

## HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 17, 1999 Hearing Room E

8:30 a.m. Tapes 34 - 35

**MEMBERS PRESENT:** Rep. Roger Beyer, Chair

Rep. Dan Gardner, Vice-Chair

Rep. Tim Knopp, Vice-Chair

Rep. Jason Atkinson

Rep. Bill Morrisette

Rep. Terry Thompson

Rep. Jackie Winters

**MEMBER EXCUSED:**

**STAFF PRESENT:** Keith Putman, Administrator

Frances Thomas, Administrative Support

**MEASURE/ISSUES HEARD:** SB 460 A Work Session

HB 2320 Public Hearing

HB 2486 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 34, A		

002	Chair Beyer	Calls the meeting to order at 8:37 a.m.
<b><u>SB 460 A WORK SESSION</u></b>		
003	Chair Beyer	Opens a Work Session on SB 460
<b>005</b>	<b>Rep. Knopp</b>	<b>MOTION: Moves SB 460A to the floor with a DO PASS recommendation.</b>
007	Rep. Gardner	Expresses concern that SB 460A extends a "sunset" but does not include a Management Labor Advisory Committee (M-LAC) study. States he will be voting "no" on SB 460A.
028	Rep. Morrisette	Expresses a concern about the Managed Care Organizations. Feels a need to address the "appeals process" issue. States he will be voting "no" on SB 460A.
048	Chair Beyer	Invites Rep. Gardner to submit an amendment dealing with the inclusion of the M-LAC study as a departmental budget item.
052	Rep. Gardner	Agrees that he would like that to happen.
<b>053</b>		<b>VOTE: 5-2</b>  <b>AYE: 5 ñ Atkinson, Knopp, Thompson, Winters, Beyer</b>  <b>NAY: 2 ñ Gardner, Morrisette</b>
	<b>Chair Beyer</b>	<b>The motion CARRIES.</b>  <b>REP. BEYER will lead discussion on the floor.</b>
060	Chair Beyer	Closes the Work Session on SB 460A.
<b><u>HB 2320 PUBLIC HEARING</u></b>		
063	Chair Beyer	Opens a Public Hearing on HB 2320.
066	Keith Putman	Committee Administrator. Presents an overview on HB 2320. Explains that HB 2320 exempts certain documents created by management through an internal audit, from public records laws.
085	Rep. Lane Shetterly	District 34. Testifies in support of HB 2320. States HB 2320 encourages

		employers' self auditing process for safety in the workplace by assuring employers this information will not be used to their disadvantage.
105	Chair Beyer	Ask for clarification of HB 2320, Section 5.
108	Rep. Shetterly	States, according to statute, bills were <u>passed</u> in previous legislative sessions, but not ever <u>codified</u> as part of the Oregon Revised Statutes. Explains this could happen because of a "sunset" provision, which is probably the reason in this case. States it does not have any substantive relationship to HB 2320.
131	Lisa Trussell	Associated Oregon Industries (AOI). Explains that AOI consists of 19,000 member businesses which employ 30% of Oregon's private workforce. Testifies in favor of HB 2320. Explains HB 2320 builds on Oregon's approach to workplace safety and health by removing a disincentive for some Oregon employers ( <b>EXHIBIT A</b> ).
150	Trussell	Explains Oregon Occupational Safety and Health Division's (OR-OSHA) rules are very subjective as to interpretation. Mentions OR-OSHA's consulting and training program. Testifies HB 2320 builds on the consultative approach already proven to reduce accidents in Oregon and eliminates the threat that a self-inspection could be used against the employer.
180	Trussell	States HB 2320 recognizes that self-inspections are not paid for by the public or performed at the public's request, therefore, are not public documents.
190	Rep. Morrisette	Asks for an example of why an employer would conduct a self-audit.
195	Trussell	Testifies safety audits would be conducted to improve workplace safety, not necessarily to comply with OR-OSHA rules.
213	Rep. Morrisette	Asks if self-audits have resulted in an employer's documentation being used against them.
216	Trussell	States SB 2320 is the result of an AOI member's awareness of such an instance. Suggests David Sparks, OR-OSHA may be more qualified to answer this question.
226	David Sparks	Deputy Administrator, OR-OSHA. Testifies OR-OSHA is not opposed to HB 2320. Expresses an interest in further conversation regarding the scope of HB 2320.
235	Sparks	Explains the process of OR-OSHA consulting. States he has no specifics regarding a self-audit documentation disclosure.
267	Rep. Morrisette	Discusses self-audit safety practices established that may be in conflict with an OR-OSHA rule. Uses examples.

