

**WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting**

January 31, 2014
1:30 p.m. – 3:30 p.m.

Committee Members Present:

Tami Cockeram, City of Hillsboro
 Carol Duncan, General Sheet Metal, Clackamas
 Paul Goldberg, Oregon Nurses Association, Tualatin
 Elana Guiney, Oregon AFL-CIO, Salem
 John Mohlis, Oregon Building Trades Council, Portland
 Kathy Nishimoto, Duckwall-Pooley Co., Hood River (via telephone)
 Bridget Quinn, NECA-IBEW Electrical Training Center, Portland
 Ben Stange, Polk County Fire District No.1, Independence
 Jaron Sue, Marquis Autumn Hills, Portland (via telephone)
 Patrick Allen, DCBS Director, *ex-officio*
 Theresa Van Winkle, MLAC Committee Administrator

Agenda Item	Discussion
Opening (0:00:00)	John Mohlis called the meeting to order at 1:32 p.m. Bridget Quinn moved to accept the Full MLAC Committee minutes dated January 17, 2014. Elana Guiney seconded the motion. Motion was approved on a 9-0 vote.
Review and Possible Action on 2014 Legislative Concept Proposals (0:00:51) SB 1558 (0:01:33) (0:6:20)	Theresa Van Winkle, Committee Administrator, stated that HB 4104 regarding interim medical benefits has pending amendments. Representative Holvey will provide language to Ms. Van Winkle and she will make it available to the committee so that it can be discussed at the next meeting. John Shilts, Administrator, Workers' Compensation Division (WCD) provided an overview of SB 1558 (formerly LC 52). Mr. Shilts highlighted the main points of the bill, expressed appreciation for provided stakeholder input, and hopes that the proposed -1 amendment addresses the concerns raised by stakeholder groups. The -1 will extend some time frames from original bill, giving groups more time to conduct a membership vote and procure new coverage should a group vote to decertify. Kathy Nishimoto asked whether or not groups choosing to decertify would be liable for any additional group claims. Mr. Shilts indicated that decertified groups would not. Ms. Nishimoto asked about mechanisms to handle employers who were not up to date on their assessments in a

	<p>group that opts to decertify. Mr. Shilts stated that the bill provides for the Director of the Department of Consumer and Business Services (DCBS) to levy an assessment, and existing standards to provide for this authority are unchanged under the bill. These authorities are different between private and public groups, due to the fact that private group members are able to both go out of business and become insolvent, whereas public groups can only become insolvent. SB 1558 would provide that for a short time self-insured employer groups can decertify and would be subject to common claims fund and security deposit limits. After that time the Workers' Benefit Fund would provide funding for additional claim costs. There would be no purpose in pursuing members for additional assessments, unless there was an increase in the security deposit or the common claims fund. Ms. Nishimoto asked what would happen in the event that some employers within a group choosing to decertify were current on their assessments and some were not, and if there was any recourse DCBS could take regarding those businesses that were not current on their assessments. Mr. Shilts stated that this issue does exist in the decertified contractor group and could exist in additional decertified groups, but that recourse would be pursued by the group members. A bankruptcy trustee can assess all group members, and would probably pursue those businesses on more solid financial footing. Those employer members would then have to sue the other employer members to recover their losses. That is what DCBS is trying to avoid with this bill. A separate issue is that groups have posted their full security deposits, but DCBS does not have regulatory authority over how the groups choose to fund those costs.</p>
(0:12:25)	<p>Lynn McNamara, Executive Director, CityCounty Insurance Services (CIS). CIS is one of two self-insured public employer groups. Ms. McNamara says her organization supports the bill with the -1 amendments. The bill as amended fixes some unintended consequences, where public groups would be the primary funders of claims for private groups choosing to decertify, and would also give additional oversight to all groups.</p>
(0:14:05)	<p>John Mohlis thanked Patrick Allen, Director, DCBS, DCBS staff, stakeholder groups, and committee members for their work in trying to find a solution to the issue.</p>
(0:14:38)	<p>Director Allen thanked stakeholders for their input.</p>
(0:15:17)	<p>Paul Goldberg moved that the committee recommend to the Legislature the adoption of SB 1558 with the -1 amendments. Tami Cockeram seconded the motion. Motion passed on an 8-0 vote to adopt, with Carol Duncan abstaining.</p>

HB 4048
(0:16:31)

Theresa Van Winkle, Committee Administrator, discussed [HB 4048](#) (formerly LC 23). The bill was sponsored by Representative Witt and Senator Johnson.

(0:17:04)

Mike Sahagian, private practice attorney, Beaverton, Oregon, gave background regarding the legal case surrounding the genesis of the bill. The bill proposes that in cases where a worker is killed on the job and the reason for that worker's death is due to the negligence of a third party falling under the responsibility of a government entity, the worker's estate can sue for wrongful death.

(0:23:09)

Ms. Van Winkle asked why exclusive remedy was still a part of the bill if the focus of the bill is to be able to sue a third party public entity, not to make changes to the current death benefit provided through the workers' compensation system. Mr. Sahagian indicated that the intent was not to make changes to exclusive remedy.

