

SENATE COMMITTEE ON LABOR

~ . May 13, 1991 Hearing Room 50 03:00  
p.m. Tapes 103 -104 MEMBERS PRESENT: SEN. GRATTAN KERANS,  
CHAIR SEN. LARRY HILL, VICE-CHAIR SEN. BOB KINTIGH SEN. BOB SHOEMAKER  
MEMBER EXCUSED: SEN. PETER BROCKMAN

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,  
COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 18 PH Workers' Compensation  
Overview, Informational Hearing SB 860 PH SB 539 PH . . . 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 103' SIDE A

001 CHAIR KERANS calls the meeting to order at 3:16 p.m. and announces  
that Senator Shoemaker is testifying in a House committee, Senator  
Brockman is ill and they are excused. Senator Hill will arrive shortly.  
He also announces that the committee will carry SB 656 over to a work  
session the following day.

CHAIR KERANS opens the public hearing on SB 18. SB 18 - EXTENDS  
EXISTENCE OF JOINT LEGISLATIVE TASK FORCE ON INNOVATIONS IN WORKERS'  
COMPENSATION INSURANCE UNTIL JUNE 30, 1995 - PUBLIC HEARING

Witnesses: Senator Shirley Gold Diane Rosenbaum, attorney, representing  
the Oregon State Industrial Union Council and Oregon AFL-CIO

The Legislative Fiscal Analysis is hereby made a part of these minutes  
(EXHIBIT A). 016 SENATOR SHIRLEY GOLD: SB 18 is one of the series of  
bills introduced by the Joint Interim Task Force on Innovations in  
Workers' Compensation. This bill extends the existence of the task force  
until June 30, 1995. SB 198 of the Special Session which created this  
task Senate Committee on Labor May 13, 1991- ce 2

force did not have a sunset on the life of the task force. This bill has  
a subsequent referral to Ways and Means and the committee might consider  
an amendment that would permit the receipt by the task force of funds in  
addition to state funds for its operation. It is my understanding that  
through NCSL and possibly other sources that we might be able to obtain  
other funds. Unless we have the language that says we may accept such  
funds, we could not accept or expend those funds. 078 DIANE  
ROSENBAUM, an attorney representing the Oregon State Industrial Union  
Council and the Oregon AFL-CIO, submits a prepared statement in support  
of SB 18 (EXHIBIT B). The task force has begun a process by looking at  
the way in which the health care component of workers' compensation can  
be integrated into or move toward universal health care and ways in  
which the system of resolving disputes can be made simpler. I think it  
is a mistake to try to enact any more proposals without looking at the  
whole system and the needs for drastic changes.

(Tape 103, Side A) WORKERS' COMPENSATION OVERVIEW INFORMATIONAL MEETING

Witnesses: Larry Young, Workers' Compensation Division Lynn Marie  
Crider, Chair, Workers' Compensation Board

147 LARRY YOUNG, Deputy Administrator, Workers' Compensation  
Division, Department of Insurance and Finance, submits an overview of

the workers' compensation system and the organization of the Workers' Compensation Division and asks that it be made a part of the committee record (EXHIBIT C). The chair had questions on palliative care and the definition of attending physician. The presentation in the overview by Dr. William Craig, Medical Director, covers those questions. Another question was about the reconsideration process. The presentation by Mari Miller, Supervisor, Appellate Unit, covers the status of that program. As a result of the Special Session in May 1990, the changes in the law were effective July 1, 1990. As a result of that we initiated temporary rules, had them published and distributed by June 20. Shortly thereafter we proposed permanent rules and after public hearings in October and November of last year, our permanent rules for implementing all the changes contained in SB 1197 and SB 1198 went into effect December 26, 1990. One of the things we experienced with the implementation of all the changes was not knowing the processes at the time the law went into effect, the difficulty of acquiring staff in a timely manner and getting the processes ironed out and working well. We have developed some backlogs over the last six months and we are working out of those in the areas of the reconsideration process, the medical treatment disputes and the palliative care request reviews. We feel we will be worked out of the back log in the next three to four months and will be getting the responses out in a timely manner. 221 LYNN MARIE CRIDER, Chair, Workers' Compensation Board, submits written testimony explaining the functions of the board and the types of cases the board and hearings referees decide (EXHIBIT D). The upcoming change is a result of the temporary legislation passed last session expanding the board from three to nine members to deal with a backlog of requests for review. We have, to \_ 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 proceed Ig8, please refer to the tapes. - Senate Committee on Labor May 13, 1991 - Page 3

