

SENATE COMMITTEE ON LABOR

May 14, 1991 Hearing Room 50 6:00 p.m. Tapes 105-108
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 551 PH & WS SB 656 WS SB
640 PH SB 543 PH SB 733 PH SB 732 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 105, SIDE A

004 CHAIR KERANS calls the meeting to order at 6:18 p.m. and opens the public hearing on SB 551 for the purpose of allowing Rep. Hosticka to testify.

(See also Tape 107, Side A at 175 and page 11 Of these minutes.) SB 551 - REQUIRES DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE TO EXCLUDE FROM APPLICATION OF MEDICAL FEE SCHEDULES AND HOSPITAL SERVICES THOSE SERVICES PERFORMED BY CERTIFIED MANAGED CARE ORGANIZATIONS - PUBLIC HEARING Witnesses: Rep. Carl Hosticka 005 REPRESENTATIVE CARL HOSTICKA: My testimony will be much the same as that offered by Senator Hill (SEE EXHIBIT N OF THESE MINUTES). I think we are both motivated by the desire to see managed care organizations have a chance to get started and have some experience before they are heavily regulated by the Department of Insurance and Finance. I think it is necessary and would urge the committee to go forward with legislation on this issue. The last time I talked about this issue was in front of the Department of Insurance and Finance Senate Committee on Labor May 14, 1991 - P - e 2

administrative rules hearing giving essentially the same testimony Sen. Hill gives in his testimony. They did what they wanted anyway. I believe it is necessary for the Legislature to act on this to assure managed care organizations HAVE the opportunity to have some experience and then determine whether they need to be regulated. I support changing the "may" to "shall" in terms of excluding managed care organizations from the fee schedules. 032 CHAIR KERANS closes the public hearing on SB 551 and opens the work session on SB 656.

(Tape 105, Side A) SB 65C - INCREASES BENEFITS FOR SPECIFIED MEMBERS OF PUBLIC EMPLOYEES' RETIREMENT SYSTEM. - WORK SESSION

Witnesses: Sheryl Wilson, Director, PERS Marge Kafoury, City of Portland Dave Smith, City of Portland Pat West, Oregon State Fire Fighters Council 034 CHAIR KERANS: Staff has prepared a measure summary on the SB 656-8 amendments giving an overview of what is proposed by the Chair. The summary of and SB 656-8 amendments are hereby made a part of these minutes (EXHIBIT A). The committee also has other amendments which were submitted as proposals which apparently did not create a consensus. Option No. 1 (SEE COMMITTEE MINUTES DATED MAY 8, 1991) was an earlier option. Option No. 2 is related to the SB 656-8 amendments. 052 ANNETTE TALBOTT, Committee Counsel: The SB 656-8 amendments provide a 9.89 percent increase for current retirees of the PERS system,

for judges in the retirement system and for anyone who retires on or before July 1, 1993. Thereafter, any person who retires based on their years of service at that time would receive an increase in their monthly benefit amount pursuant to the schedule as set out in the Staff Measure Summary (EXHIBIT A). In Sections 1 and 2 it talks about Section 2 (4) (a) and (b) depending on whether the persons is a general service employee or a police and fire member of PERS. The -8 amendments also include a proposal, Section 11, which says that the non-PERS police and fire systems currently would have to provide their active and retired members equivalent increases as suggested for the PERS active and retired employees. In addition, Section 12 provides that the increase in benefits under the act shall not be paid in any tax year in which the retirement benefits payable under PERS are exempt. It makes clear that a person would not receive both the tax exemption and the benefit. Section 13 talks specifically about current retirees receiving a check as of December 1, 1991 to add back the 9.89 monthly amount back to January 1, 1991. 083 CHAIR KERANS: It is the Chair's intention to move the amendments and provide a basis for the beginning of discussion between the House and Senate on this bill and HB 2352. Section 12 ussion between the House and Senate on this bill and HB 2352. Section 12 is in the bill so if it gets referred and is defeated or doesn't pass, their fate is joined and to come is in the bill so if it gets referred and is defeated or doesn't pass, their fate is joined and to come to a conclusion between the two houses of the Legislature. Senate Committee on Labor May 14, 1991 Page 3

The opening proposal is a bifurcation of the classes so those who are retired are made whole, those who retire through June 30, 1993 are made whole in relationship to any tax measure that is passed, provides for a benefit based on service to those who are active employees and takes up the schedule after July 1, 1993. The schedule becomes a consideration in the next biennium. This seems to be the best of all alternatives that have been advanced to give certainty to those who are retired and to those who wish to retire and are within the window and want to make a decision based upon the benefits that would accrue to them. They could do so with certainty during the biennium. It also provides in the next biennium the ability for the state and taxing districts to prepare and budget for the expected impact which will occur to the employer contribution rate as a result of adoption of the schedule in the following biennium.

132 SHERYL WILSON, Director, Public Employees Retirement System: Our actuary has prepared numerous cost impacts for the various proposals that have been before the committee on this issue. We do not have specific numbers on this proposal, but we can get to a close approximation based on what we have done already on the different proposals.

169 CHAIR KERANS: The combination of the \$19 million plus the schedule reaches a total of \$59 million. MS. WILSON: That is correct.

