

SENATE COMMITTEE ON COMMERCE

CORRECTED 5/9/05

January 25, 2005
3:30 p.m.

Hearing Room C
Tapes 3 - 4

MEMBERS PRESENT: **Sen. Floyd Prozanski, Chair**
 Sen. Roger Beyer, Vice-Chair
 Sen. Ginny Burdick
 Sen. Charlie Ringo
 Sen. Doug Whitsett

STAFF PRESENT: **Anna Braun, Committee Administrator**
 Karen Scofield, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:
 SB 136 – Public Hearing and Work Session
 SB 137 – Public Hearing and Work Session
 SB 138 – Public Hearing and Work Session
 SB 145 – 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
TAPE 3, A		
005	Chair Prozanski	Calls the meeting to order at 3:30 p.m. Opens public hearing on SB 136, SB 137, SB 138 and SB 145.
<u>SB 136, SB 137, SB 138, SB 145 – PUBLIC HEARING</u>		
010	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Introduces himself and other witnesses. Submits and presents written testimony in support of SB 136 (EXHIBIT A).
030	Christine Hammond	Administrator, Wage and Hour Division, BOLI. Discusses details of SB 136.
040	Gardner	Submits and presents written testimony in support of SB 137 (EXHIBIT B).
060	Gardner	Submits and presents written testimony in support of SB 138 (EXHIBIT C). Mentions BOLI's technical assistance unit designed to assist employers.
100	Annette Talbott	Deputy Commissioner, Bureau of Labor and Industries (BOLI). Discusses SB 138. Discusses the 45 day time frame for an employer to produce records.
115	Gardner	Submits and presents written testimony in support of SB 145 (EXHIBIT D).
120	Talbott	Testifies in support of SB 145. Remarks that SB 145 will codify current practice and assist employers.
140	Chair Prozanski	Asks Gardner for clarification regarding SB 136 that flaggers are covered by either the little (state) or big (federal) Davis Bacon act depending on funding.
150	Gardner	Responds.
160	Chair Prozanski	Asks committee members for questions regarding SB 137. Asks Gardner for clarification that youths will get a meal break between the third and fifth hour of work like adults.
165	Gardner	Answers question regarding eligibility.

167	Chair Prozanski	Responds.
170	Sen. Beyer	Addresses subsection 4, lines 22-25. Asks how this situation would work regarding employee records and the agreement of the extension between the employer and employee.
185	Gardner	Addresses question. Remarks that 45 days should be a sufficient amount of time for employer to produce records. States that it would take exceptional circumstances to need to extend this timeline.
205	Sen. Beyer	Inquires as to what type of scenario would have to happen for subsection 4 to apply. Comments that an employee could prolong the appointments and therefore try to receive civil penalties against the employer.
215	Gardner	Remarks that the civil penalty is discretionary upon the part of the Bureau and comments that they would not enforce a civil penalty in that situation.
225	Sen. Beyer	States that he is concerned that the statute does not reflect that the Bureau would not enforce a civil penalty if an employee manipulates the ability to view their records.
235	Talbott	Remarks that employees ask to see their employee records because they actually do want to see their record. This is why the bill has been drafted, to help employees receive their file.
265	Sen. Beyer	Inquires what other penalties section 2 is referring to other than civil.
270	Talbott	Answers that there are no other existing penalties regarding section 1 of the bill, which relates to personnel records. That is why the bill was drafted.
280	Gardner	Adds that the only current remedy for an employee is to hire an attorney and go to court to receive their records.
285	Sen. Beyer	Clarifies why he asked the question.
290	Sen. Whitsett	Asks how many cases of non-compliance complied with the demand from the Bureau voluntarily.
292	Gardner	Answers question. States that they sent out 117 letters, but do not track how many employers produce records after the letter is sent.
300	Sen. Whitsett	Remarks that he questions how much the legislation is needed because they do not know how many employers did not comply.
305	Gardner	Responds that many employees come to them to complain and they feel that the legislation is necessary.
315	Sen. Whitsett	Asks to see the numbers to know how much the law is needed.
320	Gardner	Remarks that due to staffing reductions, this has not become a priority.
325	Sen. Ringo	Comments that there may be possible wrong doings out there not being brought to BOLI's attention.
335	Gardner	Agrees that this is a concern and needs to be addressed. Remarks that the goal of SB 138 bill is to save employees from having to go to court.
350	Sen. Ringo	Draws attention to section 1, subsection 2 of SB 138. Remarks that an employer would not be in violation if they provide reasonable opportunity.
365	Gardner	Agrees that if an employer has provided a number of opportunities to view the file and the employee has broken the appointments, the employer has provided the reasonable opportunity.
375	Sen. Ringo	States that section 1, subsection 4 is written to give flexibility to