a large extent, dealt with that backlog over the last couple of years. > At the close of the biennium I expect we will be about 200 cases short of eliminating the backlog; we have moved from a 2,500 to 200 case load. >During last biennium the board was receiving approximately 140 requests for review per month. > The board is currently receiving about 180 requests for review per month. This work load will require from five to six board members to maintain the work load on a current basis. When the board returns to three members on July 1, we are going to be facing a problem in terms of putting out cases on a timely basis. > There is a House bill that would increase the board temporarily for a biennium to five and to . allow some flexibility to go to seven if there is a need. The bill currently is in Ways and Means. > Since the Special Session we have seen a dramatic decrease in the number of requests for hearing from a high of over 2,000 a month to about 1,300 per month. The 1,300 figure is probably artificially low because we aren't seeing any extensive disability cases yet. > In the next year we will be looking at what the long term work load and needs for the agency are. 278 CHAIR KERANS: Have the changes brought about by SB 1197 keep the requests for hearings down over the long term? 285 CRIDER: I think that is likely to be the case. It seems some of the changes that were made and the shifts in jurisdiction from the Hearings Division to the department will have a long term affect. And probably the changes with respect to the extent of disability will have a long term effect. 301 CHAIR KERANS: You have a backlog as you go into a new biennium. If you were to be stabilized at perhaps five members, how would the board work? 305 MS. CRIDER: With a board of five members, we would work in shifting to have different groups of three deciding different cases. CHAIR KERANS opens

the public hearing on SB 860.

(Tape 103, Side A) SB 860 - ADDS CANCER TO LIST OF OCCUPATIONAL DISEASES FOR WHICH THERE IS PRESUMPTION OF COMPENSABILITY FOR FIRE FIGHTERS UNDER WORKERS' COMPENSATION LAW. - PUBLIC HEARING

Witnesses: Floyd Pittard, Tualatin Valley Fire and Rescue, representing the Oregon Fire Chiefs Association and the Oregon Fire District Directors Association Pat West, Oregon State Fire Fighters Council Bill Knox, firefighter John Seifert, firefighter Larry Stuck, firefighter

The Preliminary Staff Measure Summary and Legislative Fiscal Impact Assessment are hereby made a part of these minutes (EXHIBIT E). Senate Co\_ on Labor Ma, 13, 1991 - Pflge 4

323 CHAIR KERANS: We will view a video that is on loan to the committee as an introduction to SB 860 and will then hear the witnesses.

334 The video tape shows the hazards of burning plastics and other materials to firefighters while fighting fires.

TAPE 104, SIDE A

001 The video tape continues.

CHAIR KERANS temporarily leaves the meeting and Senator Hill assumes Chair.

031 FLOYD PITTARD, Tualatin Valley Fire and Rescue, representing the Oregon Fire Chiefs Association and the Oregon Fire District Directors Association: I want the committee to understand that we strongly support the protection of our firefighters. We have made a lot of gains over the years, but the opportunity for exposure to carcinogens is much more than for the average person. We urge passage of the measure.

