

CONFERENCE COMMITTEE ON SB 283 B

June 6, 1997 Hearing Room C

8:00 AM Tapes 1 - 2

MEMBERS PRESENT:

Sen. Neil Bryant, Chair

Sen. Kate Brown

Sen. Gene Derfler

Rep. Dan Gardner

Rep. Steve Harper

Rep. John Minnis

MEMBER EXCUSED:

STAFF PRESENT:

Cara Filsinger, Administrator

Jan Nordlund, Administrator

Sandy Thiele-Cirka, Administrative Support

MEASURES/ISSUES HEARD:

SB 283B Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

Tape/#	Speaker	Comments
TAPE 1, A		
003	Chair Bryant	Calls meeting to order at 8:08am, opens work session on SB 283B.
<u>SB 283B WORK SESSION</u>		
005	Chair Bryant	Summarizes SB 283B, provides bill history.
030	Michelle Kennedy	Manager Fiscal, Performance and Planning, Employment Department, introduces Richard VanPelt.
035		

	Richard VanPelt	Manager, Unemployment Insurance Program, provides testimony of history and case law of the original SB 283.
047	Chair Bryant	Comments on the opinion of the court, that the department acted beyond their authority because the legislature had not authorized an administrative rule addressing valition/non-valition.
051	VanPelt	Responds in agreement.
052	Chair Bryant	Comments on language `or suspended' and `pattern of being absent' in subsection (f), questions what is a pattern versus what is an isolated incident.
072	Kennedy	Responds that this is covered by administrative rule.
073	Chair Bryant	Requests definition of `pattern'. Questions if the department has any suggestions.
078	Kennedy	Responds that the department could provide a definition, however it would better if the definition was in statute.
083	Rep. Minnis	Comments that during the hearings in House Labor Committee, the department agreed to provide a definition by rule. Questions why they are recommending a definition in statute.
087	Kennedy	Responds that an administrative rule is possible, however it is more clear for the employee and employer if a definition exists in statute.
095	Chair Bryant	Questions defining alcohol versus drug use.
098	VanPelt	Responds that the committee would have to add language identifying the boundaries between alcohol and drug use.
105	Rep. Gardner	Questions what the definition of isolated incident is.
107	VanPelt	Responds an incident involving poor judgment where the evidence would show that the employee, due to lack of judgment, would act contrary to the employers best interest.
113	Rep. Gardner	Questions if an isolated incident is more than one occasion.
117	VanPelt	Responds that the isolated incidence would form the basis for a pattern.
123	Rep. Gardner	Questions the difference between `pattern of' and `isolated instance'.
126	Chair Bryant	Comments that
130	Rep. Gardner	Comments that in House Labor Committee the definition of `pattern of' means two or more instances within a short period of time.
135	Sen. Derfler	Comments that a definition is needed for `a short period of time'.
136	Rep. Gardner	Responds twelve months.
137	Kennedy	Comments that for the department to develop a definition by rule it would be an asset to understand the legislative intent.

143	Rep. Minnis	Responds that the criminal statute defines 'pattern of use', the objective is for the employer to document absences due to alcohol.
161	Sen. Derfler	Comments that employers will not discharge good employees.
169	Rep. Minnis	Responds in agreement, however there is the possibility that an employer could use this law in an unreasonable manner.
172	Sen. Derfler	Questions if the language were changed to more than on incident.
175	Rep. Harper	Questions if the definition is present in the criminal code.
178	Rep. Minnis	Responds affirmatively.
179	Rep. Harper	Recommends using the same definition for consistency.
181	Chair Bryant	Questions the definition of 'period of time'.
183	Rep. Minnis	Responds that 12 months would be acceptable.
194	Chair Bryant	Questions if the difference between alcohol and drug use is acceptable.
198	Sen. Derfler	Questions the distinctions.
199	Chair Bryant	Responds with zero tolerance as relates to drug use.
202	Rep. Gardner	Requests definition from the department. Questions what methods are used to establish drug use.
207	VanPelt	Responds that the absence would have to be evidenced by an admission by the employee that it was due to alcohol or drug use.
224	Chair Bryant	Comments on case law behind this bill.
236	Rep. Minnis	Comments on the difference between alcohol and drug use.
242	Sen. Brown	Question what difference does it make.
243	Chair Bryant	Responds that the definitions will indicate more tolerance towards alcohol and zero tolerance towards drug use.
247	Rep. Gardner	Provides testimony for the proposed conceptual amendments (EXHIBIT A).
258	Chair Bryant	Questions how program participation will be verified.
264	VanPelt	Responds that the information would have to be obtained and verified from the claimant and/or the treatment center.

