

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

June 03, 1999 Hearing Room 357

3:00 p.m. Tapes 186 - 188

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Rachel Short, Administrative Support

MEASURE/ISSUES HEARD:

SB 20A - Work Session

SB 795A - Work Session

SB 1115 - 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 |
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TAPE 186, A

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| 007 | Chair Shetterly | Calls meeting to order at 3:30 p.m. |
| <u>SB 20A WORK SESSION</u> | | |
| 032 | Chair Shetterly | Discusses the ñA18 amendments (red light photos) to SB 20A that denominates as violations all offenses that do not provide for term of imprisonment (EXHIBIT A) . |
| 037 | Dave Heynderickx | Deputy, Legislative Counsel Discusses the ñA19, amendments to SB 20A that were requested by the Judicial Department to round off the fine to the nearest dollar (EXHIBIT B) . |
| 046 | Chair Shetterly | Introduces the ñA20 amendments to SB 20A (EXHIBIT C) . States that the ñA21, and the ñA22, amendments are being withdrawn (EXHIBITS D & E) . |
| 076 | Heynderickx | Discusses the ñA24 and ñA25 amendments to SB 20A (EXHIBITS F & G) . |
| 100 | Chuck Craig | Department of Agriculture Discusses the ñA26, ñA27, and ñA28 amendments to SB 20A (EXHIBITS H ñ J) . |
| 118 | Chair Shetterly | Of the previously mentioned amendments, which one is most current with respect to current law? |
| 119 | Heynderickx | The ñA28 amendments (EXHIBIT J). |
| 145 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-19 amendments dated 04/27/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 149 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-20 amendments dated 05/20/99. |
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| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 158 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-24 amendments dated 05/20/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 162 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-25 amendments dated 05/24/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 167 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-26 amendments dated 05/28/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 174 | Rep. Wells | MOTION: Moves to ADOPT SB 20A-28 amendments dated 05/28/99. |
| | | VOTE: 9-0 |

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| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 178 | Chair Shetterly | Closes the work session on SB 20A. |
| <u>SB 795A WORK SESSION</u> | | |
| 189 | Dave Barrows | Oregon Veterinary Medical Association Discusses the ñA7 amendments to SB 795A that creates schedule of progressive civil penalties and remedial measures for county having dog control program to use when dog kills, wounds, injures or chases livestock (EXHIBIT K). |
| 209 | Rep. Witt | MOTION: Moves to ADOPT SB 795A-7 amendments dated 05/25/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 213 | Barrows | Discusses the ñA10 amendments to SB 795A (EXHIBIT L). |
| 255 | Rep. Witt | MOTION: Moves to ADOPT SB 795A-10 amendments dated 06/03/99. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 258 | Chair Shetterly | Do the ñA7 amendments replace the ñA6 amendments (EXHIBIT M)? |
| 260 | Barrows | Yes. |
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| 266 | Rep. Walker | What happened to the ñA8 amendments (EXHIBIT N)? |
| 269 | Barrows | The ñA8 amendments were an earlier configuration of the ñA9 amendments (EXHIBIT O). |
| 276 | Rep. Walker | What about the ñA5 amendments (EXHIBIT P)? |
| 286 | Chair Shetterly | Are these the grandfather clause for Lincoln County? |
| 289 | Rob Bovett | Lincoln County Dog Judge Testifies and submits written testimony in opposition to SB 795A in its present form (EXHIBIT Q). Discusses the ñA5 amendments that would reinstate an "opt out" provision for counties with existing ordinances. |
| 304 | Barrows | Expresses his opposition to the ñA5 amendments. |
| 331 | Rep. Witt | MOTION: Moves SB 795A to the floor with a DO PASS AS AMENDED recommendation. |
| | | VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye. |
| | Chair Shetterly | The motion CARRIES. REP. WITT and REP. WALKER will lead discussion on the floor. |
| 358 | Chair Shetterly | Closes the work session on SB 795A. |
| <u>SB 1115 PUBLIC HEARING</u> | | |
| 384 | Chair Shetterly | Introduces the ñ2 amendments and the resultant hand-engrossed version of SB 1115 that modifies scope of public policy in statutes relating to organized labor and labor disputes (EXHIBITS R & S). |
| 394 | Tim Bernasek | Oregon Farm Bureau Testifies and submits written testimony in support of SB 1115 (EXHIBIT T). |