172 CHAIR KERANS: We have to add to the \$56.1 million the \$2.9 million.

176 MS. WILSON: The Chair has asked the question as to when these costs would be felt by the various employers. Every two years on the odd numbered year we do an actuarial evaluation as of December 31. The actuary will fool: at the information-how the benefits have changed and what the liability is for the increased benefit . Probably in late summer or early fall of 1992, the actuary will deliver to the PERS board his findings. It is up to the board to declare the rate.

The actuary will calculate what the rate should have been on January 1992 based on the snap shot taken on December 31, 1991. The PERS board has never gone backwards to establish a retroactive increase or decrease. In times of both increase and decrease, there has been a tendency on the part of the board to smooth it-to push forward. For example, the 12/31/87 evaluation required a fairly significant employer contribution rate increase. That was postponed in application to January 1, 1991 and January 1, 1992. By the time the 1989 evaluation data was available, it was found that those increases were not necessary. The rate was smoothed. That is what you have seen in the budget process. You are seeing the 1990 rate frozen at that level through 1991 and the first half of 1992 with a projected decrease occurring on July 1, 1992.

213 The December 31, 1991 valuation data will not be available prior to the time the rate decrease for July 1992 has already been scheduled to happen. The board does have the authority to alter that if they see fit. Typically they would probably not do that. They would probably wait for the actuary's valuation and then tend to smooth that increase that would be required by the enactment of something like this. The earliest it would be felt would be July 1, 1993. 255 CHAIR KERANS: If we were to do this, we would know 1) that the employer rate change due in July 1, 1992 would be adjusted downward, 2) based on the actuarial report which will come after labor day of 1992, the board will make a decision about how to implement the necessary -

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employer contribution rate changes beginning no earlier than July 1993, and 3) that they will be moderated by other actions and it is the board's posture to not give a 100-percent-downandnothing-later approach.

298 SEN. KINTIGH: Why are school districts higher than state agencies and local employers? 300 MS. WILSON: Each of the three employer groupings are rated by their own experience. There are several factors--longer careers, higher salaries. The fact there are early retirement initiatives at the local level affects what I call member behavior and sometimes urges those folks to retire earlier than their counterparts in general service in state government, for example.

320 SENATOR SHOEMAKER: Let's explore the rate schedule for Option 2 against the rate schedule for Option 5. I have heard some discussion that maybe the rate schedule on Option 5 with the \$7,500 exclusion is fiscally more realistic than Option 2. I would like some comments on that and also how close does Option 5 come to evening the scales? 333 MS. WILSON: We have done some penciling in the same way we have estimated on the options before the committee. It appears the bottom line costs of Option 5 would be approximately \$49 million per year. That is the result of assuming an exclusion of a larger amount of retirement income. That relates fundamentally to the scheduled increase for actives. If I understand Option 5 correctly, you are still giving the 9.89 over the same time frame. 347 SENATOR SHOEMAKER: Yes. So you go to \$49 million instead of \$46.1 million because of the 1993 date. So we are in it \$10 million less annually. 356MS. WILSON: Yes. That is in today's dollars. 357 SENATOR SHOEMAKER: How does that all relate? 360 MS. WILSON: It is a difficult question. I will address it briefly but will qualify my statements by saying that taxation is not my field. I can tell you what the numbers are based on. They are both exclusions. It is impossible according to the actuary, because of the individual

differences that are envisioned in a credit methodology, to cost one that will dovetail perfectly with the credit methodology. We are assuming the first \$7,500 is not taxed. 382 CHAIR KERANS: The reason the Chair will make the motion on the -8 which includes the \$5,000 is that it is an opening bid in what is going to be a process which may end up in a conference committee. Then the tax bill would then be able to fly on its own. Both have the same effective date. It is best, in my opinion, to start high. We are going to vote on this more than once.

406 SENATOR SHOEMAKER: How close do these options come to making the retirees whole? 407 MS. WILSON: The benefit for the retirees, as we understand the calculation, would make all of those to whom it applies, whole and probably in the case of some of the lower paid retirees, then some. It might make them more than whole.

These minutes contain - in materials which paraphrase and/or summarize statements made during the 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 14, 1991- Page 5

414 SENATOR SHOEMAKER: That is the 9.89. How does the schedule work out? 417 MS. WILSON: The schedule was calculated based on average benefits paid under the PERS system for calendar year 1990. Since you are using an average salary figure, you can assume some people are going to get a little more than they need and some not quite enough. That statement is compounded by our lack of resolution of the tax side of the equation. It is an impossible question to answer in total.

431 SENATOR SHOEMAKER: But each is calculated to be at the mean for each of the years of service and the difference is that one is a \$5,000 exclusion and a higher percentage and the other is a higher exclusion and a lower percentage. 431 MS. WILSON: Precisely. We applied today's tax rates to the balance of income after subtracting the exclusion.

437 SENATOR SHOEMAKER: If each is at the mean of each level of service, why does one cost \$10 million a year more than the other?

443 MS. WILSON: Because one excludes more income and therefore leaves less income on the table to be taxed.

TAPE 106, SIDE A

028 SEN. KINTIGH: Do the local governments and school districts pick up the whole tab on this increase, or will the state help them in some way?

029 CHAIR KERANS: That is why it is the Chair's desire to put the implementation of the schedule into the following biennium providing a period of two years in order to possibly reconsider it in the 1993 Session.