053 CHAIR HILL: Have you seen an increase in the incidence of cancer?

055 CHIEF PITTARD: We have had three cases in the past year of younger people who are suffering from cancer?

065 CHAIR HILL: In 1985 we passed a requirement that businesses tell of hazardous substances on site in an effort to allow emergency response workers to be aware of those hazards. Is that system useful in helping deal with the substances in a fire? 068 CHIEF PITTARD: Yes, it is an important part of the system. 091 PAT WEST, Oregon State Fire Fighters, submits and summarizes a prepared statement in support of SB 860 (EXHIBIT F). 119 BILL KNOX, Captain, Portland Fire Department: I am not testifying for the Portland Firefighters Association. For approximately the last six years I have been an officer on the Haz Mat Response Team which deals with chemical spills, releases, etc. We also deal with the unknown drug labs. Many of the things we come in contact with in these situations aren't put there by people who are following the law. There is no way to prepare for the unknown. Approximately seven years ago I was diagnosed as having hodgkin disease. I went through treatment for approximately a year, was in remission for three years and it occurred again. I went through treatment again and have been in remission for about two years. When I was first diagnosed I checked around to see what I might have been exposed to, but found there was a hodge-podge of what may have happened to me at different times. I did

find there were records in my Haz-Mat experiences where I was exposed to possible or probable carcinogens. I talked to an attorney about it and because it is not presumptive, the burden of proof comes down on me. It is a catch 22 situation because it is very difficult to prove beyond any reasonable doubt that the cancer is the result of a particular exposure. Senate Committee on Labor May 13, 1991 - Page 5

One of the reasons I support this bill is it shifts the burden of proof more equally between the employee and management. I believe it would provide an incentive for both sides to do all they can toward preventive aspects of using protective gear and providing the protective gear.

175 SENATOR KINTIGH: Do you wear protective gear or clothing in these types of situations?

177 MR. KNOX: We wear air packs which look like scuba tanks. We can be in an unexpected situation where we get exposed. We do have special clothes but they are not water proof, gas proof and do not necessarily keep powders from getting in.

220 JOHN SEIFERT, Portland fireman: My father was also a Portland fireman. In 1960 he was diagnosed as having inoperable colon cancer after having been a fireman for eight years. When he passed away, the employees had to have been in the Portland Fire Department 20 years in order to be vested for pension benefits, etc. My mother received nothing except the City's payoff on the life insurance policy. That put a burden on the family. Firemen do wear all the protective gear but still the skin is sometimes exposed and there is absorption through the skin of different chemicals that can harm the fireman. We have a cloth type of turnouts instead of rubber ones and they also absorb things that are not good. At this time we do not have a regular cleaning policy, but we are thinking about instituting something like that. I think this bill would make both sides try as hard as they can to eliminate the exposure. Management would provide the best possible protective equipment and it would be up to the individual firefighter to wear it. We do have mandatory rules that firefighters wear the self contained breathing apparatus at all times, even at exterior fire fighting. LARRY STUCK, a firefighter speaking for himself and family: I have been a firefighter with the City of Portland for 13 years. My father was a firefighter for 22 years for the City of Portland. In 1969 he found he had contracted colon cancer. My father and John's father came out of the same engine house. Three other people from that engine house have also died due to cancer. The doctor who treated and operated on my father stated that was an occupational hazard, probably job related. But in 1969, as in 1991, cancer comes with the job. After 22 years of service with the Portland Fire Bureau, \$180 a month from his pension was not a lot. I think most firefighters in the state agree that SB 860 is overdue and something like this needs to be put into law. 342 RAIMEY STROUD, Chief Deputy, Office of State Fire Marshall, submits a prepared statement in support of SB 860 (EXHIBIT G). I am also an adjunct member of the National Fire Academy, and a national teacher of a course called "Firefighters Safety and Survival." During the course of the training session, we have a segment on protecting ones self from cancer because firefighters have a 200 -300 percent higher overall chance of coming down with cancer than does the average citizen. On a national basis, a firefighters life span is approximately 10 years less than the average citizen. One of the reasons for this is the occupational exposures that firefighters experience during the ordinary course of their assignments. Senate Committee on Labor May 13,1991- Page 6

This bill takes into consideration the nature of those exposures and does not create a new right for firefighters in the sense of paying for something they do not currently have the ability to enjoy. Rather, it shifts the burden of proof to the employer who is the entity responsible for providing the safety equipment and standards and for helping the firefighters to be able to protect themselves during the course of assigned activities. The State Fire Marshal is strongly in favor of this because it will protect not only the paid firefighters, but also will be of great benefit to volunteer firefighters throughout the state.