TAPE 187, A

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| 031 | Barry Bushue | Vice President, Oregon Farm Bureau Federation Testifies in support of SB 1115 stating that this legislation reinstates the role of the legislature as the lawmakers of the state of Oregon. |
| 081 | Jack Roberts | Commissioner, Oregon Bureau of Labor and Industries (BOLI) Testifies in support of SB 1115 stating that this legislation would provide protections for farm workers for the first time in statute. |
| 105 | John McCulley | Oregon Tree Fruit Growers Testifies and submits written testimony in support of SB 1115 and the ñ2 amendments (EXHIBIT U). |
| 124 | Rep. Walker | What particular groups are opposed to this legislation? |
| 128 | Roberts | The farm worker advocates are opposed to this bill. |
| 136 | Rep. Walker | Did the court find that the employees in the Oregon Roses case were not engaged in union activities? |
| 140 | Roberts | Yes. |
| 153 | Rep. Walker | Do you disagree with the courtís decision in the Oregon Roses case? |
| 159 | Bernasek | Yes. Discusses the courtís broad interpretation of the <u>Rauda v. Oregon Roses</u> case. |
| 213 | Rep. Uherbelau | Discusses the loose standard applied to "substantial job interruption" in Section 7, page 1 of SB 1115. |
| 241 | Bernasek | We attempted to define a "substantial job interruption" with the ñ2 amendments, and also maintained the power for BOLI to craft administrative rules. |
| 259 | Rep. Uherbelau | Notes that the word "substantial" is only used in relation to job interruption, not work interruption. |
| 265 | Roberts | You are correct. That first phrase "does not disrupt work" may be unnecessary. Discusses that the intent of this legislation is to address not only workers discussing wages or working conditions with their employers, but also among themselves. |
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| 289 | Rep. Uherbelau | What constitutes a "substantial job interruption"? |
| 314 | Roberts | A "substantial job interruption" would depend upon how the interruption might disrupt the opportunity of others to do work. |
| 327 | Bernasek | States that the language concerning "work disruption, slowdown, strikes, and substantial job interruption" is lifted from the Governor's veto message on SB 1205 from the 1997 Session. We wanted to use his language in crafting a solution to this issue. |
| 342 | Rep. Uherbelau | If an employee refuses to work after being asked to do so by the employer, there is no qualifier about the time to respond. In Section 8 beginning on page 1 of SB 1115, there is nothing that addresses a response to an employer once a complaint has been filed with BOLI. |
| 389 | Roberts | Discusses how complaints are currently handled by BOLI. |
| TAPE 186, B | | |
| 002 | Rep. Witt | Is a copy of an employee's complaint delivered to the employer? |
| 004 | Roberts | Yes. We send a copy of the complaint to the employer with a request for their response. |
| 007 | Rep. Witt | Is their response typically provided in writing? |
| 008 | Roberts | Yes, or it could be taken over the telephone. |
| 011 | Rep. Witt | If there is a written response, is that response provided to the claimant? |
| 013 | Roberts | Discusses that most of the time information would be shared between the parties involved. |
| 023 | Rep. Witt | Do you feel that there is no inherent bias in this process of routinely sharing the complaint with the employer, but not routinely sharing the employer's response with the complainant? |
| 025 | Roberts | I feel there is no bias in the way we are treating complainants and respondents. |
| 032 | Rep. Witt | Would you object to removing "disrupt work or" from line 17, page 1 of SB 1115? |
| 038 | Bernasek | No. |