078 CHAIR KERANS: We can provide the benefits for retirees in 1991, tax that benefit, collect it beginning April 15, 1992. The employers will still get their decrease in rates July 1, 1992. The board will then make a calculation of what will happen the following year. We have pushed out in the future the obligations of the trust fund, local governments and state government and it gives us a time to work the case and budget for the actual return to where we are now. Or in the best case, the Ways and Means Committee and the Revenue Committee could make some recognition of this permanent adjustment to the employers' contribution rate. 098 SEN. KINTIGH: I would like to be on record that I feel the increased income tax should be shared with the locals.

107 SEN. HILL: I think we need to mitigate the impact on local districts in light of Ballot Measure 5. 114 MOTION: CHAIR KERANS

moves that the SB 656-8 amendments BE ADOPTED.

THE MOTION DIES.

These minutes contain serials which paraphrase and/or summarize the discussion. Only text enclosed in quotation marks report the speaker's exact words. For complete contents of the proceedings, please refer to the taper. - Senate Committee on Labor May 14, 1991- P - e 6

116 CHAIR KERANS: We have in Sections 10 and 11 an amendment which was not included in our earlier hearing. I would ask Marge Kafoury to testify to the amendments found in those sections.

126 MARGE KAFOURY, City of Portland, introduces David Smith, Treasurer, City of Portland and submits a statement explaining the two retirement systems of the City of Portland (EXHIBIT B). >Portland took a \$14 non-school combined levy rate and compressed it to \$10. By some mathematical calculations we dropped some of our serial levies off next year's levy in order to not have them compete with the regular property tax levying amount. The \$2.55 was, in effect, an over levy in order to generate enough money to satisfy the needs of the plan. Without Measure 5, we would have probably levied around \$2.20. > Section 11 would extend benefits to both retired PF & PDR covered employees and to actives. We have a new plan in our Charter which was adopted by the voters in 1990 that is a substantial improvement over the plan we had in the past. We would argue that it is unfair and very expensive to extend increased benefits to actives who are already covered under a plan superior to PERS. Extending increased benefits to our already retired people will cost us an immediate \$2.5 million. It would have to go on the property tax levy somehow and if we couldn't generate enough money to satisfy that we would have to reach back into our General Fund which would mean we would have to cut services.

218 SENATOR SHOEMAKER: Are the non-PERS police and fire people not subject to state income tax at this time?

220 KAFOURY: They have a tax free benefit at this time.

Issues discussed: >How the "equal-to-or-better-than" requirements affects City of Portland active and retired employees.

301 SENATOR SHOEMAKER: So everyone knows where I am right now on this, we ought to extend Section 11 to those who retired prior to January 1, 1990 but not extend it to those subsequent to that or the actives because they have a present contract right which should protect them. I will be interested to hear from the police and fire people.

320 CHAIR KERANS: For those who retired under the old separate retirement system, you don't have to reach back and do anything for those folks in the event their benefits are taxed. Is that correct?

325 MS. KAFOURY: I believe that is correct.

326 CHAIR KERANS: The council may, but it is not required by law, by contract have to reopen the contract if it fails to meet a standard contained in the contract. Is that not correct?

333 DAVE SMITH & MS. KAFOURY: That is true.

345 CHAIR KERANS: In addition, you are not the only

equal-to-or-better-than class. Most of them don't have the same situation. Absent any other change by statute here, what we would do with

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the passage of this bill and with the passage of HB 2352 would be to require only the retired fire fighters and police to pay the full load without any add-back by statute.

366 MR. SMITH: That gets into the argument whether or not we have a contractual obligation.

369 CHAIR KERANS: I am just asking you, absent any state statute, if the only ones who are going to pay the tax would be those equal-to-or-better-than retirees under P&F. There are a couple of smaller districts, but I am not counting those. Am I correct?

378 MR. SMITH: Yes. 388 MS. KAFOURY: The difficulty is each plan has to meet a standard with PERS-"equal to or greater than." Some may be found to be 100 percent of PERS, some may be greater than. Our plan, as determined by PERS, is at least 124 percent of PERS now. It's difficult to say that a fire fighter or police officer who retires under our new plan is going to be worse off than somebody who retires under PERS.

406 SENATOR HILL: I think there are several cities in the same situation. Portland is not the only one and I think one is the City of Springfield.

410 MS. KAFOURY: I think there are at least 13 other non-PERS plans in the state.

415 CHAIR KERANS: We will find out. TAPE 105, SIDE B

003 PAT WEST, Oregon State Fire Fighters Council: >Reads from a letter, a legal opinion on the contractual obligation, which he had earlier distributed to the Senators offices (Copy not available). >The contractual argument is as strong for the PERS-exempt fire and police as it is for the PERS employees. >People retired under the old Portland plan are still covered by the equal-to-or-better-than section of the law.

040 SENATOR SHOEMAKER: The contract you have with the City, says "equal to or better than." If the Legislature gives additional benefits to the PERS people, then the City of Portland has an obligation to you to see that your plan is still equal to or better than that now enhanced PERS plan. Is that right?

050 MR. WEST: When the evaluation is done, the plan would have to be brought up equal to or better than.

052 Discussion continues on subject of the equal-to-or-better-than provision.

103 CHAIR KERANS: I suggest we take a look at some way of recognizing the special circumstances. I will think about that.

109 Additional issues discussed: - Senate Committee on Labor May 14, 1991 Page 8

> History of retirement systems. > Fairness of providing additional benefits to cover the tax. > Appropriateness of dual systems and allowing employees to convert from city plans to PERS individually.