300	Sparks	States in concept, OR-OSHA does not oppose HB 2320.
312	Rep. Morrisette	Asks if issues encompassed in HB 2320 could be handled with OR-OSHA administrative rules.
319	Sparks	Expresses doubt that HB 2320 could be administratively executed. Explains that it may need be addressed statutorily.
350	Putman	Comments that OR-OSHA could not waive the access related to the public records law.
352	Sparks	Agrees. States OR-OSHA would have an interest in how broad the exclusions would be in the statute.
358	Chair Beyer	Asks if OR-OSHA has engaged in conversation with AOI about HB 2320.
361	Sparks	Responds affirmatively. Requests the committee delay a Work Session on HB 2320 for a few days longer to allow further dialog with AOI.
370	Bob Isaacson	Safety Manager, Freightliner Corporation, Portland and member of Associated Oregon Industries. Testifies in support of HB 2320.
400	Isaacson	Explains an employer must be able to review a facility with frankness, be honest with what is found and with no concern for what is documented. States that if OR-OSHA was given access to the audit documents and found something did not get done, the potential exists for a "willful violation."
450	Rep. Morrisette	Asks for clarification of who would be fined.
458	Isaacson	Responds the company would be fined, not the employee.
471	Sparks	Discusses the process of OR-OSHA inspections, violation citing, subsequent inspections and fines.
<b>TAPE 35, A</b>		
003	Sparks	Explains fines for "willful violations" with examples.
028	Rep. Morrisette	Continues discussion of "willful violations" with relationship to the self-audit process.
050	Rep. Morrisette	Refers to the third paragraph of HB 2320.

052	Trussell	Explains audit inspections are not required. Clarifies that for employers who want to go beyond the requirements, HB 2320 removes the disincentive to conduct self audits.
090	Merle Campbell	Injured Workers Alliance. Testifies in opposition to HB 2320, Sections 1 and 2, and in favor of Section 3 ( <b>EXHIBIT B</b> ).
100	Campbell	States that HB 2320 provides for the concealment of safety and health violation documentation from employees. Explains the importance of disclosure of employer negligence.
137	Campbell	States he is in agreement with Section 3 of HB 2320.
140	Chair Beyer	Discusses changes in Section 3 of HB 2320.
161	Putman	Clarifies the language in HB 2320, Section 3. States the change added to Section 3 is to exempt self-audit records from the public records law.
171	Campbell	States that he withdraws his support of Section 3 of HB 2320.
173	Chair Beyer	Asks if it is reasonable for employers striving for a safer, better workplace to be penalized for their efforts.
178	Campbell	Comments on an unbalanced system that favors the employer. Speaks about fairness.
210	Chair Beyer	States he does not view HB 2320 as an injured worker bill.
214	Campbell	Comments that HB 2320 could adversely affect a legitimate injured worker claim.
228	Chris Davie	SAIF Corporation. Introduces self.
229	Chair Beyer	Inquires about SAIF's current use of records filed.
238	Davie	States he does not know if the company's records could be subpoenaed by an injured worker's representative.
253	Campbell	Understands any information pertinent to an accident currently is discoverable. States HB 2320 would preclude that ability.
246	Chair Beyer	Asks to have SAIF provide answers for these questions.

