced this session should be  
heard in consortium. 331 REP. WATT: Have you previously talked to the  
Department?

334 WITT: Had discussions, not really to encourage a joint hearing  
but to discuss problems with this particular bill. Basically feel there  
is too much left to the discretion of the director of DIF. Specifically,  
what the funds will be dedicated to and how much money will come  
back to fund programs.

386 REP. WATT: Do you feel the rule-writing procedures can deal with  
that?

389 WITT: That was an earlier concern but now we would be  
satisfied with the process.

390 FRANK BIEHL, ASSOC. WESTERN PULP AND PAPER WORKER: Concurr with  
Witt testimony but does not share comfort level with leaving decisions  
up to the rule making process.

TAPE 137, SIDE B

008 REP. PAYNE: Going back to Rep. Tiernan's point, the Center for  
Occupational Disease Research, what does it do, from a worker's  
standpoint? Why are we spending that money?

012 WITT: I guess that is something we'd like to know as well. I  
suggested that they make a presentation to the Worker's Comp. Labor  
Advisory Committee.

018 REP. WATT: I am interested in knowing what it does and where  
its budget goes.

019 REP. TIERNAN: Who is on the Labor Management Committee? By name.

020 BIEHL: Management members: Mark Davison...

022 REP. TIERNAN: I would like a list.

027 PAT GALLIGHER, SAIF: Supports disengaging worker day process  
from the insurance companies. Supports Miller testimony, including  
concerns. Elaborates on cost estimate, states approximately \$400,000  
annually. Expenses involve one full-time person but program is so  
invasive throughout the department that it is difficult to get an  
accurate handle. Especially costly is the programming of any new  
system.

059 REP. WATT: Notes lack of fiscal impact statement. Feels bill  
honestly moves toward efficiencies in government but has questions.

PUBLIC HEARING ON HB 2045 Witnesses: Tom Mattis, DIF Fred Van Natta,  
Oregon State Home Builders Brad Witt, OR AFL-CIO

075 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Explains bill to  
committee and submits a preliminary staff measure summary, fiscal and  
revenue impact statements (EXHIBIT F).

077 REP WATT: Declares intention to postpone hearing on HB 3069.

079 TOM MATTIS, WORKERS COMP. DIVISION OF DIF: testifies in favor of HB 2045. Testimony is summarized in EXHIBIT G. Would support three changes;

\_ Page 1, Section 1, lines 15 and 16 We want to modify the law in order to give instruction to circuit court judges in how to deal with repeat offenders. Currently after the worker's comp. division has cited a non-complying employer two or three times we seek an injunction to enjoin that employer from employing subject workers without having coverage for them. However, if at the time we request an injunction the employer shows up at court with an insurance binder, judges are hesitant to issue an injunction due to current statute which permits an injunction only until employer has complied with the law. Judges also feel the law does not give them the authority to issue a permanent injunction.

The problem we have is that the employer then walks out of court with the binder, allows the insurance to lapse or be cancelled without securing coverage. Another citation is issued against them, they come back to court with a binder and the cycle continues.

\_ Section 2 of the bill, page 1, lines 27 and 30, raises the maximum civil penalty for the first period in which an employer is found to be noncomplying from \$1,000 to \$10,000. If the employer continues to be noncomplying the penalty would be raised from \$25 per day up to \$250 per day for each day the employer continues to break the law.

The penalties should be commensurate with the offense. The caps we have now are twenty years old and really offer no financial deterrent to noncompliance.

\_ Section 3, page 2, lines 8 - 17 require that the attorney fees from the prevailing party be paid by the losing party for a hearing regarding a noncompliance order. It further requires the insurance company to pay the employer reasonable attorney fees if an order was issued as a result of the insurance company's failure to file with us a guarantee contract.

Fiscal impact is modest.

176 REP. WATT: In Section 2 you increased from \$1,000 to \$10,000 but I notice in Section 2 Sub 3, there are penalties assessed that haven't increased at all. What is the thought process here?

185 MATTIS: The claim closure penalties on page two were not even discussed. Felt these penalties sufficient considering claim due and additional penalties.

209 REP. WATT: Do you really feel this \$10,000 figure is realistic or is this where you intend to start bargaining from?

221 MATTIS: We meant \$10,000. By avoiding these costs contractors can underbid complying employers to say nothing about the money saved by paying penalties as opposed to complying with the law.

234 REP. WATT: If the order becomes final you are also asking for recover of attorney fees. How many other actions within the department do you recover attorney fees?

241 MATTIS: I don't know that.

242 REP. TIERNAN: We've visited this issue here before. I wouldn't want companies being deterred from pursuing a legitimate complaint by regulators who collect their attorney fees. Business can't afford it.

266 MATTIS: We try up front to have a subject employer and a subject worker. By the time we get to litigation it is rare that our case is not strong.

289 REP. TIERNAN: What if you had to incur these types of costs to appeal your property taxes? People would be deterred.

305 MATTIS: It would also deter those people who are mad as hell and want to make a point.

311 REP. WATT: In regards to 656.052, the noncompliance statutes, is there a time table that you go back to?

329 MATTIS: The penalty is \$25 per day that the employer is out of compliance.

339 REP. WATT: The first figure is the initial fine. The rest accrues as a \$25 per day fine? Would you figure out what those penalties would be with your proposed changes?

358 MATTIS: Yes, I'll get back to you.

362 FRED VAN NATTA, OREGON STATE HOME BUILDERS ASSOC: This legislation causes us some concern but the examples given today find no sympathy with our organization. However, in our industry, somewhere down the line between the general and the sub contractors due to misinterpretation or even because of an outright flake, if the general is not carrying a policy of some sort he winds up as a noncomplying employer. As a practical matter, the general contractor on residential building sites is not in a position to know what is going on with all the subs at all the sites.

TAPE 138, SIDE A

005 VAN NATTA continues testimony on HB 2045. Suggests splitting the penalty severity for interpretation or unintentional mistakes vs intentional abuse.

019 REP. WATT: Should we seriously look at simply requiring everybody carry worker's comp?

025 VAN NATTA: I can't even explain to you the varied amount of disagreement that would descend upon the capitol.

058 BRAD WITT, OR AFL-CIO: Testifies in support of HB 2045. Assures that compliance is cost effective. Levels playing field between those employers who do and those who do not now hire lawfully. Would work toward the elimination of fraudulent employers.

080 REP. WATT: Adjourns meeting at 12:03.

Submitted by:

Reviewed by:

Kristina McNitt

Marilyn Johnston Committee Clerk  
Committee Administrator

EXHIBIT LOG

A - HB 3111 preliminary staff measure summary, -2 LC and machine engrossed amendments, fiscal and revenue impact statements submitted by staff, pp 5

B - HB 2355 preliminary staff measure summary, -6 LC and machine engrossed amendments, revenue and fiscal impact statements, -7 LC and machine engrossed amendments, revenue and fiscal impact statements submitted by staff, pp. 15.

C - HB 2348 preliminary staff measure summary, -1 LC and machine engrossed amendments, fiscal impact statement submitted by staff, pp. 12

D - HB 2348 written testimony submitted by Guilfooy, pp. 2

E - HB 2348 written testimony submitted by Miller, pp. 2

F - HB 2045 preliminary staff measure summary, fiscal and revenue impact statements submitted by staff, pp. 3

G - HB 2045 written testimony submitted by Mattis, pp. 4