

HOUSE COMMITTEE ON
BUSINESS, LABOR, AND CONSUMER AFFAIRS

March 28, 2005 Hearing Room B

8:30 A.M. Tapes 70 - 72

MEMBERS PRESENT: Rep. Alan Brown, Chair

Rep. Sal Esquivel, Vice-Chair

Rep. Mike Schaufler, Vice-Chair

Rep. Paul Holvey

Rep. George Gilman

Rep. Derrick Kitts

Rep. Chip Shields

STAFF PRESENT: Janet Adkins, Committee Administrator

Katie Howard, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2098 – Work Session

HB 2409 – Public Hearing

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
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TAPE 70, A

003 Chair Brown Calls the meeting to order at 8:37 a.m. Opens the work session on HB 2098.

HB 2098 – WORK SESSION

006 Janet Adkins Committee Administrator. Explains HB 2098. Refers to the -1 amendments **(EXHIBIT A)**.

034 Rep. Schaufler Asks why all the costs are not reimbursed to someone who is found not guilty.

036 Carol Halford Board of Architect Examiners. States that she did not have the amendments drafted.

044 Rep. Esquivel Explains the -1 amendment and states that if you have been exonerated then the Board of Architect Examiners has to pay the plaintiff.

051 Rep. Schaufler Asks clarifying question.

053 Rep. Kitts Asks why the amendment says may reimburse.

057 Rep. Esquivel Responds that it may be possible for the language to be made more definitive.

059 Rep. Kitts Asks if the committee can do a conceptual amendment.

066 Adkins States that the amendment can be taken back to Legislative Counsel. Explains why the -1 amendments are not more definitive.

076 Rep. Esquivel Talks about how the committee is struggling with the concept of innocence. Explains that the amendment may be a good middle ground.

085 Rep. Kitts Responds that, if the Board of Architect Examiners is going after architects, the board should be sure that the defendant is guilty.

092 Chair Brown

Closes the work session on HB 2098 and opens the public hearing on 2409.

HB 2409 – PUBLIC HEARING

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| 098 | Janet Adkins | Committee Administrator. Explains HB 2409. Submits written testimony on the behalf of Phillip Kennedy-Wong in opposition to HB 2409 (EXHIBIT G). |
| 132 | Rep. Gilman | House District 55. Speaks in support of HB 2409. Discusses his experience training young people and believes that he should not have paid them the full minimum wage. |
| 150 | Bill Perry | Oregon Restaurant Association. Speaks in support of HB 2409. Refers to attachment A and discusses tip reporting (EXHIBIT B, Pages 3 - 5). Notes that tip reporting is the only way that the employer can count their tip as part of the wage. States that HB 2409 falls in line with two provisions of the Fair Labor Standards Act. Notes that other states have tip wages and how people hired on commission do not have to pay minimum wage if the employee makes more than minimum wage through commissions (EXHIBIT B, Pages 6 – 13). |
| 200 | Perry | Says that HB 2409 will allow servers to make the same amount of money and talks about how menu prices going up allow tips to go up. Mentions studies done on how much a server actually makes (EXHIBIT B, Pages 13 – 29). Talks about how cooks' wages and benefits have not increased. |
| 260 | Perry | Talks about federal law and tip rules (EXHIBIT B, Page 4). Notes that cooks get hurt by current state law, because servers do not have to share tips with the cooks and others in the kitchen. Says that he has had to decrease healthcare benefits and increase premium payments that employees have to pay due to the rising cost of labor. |
| 314 | Debra Caldwell | Restaurant Owner, Klamath Falls. Speaks in support of HB 2409. Talks about her experience as a business owner in California and how she paid all of her employees more than minimum wage when she first started. Notes that the only minimum wage employees were the waitresses. States that the Internal Revenue Service (IRS) penalizes her when her waitresses do not report their tips as income. |
| 354 | Caldwell | Talks about how she cannot enforce giving tips to employees in the kitchen. States that she has never had a waitress leave with less than |

15 dollars an hour. Mentions the difficulty of having to increase the prices of the menu when increasing her waitresses' wages every year. Adds that this menu price increase makes the waitresses' tips higher.