330 CHAIR KERANS: The committee is left with a choice and I would like to poll the committee to see if their wishes are to act on the measure or hold it over to another agenda.

386 SENATOR SHOEMAKER: Section 12 ties this in with the tax increase. Can we not only impose this on the city, can we also cause it to be taken away?

398 MS. TALBOTT: Yes, one of the suggestions of Legislative Counsel is that the committee would be wise to divide Section (12) into several subsections in case there were ever a decision where the exemption was going to be applied differently to either PERS or the judges's retirement system or to the non-PERS P&F system. The self-destruct clause would separate it into difference subsections under Section 12. It is easy to do.

TAPE 106, SIDE B

004 SENATOR HILL: I don't want to take the section out of the amendment that addresses the equity for fire fighters and police persons under the other plans. At the same time I am reluctant to support a measure that doesn't have a solution provided for the cities that are hit with the additional costs this biennium.

015 CHAIR KERANS, concluding the consensus of the committee is to hold the bill over to another agenda, closes the work session on SB 656 and announces the committee will consider the bill on Thursday at 6:00 p.m. A prepared joint statement submitted by League of Oregon Cities and Association of Oregon Counties is hereby made a part of these minutes (EXHIBIT C). 042CHAIR KERANS opens the public hearing on SB 640.

(Tape 106, Side B) SB 640 - AUTHORIZES REPRESENTATION OF EMPLOYERS IN WORKERS' COMPENSATION PROCEEDINGS BY INDIVIDUALS WHO ARE NOT ATTORNEYS - PUBLIC HEARING

Witnesses: Ross Dwinell, Oregon Self-Insurers Association Mark Davidson, Oregon Self-Insurers Association Lynn Marie Crider, Chair, Workers' Compensation Board Robert "R.C.A." Moore, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys Chris Moore, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys

The Legislative Fiscal Analysis on SB 640 is hereby made a part of these minutes (EXHIBIT D). . . These elinutes contain materials which paraphrase and/or surnmanze etaternenb made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contorts of the proceed 'gs, please refer to the tapes. Senate Committee on Labor May 14, 1991 - Page 9

047 ROSS DWINELL, Oregon Self-Insurers Association, submits and summarizes a prepared statement and graphs showing legal costs and potential savings under SB 640 (EXHIBIT E).

092 MARK DAVIDSON, Loss Control Claims Manager, Safeway Stores, representing Oregon SelfInsurers Association: I have been actively involved with workers' compensation litigation since we became

self-insured in 1977. I stand in support of Mr. Dwinell's testimony. If you do hear testimony in opposition to this bill, I think you need to take into consideration the following fact. I have found our employees encouraged by their representatives to seek legal representation because they are faced with a "high powered corporate attorney" representing the employer in the proceeding. I support Mr. Dwinell's statement that the adversarial situation in a workers' compensation can be taken to its minimum by allowing the employer and the employee to negotiate claim settlement or resolution or representation at the hearing level. Many of our claims are settled on the steps of the courthouse. In normal business practice we are obligated with our defense bar to present these cases to them in a timely manner. It can be weeks or perhaps months to give them time to can plan their case load. For these reasons, we support the bill.

120 LYNN MARIE CRIDER, Chair, Workers' Compensation Board: > Board has not taken a position on the bill. > There are certain proceedings before the Hearings Division of the Workers' Compensation Board in which employers are now allowed to be represented by non-lawyers. Those cases involve OR-OSHA orders. Chapter 654 permits employers to be represented by any representative of their own choosing. > This bill would not only allow self-insured employers to self-represent, it would also allow non-complying employers to be represented by non-lawyers. It may not be in their interest to come before the board without an attorney.

143 Issues discussed: ~ Experience of board in OR-OSHA proceedings. > The hearings tend to take longer because of trying to explain the processes to them, plus the referee has to have a complete record, so it may tend to leave the impression that the referee has taken sides during the proceeding.

206 ROBERT "R.C.A." MOORE, Oregon Trial Lawyers Association and the Oregon Workers' Compensation Attorneys: I have invited Mr. Chris Moore to speak to the issue of SB 640.

209 CHRIS MOORE, representing Oregon Workers' Compensation Attorneys: We are opposed to this bill. We have experience in dealing with non-attorney representation in workers' compensation claims in some of the work we do. >Problems we see with SB 640 include: Demeaning to the "system." Professionalism is jeopardized by this bill. Board's own motion process presents problems. Hearsay documents submitted because of the lack of understanding of the process. > Other concerns: The length of hearings will increase. The number of cases will go up. Out-of-court settlements will decrease.

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Unsure what smaller issues will go to hearing. Unreasonable conduct issues, unless they are attached to another issue, are going to the Department of Insurance and Finance. Extended disability questions are not small issues. Compensability cases are a night mare. I will make more money on cases where counsel is not opposing me. No litigation system works unless the vast majority of cases settle. It will be bad for the workers' compensation system as a whole. 317 CHAIR KERANS: Does the suggestion on the certification process help at all?

322 MR. MOORE: No. It don't think it will certify people to litigate

cases. There are still problems. A letter received from Christopher James, Chair, Unlawful Practice of Law Committee, Oregon State Bar, in opposition to SB 640 is hereby made a part of these minutes (EXHIBIT F).

