

SENATE COMMITTEE ON GENERAL GOVERNMENT

April 26, 2005
3:10 P.M.

Hearing Room B
Tapes 65 - 67

MEMBERS PRESENT: **Sen. Frank Shields, Chair**
 Sen. Gary George, Vice-Chair
 Sen. Bruce Starr
 Sen. Joanne Verger
 Sen. Vicki Walker

STAFF PRESENT: **Judith Callens, Committee Administrator**
 Linda K. Gatto, Committee Assistant

MEASURES/ISSUES HEARD:
 SB 310 – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 65, A		
004	Chair Shields	Calls the meeting to order at 3:17 p.m. and opens the work session on SB 310. Refers to the document titled Disputed Issue Decision Chart and invites Mr. DiLorenzo to comment.
<u>SB 310 - WORK SESSION</u>		
022	John DiLorenzo, Jr.	Oregonians for Sound Economic Policy (OSEP). Submits rebuttal testimony which includes correspondences (EXHIBIT A). Refers to the Disputed Issue Decision Chart (EXHIBIT A, Tab 11) and summarizes OSEP's opposition to SAIF reconnecting with the Public Records Law and SAIF's conceptual change to Section 6. Summarizes OSEP's support for the -10, -4 and -11 amendments.
066	Sen. Walker	Notes that the -11 amendments supersede the -5 amendments.
068	DiLorenzo, Jr.	Continues to summarize support for the -7, -8 and -9 amendments to SB 310 and the -1 amendments to SB 984. Adds that the conceptual change regarding the assigned risk pool study would not be necessary if SB 984 -1 amendments were adopted.
100	John DiLorenzo Jr.	Refers to (EXHIBIT A) and explains OSEP's intent in regard to the rebuttal testimony from SAIF, AOI and AGC.
127	DiLorenzo, Jr.	Refers to the Statesman Journal article quoting Mr. Thurber and the minutes of SAIF Board of Directors meeting on January 24, 2005.
160	DiLorenzo, Jr.	Discusses questionable uses of money and concurs with Sen. George that the legislature should prescribe statutes specifying what the rules should be rather than rely on good will.
164	DiLorenzo, Jr.	Reiterates opposition to SAIF reconnecting to the Public Records Law. Refers to examples (EXHIBIT A, Tab 2) and states that there should be a law regarding disclosure and advocates the -4 amendments (EXHIBIT B).

189	DiLorenzo, Jr.	Discusses the SAIF contempt of court ruling and SAIF's position regarding sovereign immunity. Concludes with discussing the -8 amendments and loss provision contracts.
273	Christopher Davie	Representing SAIF Corporation. Refers to the summary of proposals to SB 310 (EXHIBIT C) and the explanation of proposed amendments to SB 310 (EXHIBIT D). Reviews and explains the proposals section by section.
290	Sen. Walker	Notes that all the sections associated with her name were incorporated into the -11 amendments.
302	Brenda Rocklin	Interim President and CEO, SAIF Corporation. Commenting on the public records issue, suggests that the committee needs to determine if SAIF should be treated differently than every other state agency and public entity. Refers to the definitions of "employer account records" and "claimant files" as advised by the Department of Justice (EXHIBIT C, Page 7).
339	Chair Shields	Comments on the inconsistency in writing style.
347	Rocklin	Begins a discussion on the -1 amendments and -4 amendments regarding "sovereign immunity".
386	Sen. Walker	Confirms there were two versions and the -4 amendments are the most recent.
400	DiLorenzo, Jr.	Explains the -1 amendments prohibit asserting the defense of sovereign immunity. Explains that the -4 amendments say that SAIF is subject to the inherent contempt power of the court and prohibits asserting the defense of sovereign immunity.
409	Rocklin	Responds that the -4 amendments are unnecessary. Explains that the legal issue is whether the legislature had authorized the court to impose monetary sanctions against the corporation itself; not against particular managers that may have engaged in contemptuous conduct.
TAPE 66, A		
010	Rocklin	Speculates on the relationship between attorney fees the -4 amendments.
020	Chair Shields	Refers to sovereign immunity as related to all state agencies in SB 989 and asks why not broaden this to all state agencies.
031	DiLorenzo, Jr.	Explains that the Chair of the Judiciary Committee will not hear the bill. States that SAIF is the only state agency to be found in contempt of court.
040	Rocklin	Refers to Section 9 of the -4 amendments states that this is not talking about future conduct; the amendments are addressing January 2004.
059	DiLorenzo, Jr.	Responds that the court originally fined SAIF over \$2 million but then reduced the fine to \$700,000.
064	Sen. Walker	Responds it is not uncommon for people to come with legislation to head off court decisions.
071	Chris Davie	Refers to the Disputed Issue Decision Chart (EXHIBIT A, Tab 11) and reviews SAIF's position on the different proposals.
102	Davie	Refers to the document that outlines the types of records that are subject or not subject disclosure under the Public Records Law (EXHIBIT E). Summarizes SAIF's opposition to the -10 and -4 amendments, support for the -11 amendments, and opposition to the -7, -8 and -9 amendments.
141	Davie	Discusses the suggested amendments to SB 984 submitted by the Department of Consumer and Business Services regarding the assigned risk pool (EXHIBIT F).