406 Caldwell States that no major food chains have started on the west coast, because the startup price is so high.

TAPE 71, A

001 Caldwell Talks about how she trains her employees and states that she does not have a problem freezing the minimum wage for waiters and waitresses. Says that she is a hard worker and that the minimum wage negates employees' merit raises.

024 Chair Brown Asks if the Oregon Department of Revenue requires that tips are counted as income.

026 Caldwell Notes that the state of Oregon does not require tips to be reported as income. Talks about the IRS's requirement that tips be reported as income and that the IRS holds the employer accountable.

046 Chair Brown Asks if the tips are counted as wages in the calculations for worker's compensation and unemployment insurance payroll charges.

047 Caldwell Says that it is based on the tip books that the IRS requires the waitresses to keep.

052 Bill Perry Says that the employer is liable under audits to pay the taxes on the unreported tip income.

056 Rep. Schaufler Talks about his family's experience bucking hay. Asks why restaurants were excluded from the rule that allows employers not to have to pay minimum wage to commissioned workers, and if there are any restaurants that give commissions and are exempt from the minimum wage requirement.

072 Bill Perry Talks about how in 1977 servers were no longer considered commissioned employees.

080 Rep. Schaufler Reiterates second part of question.

085	Bill Perry	Says that if the tip is required by the house it belongs to the house. Mentions situation in Ashland that paid servers \$17 an hour and how they lost employees. States that they do not want to take tips away from servers.
111	Caldwell	Talks about how having extra substitute staff at the front is not possible because they do not have enough money to hire more workers. Talks about how her reputation is impeccable and how she needs good workers. States that she is not underestimating her employees' skills.
146	Rep. Holvey	States that people that work for a living should make a good living. Asks how many restaurants have healthcare for their employees.
156	Perry	Talks about how 70 percent of the members supplied healthcare four years ago. Refers to Labor Issues Survey (EXHIBIT B, Page 30 – 40).
185	Tim Nesbitt	President, Oregon AFL-CIO. Submits and reads from written testimony in opposition to HB 2409 (EXHIBIT C). Emphasizes that the increase in minimum wage was passed by Oregon voters. Says that age should not be used to lower some people's wages.
241	Nesbitt	Continues to read from written testimony (EXHIBIT C). Talks about servers who do not work 40 hours a week. Refutes the brochure "Why a Tip Wage is Good for Oregon" (EXHIBIT B, Pages 6 – 13). Notes that servers and kitchen staff make less money in tip penalty states. Asserts that there are more server jobs in states that do not have a tip penalty.
285	Nesbitt	Continues to read from written testimony (EXHIBIT C). States that tip penalty wages will not bring more jobs and higher paying jobs to Oregon. Wants to protect local restaurants.
317	Josh Gibson	Portland. Speaks in opposition to HB 2409. Talks about how HB 2409 will cut wages for minimum wage employees. Elaborates on his experience as a server in New Mexico, which is a tip penalty state. Says that it is easier for employers to hire a lot more employees if the wages are lower and how it would decrease the tips for individual servers.
360	Gibson	Says that the Oregon restaurant industry is growing. Shares doubts that, if HB 2409, passed more money would go to kitchen staff. Talks about how most tipped employees do not make \$17 an hour.

