

## SENATE COMMITTEE ON COMMERCE

February 8, 2005  
3:10 P.M.

Hearing Room C  
Tapes 11 - 12

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

**MEMBER EXCUSED:**     **Sen. Ginny Burdick**

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

**MEASURES/ISSUES HEARD:**  
                                  **SB 147 - Public Hearing**  
                                  **SB 148 – Public Hearing**  
                                  **SB 139 – Public Hearing**  
                                  **Introduction of Committee Measures – Work Session**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 11, A</b>		
005	Chair Prozanski	Calls the meeting to order at 3:17 p.m. Opens public hearing on SB 147.
<b><u>SB 147 - PUBLIC HEARING</u></b>		
020	Anna Braun	Committee Administrator. Provides an overview of SB 147.
030	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Discusses and submits written testimony in support of SB 147 ( <b>EXHIBIT A</b> ).
040	Amy Klare	Administrator, Civil Rights Division, BOLI. Discusses support of SB 147.
050	Chair Prozanski	Asks for clarification regarding the start time of the timeline for when an employee may file a claim.
055	Klare	Answers that it is regarding when the employee has knowledge that the adverse employment action took place. Continues to discuss SB 147.
080	Chair Prozanski	Asks for clarification regarding Klare's comments.
082	Klare	Answers clarification.
085	Sen. Whitsett	Inquires about the need to expand the thirty (30) day timeline. Asks for clarification regarding the beginning of the 30 day timeline.
090	Klare	Answers that it is thirty (30) days within the last day of harm. Comments that this is needed because many people are not aware that it is only thirty (30) days and end up missing the deadline.
100	Gardner	Discusses timeline in civil rights cases.
105	Sen. Whitsett	Comments regarding timeline in civil rights cases.
110	Gardner	Responds to comments from Sen. Whitsett.
112	Klare	Comments that they try not to use the full timelines given them.

115	Chair Prozanski	Asks for clarification regarding options for employees depending on what type of claim they have. Asks why the law impacted by SB 147 has a 30 day timeline.
125	Annette Talbott	Deputy Labor Commissioner, BOLI. Answers clarification regarding current law.
150	William Stark	Lawyer, Oregon Trial Lawyers Association. Discusses and submits written testimony in support of SB 147 ( <b>EXHIBIT B</b> ).
170	Stark	Discusses desire to move statute of limitations on SB 147 to be consistent with other discrimination statutes.
205	Sen. Beyer	Inquires if they would support moving all timelines to thirty (30) days.
215	Stark	Answers that they would not. Remarks that the longer the timeframe allows for more deliberation.
240	Sen. Whitsett	Inquires if there is documentation that the shorter timeframe would cause more lawsuits.
245	Stark	Answers that in order to protect a person's rights, you must file a lawsuit within a timeline.
247	Sen. Whitsett	Asks if it could be argued that the longer the timeframe is, you could have more lawsuits.
249	Stark	Remarks that they should use alternative dispute resolution first rather than having to file a lawsuit within thirty (30) days.
255	Sen. Whitsett	Inquires as to clarification on how thirty (30) days would cause a rush of lawsuits.
270	Stark	States that because they do not have enough information at the thirty (30) day timeline, they cannot file a complaint with BOLI so they file a lawsuit in order to do it before the timeline is up.
300	Sen. Ringo	Comments that this bill is written to allow more time for attorneys to research before lawsuits are filed.
320	Stark	Comments that it can take a long time to acquire information regarding cases.
340	Joe Schaeffer	Service Employees International Union (SEIU). Discusses support of SB 147. Discusses concerns regarding SB 147.
395	J.L. Wilson	National Federation of Independent Business (NFIB). Discusses concerns regarding SB 147.
415	Sen. Ringo	Discusses the need of having a longer timeline than thirty (30) days.
440	Wilson	Discusses concerns regarding timeline.
452	Chair Prozanski	Inquires as to what would be a compelling reason for Wilson to agree to extend the timeline.
455	Wilson	Discusses answer. Discusses viewpoint regarding extending the timeline.