349 CHAIR KERANS closes the public hearing on SB 640 and opens the public hearing on SB 543.

(Tape 106, Side B) SB 543 - ELIMINATES SPECIAL PROCEDURE FOR ASSESSMENT OF ADDITIONAL AMOUNTS OF WORKERS' COMPENSATION BENEFITS WHEN INSURER OR SELFINSURED EMPLOYER OR UNREASONABLY DELAYS OR REFUSES TO PAY BENEFITS OR TO ACCEPT OR DENY CLAIM - 'PUBLIC HEARING

Witnesses: Robert "R.C.A." Moore, Oregon Trial Lawyers Association and the Oregon Workers Compensation Attorneys David Hittle, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys Tom Mattis, Workers' Compensation Division, Department of Insurance and Finance

The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT G). 361ROBERT "R.C.A." MOORE, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys: This is an example of a bill written by a committee. David Hittle of Salem will speak on behalf of our associations. 370DAVID HITTLE, attorney, representing the Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys: Prior to SB 1197, Chapter 656.262 (10) provided that where a self-insured employer unreasonably delayed or unreasonably refused to pay compensation or unreasonably delayed acceptance or denial of a claim, the self-insured employer would be liable for a penalty up to 25 percent of the compensation due plus an attorney fee. SB 1197 took out the provision having to do with the attorney fee and said the jurisdiction over those issues having to do with penalties would be taken from the Hearings Division of the Workers' Compensation Board and be vested with the Workers' Compensation Division. It said where there was another issue pending before the Hearings Division, that the issue of the penalty would go to the Hearings Division as well. The purpose of our amendment (EXHIBIT H) is to change that so that when a penalty issue is

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litigated before the Hearings Division, an attorney fee could also be paid in addition to the penalty. We originally proposed to eliminate the provision that SB 1197 had made and reinvest the Hearings Division with all of the jurisdiction. However, we have amended that to agree that where there is an issue that is properly before the Hearings Division (it is a penalty issue tied with another issue) and the attorney prevails on the penalty issue, the attorney fee would be paid. However, if an attorney attempted to get before the Hearings Division by raising a nonmeritorious issue and the non-meritorious issue was determined against the attorney, it would go back to the division. The division would then decide the penalty issue.

TAPE 107, SIDE A

038 MR. HITTLE summarizes his testimony.

105 MR. MOORE: We took this to our advisory committee and they want to be sure that if the only issue is a penalty, it gets decided by the department. And if there is more than one issue, it will be decided by the Hearings Division. They have bought off on that and that is why the bill came in the shape it is in.

TOM MATTIS, Manager, Compliance Section, Workers' Compensation Division, Department of Insurance and Finance, submits and summarizes a prepared statement in opposition to SB 543 (EXHIBIT I).

163 CHAIR KERANS closes the public hearing on SB 543 and opens the public hearing on SB 551 .

(Tape 107, Side A) (See Also Tape 105, Side A at 005 and Page 1 of these minutes.) SB 551 - REQUIRES DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE TO EXCLUDE FROM APPLICATION OF MEDICAL FEE SCHEDULES AND HOSPITAL SERVICES THOSE SERVICES PERFORMED BY CERTIFIED MANAGED CARE ORGANIZATIONS - PUBLIC HEARING

Witnesses: Ken Rutledge, Oregon Association of Hospitals Eva Smekens, Oregon Association of Hospitals Patrick Devlin, Sacred Heart General Hospital Dave Fiskum, Sisters of Providence Health Plans in Oregon Larry Young, Workers' Compensation Division Jerry Manahan, Workers' Compensation Division Ed Patterson, Oregon Association of Hospitals

175 KEN RUTLEDGE, Oregon Association of Hospitals submits and summarizes a prepared statement in support of SB 551 (EXHIBIT J) and shows charts outlining current fee schedules for hospitals.

261 EVA SMEKENS, Director, Occupational Health Services, McKenzie Willamette Hospital and representing the Oregon Association of Hospitals, submits and summarizes a prepared statement in support of SB 551 (EXHIBIT K). 290 PATRICK DEVLIN, Director, Employers Services, Sacred Heart General Hospital, submits and summarizes a prepared statement in support of SB 551 (EXHIBIT L).

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DAVE FISKUM, Sisters of Providence Health Plans in Oregon: We are in support of this bill. My main purpose is to underline the comments made by the Association of Hospitals. We believe the imposition of the fee schedule does serve as a substantial disincentive to the formation of MCOs around the state. From the standpoint of our certified MCO, moving the fee schedule is important. It has been an impediment, roadblock, a question mark in our operation. Even if you don't take this action, we will attempt to keep operating anyway. We are committed to attempting to do so. The rub is others won't start. That is an important public policy issue that you face in making managed care effective statewide.

TAPE 108, SIDE A

021 MR. FISKUM: I would like to make one suggested change on page 2, Section 12, line 9, as suggested by legal counsel by adding "hospital participation in any" before the word "managed." 033 CHAIR KERANS: If we do this, would it be a license for a hospital to turn around and use their hospital fee exemption rates to serve employers not contracting

for MCO services? Mr. Young will testify that under the proposed language the MCO could apply the hospital fee exemption rates to employers and insurers who do not have contract with them which would result in increased medical costs to those insurers and employers.

042 MR. FISKUM: That provides an incentive. If you exempt the employer from the fee schedule even though the managed care exemption exists, which way are they going to go? If they are going to get a higher fee for being in the managed care organization, I don't see an incentive for going into it. I think you have to have the fees the same so when we go into a managed care organization, there is some negotiating position and you are able to cover the cost of being able to put up with five pages on how to administer a managed care organization.