		Requests that the conceptual amendments include `or' after the comma on line 25.
297	Rep. Gardner	Responds in agreement, and suggests adding the words `either/or'.
298	Rep. Harper	Comments on the original language intent.
311	Chair Bryant	Comments on drafting additional amendments. Continues with summary of Kelly Clark's proposed amendments.
325	Kelly Clark	Attorney, provides testimony and summary of proposed amendments (EXHIBIT B).
362	Chair Bryant	Comments on legislative counsel's concern regarding the relating to clause and the proposed amendments.
373	Chuck Wilson	Legislative Counsel, provides testimony relating to workers' compensation clause and the relating to clause of SB 283.
398	Sen. Brown	Comments that both the bill and the amendments relate to ORS Chapter 657. and supports attaching the amendments to SB 283.
414	Rep. Harper	Requests additional information from the department.
419	Sen. Derfler	Comments that leadership could be resistant to change the relating clause.
426	Clark	Comments on the similarities of the relating to clause of HB 2635 and SB 283.
443	Kennedy	Introduces Donna Hunter, Manager of Tax Program, Employment Department.
TAPE 2, A		
007	Chair Bryant	Requests explanation from the department regarding the short falls of HB 2635.
009	Kennedy	Responds that the intent of HB 2635 was to exclude translators and interpreters from unemployment insurance law. Members of these professions generally do not qualify under the 8 independent contractor criteria established by the department, HB 2635 does not cover the independent contractor classification.
025	Rep. Harper	Questions that the work done in the committee did not remedy this dilemma.
032	Kennedy	Comments that the department's understanding was to exempt these professions from unemployment insurance law in the future.
035	Sen. Brown	Comments that SB 512 addressed this issue, the amendment also excluded a couple of agencies.
043	Kennedy	Responds that SB 512 was heard in House Agency & Oversight Committee, the department testified on the independent contractor piece.
055	Sen. Brown	Comments that SB 512 did not pass as amended, questions if these individuals are classified as independent contractors for the tax code.
062	Kennedy	

		Responds with explanation of process and agency involvement in the status determination.
066	Sen. Brown	Questions if an individual could be classified as independent contractor for one agency but not another.
071	Donna Hunter	Employment Department, responds that all agencies use ORS 670.600, to determine status.
091	Chair Bryant	Questions why the bill was not amended to correct the problem.
093	Kennedy	Responds that there was discussion addressing this.
099	Hunter	Comments that the department understood that once the bill was signed, it would become effective. The audit was conducted to bring the employer into compliance.
108	Sen. Derfler	Questions if this amendment were to pass, would the situation be resolved.
109	Hunter	Responds that under Federal Unemployment Tax Administration (FUTA) law does not allow a retroactive effect.
115	Sen. Derfler	Comments that this amendment is not the solution to the problem.
116	Hunter	Responds that if it has a retroactive effect, it would put the department out of conformity with federal law.
121	Sen. Brown	Comments on concerns regarding these amendments.
127	Hunter	Responds that it was the department's understanding that the bill solved the problem.
133	Sen. Brown	Comments on the audit results timing.
134	Hunter	Responds that the individual was aware of the audit since January or February 1997.
136	Rep. Harper	Comments that the department was present during the hearings, they were aware of the problem, questions why this issue was not solved during that time.
143	Hunter	Responds that they were under the impression that it was solved.
145	Rep. Harper	Questions the impact of the audit and what is needed to solve this problem.
151	Hunter	Responds that the audit has been in process since January, the employer did not notify the legislature or the department that the decision was pending, otherwise the original bill would have addressed the effective date.
164	Kennady	Comments that the department was unaware of any issue addressing a retroactive date.
169	Sen. Brown	Questions if these individuals are exempt, why does the federal statute apply.
173	Hunter	

		Responds that FUTA coverage requirements are strict continues with explanation and impact to the state.
186	Chair Bryant	Requests further work and reschedule another meeting, adjourns meeting 8:50am.

Submitted By, Reviewed By,

Sandy Thiele-Cirka, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 283B, conceptual amendments, Rep. Dan Gardner, 3pp

B - SB 283B, proposed amendments, Kelly Clark, 2pp