**TAPE 12, A**

030	Chair Prozanski	Clarifies Wilson's concerns regarding SB 147.
035	Chair Prozanski	Closes public hearing on SB 147 and opens public hearing on SB 148.

**SB 148 – PUBLIC HEARING**

040	Anna Braun	Committee Administrator. Provides an overview of SB 148.
050	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Submits and discusses written testimony in support of SB 148 ( <b>EXHIBIT C</b> ).
060	Amy Klare	Administrator, Civil Rights Division, BOLI. Discusses support of SB 148. Discusses Oregon Family Leave Act. Discusses and submits Oregon Court of Appeals case ( <b>EXHIBIT D</b> ).
090	Chair Prozanski	Inquires if BOLI would have been protected if it were not for the

100	Annette Talbott	case Klare discussed. Deputy Commissioner, BOLI. Answers that unless the person worked for someone who had 50 or more employees they would not be covered under the Family Medical Leave Act.
110	Chair Prozanski	Asks for clarification.
112	Talbott	Offers to return information.
115	Chair Prozanski	Clarifies that BOLI is trying to codify their current rule.
120	Talbott	Answers yes.
121	Sen. Beyer	Inquires if the state act allows more leave than the federal act.
125	Gardner	Answers clarification regarding the differences between the federal and state act. Comments regarding the Oregon Family Leave Act.
135	Sen. Beyer	Inquires regarding other differences between the state and federal acts.
140	Talbott	Answers regarding the differences between the two acts. Discusses sick child leave.
170	J.L. Wilson	National Federation of Independent Business (NFIB). Discusses concerns regarding SB 148. Discusses the need of clarification of language in the bill.
193	Chair Prozanski	Asks for Wilson's suggestions to amend the bill.
195	Steve Lanning	Oregon American Federation of Labor - Congress of Industrial Organizations (AFL-CIO). Discusses support of SB 148.
210	Sen. Whitsett	Asks for more details in regard to Lanning's testimony.
211	Lanning	Answers question.
225	William Stark	Attorney, Oregon Trial Lawyers Association. Discusses and submits written testimony in support of SB 148 ( <b>EXHIBIT E</b> ). Remarks that SB 148 will assist in minimizing lawsuits.
260	Stark	Continues. Discusses the ability of SB 148 to clarify current statute.
315	Sen. Ringo	Inquires regarding language of retaliation and inquires if Stark believes that the words can be misconstrued.
320	Stark	Discusses the meaning of the language.
350	Chair Prozanski	Asks BOLI for definitions of retaliation and discrimination in their rules.
360	Talbott	Discusses definition of unlawful discrimination. Offers to return information regarding the definition of retaliation.
387	Sen. Beyer	Asks for reference of definition.
390	Talbott	Provides statute.
400	Chair Prozanski	Asks to seek judicial guidance regarding case law. Comments regarding definition.
420	Sen. Whitsett	Inquires regarding potential consequences regarding unfair allegations made by an employee to an employer.
435	Gardner	Answers that there has not been a case with the bureau of an employee retaliating against an employer to his knowledge. Discusses possible consequences.
445	Sen. Whitsett	Clarifies question.
460	Gardner	Remarks that a case would be dismissed by BOLI if an unfair allegation is made.