Carol Duncan asked if there would have been a difference in the case precipitating the bill had the victim worked for a private party rather than a non-profit entity. Mr. Sahagian stated that it would not; that the issue was not for whom the victim worked, but who bore responsibility for the perpetrator.

Director Allen observed that sovereign immunity is more pertinent to the issue exclusive remedy. There is concern that the way to fix the sovereign immunity problem is to make changes to the exclusive remedy statutes. Mr. Sahagian agreed that it would be preferable to make changes to the issue of sovereign immunity without making any changes to exclusive remedy.

John Mohlis and Elana Guiney asked several questions regarding specific sets of circumstances, such as differences in whether the person causing the wrongful death of another is employed by a private contractor as compared to a government entity, if the worker is on the job as compared to not on the job, and to whom negligence is assigned. Mr. Sahagian clarified that this bill is intended to target a very specific set of circumstances.

Kathy Nishimoto asked how long the current statute had been in place. Mr. Sahagian stated that a case had been brought approximately 10 years ago, where there had been a similar fact pattern. The estate of the victim brought a law suit, and the circuit judge ruled the unconstitutional; however, the Oregon Supreme Court reversed the decision of the lower court and said that the law must be changed by the legislature. Ms. Nishimoto asked what the conversation was to write the current statute into law regarding creating a difference between private and government

<p>(0:34:29)</p>	<p>entities. Director Allen stated that ultimately it goes back to English common law, decisions regarding which are beyond the scope of the committee.</p> <p>Scott Winkels, League of Oregon Cities (LOC), stated that his organization has concerns with bill as drafted. While the case which led to this bill brought to light a flaw in the workers' compensation statute, LOC wishes to point out that their claims history over the past five years has paid out \$750,000 to over \$1 million per claim in workplace fatality cases. They are concerned regarding the issue of sovereign immunity because governments provide essential functions and they need to be able to do so with protections from excessive liability claims. Changes to sovereign immunity would subject public employers to some tort liabilities where they would be unable to provide services in the most effective way. LOC would like exclusive remedy to stay intact. Proposes that this concept be written as a special purpose bill, and if changes to the workers' compensation system should be made they should be changed to provide for a specific death benefit in cases of homicide.</p>
<p>(0:38:53)</p>	<p>Paul Goldberg asked if an injured party or family waive workers' compensation coverage would they then be able to sue a government agency. Mr. Sahagian stated that they would not be able to do so because of exclusive remedy provisions. Elana Guiney asked some clarifying questions regarding specifics of cases, how frequently cases of this nature occur, and how these cases would relate to the bill.</p> <p>Lynn McNamara, CIS, stated that her organization was involved in three recent wrongful death cases: the death of a police captain during the bombing of a police station in Woodburn, the shooting death of the Rainier Chief of Police by a suspect, and the death of a public works employee in Union County who was hit and killed by a car. In those cases there were spouses and children who met the current statutory definition of "dependent". If an individual does not have dependents that meet this statutory criteria, the single person receives a small death benefit when there are not dependents.</p> <p>Mr. Goldberg asked about cases of negligence. Ms. Guiney observed that negligence is a separate issue from these situations. Mr. Sahagian agreed, stating that the third party issue makes this a completely different scenario.</p> <p>Ms. Guiney asked if an increased death benefit would be paid by the workers' compensation insurance of the employer. Mr. Sahagian said that yes, in the case which precipitated this bill the burden would have fallen back on SAIF, which is unfair when a third party is responsible rather than the insured.</p>

	<p>Ms. Van Winkle asked for clarification regarding the direction LOC would like to see the committee take in terms of the bill. Mr. Winkels indicated that LOC would be bringing amendments forward.</p> <p>John Mohlis asked if there was a good way to navigate the sovereign immunity question. Ms. Van Winkle said she would follow up, possibly with Legislative Counsel, for clarification on intent of bill. She will summarize Monday’s Judiciary hearing information and have it available for discussion on Friday.</p> <p>Elana Guiney asked if there had been any pushback from the Legislature regarding timelines. Ms. Van Winkle indicated that she would find out, but that there was no pressure for action on bills today. She will also provide the committee with additional background information.</p> <p>Tami Cockeram asked if the death benefit amount had been recently increased. Ms. Van Winkle said that it had been, in 2010.</p> <p>Kathy Nishimoto asked what would have happened if the victim in the precipitating case had been in a vegetative state rather than killed. Mike Sahagian stated that she would have medical care provided to her.</p> <p>Ms. Cockeram asked for clarification on whether the issue at hand is about the death benefit amount or if it is about the right to sue. Mr. Sahagian stated that the issue is the right to sue, and that amount awarded should be a question answered by a jury.</p> <p>Ms. Van Winkle informed the committee that two bills would be on the agenda for Friday, February 7.</p>
<p>Meeting Adjourned (0:58:32)</p>	<p>John Mohlis adjourned the meeting at 2:30 p.m.</p>

*These minutes include time stamps from the meeting audio found here:
<http://www.oregon.gov/DCBS/MLAC/audio.shtml> .

**Referenced documents can be found on the MLAC Supporting Documents page here:
<http://www.oregon.gov/DCBS/MLAC/pages/support.aspx>