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| 044 | Rep. Uherbelau | States that the worker is being harmed by the provisions in Section 8, lines 26 through 28 on the ñ2 amendments referring to back pay. |
| 064 | Bernasek | This section is to clarify that there is one year to file a complaint. |
| 115 | Sen. Castillo | State Senator, District 20 Testifies in opposition to SB 1115. We have looked at farm workers in a very discriminatory manner, and I am concerned about rolling back protections for this group. If anything, we need to add more protections. |
| 165 | Chair Shetterly | Discusses conceptual amendments that could be made to the hand-engrossed version of SB 1115 (EXHIBIT S). |
| 180 | Chip Lazenby | Legal Counsel to Governor Kitzhaber Testifies in opposition to SB 1115 in its present form, and submits a letter from Governor Kitzhaber addressing SB 1115 on the Senate side (EXHIBIT V). Discusses changes that need to take place before the Governor would support this bill. |
| 234 | Rep. Lowe | What is the posture of the <u>Rauda v. Oregon Roses</u> case? |
| 236 | Lazenby | It has been argued and the Oregon Supreme Court is still considering it. |
| 256 | Chair Shetterly | Cites the April 30, 1999 letter from the Governor's office setting up the work group on SB 1115 (EXHIBIT W). |
| 277 | Michael Dale | Oregon Law Center Testifies and submits written testimony in opposition to SB 1115 (EXHIBIT X). Discusses the court's interpretations of Oregon statutes, as written by the legislature, when considering the Rauda case. Describes alternative legislation that was proposed to resolve the fears of agricultural employers and how those agricultural employers refused to consider the proposals. Discusses concerns with the ñ2 amendments. |
| TAPE 187, B | | |
| 047 | Chair Shetterly | With regard to Section 7, page 1 of SB 1115, why would a meeting off premises, outside of working hours, not be protected when employees are meeting to discuss wages or working conditions? |
| 057 | Dale | If the employee who allowed the use of his property for the meeting spoke at the |

