

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

April 9, 2021
3:00 a.m. – 5:00 p.m.

Committee Members Present:

Alan Hartley
Kimberly Wood, Wood Risk Management Services
Diana Winther, IBEW Local 48
Lynn McNamara, Paladin Consulting
Kathy Nishimoto, Duckwall Fruit
Andrew Stolfi, DCBS Director, *ex officio*
Jill Fullerton, Clackamas County Fire Department
Ateusa Salemi, Oregon Nurses Association
Scott Strickland, IOUE Local 701

Committee Members Absent:

Tammy Bowers, May Trucking
Kevin Billman, United Food and Commercial Workers

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Jeffrey Roddy-Warburton, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Diana Winther opens meeting at 1:01 p.m. Theresa Van Winkle does roll call. Diana Winther begins discussion on MLAC meeting minutes. Lynn McNamara moves and Scott Strickland seconds the motion to approve the April 2, 2021 minutes. All MLAC members present vote to approve the April 2, 2021 meeting minutes
Report on SB 489 subcommittee (0:02:30)	Diana Winther gives a report on the MLAC subcommittee meeting on SB 489. Diana Winther states that language has been sent over to the Oregon Trial Lawyers Association (OTLA) by Elaine Schooler from SAIF. Another subcommittee meeting has not been scheduled yet. SB 489 will not be advancing this session but MLAC is dedicated to making sure the questions and concerns are addressed hopefully in time for next session.
Legislative Review (0:03:30)	Diana Winther begins the discussion on legislative review and states that there are a number of people that are signed up to speak about SB 801 -2 amendments. She adds that we are also addressing HB 3188 with -1 amendments and the proposed -2 amendments . Diana Winther asks that everyone keep their testimony to 5 minutes or less so that everyone gets a chance to speak and time for the committee to have discussion afterwards.

SB 801 -2

(0:04:20)

Michael Selvaggio from United Food and Commercial Workers Union gives his testimony in support of SB 801-2 amendments. Michael Selvaggio in regards to the concern that this is bill is a “run around” MLAC or taking away from MLAC’s responsibilities, states that is not the intent of the bill. He states the task force is not a representation of any lack of faith in MLAC, it is simply a right tool for the job. Michael Selvaggio adds that he doesn’t think this particular inquiry is the direction MLAC has usually gone before. Michael Selvaggio states that in drafting the amendments we wanted to be very careful to include MLAC and that is why the two co-chairs of MLAC are part of the task force and clear lines of communication and coordination between the task force and MLAC’s work. Michael Selvaggio notes that he also heard concerns about the relative balance of the task force, and he has asked for an amendment to eliminate the non-voting worker positions section, those were in a prior version that didn’t make it into the final draft and are no longer relevant. Michael Selvaggio gives a general overview of what it they are hoping this bill and amendment does.

(0:09:00)

Alan Hartley asks for a more in-depth reasoning as to why MLAC is not the appropriate organization to address the issues proposed in the bill, and whether today is just for our notification or is it for MLAC to approve or disapprove. Michael Selvaggio responds to the second question first and states he would defer that to the MLAC co-chairs. He responds to the second question the reason they sought after a task for is to go after more broad issues in the workers’ compensation system.

(0:11:40)

Kathy Nishimoto asks what is the balance between voting members and non-voting worker representatives and how will these people be vetted in regards to their experience with the workers’ compensation system or will anyone that wants to put in the time be appointed to it. Michael Selvaggio responds that is up to the discretion of the appointing authorities, which would be the speaker and the president, he adds in putting a good work group together it is important to have that full spectrum of experience and we would want to coordinate those appointments to have experts in all areas.

(0:14:40)

Kimberly Wood asks why is the voting membership unbalanced with one for management and two for labor. Michael Selvaggio responds that it is expressly for labor members, and we wanted to make sure that non-represented workers were also given a voice at the table. He states he would not have any objection to adding a representative to the management side to balance it out. Kimberly Wood states that she wants to know why there is only one business representative and two labor representatives. Michael Selvaggio responds the second worker appointment from each side would be explicitly workers who are not

represented by a labor organization. Kimberly Wood responds that she understands that distinction.

(0:18:00) Diana Winther states that often times the interest of organized labor and the interest of workers as a whole that are unrepresented are not always in sync so she understands the desire to make sure that there is a wider group of workers at the table.

(0:19:30) Scott Strickland clarifies this is not a run around or the end of MLAC it is just an enhancement to MLAC data that they need. Michael Selvaggio responds that is correct.

(0:21:30) Diana Winther asks is it the intent of the task force to put forth whatever recommendations it has to MLAC for approval or consideration or adjustment. Michael Selvaggio responds that would be up to the task force, but in his opinion any recommendation should be routed through MLAC.