**TAPE 11, B**

035	Chair Prozanski	Closes public hearing on SB 148. Opens public hearing on SB 139.
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**SB 139 - PUBLIC HEARING**

040	Anna Braun	Committee Administrator. Provides an overview of SB 139.
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045	Dan Gardner	Commissioner, Bureau of Labor and Industries (BOLI). Discusses and submits written testimony in support of SB 139 <b>(EXHIBIT F)</b> .
050	Annette Talbott	Deputy Commissioner, BOLI. Discusses support of SB 139. Discusses public employer and criminal whistle blowing laws.
075	Talbott	Discusses the ability of SB 139 to address whistle blowing retaliation more clearly.
100	Talbott	Discusses a standard of proof that BOLI uses regarding civil rights complaints.
150	Sen. Whitsett	States appreciation of clarification.
155	Sen. Beyer	Inquires regarding non wage claim complaints.
160	Talbott	Answers question regarding non wage claim complaints.
165	Sen. Beyer	Inquires as to how many complaints were dismissed.
170	Talbott	Offers to return information.
175	Gardner	Answers that BOLI first sends a demand letter to try to get employers into compliance before invoking civil penalties.
180	Sen. Beyer	Inquires as to how many complaints are regarding farmworkers.
185	Gardner	Answers question. Discusses farmworker rules and protection.
205	Sen. Beyer	Clarifies answer given by Gardner.
210	Gardner	Re-clarifies answer.
215	Sen. Whitsett	Comments regarding response to rule change. Discusses knowledge of concern of agricultural workers regarding mandatory break periods.
235	Gardner	Discusses response to Whitsett's comments. Emphasizes desire for all workers to take break periods.
270	Sen. Whitsett	Inquires regarding agricultural employee's rest periods.
280	Gardner	Answers that an administrative rule exempted agricultural workers and it has now been changed to remove them from exemption.
290	Sen. Whitsett	Inquires if employers are required to enforce the rest periods.
300	Gardner	Answers that employees have a legal right to take the rest break, but they are not forced to take it.
310	Chair Prozanski	Interjects that farmworker rights will be on the agenda next week and can be discussed then. Comments regarding workers rights to a rest period and they can choose to exercise it or not.
320	Gardner	Answers that if the worker chooses not to take a rest period, they cannot file a complaint with BOLI.
335	William Stark	Lawyer, Oregon Trial Lawyers Association. Discusses and submits written testimony in support of SB 139 <b>(EXHIBIT G)</b> .
375	Stark	Continues. Discusses ability of SB 139 to allow the employer and employee to discuss wages without having to seek outside sources.
415	Lisa Trussell	Associated Oregon Industries, (AOI). Discusses concerns regarding SB 139. Discusses desire to speak with BOLI regarding the bill.

**TAPE 12, B**

020	Chair Prozanski	Clarifies purpose of Trussell's desire to meet with BOLI.
025	Trussell	Answers that they met once before, but will work together in the future.
035	Chair Prozanski	Closes public hearing on SB 139 and opens work session for introduction of committee measures.

**INTRODUCTION OF COMMITTEE MEASURES - WORK SESSION**

040	Anna Braun	Committee Administrator. Introduces LC 178 <b>(EXHIBIT H)</b> and LC 2333 <b>(EXHIBIT I)</b> .
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045                    **Sen. Beyer**                    **MOTION: Moves LC's: 178, 2333 BE INTRODUCED as committee bills.**  
**VOTE: 4-0-1**  
**EXCUSED: 1 - Burdick**  
**Hearing no objection, declares the motion CARRIED.**

050                    **Chair**  
                         Chair Prozanski                    Closes work session for introduction of committee measures and adjourns meeting at 4:43 p.m.

**EXHIBIT SUMMARY**

- A. **SB 147, written testimony, Dan Gardner, 2 pp**
- B. **SB 147, written testimony, William Stark, 1 p**
- C. **SB 148, written testimony, Dan Gardner, 2 pp**
- D. **SB 148, statute, Amy Klare, 6 pp**
- E. **SB 148, written testimony, William Stark, 1 p**
- F. **SB 139, written testimony, Dan Gardner, 3 pp**
- G. **SB 139, written testimony, William Stark, 1 p**
- H. **Introductions, LC 178, Staff, 2 pp**
- I. **Introductions, LC 2333, Staff, 6 pp**