		employers.
380	Gardner	Agrees.
385	Sen. Ringo	Gives an example of how an employer may help an employee.
390	Gardner	Points out that there is another section in the bill to address this.
400	Sen. Burdick	Discusses section 1, subsection 4. Inquires as to how an employee's record would not be available within 45 days.
410	Talbott	Comments that they tried to consider all circumstances and that there is a possibility that it may take up to 45 days. States that they wanted to provide the employer flexibility.
435	Sen. Burdick	Comments that she wonders what the employee's motivation would be to give an extension to the employer.
445	Talbott	Comments that the Bureau was trying to provide flexibility.
450	Chair Prozanski	Remarks that under section 1, line 7, the definition of personnel records says it does not include records relating to criminal law. Asks for clarification as to why this would not be included in someone's personnel record.
470	Talbott	Answers that arrest records are not always best to rely on.
TAPE 4, A		
040	Chair Prozanski	Inquires as to the history of not including criminal law activity in employee's personnel records.
065	Talbott	Agrees to look into the history and return information.
070	Chair Prozanski	Asks for any questions regarding SB 145 from the committee.
075	Sen. Whitsett	Asks for clarification regarding the writing of SB 145.
080	Gardner	Answers clarification.
095	Sen. Whitsett	Inquires as to why language needs to be changed if the bill does not change the confidentiality.
100	Gardner	Answers that it is a clarification of current practices.
110	Sen. Whitsett	Inquires as to what happens if the bill does not pass.
112	Gardner	Explains that they will continue their current practice, but would like to receive the statutory authority to do so. States that the clarity of the law will limit exposure.
117	Sen. Whitsett	Asks Gardner if he thinks his current practices are outside of current statutory authority.
120	Gardner	Answers, no, but states that he desires the clarity to avoid litigation or potential for argument.
125	Talbott	Submits Confidentiality Agreement (EXHIBIT E). States that all employees are required to sign the Confidentiality Agreement.
130	Sen. Beyer	Inquires as to the current practices of the Bureau.
135	Gardner	Answers question.
145	Talbott	Discusses the authority for their decisions.
150	Sen. Beyer	Asks for direction to where Talbott is speaking of.
151	Talbott	Directs committee's attention to page 1, lines 11-13.
160	Sen. Beyer	Discusses the need of the bill by the request of the Bureau.
170	Gardner	Discusses that the bill is needed for clarity.
175	Sen. Beyer	Asks for example of what this bill would assist with.
180	Talbott	Answers question and provides an example of when the bill would be applicable.
220	Chair Prozanski	Seeing no further witnesses, closes public hearing on SB 136. Asks for more witnesses regarding SB 137.
235	Patrick Allen	Manager, Office of Regulatory Streamlining, Department of Consumer and Business Services. Discusses purpose of the Department. Discusses and submits Regulatory Streamlining Legislative Agenda in support of SB 137 (EXHIBIT F).

245	Chair Prozanski	Closes public hearing on SB 137. Seeing no further witnesses, closes public hearing on SB 138.
260	Tamara Brickman	Legislative Coordinator, Oregon Employment Department. Offers to answer questions regarding SB 145.
265	Sen. Beyer	Asks for clarification of current procedures regarding confidential information.
270	Brickman	Answers question.
280	Sen. Beyer	Inquires if they have sought an attorney general's opinion on this issue.
285	Brickman	Answers that they have not.
290	Sen. Beyer	Asks for example as to what would be contained in information.
295	Brickman	Answers that it would generally be wage records and address. Not quite sure.
300	Sen. Beyer	Gives scenario and inquires as to what level of detail is provided to BOLI.
315	Brickman	Answers that she does not know, but offers to return information.
320	Sen. Whitsett	Asks if SB 145 would change the current laws that allow limited release of employment department information.
330	Brickman	Answers, no it would not.
335	Chair Prozanski	Closes public hearing on SB 145.
345	Chair Prozanski	Calls meeting to a recess.
346	Chair Prozanski	Calls meeting back to order. Opens work session on SB 136.
<u>SB 136 - WORK SESSION</u>		
350	Sen. Beyer	MOTION: Moves SB 136 to the floor with a DO PASS recommendation.
		VOTE: 4-0-1
		EXCUSED: 1 - Sen. Ringo
	Chair Prozanski	Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.
365	Chair Prozanski	Closes work session on SB 136 and opens work session on SB 137.
<u>SB 137 – WORK SESSION</u>		
370	Sen. Beyer	MOTION: Moves SB 137 to the floor with a DO PASS recommendation.
		VOTE: 4-0-1
		EXCUSED: 1 - Sen. Ringo
	Chair Prozanski	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
375	Chair Prozanski	Closes work session on SB 137. Opens work session on SB 138.
<u>SB 138 – WORK SESSION</u>		
385	Sen. Beyer	MOTION: Moves SB 138 to the floor with a DO PASS recommendation.
390	Sen. Beyer	Stated that Senator Ringo's previous comments regarding this bill alleviated his prior concerns. VOTE: 4-0-1 EXCUSED: 1 - Sen. Ringo
415	Chair Prozanski	Hearing no objection, declares the motion CARRIED. SEN. WHITSETT will lead discussion on the floor.
435	Chair Prozanski	Closes work session on SB 138. Discusses next committee meeting. Adjourns the meeting at 4:30 p.m.

EXHIBIT SUMMARY

- A. **SB 136, written testimony, Dan Gardner, 1 p**
- B. **SB 137, written testimony, Dan Gardner, 1 p**
- C. **SB 138, written testimony, Dan Gardner, 2 pp**
- D. **SB 145, written testimony, Dan Gardner, 1 p**
- E. **SB 145, confidentiality agreement, Annette Talbott, 1 p**
- F. **SB 137, legislative agenda, Patrick Allen, 5 pp**