385 At the Chair's pleasure, I can provide documentation from the National Fire Academy to support my testimony.

387 CHAIR KERANS: That would be most helpful. I am reading a letter from my own city (City of Eugene) telling me there is no relationship and there is nothing on which to form a basis of the relationship (EXHIBIT H).

A letter received from the City of Portland in opposition to SB 860 is hereby made a part of these minutes (EXHIBIT 1).

449 CHAIR KERANS closes the hearing on SB 860 and opens the public hearing on SB 539.

TAPE 103, SIDE B SB 539 - INCREASES VALUE OF "UNSCHEDULED" DISABILITY BENEFIT DEGREE UNDER WORKERS' COMPENSATION LAW - PUBLIC HEARING

WITNESSES: Chris Moore, Oregon Workers' Compensation Attorneys Mike Manley, Research Team Supervisor, Information Management Division, Department of Insurance and Finance Robert "R.C.A." MOORE, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys Larry Young, Deputy Administrator, Workers' Compensation Division, Department of Insurance and Finance Marilyn Garber, injured worker, Eugene Bob Lewis, injured worker, Eugene Diane Rosenbaum, Oregon State Industrial Union Council The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT J). CHRIS MOORE, Oregon Workers' Compensation Attorneys, submits and paraphrases a prepared statement in support of SB 539 (EXHIBIT K)

133 CHAIR KERANS: The Legislative Fiscal Impact estimates the cost at between 47 and 52 million dollars (EXHIBIT J). 145 MR. MOORE: I am curious as to how I lose figures were arrived at. We are seeing some awards of permanent disability dropping off for certain classes of workers as a consequence of SB 1197.

These minutes contain serials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact word. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor May 13, 1991 - Page 7

168 SENATOR HILL: How many cases end up with scheduled awards versus unscheduled awards? 175 MIKE MANLEY, Research Team Supervisor, Information Management Division, Department of Insurance and Finance: Roughly, unscheduled disability makes up about 60% of the cases and 40 percent are scheduled awards. SENATOR HILL: What is the difference between scheduled and unscheduled for severe injuries?

190 MR. MANLEY: There are so many ways to measure severity that it is all in how you frame the question.

193 SENATOR HILL: We substantially increased the payment per degree for scheduled and if the scheduled make up 40 percent and they are inclusive of a number of serious injuries, we should have seen a substantial fiscal impact increase. So far the results of the workers' comp reforms of last year have been to decrease costs, apparently, by decreasing the number of awards granted. I think that was the strategy of the proponents of the legislation. On the other hand we have a fiscal impact that says if we have a corresponding increase in value per degree for the 60 percent unscheduled we will see a massive fiscal impact, which indicates there is substantially more high value injuries in the unscheduled portion than in the scheduled portion. Do you disagree with my surmise? 207 MR. MANLEY: If you simply look at the number of degrees of disability granted, there is perhaps a two and one-half to one ratio between an unscheduled and a scheduled. 210 SENATOR HILL: So unscheduled injuries tend to be more severe on the average as measured by degrees. CHAIR KERANS: Is there more than one way to get there? 241 MR. MOORE: A bill that will be heard tomorrow night is a wonderful idea. The only quarrel I have with it is tying it to the average weekly wage. In reference to the 47 to 52 million dollar increase in the Fiscal Impact Statement -- we can draw a circle around the cost of disability. We are talking about moving the line around. We are not increasing the cost of disability. If we don't move the line, it is still going to cost some people of this state 47 to 52 million dollars. Those people will be those who are injured and aren't compensated at that rate. That is the point I was trying to make before. 288 Robert "R.C.A." MOORE, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys: I have brought two of my clients, Marilyn Garber and Bob Lewis. They both are injured and cannot go back to the job they had before. Mr. Lewis has been particularly harmed by one of the out falls of the Special Session. He is not going to be compensated for his inability to work any longer. Ms. Garber will be able to go back to school. 307 BOB LEWIS, a 65 year old injured worker: I was working as a log truck driver making approximately \$31,000 a year and due to injury to my neck and back I am not able to go back - 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. - Senate Committee on Labor . May 13, 1991 - e 8