055 SENATOR SHOEMAKER: The additional language would limit this to hospitals, does that mean that the fee schedules could still apply to doctors participating in a managed care organization? 058 MR. FISKUM: I'm not sure. I wouldn't want that.

065 SENATOR SHOEMAKER: It says the director "shall" exclude from the application of medical fee schedules and hospital services"...those services performed by an MCO. What is the reference to "and hospital services?" 073 MR. FISKUM: We are talking about an exemption on medical fees and fee schedules applied to hospital services. In effect, that is what the language of the statute indicated-that the director may exempt from the fee schedule hospital services. The only thing we are suggesting is that should be a requirement, not an option.

080 SENATOR SHOEMAKER: Then you think the medical fee schedules that they apply relate only to hospital services and they do not relate to non-hospital services provided within an MCO.

085 MR. FISKUM: The fee schedule is applicable to in-patient hospital services.

089 MS. SMEKENS: There are separate fee schedules for in-patient and out-patient services. It is Senate Committee on Labor Miy 14,1991- Page 13

my understanding that SB 551 refers only to the hospital in-patient fee schedule. 122 SENATOR HILL: In looking at Section 12 of SB 1197 and the existing language in the section we are proposing to amend, it appears the reference is to medical service fees and hospital service fees. 127 LARRY D. YOUNG, Deputy Administrator, Workers' Compensation Division, Department of Insurance and Finance submits a prepared statement in opposition to SB 551 (EXHIBIT M). I believe the medical service fees are services provided by the medical service providers; the hospital services are separate fees. Mr. Young summarizes his prepared statement (EXHIBIT M). 220 JERRY MANAHAN, Supervisor, Medical Review and Abuse Section, Workers' Compensation Division, Department of Insurance and Finance: As we have gone through the testimony and process in our administrative rules, fundamentally we need to go back into what the fee schedules represent. The cost-charge ratio that applies to hospitals is a fee schedule that applies to hospital in-patient and out-patient surgical services. All other services, including those provided by hospitals, are subject to our other fee schedule, which are medical services fee schedule. There has to be a common ground, a way of controlling, of monitoring and regulating costs that insurers would incur for hospital services. We have already exempted the option for MCOs on the hospital cost-charge ratio for the in-patient, out-patient surgical services. There are a lot of other services, physical therapy services, etc. that are not governed by the

cost-charge ratio, but rather by the medical services schedule. There has to be a controlling factor that lays out a way in which the insurers can monitor those costs. 390 SENATOR HILL submits a prepared statement in support of SB 551 (EXHIBIT N). 392 SENATOR HILL: Two words are left out (page 2, line 9). It should be "hospital services fee schedules." The reference is to hospital services in lines 2 and 3. I think the reference in line 9 of the original bill is to specific in-patient hospital services fee schedules based on DRGs. We are speaking to both medical fee schedules and hospital services in-patient fee schedule.

TAPE 107, SIDE B 024 ED PATTERSON, Oregon Association of Hospitals: Traditionally, hospitals have established their own fees that they charge everybody, unless there is some other arrangement. If there is an injured worker who did not participate in the MCO or in his employer's MCO, he will be charged the normal routine customary charge. However, if the injured worker participates in an MCO based at that hospital, then the charge will be at the negotiated rate between the selfinsured or whomever and the MCO. It puts it back on a level playing field.

033 MS. TALBOTT: If you weren't participating in the MCO, the fee charged to the employer would be reduced like any other fee so you are not on a level playing field at that point. 036 MR. PATTERSON: I think that is what I said. The way the current rules are administered,

These minutes contain errors which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report speaker's exact words. For complete content of the proceedings, please refer to the tapes. Senate Committee on Labor May 14, 1991-
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if a hospital does not participate in an MCO or if there is a non-MCO injured worker, then the hospital is reimbursed on the fee schedule basis, the discount. What we are saying in SB 551 is to provide an incentive for hospitals to participate in MCOs, to make the structure within the MCO where the self-insurers want to be insured so you get more injured or more employees covered under MCOs, which is the theme behind the state policy. The incentive is to participate in an MCO and it will cost you less and you will get better service.

050 SENATOR HILL: For a hospital that has a large amount of uncompensated care, the fee schedule forces them to charge less than costs.

119 MR. YOUNG: It boils down to incentives. I think employers and self-insurers and insurers are the ones who are ultimately going to drive this. Right now you have an incentive where an employer can say I want to get an MCO contract but I will no longer qualify for the fee schedule so we are going to negotiate a higher price to participate in an MCO. That is the incentive now. Under our proposal, you have no fee schedule if the hospital participates in an MCO. The hospital will offer not only a managed care product, but most likely they will negotiate a lower price than their normal bill charges.

145 SENATOR SHOEMAKER: A suggestion was made that in order for a hospital to get released from the fee schedule they might form an MCO which they don't really market very aggressively.

162 SENATOR SHOEMAKER: How about a sunset clause?

184 CHAIR KERANS suggests a sunset date of June 30, 1994.

193 MR. YOUNG: For clarification of the record, I want to be sure I am on record with our position and that you understand our position and the possible consequences of this amendment. The problem is you say in the same statute that we have to have fee schedules for medical services and for hospitals. The question becomes, how do we administer that requirement in conjunction with the MCO program and make it equitable and fair and so people who do not want to participate in an MCO program get the benefit and advantage of the fee schedules.

