

HOUSE COMMITTEE ON
BUSINESS, LABOR, AND CONSUMER AFFAIRS

May 25, 2005 Hearing Room B

10:30 A.M. Tapes 143 - 145

Corrected 10/03/05

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:

SB 323 – Public Hearing

SB 1006 – 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 143, A

003 Chair Brown Calls the meeting to order at 8:44 a.m. Opens the public hearing on SB 323.

SB 323 – PUBLIC HEARING

007 Janet Adkins Committee Administrator. Explains SB 323 and submits the -6 amendments (**EXHIBIT A**).

020 Tom Holt Oregon State Pharmacy Association. Speaks in support of SB 323. Notes that SB 323 makes the association nervous and wants the committee to put their intent in regards to pharmacists on the record. Says that the Employment Department has a history of taking action against independent contractors who are pharmacists.

065 Ed Hardon Newspaper Publishers Association. States that the committee and the taskforce have done a good job of creating clear definitions of independent contractors. Talks about the amendment that has been proposed about stringers.

079 Clark Gallagher Hillsboro Argus. Speaks in support of SB 323 with the -5 amendments. States that, without the amendments, they would be subject to enhanced enforcement interpretations by the state labor, revenue, and insurance departments. Details the importance of having guest contributors.

104 Rep. Kitts Asks how an article he submitted for free would be published in the newspaper.

109 Gallagher Says that it would usually go in the editorial section. Notes that if a story was submitted that fit into the newspaper outside of the editorial page the author of the piece would be paid for the article.

130 Roger Martin Lobbyist, Brokerage Clients. Speaks in support of SB 323. Gives a history of the definition of independent contractors. Talks about how he was fined by the Employment Department when he hired an independent contractor.

177 Jim Colton Mortgage Broker Business Owner. Talks about the Employment Divisions action against his company, because the agency did not believe that the Certified Public Accountant (CPA) was an

independent contractor. Says that loan officers do not qualify for unemployment benefits. Believes that the state's intent is to shut his business down, because they have a different interpretation of independent contracting statutes.

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| 231 | Martin | Clarifies who loan originators are and says that in Washington and California they are classified as independent contractors. |
| 244 | Chair Brown | Asks if Washington and California require certain criteria for loan originators to be independent contractors. |
| 250 | Colton | Says that loan originators fall under the Real Estate Division in Washington and California. States that the real estate divisions are exempt from independent contracting law. |
| 263 | Rep. Holvey | Asks if loan originators are paid on commission. |
| 271 | Colton | Says that they are paid 100% commission. |
| 273 | Rep. Esquivel | Asks if the loan originators are required to work a certain number of hours a week and if the company provides them with health insurance and workers' compensation insurance. |
| 276 | Colton | Asserts that the company has no time requirements and provides no benefits. |
| 279 | Chair Brown | Asks if they have to be licensed. |
| 281 | Colton | Talks about how the loan originators do not have to be licensed in Oregon but that they have to be licensed in Washington and California. States that they do have to register. |
| 289 | Rep. Kitts | States that the story told by Roger Martin is different than the one told by Jim Colton. Says that Mr. Colton merits a good story. |
| 327 | Martin | States that he was following the old law when he was fined by the Employment Department. |
| 341 | Rep. Schaufler | Asks for Grover Simmon's testimony. |

350 Grover Simmons Lobbyist, Travel Industry. Submits the -7 amendments (**EXHIBIT B**). Says that travel agents do not receive a commission for issuing airline tickets. Mentions United Airlines declaration of bankruptcy. Notes the changing nature of travel agencies. Talks about how a travel agent issues tickets for 15 different agencies.

TAPE 144, A

001 Simmons Believes that travel agents do not work for 15 different companies. Notes that the amendments are well-written.

024 Rep. Schaufler Says that who is an employee and who is an independent contractor needs to be clearly separated. Asks for the names of people with bad attitudes in the state government.

039 Colton Asks if he would like names from the Employment Division.

040 Rep. Schaufler States that he is interested in any government worker with a bad attitude.

042 Colton Offers to get information.

044 Rep. Kitts Asks about the airline agency's number that is used by travel agents to issue airline tickets to customers. States that they are reliant on the agency and believes that travel agents could have ten employers.

077 Simmons Offers to discuss the issue further. Describes how the number works when someone is booking an airline ticket.

088 Rep. Schaufler Talks about the bonds and insurance that he has as an independent contractor. States that he has 20 to 30 customers a year and not 20 to 30 employers.

105 Rep. Kitts Refers to the Laughing Rabbit Contractor. Talks about why lobbyists are independent contractors. Says that an independent contractor has been defined by a certain set of criteria such as getting business cards and registering with the state.