(0:23:20) Lynn McNamara states that she has concerns about how much baseline knowledge the task force members will have about the workers' compensation system, because she has been on MLAC for six years and is still learning. Michael Selvaggio states that is why it is important that we have the two co-chairs of MLAC and the ombudsman on the task force so we are starting out with that level of expertise. Michael Selvaggio adds that the task force is not going to be a detailed administrative look at specific ground-level policies this is supposed to be a step back review of what the data is showing.

(0:26:20) Alan Hartley states the bill does not specifically state that conclusions and recommendations of the task force would be sent to MLAC for consideration and processing, Alan Hartley asks why aren't we more specific with that. Michael Selvaggio responds that mostly because we used a boilerplate task force language Legislative Counsel has, but if we can write that part in. Michael Selvaggio adds that so far, he has heard two actionable concerns that we can put into amendments.

(0:27:30) Kimberly Wood asks that the Ombudsman for Small Business should be added to the task force as well since the Ombudsman for Injured Workers is included, and would like to see that in the amendment. Michael Selvaggio doesn't have an objection to that but he would defer to the agency. Kimberly Wood states that for her it is sort of "all or nothing" so if both sides can not be representative than neither should be.

(0:29:00) Diana Winther states that she appreciates Michael Selvaggio's openness to hear all of the concerns. Diana Winther mentions there is a recommendation around MLAC doing this through a subcommittee. Diana Winther tells the proponents of the bill that she appreciates consideration

for the composition of the task force, but she also appreciates the fact that the task force has very specific people involved including legislators. She thinks this is a substantial policy consideration, while MLAC has addressed policy before it was with a direct connection to benefits.

- (0:33:00) Joe Crelier, Portland Public Schools, gives his testimony in opposition to 801 -2 amendment. Joe Crelier's suggestion to MLAC is that both the bill and the amendment are dropped and he advises legislators to use the system and controls that are already in place and he goes over the details of those system and controls, WCD and MLAC.
- (0:36:00) Scott Strickland states that he did notice one thing in the proposed 801 -2 amendment, is an ability to compel production of documents and records and otherwise take actions reasonably related to and necessary to enable the task force to carry out tasks, but he doesn't see that in our statute. Scott Strickland asks do you have a response that would raise the concern that maybe MLAC doesn't have the statutory authority to complete the investigation as we would need. Joe Crelier states he does not have a response to that because he is not an attorney, but as a self-insured employer he has experienced and observed is the audit team may have access to all records somewhere in line with what you are thinking.
- (0:37:40) Ateusa Salemi in regards to 801 -2 amendment, section 3 (B) and (C) and if something doesn't go into the workers' compensation system, then we can not look at it. Ateusa Salemi says it appears that the task force is actually trying to discover what is being diverted from the system, and she asks if we don't do the task force then how would MLAC find this information out. Joe Crelier responds that under the MLAC statute you have the ability to hire experts, maybe that is a manageable topic for an MLAC subcommittee.
- (0:39:30) Diana Winther in regards to WCD's audit processes and capabilities states she would like clarification on when WCD is doing an audit, are you auditing processes or auditing results of the process. Sally Coen, WCD responds typically WCD audits the outcome, and typically WCD does not have standards that say you have to do certain things during the process, with the expectation of the rule regarding conducting a reasonable investigation of the claim. Sally Coen adds now WCD has specific rule requirements about what an insurer is supposed to do in investigating processing of COVID claims.
- (0:41:40) Sheri Sundstrom, Hoffman Construction, and former MLAC states that MLAC does not just look at administrative issues because in her time as a member MLAC took on some huge policy issues as well. Sheri Sundstrom gives details on how well MLAC and MLAC subcommittees work as a whole and how when MLAC, WCD, third-party administrators, self-

insurers, and others work together and continue to work together they can get a lot done. She adds that if MLAC keeps working hard she believes they will come up with what is being asked of the task force.

(0:46:00) Kimberly Wood in regards to someone else looking into policy issues and not MLAC asks if the legislature has ever done a task force outside of MLAC on a workers' compensation issue. Sheri Sundstrom responds no.

(0:48:10) Kate Suisman, Attorney with Northwest Worker Justice Project (, gives testimony in support of SB 801 -2 amendment because from the broad perspective the system is not working for her clients. She also believes that the task force will be a good tool to answer questions like what happens to people before they enter the workers' comp process, and why didn't they file a claim. Kate Suisman states that she likes that the task force is not just made up of experts but of people that are going to step back and take a look at what is happening in the system.

(0:51:40) Kimberly Wood states that she was under the very distinct impression that you cannot force a global release of work with a settlement, and you can't even talk about it with an unrepresented employee, and asks if that is her understanding as well. Kate Suisman responds that she is not a worker's comp attorney and is not sure if that is true, but knows that it was included in a settlement written by an attorney the client was represented through the process. Kimberly Wood responds that in her own experience with SAIF it is never allowed.