266	Davie	States there is a standard that allows an injured worker to sue an employer.
273	Campbell	Continues discussion of a "willful action" by an employer.
292	Jennifer Webber	Oregon Workers Compensation Attorneys and Oregon Trial Lawyers Association. Expresses a concern about HB 2320 in relationship to third party claims in a civil action to insure any audits would be discoverable.
300	Chair Beyer	Closes the Public Hearing on HB 2320.
<b><u>HB 2486 PUBLIC HEARING</u></b>		
322	Chair Beyer	Opens a Public Hearing on HB 2486.
327	Putman	States that HB 2486 amends the 1995 law regarding family leave, requiring an employer to return a person to exactly the same position upon return. HB 2486 provides some employer flexibility to return a person to an equivalent and comparable position.
340	Betsy Earls	Associated Oregon Industries (AOI). Introduces Julie Brandis, AOI. Testifies in favor of HB 2486. Explains the history of the family leave issue. Defines "equivalent" within the context of HB 2486.
392	Julie Brandis	Associated Oregon Industries (AOI) and Director, Oregon Retail Council. States the major reason for the change comes from retail businesses. Testifies in favor of HB 2486 ( <b>EXHIBIT C</b> ).
418	Rep. Gardner	Asks to for a definition "same job duties."
425	Earls	States the details of "same job duties" has not yet been clarified. Discusses with examples. States the intent is for the person to have the same level of responsibility with their equivalent pay.
441	Chair Beyer	Expresses concerns about the "20-mile" language.
465	Earls	Explains this standard was chosen because of a similarity to the "20-mile" federal law.
484	Ken Fitzsimon	Labor Relations Administrator, Oregon Nurses Association. Testifies in opposition to HB 2486. Concerns about the interpretation of HB 2486.
<b>TAPE 34, B</b>		

001	Fitzsimon	Explains details about the various aspects of employment situations for nurses. States HB 2320 would allow an employer to fill a position permanently while a nurse is on leave.
028	Rep. Thompson	Comments on the difficulty of finding qualified people to substitute for the nursing profession.
031	Fitzsimon	Explains the process of "on call pool" used currently for intermittent employment.
039	Rep. Thompson	Admits not understanding the nursing profession. States other professions are not afforded the luxury of having the "on call" staff.
045	Irv Fletcher	President, AFL-CIO. States the history of AFL-CIO. Testifies in opposition of HB 2486.
060	Lori Wimmer	Government Relations Consultant for Oregon Education Association and Executive Director, Oregon Commission for Women. Testifies in opposition to HB 2486. Explains the history of family leave which combines several previous laws into the current family leave law. States that HB 2486 attempts to remove the compromise language that represents the balance of interests adopted previously.
102	Wimmer	Explains the current law has been a success in Oregon. States there is no reason to damage the carefully crafted compromise of interests. Clarifies the reason for family leave is to provide job protection to the employee. HB 2486 undermines the whole intent of the current law.
141	Rep. Thompson	Asks if HB 2486 was conceived from an exact case.
143	Wimmer	States the argument for the employer to restore the employee to any position has been a constant argument in every step of family leave legislation.
154	Rep. Knopp	Asks if employee can returned to <u>any</u> position or an <u>equivalent position</u> .
157	Wimmer	Clarifies that HB 2486 states "any available equivalent position."
166	Jeannie Berg-Rempel	Political Organizer, Service Employee Union (SEIU). Testifies in opposition to HB 2486.
177	Rep. Winters	Discusses the absence of pay change, duty equivalency and seniority value in HB 2486. Explains with examples.
208	Chair Gardner	Asks to have "equivalent" defined by Oregon law for the committee.

222	Chair Gardner	Closes the Public Hearing on HB 2486.
224	Chair Gardner	Adjourns the meeting at 9:55 a.m.

Submitted By, Reviewed By,

FRANCES THOMAS, KEITH PUTMAN,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 2320, written testimony, Lisa Trussell, 2 pp**

**B ñ HB 2320, written testimony, Merle Campbell, 1 p**

**C ñ HB 2486, written testimony, Julie Brandis, 2 pp**