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| | | meeting, he would be protected. Continues to discuss his concerns with SB 1115 and the ñ2 amendments. |
| 129 | Ramon Ramirez | President, PCUN Testifies and submits written testimony in opposition to SB 1115 (EXHIBIT Y) stating that this bill undermines the fundamental rights of farm workers. |
| 194 | Brad Witt | Oregon AFL-CIO Testifies and submits written testimony in opposition to SB 1115 (EXHIBIT Z) stating that the bill is anti union in terms of its favoring individual activity at the expense of group or concerted activity. |
| 238 | Rep. Uherbelau | Why would farm workers not be able to sue in a civil court? |
| 258 | Dale | My testimony was written prior to seeing the ñ2 amendments. Discusses ORS 659.121 that allows the BOLI Commissioner to file suit on behalf of an employee, but the workers themselves couldnít sue. |
| 272 | Rep. Uherbelau | If the unfair employment practice is included in ORS 659.121, shouldnít the workers have the right to sue in civil court? |
| 287 | Dale | All of our discussions with the Governorís office have proceeded from the standpoint that there was no private right to sue. |
| 308 | Chair Shetterly | Do you acknowledge that SB 1115 with the ñ2 amendments is an improvement on the legislation that was passed out of the Senate? |
| 312 | Dale | Yes. |
| 313 | Chair Shetterly | References Governor Kitzhaberís letter of May 11, 1999 (EXHIBIT V) regarding actions that would need to be taken to gain the Governorís support of SB 1115. |
| 330 | Dale | Concedes that there has been substantial progress on the right to sue, but there has been no movement of any substance on the question of scope of activity. |
| 366 | Rep. Uherbelau | We have heard today that the proponents of the bill are willing to make changes like deleting the "disrupt" language and concerning back pay. After hearing those concessions, are you any more supportive of the bill? |
| 378 | Dale | Expresses this concern about the scope of protected activities still being too narrow. If the chair is willing to consider the language that was used in my draft bill and incorporate that language into the bill, we might have the beginnings of a real compromise. |
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| 408 | Chair Shetterly | What is before the committee today is SB 1115 with the 2 amendments and the conceptual amendments that we have discussed. Asks Commissioner Roberts to clarify the process issue that was raised. |
| 418 | Roberts | Discusses that BOLI does not withhold relevant or material evidence from the claimant that is provided by the respondent. |
| TAPE 188, A | | |
| 007 | Rep. Uherbelau | Is the workers' access closed off to the court system unless they come through BOLI? |
| 011 | Roberts | The intent of this legislation is that the proponents want the case to come to BOLI first and the case can only go forward if we find substantial evidence and make a "cause" finding. I believe that there should be an unrestricted private right of action as well as come to BOLI. |
| 018 | Rep. Uherbelau | There is for most unemployment. |
| 018 | Roberts | That's right and it should be treated the same way as other cases. Under Oregon Roses, nobody has a right to come to BOLI because it is not a statutory right and therefore everyone would have to go to court. |
| 026 | Rep. Uherbelau | Was it the intent of the Farm Bureau to limit action going to BOLI first and if the case did not have merit, it stopped at you? |
| 028 | Roberts | Yes. |
| 031 | Dale | Suggests defining "concerted activities" as activities of employees and perspective employees which are taken with one another for the purposes of self organization and the designation of representatives of the workers own choosing to negotiate the terms and conditions of employment, collective bargaining or other mutual aid or protection. |
| 042 | Chair Shetterly | Closes the public hearing on SB 1115. |
| <u>SB 1115 WORK SESSION</u> | | |
| 044 | Rep. Witt | MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to SB 1115. |
| | | VOTE: 9-0 |
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| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 047 | Rep. Witt | MOTION: Moves to ADOPT the conceptual amendment to delete "disrupt work or" from line 17, page 1 of SB 1115. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 050 | Chair Shetterly | MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to the ñ2 amendments to SB 1115. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 055 | Chair Shetterly | MOTION: Moves to ADOPT the conceptual amendment to delete the sentence "Back pay liabilityÖunder this section." beginning on line 26 through line 28, on page 2 of the ñ2 amendments to SB 1115. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 064 | Chair Shetterly | MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to the hand-engrossed version of SB 1115 (EXHIBIT S). |
| | | VOTE: 9-0 |

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| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 072 | Chair Shetterly | MOTION: Moves to ADOPT the conceptual amendment to add "Section 7 (4) for the purpose of this section, substantial interruption does not include an employee's refusal to work based on a violation of law, regulation or standard pertaining to safety and health in the place of employment of which the employee has provided notice to employer" referencing the statute in Chapter 654 that provides for that protection. |
| | | VOTE: 9-0 |
| | Chair Shetterly | Hearing no objection, declares the motion CARRIED. |
| 080 | Rep. Witt | MOTION: Moves to ADOPT SB 1115-2 amendments dated 06/02/99 as conceptually amended. |
| 083 | Rep. Lowe | Did you address preserving the private cause of action in addition to going through BOLI? |
| 086 | Chair Shetterly | Isn't that already protected? |
| 087 | Rep. Uherbelau | Discusses that it was the intent not to retain that private cause of action so we would have to make a conceptual amendment to make sure that was clear in the bill. |
| 093 | Rep. Uherbelau | MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to SB 1115. |
| 100 | Chair Shetterly | Asks for Rep. Witt's consent to the conceptual amendment because Rep. Witt has a previous motion before the committee. |
| 101 | Rep. Witt | I do not give consent. |
| 103 | Rep. Lowe | MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to SB 1115. |
| 110 | Rep. Witt | I do not give consent. |
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| | | VOTE: 9-0 |
| 114 | Chair Shetterly | Hearing no objection, declares the motion CARRIED . |
| 116 | Rep. Witt | MOTION: Moves SB 1115 to the floor with a DO PASS AS AMENDED recommendation. |
| 122 | Rep. Uherbelau | States that positive movement seems to have been made on SB 1115, but is opposed to the bill without the option of civil court included. |
| 132 | Rep. Walker | Expresses her concerns about SB 1115. |
| 135 | Rep. Lowe | With the disallowance of the two conceptual amendments, I am opposed to SB 1115. |
| 141 | Chair Shetterly | Acknowledges the efforts of all parties concerned on SB 1115. |
| 169 | | VOTE: 5-4 AYE: 5 - Backlund, Wells, Williams, Witt, Shetterly NAY: 4 - Edwards, Lowe, Uherbelau, Walker |
| | Chair Shetterly | The motion CARRIES. CHAIR SHETTERLY will lead discussion on the floor. |
| 173 | Rep. Walker | Serves notice of a possible minority report. |
| 174 | Rep. Lowe | Serves notice of a possible minority report. |
| 190 | Chair Shetterly | Closes the work session on SB 1115. |
| 196 | Chair Shetterly | Adjourns the meeting at 5:30 p.m. |