(0:53:10) Ateusa Salemi states that it is her experience that people have been deterred from filing claims, and if a settlement was illegal what are the barriers that individual workers face in terms of actually pursuing a further claim. Kate Suisman responds that her office handles the retaliation piece, and we can not take most cases that are brought to us because of capacity, and for workers' compensation cases we have a pretty short referral list of attorneys and an even shorter referral list for Spanish speaking ones.

(0:55:20) Diana Winther asks if Jennifer Flood or Elaine Schooler can answer Kimberly Wood's questions about legality of requiring someone to sperate from employment. Elaine Schooler, SAIF responds that to the best of her knowledge for workers' compensation system there is no specific statue that renders an employer or insurer unable to combine settlement agreements, however she does practice in the area of employment law. Elaine Schooler adds in terms of workers' compensation we do have statutory authority for our agreements alone and there are also board rules that speak to those agreements.

(0:57:30) Jennifer Flood, Ombudsman for Injured Workers, states that she believes that it is very commonly known in our industry as what we call global

settlements, where a worker will do a CDA, DCS, and employment release and it happens all the time for represented and unrepresented workers. The ALJ doesn't usually approve those settlements but it is usually a package deal with DCS and CDA and employment release.

(0:58:30) Kimberly Wood thanks everyone for chiming in and helping answer her question. She adds that she sees areas of improvement and things we can talk about going forward.

(0:59:10) Elaine Schooler states there is a distinction between releasing your employment claims so you can sue your employer in the future and releasing your ability to go back to work.

(1:00:00) David Barenberg, SAIF, echoes what Elaine Schooler stated about global settlements and gives his testimony on SB 801 -2 amendments. David Barenberg believes that MLAC is the right place to be having these discussions and this is exactly what MLAC was built for was to handle these kinds of topics. He adds that MLAC did very important work on COVID claims. David Barenberg states that MLAC is missing one thing and that is a work plan, and working with the division on the resources available to try and do some of these investigations and how do we establish a plan to focus and move forward in a way where we have the data and the involvement from all parties to come up with recommendations and changes to the system. David Barenberg states SAIF does do global settlement settlements, but our practice of handling those negotiations is likely different from other insurers and their employers.

HB 3188

(1:07:30) Diana Winther begins the discussion on HB 3188 with the proposed -2 amendments. Theresa Van Winkle gives details and a brief overview of the bill. Kimberly Wood asks if any of the stakeholders disagree with the bill and amendments, no stakeholders speak up in disagreement. Diana Winther asks for a motion on the HB 3188 -2 amendments. Kimberly Wood makes a motion to move that the MLAC committee support HB 3188 with the -2 amendments. Alan Hartley seconds the motion. MLAC members present vote to unanimously approve HB 3188 with -2 amendments. WCD will draft up an approval letter.

SB 801 -2

(1:11:00) Paloma Sparks, Oregon Business and Industry, gives her testimony in support of MLAC and all they do to take on big problems in the system, as well as the how well they work with others and have a group that really understands how the system works. Paloma Sparks also worries about the precedent that this would set of having a task force that is separate from MLAC and how that would affect MLAC moving forward.

(1:12:45) Kirsten Adams, Associated General Contractors (AGC) gives her testimony and states that it is AGC's position that they do not think a task

force should be created that has a charge that falls in the purview of MLAC. She adds that MLAC's knowledge and familiarity with the system that they have shown in the past is why they are the right group to handle these issues.

- (1:15:45) Scott Strickland states that he does not see MLAC meetings and subcommittee meetings as an exclusive investigatory mechanism. Scott Strickland adds if we're talking about hiring specialists as an alternative, he is not seeing any limiting language or specific mechanism for how we do this investigation or how data collection is performed. He does not see any limitation on the legislature's ability to facilitate our work. Kirsten Adams responds to her understanding it is not that this is an exclusivity issue but that this is the purpose of MLAC, so that long standing has been that issues have been discussed here. Kirsten Adams adds that she believes this task force is not being set up to support MLAC but rather to do MLAC's job. Scott Strickland responds that he respects that and he thinks that if there wasn't the limited language and the auto repeal and the very specific narrow purpose of it, he doesn't see that as the intent of the task force. Kirsten Adams responds that the concern is not so much that the task force explicitly does anything to MLAC, it is the precedence that it sets.
- (1:19:00) Kimberly Wood states that it could be the beginning of individuals who don't like the MLAC process to go around MLAC and work with the task force instead. Kimberly Wood states that it is not the bill's intent to undermine MLAC, but that could be the result and that is concerning for the future of MLAC, so it is important for MLAC to weigh in and state we can take up these big tasks for the legislature. Scott Strickland responds that he sees those concerns and he isn't saying those are not valid, he is just confused because he sees the bill automatically sunset, MLAC co-chairs involvement, and the task force intending to come back to MLAC.
- (1:24:30) Diana Winther states that she understands that there is always a concern about creating a precedent, but at the end of the day the legislature would have to approve additional task force moving forward, and there may be a conversation about what is and is not in MLAC's purview. She adds that she is concerned that some of the things the task force is designed to do are incredibly important and the task force is designed in some ways to have a broader reach on topics which are not necessarily for MLAC to discuss.
- (1:26:30) Lynn McNamara states she does see a difference, specifically in SB 801-2, between the big picture issues about workers being comfortable accessing the system, what are the barriers, and examining workers' compensation claim processing procedures. She adds that claims processing procedures are something that MLAC looks at so it is frustrating that is something the task force would look at. Lynn McNamara states that larger work force