to earning that kind of money. My attorney tells me the most I can get out of my injury is around \$32,000. I don't feel that is fair. I have been healthy and felt like working until I had to quit. My company has offered me a job as security guard, a minimum wage job. I feel I could have earned a lot more. I have tried the outside work force and due to my condition I can't earn the kind of money I was earning before. As a concerned citizen, I feel it is very unfair that I would be put into the category that I am in. The accident wasn't due to my carelessness and I have no way of saving money I would have earned and I can't afford to retire. I think the system should make some change to help a person in my situation.

359 MARILYN GARBER, an injured worker from Eugene: I was a delivery driver for 12 years. At the time I was injured I fractured my back. I was making \$15 an hour, had always been a rather physical person and earned my money in that capacity. My doctor says I can't do that type of job or anything that would require me to lift more than 20 pounds or stand or sit for a certain amount of time. I am pretty limited in what I can do.

In talking to counselors, with the restrictions I have and the job markets, I am looking at \$7 an hour if I don't totally reeducate myself. Coming down from what I was making to what I could make now is quite an impact to my lifestyle. We were a two-car family and are now down to one car. We don't have the ability to save as we used to and there are a lot of things that we did do that we don't do now.

I was surprised and shocked when I found out that the scheduled disability I was entitled to was about \$5,400 which doesn't begin to make up for the fact that I can no longer do what I did before. There will be either a great cost in education so I can get my salary back up or I am going to have to work for \$7 an hour. I wanted to let you know a very real discrepancy happens.

TAPE 104, SIDE B

088 DIANE ROSENBAUM, Oregon State Industrial Union Council: Many of the points I wanted to make have been made. We are here to express support for the concept, if not all the details in terms of monetary amounts and schedules of increase represented in SB 539. It seems the disparity between the amounts awarded for scheduled and unscheduled disability are really one of the most blatant inequities that happened as a result of SB 1197 in the Special Session.

I think, and what I often heard said before passage of the package, that scheduled injuries were supposedly the most serious kinds of injuries that workers sustain and therefore what we were doing by more than doubling the amount per degree for those injuries was really putting the money toward the more seriously injured workers. I think the testimony the committee has heard is that definitely is not the case, but I think it is an historical misconception that we have to educate people about. There is the idea that somehow an amputation or something that is visible is the most serious injury. The reality in the contemporary work place is 55 percent of all injuries are soft tissue, cumulative trauma types of injuries, many of which are the unscheduled cases.

I think the testimony from the department today indicates their assessment that the unscheduled cases are very often the most serious in terms of the degrees that are associated with them.

136 There was a provision enacted in 1987 which said that any savings that were realized because of Senate C\_ o. L~SB or May 13, 1991- Page 9

the standards which were supposed to make it easier and a more objective process of rating unscheduled disabilities should be funneled toward a raise in benefits for unscheduled disabilities. That was in 1987, the standards went into effect in July 1988 and we are setting here today having not yet realized those savings and having not seen that increased. I have heard that the department is anticipating there will some savings and perhaps those amounts can be used to offset some of the fiscal impact of this bill. Clearly, when the law changed in 1987 there was an anticipation of a need and a mechanism for increasing unscheduled benefits. It simply hasn't happened and I would feel more comfortable if the Legislature caused it to happen instead of waiting for the administrative process to find the money. ' 159 CHAIR KERANS: Is there another way to move in this direction over time and take this decision making out of the hands of the Legislature?