145 Ed Glad Pacific Northwest Regional Council of Carpenters. Speaks in support of SB 323. States that the history goes back much later than 1980s. Gives history of independent contractors. States that 46 states no longer work with the federal law for independent contractors.

Mentions statutes in different states. Says that there are over \$1 billion in untaxed wages, because people are being told by an employer that they are independent contractors.

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| 201 | Glad | Talks about problems with independent contracting law in terms of immigrant workers. States that SB 323 is good government at its best. |
| 229 | Rep. Schaufler | Talks about his concrete layer and how he has to have insurance for the contract layer. States that if the concrete layer does not have a license then he has to treat them as employees. Says that people who want to be independent contractors should have licenses. |
| 251 | Glad | States that it is not uncommon to have an independent contractor installing roofing and fall off the roof. Indicates that when this happens it is not uncommon for the roofer to become an employee “before he leaves the gutter”. |
| 274 | Rep. Kitts | Asks about a general contractor hiring a subcontractor and paying them under the table. States that this practice is currently illegal. |
| 280 | Glad | Believes that there needs to be an interest by the state to enforce the statutes regarding independent contractors. |
| 293 | Rep. Kitts | Asks if an independent contractor pays taxes and where the lost revenue comes in. |
| 306 | Glad | States that employers who are qualifying people as independent contractors when that person should be an employee are attempting to skirt the law. |
| 311 | Rep. Kitts | Clarifies question. Believes that tax revenue is not being lost when independent contractors are incorrectly labeled by their employers. States that the tax burden is merely being shifted. |
| 340 | Glad | Talks about how an employee thinks that the employer is paying the taxes and the employee then has no capacity to pay when they find out what taxes they owe. Indicates that this is where tax revenue is lost. |
| 357 | Rep. Kitts | Shares that an employer should be required to disclose in the beginning whether the person hired is an employee or an independent contractor. |

- 367 Glad Says that this requirement was discussed in the Independent Contractors Task Force. States that the Tax Bar and the electronic industry would not meet the criteria of the state or federal standard.
- 371 Chair Brown Moves to a subcommittee at 9:38 a.m. Talks about his experience with independent contracting.
- 400 Paula Hobble Travel Agent. Submits written testimony in support of SB 323 with the -7 amendments (**EXHIBIT C**). States that they are a unique industry. Says that currently travel agents do many different tasks. Talks about how when writing an airline ticket, they need a special number from the airline. States that in other travel industries they have their own numbers and do not receive them from the industry.

TAPE 143, B

- 010 Chair Brown Moves the committee to a full committee by welcoming Rep. Shields, Rep. Holvey, and Rep. Schaufler back to the committee at 9:42 a.m.
- 011 Hobble States that current interpretation of employment statutes are very burdensome to travel agents. Notes world catastrophes have had a negative effect on all facets of the travel industry.
- 040 Rep. Schaufler Asks if travel agents have to get a license to do business in Oregon.
- 043 Hobble States that almost all of them get a business license in the state of Oregon.
- 048 Rep. Schaufler Asks if travel agents have to pass a criminal check or have bonds to operate in Oregon.
- 051 Hobble Indicates that a person could tell a friend that they are a travel agent and that person would be a travel agent. States that it why is important for them to work through legitimate travel agencies.
- 058 Rep. Schaufler Notes that a differentiation needs to be in place between an independent contractor who is a business person and an employee.
- 069 Hobble Believes that many of the travel agents have become limited liability companies (LLC) or a corporation.

073	Chair Brown	States that having an LLC does not necessarily qualify a person as an independent contractor.
076	Hobble	Says that it does show that you are an independent business.
077	Chair Brown	Notes that being an LLC does not demonstrate a person is an independent contractor under current statute.
079	Kris DeSylvia	World Travel. Speaks in support of SB 323 with the -7 amendments. Talks about the strict guidelines. Asks travel agents to stand in the audience. Mentions that airline security laws and policy have created stricter standards for authorized travel agencies. Talks about her independent contractors and how they qualify under the guidelines set out in SB 323.
165	Rep. Kitts	States that a person generating an airline ticket for the customer would not be an airline employee if they were actively choosing between multiple airlines.
179	DeSylvia	Asks clarifying question.
181	Rep. Kitts	States that a person does not become an employee of the airline, but the requirement to have the ARC number that is required by airlines means that a person is not acting independently.
190	DeSylvia	Says that a travel agent could circumvent the ARC number and notes that it is only one option available to travel agents.
207	Rep. Kitts	Reads qualifications for the independent contractor. Talks about the qualifications that travel agents would have. Asks why there is a need for exemptions if travel agents already meet the qualifications.
256	DeSylvia	States that a suit that was filed against All Star Travel by the Employment Department. Talks about how the criteria has been met by travel agents and the suit was still filed. Says that an audit would bankrupt a company.
297	Rep. Schaufler	Says that audits are one of the tools that help the state determine if companies are complying with the law. Asks for information on specific state employees who are being rude or not correctly interpreting the law. Asks if Ms. DeSylvia is aware that the exemption would cause the company to pay federal taxes that they do not currently pay.