Transcribed By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

- A - SB 20A, ñA18 amendments (LC 319), dated 4/1/99, staff, 4 pgs.
- B - SB 20A, ñA19 amendments (LC 319), dated 4/27/99, staff, 1 pg.
- C - SB 20A, ñA20 amendments (LC 319), dated 5/20/99, staff, 2 pgs.
- D - SB 20A, ñA21 amendments (LC 319), dated 5/20/99, staff, 2 pgs.
- E - SB 20A, ñA22 amendments (LC 319), dated 5/20/99, staff, 2 pgs.
- F - SB 20A, ñA24 amendments (LC 319), dated 5/20/99, staff, 2 pgs.
- G - SB 20A, ñA25 amendments (LC 319), dated 5/24/99, staff, 6 pgs.
- H - SB 20A, ñA26 amendments (LC 319), dated 5/28/99, Chuck Craig , Dept. of Ag, 1 pg.
- I - SB 20A, ñA27 amendments (LC 319), dated 5/28/99, Chuck Craig , Dept. of Ag, 1 pg.
- J - SB 20A, ñA28 amendments (LC 319), dated 5/28/99, Chuck Craig , Dept. of Ag, 1 pg.
- K - SB 795A, ñA7 amendments (LC 1748), dated 5/25/99, staff, 1 pg.
- L - SB 795A, ñA10 amendments (LC 1748), dated 6/3/99, staff, 1 pg.
- M - SB 795A, ñA6 amendments (LC 1748), dated 5/21/99, staff, 1 pg.
- N - SB 795A, ñA8 amendments (LC 1748), dated 6/1/99, staff, 8 pgs.
- O - SB 795A, ñA9 amendments (LC 1748), dated 6/1/99, staff, 14 pgs.
- P - SB 795A, ñA5 amendments (LC 1748), dated 5/21/99, staff, 1 pg.
- Q - SB 795A, written testimony submitted by Rob Bovett, Lincoln County Dog Judge, 5 pgs.
- R - SB 1115, ñ2 amendments (LC 3884), dated 6/2/99, staff, 5 pgs.
- S - SB 1115, hand-engrossed version with the ñ2 amendments, submitted by Rep. Lane Shetterly, 8 pgs.
- T - SB 1115, written testimony submitted by Tim Bernasek, Oregon Farm Bureau, dated 6/3/99, 2 pgs.
- U - SB 1115, written testimony submitted by John McCulley, Tree Fruit Growers, dated 6/3/99, 1 pg.
- V - SB 1115, Governorís letter to Senate, submitted by Chip Lazenby, dated 5/11/99, 1 pgs.

W - SB 1115, Memo to Tim Bernasek from Governor's Office, submitted by Chip Lazenby, dated 4/30/99, 1 pg.

X - SB 1115, written testimony submitted by Michael Dale, Oregon Law Center, dated 6/3/99, 3 pgs.

Y - SB 1115, written testimony submitted by Ramon Ramirez, PCUN, dated 6/3/99, 3 pgs.

Z - SB 1115, written testimony of Brad Witt, AFL-CIO, 2 pgs.