165 MS. ROSENBAUM: Yes, I think the other bill is a good way of doing

that. I think it preserves the same gap that exists now and that needs to be narrowed and the only way to do that is by adjusting the formulas at the outset. I have no problem with having the increase happen in increments and have it happen in a way that is indexed to the cost of living.

174 KARL FREDERICK, Associated Oregon Industries: I would like to speak in opposition to SB 539 for two basic reasons. One is the fiscal impact. We are starting to reduce the overall costs of workers' compensation by virtue of SB 1197. We are only nine to ten months into experience and we would like to give it a chance to work before talking about significant changes. Secondly, it is our understanding that the Management/Labor Advisory Committee studied this measure and recommended against supporting it. In a letter to Senator Kerans, the committee chair and Cecil Tibbits of AFSCME indicated, "The committee received information from the department that the fiscal impact of this bill would be between 47 and 52 million dollars and this fiscal impact will raise the workers' compensation premium rates. The committee cannot support a bill that has a fiscal impact of this dimension on the system, including the probability that workers' compensation premium rates will rise." We echo our support of their evaluation of the bill.

198 We personally like the approach in SB 732 and want to look carefully at it. I understand the Management/Labor Advisory Committee is also looking at it as a possible way of eliminating these types of arguments every two years.

207 CHAIR KERANS: I would like to know what basis was used to make the calculation.

212 LARRY YOUNG, Deputy Administrator, Workers' Compensation Division, Department of Insurance and Finance: The purpose of testifying today was to advise the committee on the fiscal impact on the workers' compensation system (EXHIBIT L).

224 CHAIR KERANS: What was the total premium paid a year ago versus where we are now?

229 MIKE MANLEY, Information Management Division, Department of Insurance and Finance: We don't know what premium is being paid right now. We project statewide the premium will decline slightly, a few percent in 1991. This is in the face of continuing economic growth in the state, job growth, payroll growth, etc. The premium base is rising which tends to offset the rates declining. In that sense, the premium is roughly flat. So, the premium is roughly flat. Senate Committee on Labor  
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241 SENATOR SHOEMAKER: Is the 47 to 52 million dollars an annual figure? 244 MR. YOUNG: Yes. 247 SENATOR HILL: How much was SB 1197 supposed to save in pure premium? 252 CHAIR KERANS: We will ask Committee Counsel to find out what the savings were supposed to be. 254 SENATOR HILL: Pure premium alone doesn't tell the story. It is pure premium plus discounts. 257 MR. MANLEY: It would have a load factor which would increase it. So it would be pure premium plus 25 to 30 percent. 266 SENATOR HILL: What is the net premium? 266 MR. MANLEY: It is in the range of \$30 million a year. 292 CHAIR KERANS: How do we arrive at the 47 to 52 million? 293 MR. MANLEY: We used a base year and diminished it somewhat for a guesstimate as to what the effects of SB 1197 would be, then multiplied it by 110 percent. 325 CHAIR KERANS: Do you have comparable data from other states? 325 MR. MANLEY: There is



the Annual Chamber of Commerce report. 332 CHAIR KERANS: We would appreciate receiving a copy of the data. 342 CHAIR KERANS declares the meeting adjourned at 5:05 p.m. Transcribed and Reviewed by: Annetta Mullins Annette Talbott Assistant Committee Counsel

EXHIBIT SUMMARY: A - SB 18, Legislative Fiscal Analysis, staff B - SB 18, prepared statement, Diane Rosenbaum C - Workers' Compensation Overview, Larry Young D - Workers' Compensation Board Overview, Lyn-Marie Crider E - SB 860, Preliminary Staff Measure Summary, staff F - SB 860, prepared statement, Pat West . Senate Committee on Labor May 13,1991- Page 11 G - SB 860, prepared statement, Ramey Stroud H - SB 860, letter from City of Eugene I - SB 860, letter from City of Portland J - SB 539, Legislative Fiscal Analysis, staff K - SB 539, prepared statement, Chris Moore L - SB 539, prepared statement, Larry Young ~