189	Sen. Verger	States that this is a unique and separate issue pertaining to SAIF and not other state agencies. Asks why the contract was broken with regard to the magazine.
193	Rocklin	Answers that the contract was not really broken. Explains that last year the board of directors for SAIF Corporation had concerns about political viewpoints in addition to safety information in the magazine called Business Viewpoint. The SAIF board wanted to renegotiate the contract, while not paying for the magazine.
242	Chair Shields	Asks if this is still an unanswered question.
243	Rocklin	Answers that the negotiations are ongoing.
250	Sen. Verger	Acknowledges the concern. Asks have all the contracts been reviewed to determine if the elimination of some might be beneficial to SAIF.
264	Rocklin	Answers if there is a legitimate contract it either needs to be honored or pay a penalty and walk away. When contracts come due they are evaluated.
287	Sen. Verger	Suggests that as SAIF goes forward, that they become non-political.
299	Rocklin	Responds this is what they are trying to do in SB 310.
304	Chair Shields	Refers to (EXHIBIT C) and (EXHIBIT A, Tab 11) and directs the committee to address issues that they feel strongly about and discuss them.
356	Sen. Walker	States there appears to be consensus on the -11 amendments entitled "new section" (EXHIBIT G) .
443	Sen. B. Starr	Refers to Section 1 and suggests changing "may" to "shall".
484	Judith Callens	Committee Administrator. Clarifies that the change from "may" to "shall" means <u>require</u> instead of <u>allow</u> .
TAPE 65, B		
030	Rocklin	Refers to the section just above where the board is required to review and approve all contracts (EXHIBIT C, Page 1) . States the intent of Section 3 is the board may approve particular contracts under certain provisions.
047	Sen. George	Asks if the language in the original bill is not amended would it be okay.
059	Sen. Walker	Inquires if the -7 amendments regarding group plans are in Section 1.
063	DiLorenzo, Jr.	States that SAIF's handout (EXHIBIT C) includes only the amendments that SAIF is supportive of not any of OSEP's suggested amendments.
091	Chair Shields	Asks what the -7 amendments add to SB 310 (EXHIBIT A, Page 57) .
103	Sen. George	States dislike for a government entity to show preference. Supports the -7 amendments.
111	Sen. Walker	Concurs with Sen. George. Comments that SAIF determines who participates as a group employer.
120	Chair Shields	Wonders if Section 1(3) already accomplishes criteria like sound business practices, insurance principals for specified services. Asks if the committee wants to go with the -7 amendments.
124	Sen. Verger	Asks are these employers being rewarded.
137	Cory Streisinger	Director, Department of Consumer and Business Service (DCBS). Informs that there is currently statutory guidance on when groups can and cannot be formed. States the criteria is stipulated in ORS 737.316. DCBS would be uncomfortable with

the removal of the regulatory guidance as implied in the -7's amendments.

158 DiLorenzo, Jr. Explains that the -7 amendments are not designed to remove the statutory criteria. States the question is whether or not SAIF has to provide group status; currently SAIF can pick and choose.

179 Chair Shields Comments that other insurers pick and choose. Asks how is this different from other insurance groups.

182 DiLorenzo, Jr. Responds that SAIF is the government, other insurers are not.

186 Sen. B. Starr Inquires about groups that SAIF has denied.

188 DiLorenzo, Jr. Recalls that National Federation of Independent Businesses (NFIB) was not permitted a group. States there are number of others and he will follow up.

199 Sen. Walker States that the -7 amendments should make it clear that the group must meet the criteria of ORS 737.316

220 Streisinger States that from an insurance regulatory standpoint it would treat SAIF differently from other participants in the market. Refers to the inter-relationship between the -7 amendments and -9 amendments and expresses concern that the safety achievements of groups could be at risk.

230 Sen. George Asks if the "may" in line four of the -9 amendments solves this **(EXHIBIT C, Page 59)**.

248 Streisinger Notes that line six says "may" and explains that she reads this as having loss prevention services being put out to bid.

264 DiLorenzo, Jr. Affirms, the purpose of the amendment is to address favoritism.

298 Chair Shields States he does not understand what criteria would be added that is not already there.

329 DiLorenzo, Jr. States that the intention of the amendment is to remove SAIF's discretion to pick and choose.

343 Chair Shields Ask what does this do to the insurance market environment.

350 Streisinger States the issue is subjectivity versus objectivity.

387 Sen. B. Starr Asks does this allow for the differences in groups of employers.

361 Rocklin Responds there does not appear to be information that this is not working for SAIF under the current rules and statutes.

