

SENATE COMMITTEE ON COMMERCE

February 15, 2005
3:10 P.M.

Hearing Room C
Tapes 15 - 16

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

MEMBER EXCUSED: **Sen. Whitsett**

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

MEASURES/ISSUES HEARD:
 SB 433 – Public Hearing
 SB 144 – Public Hearing
 SB 434 – Public Hearing
 HB 2153 – Public Hearing and 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 15, A		
005	Chair Prozanski	Calls meeting to order at 3:10 p.m. Opens public hearing on SB 433.
<u>SB 433 – PUBLIC HEARING</u>		
015	Anna Braun	Committee Administrator. Gives an overview of SB 433.
020	Bob Russell	President, Oregon Trucking Associations. Discusses and submits written testimony in support of SB 433 (EXHIBIT A). Discusses the need for the bill.
060	Russell	Discusses the ability of SB 433 to amend current law. Discusses specific language in the bill.
075	Sen. Ringo	Inquires as to a statutory definition of a “for hire” motor carrier.
080	Russell	Answers question.
082	Sen. Ringo	Asks if the term “for hire” is the same as owner operator.
085	Russell	Answers clarification.
090	Chair Prozanski	Interjects that the term “for hire” is under ORS 825.005.
095	Sen. Ringo	Discusses ORS 825.005(7)(a) and (b) regarding the definition of “for hire.” Inquires how you can distinguish who fits under this definition.
110	Russell	Discusses line two (2) on page three (3) of the bill in response to Sen. Ringo.
111	Sen. Ringo	Comments on his understanding of the bill.
115	Sen. Burdick	Inquires who covers people who are not considered a covered worker if they are injured on job.
120	Russell	Answers regarding insurance options for these type of employees.
130	Sen. Burdick	Inquires if someone has a remedy against their employer if they file a workers’ compensation claim and the employer is negligent.
135	Russell	Discusses question.

140	Sen. Ringo	Asks for question to be repeated.
141	Sen. Burdick	Explains question again.
150	Russell	Answers why policies convert to workers' compensation claims.
155	Sen. Ringo	Inquires regarding examples of owner operators who work for the same trucking company and the companies decides what they do.
160	Russell	Answers regarding uniqueness of trucking companies in relation to independent contractors. Discusses the fact that many owner operators lease and work for a particular motor carrier for a long period of time.
195	Sen. Ringo	Inquires regarding the current practice of insurance companies in relation to the coverage of independent operators.
200	Russell	Answers question. Remarks that insurance premiums are currently based on twenty five percent of total compensation.
205	Sen. Ringo	Asks how many owner operators this bill will impact.
210	Russell	Answers that there is not a database of owner operators. Remarks that it does not appear that there will be a huge impact for owner operators.
220	Sen. Ringo	Inquires if the impact of the bill will be that drivers who are injured will not receive workers' compensation coverage.
225	Russell	Answers, no. States opinion that drivers, if injured, will either have an if any insurance policy or occupational accident insurance.
240	Sen. Ringo	Inquires if an owner operators' vehicle insurance covers personal injury protection coverage.
250	Russell	Discusses insurance requirements for owner operators.
260	Chair Prozanski	Closes public hearing on SB 433 and opens public hearing on SB 144.

SB 144 – PUBLIC HEARING

265	Anna Braun	Committee Administrator. Gives an overview of SB 144.
270	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Discusses and submits written testimony in support of SB 144 (EXHIBIT B). Discusses and submits informational brochure on meal periods and rest breaks (EXHIBIT C) and a sample letter regarding meal periods and rest breaks (EXHIBIT D).
330	Chair Prozanski	Asks for clarification regarding what period of time BOLI waits until the third violation.
335	Gardner	Answers that it is within a one (1) year period of time. Remarks that they send out a demand letter to try to get the employer into compliance. Refers to EXHIBIT B. Explains that after a third violation within a one (1) year period they begin an investigation.
350	Chair Prozanski	Inquires if BOLI has considered restitution for the loss of an employee rather than giving them a portion of the fine.
355	Gardner	Answers question.
365	Chair Prozanski	Clarifies question. Inquires if department has considered what a person would be able to receive as a restitution.
375	Gardner	Discusses answer to question.
390	Chair Prozanski	Inquires what would transpire during a case of an employer who is out of compliance.
400	Christine Hammond	Administrator, Wage and Hour Division, BOLI. Discusses procedures of BOLI.
415	Chair Prozanski	Inquires if BOLI has an estimate regarding the impact of the violations.