What you are proposing to adopt basically is going to say, not only for hospitals but for medical services, as soon as the MCO has one of those, they get to charge the same fees to everyone. Even the public and the employers in Oregon who do not want to participate in an MCO program are going to be exempt from having to pay the fee schedules.

224 SENATOR HILL: The committee has also received a letter from the Management Labor Advisory Committee (EXHIBIT O).

224 CHAIR KERANS closes the public hearing and opens the work session on SB 551 .

(Tape 107, Side B) SB 551 - REQUIRES DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE TO EXCLUDE FROM APPLICATION OF MEDICAL FEE SCHEDULES AND HOSPITAL SERVICES THOSE SERVICES PERFORMED BY CERTIFIED MANAGED CARE ORGANIZATIONS - WORK SESSION . Senate Com-;~-OD Labor May 14, 1991 - Page 15

227 CHAIR KERANS: We have amendments from Mr. Fiskum. . 229 MS. TALBOTT: With the amendments on page 2, lines 8 and 9, the bill will read, "Notwithstanding any other provision of this section, the director shall exclude from the application of medical fee schedules and hospital services fee schedules, those services performed by a hospital participating in a any managed care organization certified pursuant to..."

238 SENATOR SHOEMAKER: I don't think there is a need for the words "any hospital participating." 250 SENATOR HILL: I think without those words we would not be suspending the fee schedules for those services provided by the hospital for persons not subscribing. 257 MR. FISKUM: The words were suggested by our legal counsel. He thought these words made it clearer. We will not live or die with inclusion of these words. I think the intent has been well expressed by the Oregon Association of Hospitals with our support. 281 MOTION: CHAIR KERANS moves that the amendments to page 2, lines 8 and 9 as read by Legal Counsel BE ADOPTED. 283 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the amendments ADOPTED. 283 MOTION: CHAIR KERANS moves that SB 551 be further amended to include a sunset date of June 30, 1994. 284 MOTION: CHAIR KERANS, hearing no objection to the motion, declares the amendment ADOPTED. 302 MOTION: SENATOR HILL moves that SB 551, as amended, be sent to the Floor with a DO PASS recommendation. 303 VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. 330 CHAIR KERANS opens the public hearings on SB 732 and SB 733.

(Tape 107, Side B) SB 732 - BASES CALCULATION OF WORKERS' COMPENSATION PERMANENT PARTIAL DISABILITY BENEFITS ON AVERAGE WEEKLY WAGE AND LIMITS BENEFIT INCREASES BASED ON ANNUAL CHANGES IN AVERAGE WEEKLY WAGE. PUBLIC HEARING.

WITNESSES: Frank Biehl, AWPPW Robert "R.C.A." Moore, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys

332 FRANK BIEHL, AWPPW, submits and summarizes a prepared statement and charts in support of SB 732 (EXHIBIT P). Senate Cornm* - e OD Labor May 14,1991- P - e 16

406 MR. BIEHL: There are two sets of amendments. One set was generated by Legislative Counsel (EXHIBIT Q) and one was submitted by the Management Labor Advisory Committee (EXHIBIT R). Their concerns were about what this might do to this system so they requested that a sunset clause be put on it.

TAPE 108, SIDE B

030 ROBERT "R.C.A." MOORE, Oregon Trial Lawyers Association and the Oregon Workers' Compensation Attorneys: We think this is a good idea, but we think the bill fixes it a little bit. We think it ought to fixed a whole lot more. We think the dollar amounts are far too small and ought to be increased. We think you ought to start at 50 percent, not 25 percent, and move as rapidly as possible toward the time when scheduled and unscheduled injuries are given the same amount of money per degree. We don't think it is a good idea to repeal ORS 656.215 because that was one of the three or four things that were offered to labor and injured workers in exchange for 19 or 20 substantive things that were taken away.

(Tape 108, Side B) SB 733 - MODIFIES CIRCUMSTANCES UNDER WHICH WORKER WHO IS RECEIVING MEDICAL TREATMENT FOR COMPENSABLE INJURY MAY RECEIVE PAYMENT FOR ABSENCE FROM WORK.

Witnesses: Robert "R.C.A." Moore, Oregon Trial Lawyers Association and Oregon Workers' Compensation Attorneys

077 ROBERT "R.C.A." MOORE, Oregon Trial Lawyers Association and the Oregon Workers' Compensation Attorneys: The reason for our introducing SB 733 is that many times injured workers who have returned to work before they have become medically stationery still require medical treatment. Because of conflicting work and doctor schedules often the injured worker will have to lose time from work to make a doctor's appointment. While there is no dispute as to the necessity of the treatment, injured workers suffer an economic loss because of time away from the job.

(Tape 108, Side B) SB 732 - BASES CALCULATION OF WORKERS' COMPENSATION PERMANENT PARTIAL DISABILITY BENEFITS ON AVERAGE WEEKLY WAGE AND LIMITS BENEFIT INCREASES BASED ON ANNUAL CHANGES IN AVERAGE WEEKLY WAGE. PUBLIC HEARING.