TAPE 71, B

018	De Ette Peck	Gresham. Speaks in opposition to HB 2409. States that she barely makes enough money to live on and support her daughters. Says that she is not offered health benefits, because she does not work enough hours. Urges the committee not to freeze minimum wage.
050	Rep. Shields	Asks what the Department of Labor's average is for servers' pay rate.
053	Nesbitt	References the second packet and explains how they calculated the average amount wait staff makes (EXHIBIT C, Page . States that the average is \$9.98 per hour.
059	Rep. Shields	Asks where the \$17 per hour comes from.
061	Nesbitt	States that it comes from the ORA's brochure (EXHIBIT B).
064	Rep. Holvey	Asks if they have any data about how many employers offer healthcare.
066	Nesbitt	Says that they do not know and states that many employees may not even be eligible.
070	Gibson	States that he has never received healthcare and that it is not common for employers to offer benefits.
080	Peck	Mentions that her husband works at a "prestigious" restaurant and has to pay \$300 or more a month for medical benefits.
087	Rep. Kitts	Asks what a reasonable level is for wait staff.
093	Nesbitt	Says that the calculation is done by the Northwest Federation of Community Organizations (EXHIBIT C, Page 10).
095	Rep. Kitts	Asks why minimum wage is not \$10.85 an hour if that is defined as a living wage.
098	Nesbitt	States that the minimum wage is just enough to keep one adult with a dependant above the poverty line.

107	Peck	States that if she was being paid minimum wage it would not be a livable wage.
113	Rep. Schaufler	Notes that \$10.85 an hour is barely a livable wage. Asks if it is legal for a restaurant to pay commission and exempt its wait staff from receiving minimum wage.
123	Nesbitt	States that an employer cannot divert the tips.
134	Peck	Says that she worked for an establishment that had a gratuity for parties of eight or more.
140	Rep. Kitts	Asks how the gratuity is set for parties and how it is different.
145	Gibson	States that legally someone cannot be required to pay a gratuity. Says that credit card slips should say suggested gratuity.
158	Rep. Kitts	Says that the restaurant automatically added the gratuity.
165	Gibson	States that it is not legally enforceable but that no one has ever left without paying the gratuity.
171	Rep. Esquivel	States that he resents the automatic gratuity and believes that waiters and waitresses should earn it.
183	Gibson	Says that waiters are taxed based on an estimate of what they earn.
189	Peck	Agrees with Rep. Esquivel.
191	Rep. Holvey	Asks how Ms. Peck provides healthcare for her family.
195	Peck	Says that one daughter is on the Oregon Health Plan and the other is covered by her father's insurance. States that she does not have health insurance.
206	Chair Brown	Submits written testimony on the behalf of Dan Gardner (EXHIBIT D).
210	Rep. Diane Rosenbaum	House District 42. House Democratic Whip. Submits written testimony in opposition to HB 2409 (EXHIBIT E). Says that she

collected signatures for Ballot Measure 25 (2002) and speaks in support of the current law enacted by this measure. Talks about how women would be disproportionately affected by HB 2409. Notes that HB 2409 would reduce workers' real wages.

- 272 Jeff Richardson Hotel Employees Restaurant Employees Local 9. Speaks in opposition to HB 2409. Says that Portland has more restaurants per capita than any other city. Wants employers to pay a fair wage. Asserts that the vast majority of people who are servers do not have healthcare.
- 331 Rep. Kitts Asks Mr. Richardson to submit his survey for the committee.
- 335 Richardson Says that his survey was done just by talking to many employees in the industry.
- 339 Rep. Schaufler Asks what the vote was for Measure 25 (2002).
- 341 Rep. Rosenbaum Offers to get them for the committee.
- 349 Richardson Adds that the wage for training employees under the age of 18 does not increase every year under HB 2409.
- 365 Adkins States that the results for Measure 25 (2002) were 645,016 in favor and 611,658 in opposition.
- 381 Matt Harner Speaks in favor of HB 2409. Talks about his work experience in the restaurant business. States that he knows personally several waitresses that make \$60,000 a year on the Oregon Coast.