411 Sen. Walker Asks why someone cannot form their own group without being a member of another group in order to get a special discount.

427 Rocklin Responds the advantage of being part of the group is to have loss control and safety work effectively.

444 Chair Shields Refers to the mobile loss control units.

464 Streisinger Notes that groups are experience rated.

TAPE 66, B

011 Sen. George Comments on having fair criteria for every group. Explains SAIF's organizational purpose of being a safe harbor for those who are having difficulty in the open market.

025 Streisinger Agrees conceptually. Asks how to come up with criteria that allows groups to be creative.

038 Chair Shields Comments on subjective criteria.

047 Rocklin States that she is not aware of the insurance division or workers compensation divisions getting complaints of unfair treatment from unsuccessful groups.

056 Sen. Verger Expresses concern regarding the audit piece, public records, and sovereign immunity.

089 Chair Shields Comments that people have a sense of what sound business and insurance principals are.

091 Sen. Walker Supports the -7 amendments with the change of meeting the

		criteria under ORS 737.316. Asks what does “supported by sound business and insurance principals” mean.
099	Streisinger	Explains that depending on the circumstance it will exclude entering into contracts for political purposes, exclude favoritism, and business board must have business reasons for entering into contracts.
130	Sen. Walker	Supports the -7 with the changes and does not support the -9 amendments. Comments that safety programs lower workers compensation rates.
150	Sen. Verger	Comments on the -11 amendments because it does say operations.
147	Chair Shields	Requests a discussion on the audit piece. (-8 amendments)
153	Rocklin	Refers to page one of SB 310 regarding board accountability where an audit committee composed of board members would approve a plan for internal and external audits. Discusses how the -8 amendments would affect the Secretary of State Audits Division.
203	Sen. B. Starr	Agrees that someone other than the Secretary of State should do this.
211	Chair Shields	Refers to correspondence from the Secretary of State expressing concerns with the -8 amendments (EXHIBIT H).
225	Sen. B. Starr	Comments that the audit provisions in SB 310 and the -8 amendments are separate and distinct.
231	DiLorenzo, Jr.	States the -8 amendments are a perfect example of the philosophical differences in approach. The statute should provide that audits be done every other year.
252	Sen. Verger	States a preference for an external auditor; SAIF needs to dispel any wrongdoing.
261	Rocklin	Responds this is the reason why SAIF has pursued an external auditor for contract review.
282	Sen. B. Starr	Asks why not audit after the first two years and then upon renewal. Agrees with Mr. DiLorenzo that some of the things that Ms. Rocklin is bringing to the agency should be institutionalized.
296	Rocklin	Responds that the intent is hold the board of directors accountable.
324	Sen. B. Starr	Suggests more specificity in the language.
328	Sen. Verger	Comments on the behavior of the past board. Acknowledges that it is unfair but the board will need to rebuild trust and an outside auditor will provide assurance that it will be done.
353	Rocklin	Opines that the -8 amendments do not provide the business flexibility needed in the future.
363	Sen. B. Starr	Asks Mr. DiLorenzo if he is willing to alter the -8 amendments to provide more specificity.
368	DiLorenzo, Jr.	Responds affirmatively to a willingness to work on this.
370	Sen. B. Starr	Agrees to referee the work group.
379	Sen. George	Recommends that some of the language in the -8 amendments be incorporated for accountability criteria and a significant independence of the auditor.
401	Chair Shields	Recaps that Sen. B. Starr will work on the -8 amendments with input from Mr. DiLorenzo and Ms. Rocklin. Returns to the may/shall question in Section 1(3) (EXHIBIT C).
430	Callens	Informs that according to Legislative Counsel “may” is discretionary and “shall” is mandatory. Reviews what is included as discretionary or mandatory provisions.

432	Chair Shields	Comments on subjective language.
470	Sen. Verger	Suggests “shall only” approve contracts...
TAPE 67, A		
020	Chair Shields	Confirms there is consensus to change “may” to “shall only”.
055	Chair Shields	Recaps next steps, possibly carrying some over to Thursday.
058	Sen. Verger	States that she wants to be satisfied about the public records law.
070	Chair Shields	Agrees that the public records law and sovereign immunity issue are big issues and will come back on Thursday. Adjourns the meeting at 5:15 p.m.

EXHIBIT SUMMARY

- A. **SB 310, rebuttal testimony and correspondences, John DiLorenzo Jr., 63 pp**
- B. **SB 310, -4 amendments, staff, 1 p**
- C. **SB 310, summary of proposals, Christopher Davie, 10 pp**
- D. **SB 310, explanation of proposals, Christopher Davie, 16 pp**
- E. **SB 310, public records law, Christopher Davie, 1 p**
- F. **SB 310, suggested amendments to SB 984, Cory Streisinger, 2 pp**
- G. **SB 310, -11 amendments, staff, 4 pp**
- H. **SB 310, letter from Secretary of State, Sen. Frank Shields, 1 p**