Witnesses: Ross Dwinell, Oregon Self-Insurers Association

099 ROSS DWINELL, United Grocers, representing Oregon Self-Insurers Association, submits a prepared statement on SB 732 (EXHIBIT S). Our concerns are not so much the amount of the increase, but that it will add cost to the system without offsetting savings which in 1987 your committee considered very carefully. The committee may want to address the concern of the more severely injured worker. The question is the injured worker who can't go back to his regular job and is in the 75-90 percent disability category. Rather than making increases across the

board, could we focus on those who are more severely injured? _ . . .
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139 CHAIR KERANS: Would you support some tier process for unscheduled over a certain degree.

144 MR. DWINELL: I think that is the direction that the adjustment of the standards has actually accomplished. I would like to see that reviewed by the Management Labor Committee. Something along the line the Chair is recommending may be a worthwhile project.

(Tape 108, Side B) SB 733 - MODIFIES CIRCUMSTANCES UNDER WHICH WORKER WHO IS RECEIVING MEDICAL TREATMENT FOR COMPENSABLE INJURY MAY RECEIVE PAYMENT FOR ABSENCE FROM WORK - PUBLIC HEARING . Witnesses: Mark Davidson, Associated Oregon Industries Ross Dwinell, Oregon Self-Insurers Association Diane Rosenbaum, Oregon AFL, CIO and Oregon State Industrial Union Council 152 MARK DAVIDSON, Safety and Loss Control Claims Manager, Safeway Stores, representing Associated Oregon Industries: Current law allows for payment of time loss in a disabling claim when a person misses more than four hours of work. Mr. Biehl's proposal is for one hour and the current law says four hours absence from work. AOI would like to go on record, and I believe OSLA would also, in opposition to SB 733 for two major reasons. It is a serious increase in cost to the system and it is an enormous claims night mare in the claims administration process.

219 CHAIR KERANS: Would you like going down to one hour for disabling claims?

216 MR. DWINELL: No. I don't support any increase in the cost to the system. 237 MR. DWINELL: There is another problem in that the bill refers to becoming medically stationary. Palliative care is compensable medical treatment for certain circumstances. One is to monitor prescriptions and the other to keep someone employed. This does not permit, after a person becomes medically stationary, palliative care. It would not require us to pay time loss benefits. That seems to be a conflict. 266 DIANE ROSENBAUM, representing the Oregon AFL-CIO and the Oregon State Industrial Union Council: In regards to SB 733, language does exist in the law which enables employers to get out of the cumbersome requirements of monitoring the claims and reopening them and not being able to simply pay them off by paying for the incidental times as wages.

(Tape 108, Side B) SB 732 - BASES CALCULATION OF WORKERS' COMPENSATION PERMANENT PARTIAL DISABILITY BENEFITS ON AVERAGE WEEKLY WAGE AND LIMITS BENEFIT INCREASES BASED ON ANNUAL CHANGES IN AVERAGE WEEKLY WAGE. PUBLIC HEARING. Witness: Diane Rosenbaum, Oregon AFL-CIO and Oregon State Industrial Union Council

274 DIANE ROSENBAUM, representing the Oregon AFL-CIO and the Oregon State Industrial Union Council, submits a prepared statement in support of SB 732 (EXHIBIT T). The points have largely been made that it is a better way and more consistent with the purposes of workers' Sen~tte Committee on Labor May 14, 1991 ~ e 18

comp to return workers to a self-sufficient status. The point was made yesterday that you cannot look at the system for compensating people permanently disabled without looking at the gross inequity between scheduled and unscheduled disability. I would oppose taking away the only language that exists in the law now that seems to allow for some

anticipated increase in unscheduled disability because as we have heard they are many times the most serious injuries. There is a disparity between the way those people are compensated and the way other workers are compensated.

302 SENATOR SHOEMAKER: I am not sure what we are taking away. Under SB 732 when we shift from a stated dollar per degree of disability to percentage of average weekly wage per degree of disability. What are we taking away? 308 MS. ROSENBAUM: I wasn't suggesting that the bill would take away anything. I think there has been a perpetuated lack of compensation for people with unscheduled disabilities. If you look at the chart over the last several years, the gap has grown wider. There isn't any rationale for it.

330 CHAIR KERANS declares the meeting adjourned at 9:51 p.m.

Transcribed and Reviewed by: submitted by, Annetta Mullins Annette
Talbot Assistant Committee Counsel

EXHIBIT SUMMARY:

A - SB 656, Staff Measure Summary of and SB 656-8 amendments, staff B
- SB 656, prepared statement, Marge Kafoury C - SB 656, prepared
statement, League of Oregon Cities, Association of Oregon Counties D
- SB 640, Legislative Fiscal Analysis, staff E - SB 640, prepared
statement, Ross Dwinell F - SB 640, prepared statement, Christopher
James G - SB 543, Legislative Fiscal Analysis, staff H - SB 543,
hand-engrossed bill SB 543, Oregon Trial Lawyers Association I -SB
543, prepared statement, Tom Mattis J - SB 551, prepared statement,
Ken Rutledge K -SB 551, prepared statement, Eva Smekens L - SB
551, prepared statement, Pat Devlin M - SB 551, prepared statement,
Larry Young N - SB 551, prepared statement, Senator Larry Hill O
- SB 551, letter from Management Labor Advisory Committee P - SB
732, prepared statement, Frank Biehl Q -SB 732, SB 732-1 amendments,
Frank Biehl R - SB 732, proposed amendment by Management and Labor
Advisory Committee, unknown S - SB 732, prepared statement, Ross
Dwinell T - SB 732, prepared statement, Diane Rosenbaum