420	Hammond	Answers that BOLI has only had to assess civil penalties five (5) times over the past several years.
435	Chair Prozanski	Inquires as to how many times they gained compliance without assessing a fine.
440	Hammond	Answers that they have sent letters, but do not follow up until they receive further complaints.
450	Chair Prozanski	Comments on estimation of how many letters might have been sent in the past.
455	Hammond	Answers clarification.
TAPE 16, A		
030	Don Schellenberg	Farm Bureau. Discusses and submits written testimony in opposition to SB 144 (EXHIBIT E). Explains piece rate procedures.
075	Sen. Burdick	Inquires regarding the Farm Bureau's opposition to the bill.
080	Schellenberg	Discusses the concern of the bill providing an incentive to cause a problem for the employer.
095	Chair Prozanski	Remarks that the rule has been in place for two (2) years and inquires if there have been reports from farmworkers to BOLI regarding the type of claims that Schellenberg is concerned about.
100	Schellenberg	Answers that he is not aware of any claims, but is concerned that this might cause an employer to be open to more claims.
110	Chair Prozanski	Provides a scenario and asks a question about it.
120	Schellenberg	Answers question.
135	John McCulley	Tree Fruit Growers. Discusses opposition to SB 144. Discusses concern of SB 144 being an incentive for employees to violate their meal and rest periods and collect monetary damages.
160	Chair Prozanski	Discusses need of clarification from BOLI on a few items. Inquires if the Tree Fruit Growers' concerns would be alleviated if BOLI answers that there is no obligation on the employer to force employees to take breaks.
180	McCulley	Answers that they will discuss this, but they understand that employers have to force employees to take their breaks.
185	Sen. Beyer	Remarks that even if breaks do not have to be enforced by the employer, this is not enough of an incentive for an employee to not seek damages.
200	Chair Prozanski	Comments that employees could benefit from the bill by seeking damages, but they are not aware of any previous complaints.
210	Schellenberg	Remarks that the piece rate issue is the biggest concern of the Farm Bureau. Employers with hourly employees do not have as much trouble regarding breaks because the employees are not losing money during breaks.
220	Gardner	Clarifies that the rule went into effect February 1, 2004. Remarks that he is not aware of any agricultural employees who have complained that they do not want a meal and rest period. Answers that employers do need to document that breaks are taken, but they do not have to force employees to take them all at the same time.
300	Chair Prozanski	Inquires if a farmer has to force piece meal farmworkers to take breaks.
305	Gardner	Answers that employers have an obligation to make their employees knowledgeable about the breaks, but not to force them to take it. Discusses that they have only had seven (7) complaints and they were resolved through demand letters and

325	Chair Prozanski	educating the employer. Inquires if BOLI would consider a waiver that an employer had an employee sign if allegations are made.
340	Gardner	This was discussed previously, but other states that do it are concerned regarding the coercion to have an employee sign it.
355	Chair Prozanski	Comments that when you create a potential for someone to receive monetary gain there becomes concern from the employer that they become open to allegations.
360	Gardner	Remarks that the bill only allows BOLI the discretion to give up to fifty percent to employees, but the fifty percent is not mandatory.
375	Chair Prozanski	Closes public hearing on SB 144 and opens public hearing on SB 434.

SB 434 – PUBLIC HEARING

380	Anna Braun	Committee Administrator. Gives an overview of SB 434. Submits written testimony on behalf of Stephanie Harper, Deputy City Attorney, The City of Portland, Oregon (EXHIBIT F).
395	Marcia Ohlemiller	Legal Policy Advisor, Bureau of Labor and Industries (BOLI). Submits and discusses written testimony in support of SB 434 (EXHIBIT G).