issues could be something for the task force. Alan Hartley agrees with Lynn McNamara's statements. Diana Winther states with the topics being so linked together it might be challenging to separate them. Alan Hartley responds that he doesn't think the two things are linked. Diana Winther states that at the end of the day we might not all be viewing things the same way.

(1:29:00)

Shawn Miller, Northwest Grocery Association gives his testimony in opposition of SB 801 with the -2 amendments, but he is not in opposition on examining some of the components in the bill which he goes over. He thinks MLAC has the ability to tackle any of the issues given to them which makes them the appropriate venue, and MLAC should tell legislature they are willing to take up these issues with open arms.

(1:32:10)

Kimberly Wood asks Michael Selvaggio is he willing to make changes to the bill or pull the bill and have MLAC do this. Michael Selvaggio responds he thinks there is more to a task force of this magnitude, we believe this task force is the right tool and there will be some testimony that lends to that. Michael Selvaggio adds that this isn't just about looking at the workers' compensation system, it is about people that know how to analyze data and worker demographics information and to look at a broad policy inquiry. Michael Selvaggio states that he will add the amendments in as a gesture of good faith and if there is a task force created, we want it to be created in a way that is workable.

(1:36:45)

Ateusa Salemi, testifies and makes it clear that she is testifying as a registered nurse and community advocate and not as an MLAC member. Ateusa Salemi states that over the past year during the pandemic, MLAC debated on not really how to help workers during a pandemic but whether help was necessary. She adds that MLAC relied on information and data which often came months after claims were filed and too late to help the human beings who are the data points. Ateusa Salemi commented when we had data that showed discrepancies from what was held as a standard, MLAC called for more data disregarding the human stories for workers who told us about how the system was failing them. Ateusa Salemi states that SB 801 -2 amendments can help identify the group of workers that have been failed and hopefully make the data more complete, so then MLAC can get back to the work they were designed to do.

(1:40:00)

Kimberly Wood states that she disagrees that anybody on MLAC has said they don't want to do anything, and she has heard people say that they think it is a good idea to look into this, there is just a disagreement as to how to do that. Kathy Nishimoto states she shares that opinion.

(1:42:00)

Bob Estabrook, Oregon School Employees Association, details where he believes there to be a disconnect between what advocates of this proposal

are saying and what opponents are saying. Bob Estabrook states that we all have agreed that MLAC's job is to handle issues and advise on changes to the system, and make policy recommendations to the legislature, that is fundamentally different than what this task force is being asked to do which is get data that does not exist. Bob Estabrook says there is a lot of agreement that more data is needed to better inform these policy issues we discuss. He adds that having the task force gather the data will actually help MLAC going forward.

(1:48:30) Kimberly Wood states that she understands and appreciates both sides and sees where everyone is coming from, and that during the pandemic MLAC had huge issues to undertake and MLAC had to narrow down those issues to ones that felt they could address as quickly as possible. She adds that in some cases it is a smart choice for MLAC to have other agencies help work through some of the issues. Kimberly Wood states that MLAC has the ability to reach out to data experts and the ability to commission whatever kind of data collection MLAC might need. She adds that the subcommittee is a great place to have more conversations.

(1:51:00) Diana Winther reiterates that the MLAC subcommittees have been very useful in the past but is not of the same opinion that this topic is a good fit for the subcommittee because the subcommittee would not have the consistent participation of people like the task force would. Diana Winther also states that in a subcommittee people can explain the information that they are looking at in a way that overly influences perception, and she does not mean that as an insult to anyone. She adds that she like the idea of a group like the task force gathering the data and presenting it to MLAC.

(1:53:00) Diana Winther states that in the meeting chat Michael Selvaggio suggested keeping the public record open for 24 hours to Scott Winkels can submit his public testimony. Theresa Van Winkle states we can do that. [Scott Winkels did submit his written testimony after the meeting.](#)

Meeting

Adjourned

Diana Winther adjourns the meeting at 5:04 p.m.

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>