TAPE 71, B

- 001 Harner Talks about he makes enough money to support his family working as a waiter. Says that you cannot expect to live on minimum wage and that it is not the majority of his paycheck.
- 050 Harner States that \$10 an hour is a low average based on his personal experience in the restaurant business.
- 066 Mike Downing Restaurant Owner, Oregon Coast. Speaks in favor of HB 2409. States that he pays \$12,000 to \$15,000 a month in wages to

employees and that he does not make any money in the winter, because tourism drops off. Indicates that he cannot afford to provide healthcare to his employees. States that his waiters make good money.

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| 103 | Downing | Says that costs keep going up and that there is a limit on how much can be charged for food. Talks about how he is trying to make ends meet. |
| 122 | Gracie Strom | Restaurant Owner, Lincoln County. Speaks in support of HB 2409. Says that she has enjoyed the restaurant business. Believes that the automatic increase in minimum wage is hard on businesses. Gives example of her cook who has been with her for forty years. States that they never have to advertise for wait staff. |
| 163 | Strom | States that no one wants to be cook anymore and mentions that three people applied for the cook position when she advertised for it. |
| 190 | Rep. Shields | Asks if the Olive Garden would hold onto the money and not increase the pay for kitchen staff. |
| 199 | Harner | Believes that it would affect small businesses positively. States that corporate restaurants can absorb the cost of high turnover more easily and therefore do not have to pay their employees more. |
| 239 | David Brown | Bellman, Portland. Speaks in opposition to HB 2409. Talks about his wife and her work as a waitress. Believes that many waiters and waitresses are professionals. |
| 286 | Adam Petkun | Chair, Oregon Student Association Board. President, Associated Students of the University of Oregon. Submits and reads from written testimony in opposition to HB 2409 (EXHIBIT F). Talks about how HB 2409 would negatively affect students who support themselves as waiters and waitresses. Notes the high cost of attending college in Oregon. |
| 334 | Sarah Ramus | Restaurant worker, Salem. Speaks in opposition to HB 2409. Talks about her struggle to pay for her expenses during high school. Believes that it would not be fair to lower the minimum wage. Notes that most of the people that she meets do not make very much money being a waiter or waitress. Talks about her sister's struggle to support herself and her daughter when she was a minor. Asserts that her sister did not deserve to make less than minimum wage. |

398 Steve Kline Member, Board of Directors, ORA. Speaks in support of HB 2409. Believes that this is not an issue of management versus labor.

TAPE 72, A

001 Kline Says that he is one of the smallest companies that provide good benefits to their employees. States that, since he did not cancel benefits for his employees, one of his employees was able to receive a kidney transplant. Emphasizes that restaurant owners try to make their employees happy and take that into account when hiring more employees. Indicates that this consideration by restaurant owners ensures that employees' tips are not cut.

054 Kline Says that, if every restaurant can add an employee, it will help the state of Oregon.

064 Loren Stogland Restaurant owner, Portland. Speaks in support of HB 2409. Says that minimum wage was designed for the lowest paid employees and that waiters and waitresses are not making the least amount of money so they are not entitled to the benefits of the yearly increase in minimum wage. Talks about the benefits that are offered to his employees. States that there is a finite amount of money that can be given to laborers.

109 Stogland Says that in many situations, such as when an individual applies for a loan, tips are considered income.

118 Jessica Watson General Manager, Wooden Nickel Pub and Eateries and Max Place. Speaks in support of HB 2409. Says that HB 2409 would help the relationship between “the back of the house and the front”.

144 Chair Brown Adjourns the meeting at 10:41 a.m.

EXHIBIT SUMMARY

- A. HB 2098, -1 amendments, staff, 2 pp
- B. HB 2409, informational packet, Bill Perry, 39 pp
- C. HB 2409, written testimony, Tim Nesbitt, 29 pp
- D. HB 2409, written testimony of Dan Gardner, Rep. Alan Brown, 3 pp

- E. **HB 2409, written testimony, Rep. Diane Rosenbaum, 1 p**
- F. **HB 2409, written testimony, Adam Petkun, 2 pp**
- G. **HB 2409, written testimony of Phillip Kennedy-Wong, staff, 1 p**