- 311 DeSylvia States that she is not aware of the new taxes. Asks if the Employment Division pursues travel agents who meet the criteria to be an independent contractor.
- 314 Rep. Schaufler Believes that if they are complying with statute then the travel agent should be an independent contractor.
- 317 Rep. Kitts States that he would like to see the Audits Division to be liable for the costs where no violations of the law is done.
- 352 Rep. Schaufler Asks for the committee to move on.
- 362 Chair Brown Closes the public hearing on SB 323 and opens the public hearing on SB 1006.

SB 1006 – PUBLIC HEARING

- 386 Janet Adkins Committee Administrator. Explains SB 1006.
- 405 Bob Shiprack Oregon State Building and Construction Trades Council. Speaks in support of SB 1006. Explains that SB 1006 was drafted to define what a responsible bidder is in state contracts.

TAPE 144, B

- 001 Shiprack Believes that the law will not be used very often. Says that SB 1006 gives the state and local government clear guidelines for rejecting bids. Gives several examples.
- 066 Shiprack Outlines the criteria that is needed to qualify as a responsible bidder. Emphasize that SB 1006 will rarely be used.
- 077 Rep. Esquivel Asks if the request for qualifications (RFQ) process is being used and can solve the issues SB 1006 attempts to address.
- 080 Shiprack Says that he has tried to educate state and local agencies that there are tools available to them. Talks about exempt projects versus contractors that have traditionally done design-bid builds.
- 100 Dugan Petty

		Deputy Administrator, State Services Division. States that one of the fundamental tenets of public contracting law is responsible bidding. Says that the amendments will include a list of criteria and the reviewing agency will have to use the form to verify that the contractor is a responsible bidder. Notes that a better understanding of the term responsible needs to be disseminated to public agencies.
163	Rep. Holvey	Speaks in support of SB 1006. Asks about best practices and the practice of contractors low bidding and then adding on costs later.
181	Petty	States that a scenario where the contractor added on a large amount of costs after receiving the contract could be labeled as dissatisfactory performance. Says that the contracting officer still has the duty to ensure that the agency is getting the best deal and product under the contract. Emphasizes that each case has to stand on its own.
214	Jon Oshel	Association of Oregon Counties. Takes a neutral stance on SB 1006. Believes that SB 1006 will not solve the problems with construction projects. Notes that no definitions exist for past job satisfaction. Says no form or file is available that tells counties whether a contractor is qualified or not.
269	Chair Brown	Asks if SB 1006 will make the contracting process worse.
271	Oshel	States that he is concerned that SB 1006 is not an answer to the problem and only creates more bureaucracy.
280	Jessica Harris Adamson	Association of General Contractors (AGC). Speaks in support of SB 1006, but has additional concerns about the public bidding process. Says agencies have no guidelines about what responsibility means. Clarifies that an exempt process does not guarantee a public agency will have a better contractor. Notes that agencies have to put the work and time into examining a contractor and the bid to ensure a good product.
331	Rep. Schaufler	Speaks in support of SB 1006.
338	Rep. Kitts	Asks about line 21 of SB 1006.
351	Harris Adamson	States that it would not be BOLI making the determination necessarily. Says that the law was designed for large federal bidding contractors and it has to be made workable for public agencies in Oregon who have smaller scale projects. Notes that agencies have no

guidelines. Mentions the commitment by the affected parties to sit down and discuss the issue.

385 Rep. Kitts Believes that SB 1006 allows for a huge discrimination policy by public agencies. States that the problem is with section B and C.

TAPE 145, A

001 Chair Brown Asks if section B and C already exist in statute.

004 Harris Adamson States that those sections need to be looked into and that AGC has similar concerns to Rep. Kitts.

013 Rep. Kitts Shares the concern that another layer of bureaucracy is being added without a purpose.

016 Rep. Schaufler Believes in clarifying the law and states that they are creating a law to discriminate between good contractors and bad contractors.

028 Rep. Kitts References previous testimony.

031 Harris Adamson States that the discussion that Rep. Kitts and Rep. Schaufler are having is the concern in the industry and the industry is willing to work on the problem.

052 Chair Brown Closes the public hearing on SB 1006. Adjourns the meeting at 10:39 a.m.

EXHIBIT SUMMARY

- A. SB 323, -6 amendments, staff, 1 p
- B. SB 323, -7 amendments, Grover Simmons, 1 p
- C. SB 323, written testimony, Paula Hobbie, 8 pp