TAPE 15, B

025	Ohlemiller	Discusses and submits informational packet on BOLI'S Wage and Hour Division's subpoena procedure (EXHIBIT H). Discusses the need of SB 434 to clarify the language of current statute.
070	Chair Prozanski	Inquires if the framework in SB 434 is the same as administrative law proceedings.
072	Ohlemiller	Answers yes.
075	Sen. Beyer	Asks if example by Ohlemiller would be an Occupational Safety and Health Administration (OSHA) issue instead of a BOLI issue.
080	Ohlemiller	Answers that BOLI has jurisdiction over Forest Labor Contract licensing and therefore, have authority at times regarding worker safety.
085	Sen. Beyer	Remarks that he disagrees with Ohlemiller's comment that the bill does not give BOLI any new authority. Discusses that the bill expands the chapters of law that give BOLI subpoena authority.
090	Ohlemiller	Answers that the bill is not adding more authority than what they already have jurisdiction over.
100	Sen. Beyer	Comments that the bill expands BOLI's authority by adding more chapters.
105	Chair Prozanski	Comments regarding his understanding that the bill does add the full chapter, but he is not sure if this does in fact give more authority.
115	Annette Talbott	Deputy Commissioner, BOLI. Discusses current statute abilities regarding subpoenas.
125	Sen. Beyer	Inquires regarding the purpose of specific language in section two (2) of the bill.
130	Ohlemiller	Answers that the language was repeated for drafting and clarification purposes.
140	Sen. Beyer	Clarifies that it was an issue dealing with public contracting.
142	Talbott	Answers that HB 2314 (2003) rewrote public contracting laws to segregate them out.

150	Sen. Burdick	Discusses EXHIBIT H and asks if Ohlemiller can help to alleviate the concerns of the City of Portland.
160	Ohlemiller	Answers that she spoke with Legislative Counsel regarding the language that the City of Portland is concerned about and Legislative Counsel felt that the questions were consistent with current statute regarding subpoena authority. Refers to EXHIBIT H.
190	Sen. Burdick	Comments on the need to hear if the City of Portland's concerns have been alleviated.
200	Chair Prozanski	Asks that administrator contacts the City of Portland to receive clarification.
205	Talbott	Comments the BOLI would be happy to work with the City of Portland.
215	Chair Prozanski	Closes public hearing on SB 434 and opens public hearing on HB 2153.

HB 2153 – PUBLIC HEARING

220	Floyd Lanter	Administrator, Division of Finance and Corporate Securities, Department of Consumer and Business Services (DCBS). Discusses and submits written testimony in support of HB 2153 (EXHIBIT I) .
255	Chair Prozanski	Inquires regarding the status of the House vote on the bill. Closes public hearing and opens work session on HB 2153.

HB 2153 – WORK SESSION

265	Sen. Beyer	MOTION: Moves HB 2153 to the floor with a DO PASS recommendation.
		VOTE: 3-0-2
		EXCUSED: 2 - Ringo, Whitsett
	Chair Prozanski	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
270	Chair Prozanski	Closes work session on HB 2153. Discusses upcoming committee meetings. Adjourns the meeting at 4:50 p.m.

EXHIBIT SUMMARY

- A. **SB 433, written testimony, Bob Russell, 2 pp**
- B. **SB 144, written testimony, Dan Gardner, 2 pp**
- C. **SB 144, informational brochure, Dan Gardner, 4 pp**
- D. **SB 144, sample letter, Dan Gardner 1 p**
- E. **SB 144, written testimony, Don Schellenberg, 2 pp**
- F. **SB 434, written testimony of Stephanie Harper, Anna Braun, 2 pp**
- G. **SB 434, written testimony, Marcia Ohlemiller, 3 pp**
- H. **SB 434, informational packet, Marcia Ohlemiller, 20 pp**
- I. **HB 2153, written testimony, Floyd Lanter, 2 pp**