

SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

May 3, 1999 Hearing Room 50

4:30 p.m. Tapes 114 - 115

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Bill Fisher

Sen. Marylin Shannon

MEMBER EXCUSED: Sen. Ted Ferrioli

STAFF PRESENT: Brad Harper, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: SJR 38 Work Session

SB 1267 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 114, A		
003	Chair George	Calls the meeting to order at 4:55 p.m. Indicates that there are two bills scheduled for work sessions that require revisions to the submitted amendments.
008	Brad Harper	Committee Administrator. States that SB 940 and SB 12 require minor changes to be made to the submitted amendments.

013	Chair George	Opens a work session on SJR 38.
<u>SJR 38 WORK SESSION</u>		
017	Brad Harper	<p>Committee Administrator. Gives a brief description of the bill. Indicates that the ñ1 amendments (EXHIBIT A) have been submitted for consideration by the committee. Explains that the amendments make the following changes to the composition of the task force described by the bill:</p> <ul style="list-style-type: none"> • Reduces the number of members from 21 to 14 • Reduces the number of Representatives from six to four • Reduces the number of Senators from five to three • Reduce the number of agricultural growers from two to one • Reduce the number of community housing development service providers from two to one <ul style="list-style-type: none"> • Eliminates the two seats for farm worker union representatives and the two seats for legal service representatives • Adds one seat each for a county planner, a farm worker, a Department of Consumer and Business Services representative, and an experienced builder of farm worker housing <p>Indicates that the amendments would also eliminate all distinctions between "farm worker" and "migrant farm worker" for purposes of the task force. Outlines other changes made by the amendments.</p>
067	John McCulley	<p>Representative, Tree Fruit Growers. Testifies in support of the ñ1 amendments to SJR 38. Recalls the concerns expressed at a previous hearing regarding the composition of the task force. Indicates that the amendments reflect those concerns. Acknowledges that the proponents of SJR 38 do not support the ñ1 amendments. Says that the task force would consider all migrant worker housing if the amendments were adopted. Asserts that the smaller task force and consensus approach proposed by the amendments would provide a workable and more equitable approach to the issue of migrant worker housing.</p>
116	Tim Bernasek	<p>Associate Director of Governmental Affairs, Oregon Farm Bureau. Testifies in support of the ñ1 amendments to SJR 38. Asserts that the members added by the amendments have working knowledge integral to the construction of housing.</p>
131	McCulley	<p>Mentions that the seat on the task force reserved for the Department of Consumer and Business Services (DCBS) should instead go to the Oregon Occupational Safety and Health Administration (OrOSHA).</p>
136	Chair George	<p>Wonders if it is necessary to change the word "consensus," to make it acceptable to both sides.</p>
144	Bernasek	<p>Replies that he has worked in groups that made decisions through the consensus approach. Asserts that where there is a shared interest there should be no need for a majority decision-making process.</p>

160	Sen. Susan Castillo	Senate District 20. Testifies in opposition to the ñ1 amendments to SJR 38. Asserts that the amendments would so alter the task force that the proponents of the resolution would prefer that it not be passed at all, should they be adopted. Acknowledges the positive aspects of a consensus approach but says the issue may be too contentious for results to be produced. Implores that the committee consider retaining legal and union advocates in the task force.
191	Chair George	Suggests the changes are not major and that the task force would be more balanced under the ñ1 amendments. Mentions that the fiscal impact of the resolution would be reduced as well. Wonders if the task force could work through majority rule, with the option for minority report.
203	Sen. Castillo	Wonders whether legislation is necessary to produce the task force, suggesting that the Governor's Office may be able to put together a similar program with a less substantial fiscal impact.
211	Sen. Dukes	Suggests that the task force could use majority rule and add a 15 th member representing a union or legal representative. Discusses the problems associated with the consensus approach.
225	Sen. Castillo	Concurs with Sen. Dukes.
228	Sen. Wilde	Points out that the amendment would remove the DCBS representative in favor of an OSHA representative.
236	Bob Castagna	Representative, Oregon Catholic Conference. Testifies in opposition to the ñ1 amendments to SJR 38. Indicates that the removal of several positions from the task force has been ill received by many supporters of the resolution. Argues that a single dissenter could defeat any action on the part of the task force under the consensus approach. States that many of the proponents of the resolution would rather "walk away" than support the amended version.
262	Sen. Wilde	Suggests that the committee could restore some of the deleted positions so as to alleviate concerns.
283	Sen. Corcoran	Asserts that many "impressive people" with diverse backgrounds sponsored the resolution and that it should be passed in its current form, rather than being gut and stuffed.
314	Sen. Wilde	Argues that it is the job of the committee to consider the resolution on its merits, rather than the merits of its sponsors.
330	Sen. Dukes	Asks if Sen. Castillo is familiar with the estimated fiscal impact of the resolution.
335	Sen. Castillo	Replies that she is and that it may be preferable to have the Governor put together a task force on the issue.

337	Sen. Dukes	Suggests that a smaller task force would be cheaper.
343	Sen. Castillo	Wonders why it is necessary to include a builder on the task force, as suggested by the amendments. Says that the original resolution provides for many individuals with experience building migrant worker housing and that a legal representative would better serve the task force. Reiterates that the issue is "very serious" and should be addressed in a way that all interested parties can agree with.
369	Chair George	Requests that Sen. Castillo take her resolution to the Governor and report back to the committee with the results. Closes the work session on SJR 38 and opens a work session on SB 1267.
<u>SB 1267 WORK SESSION</u>		
383	Brad Harper	Committee Administrator. Gives a brief description of the bill. Indicates that the ñ2 amendments (EXHIBIT B) have been submitted for consideration by the committee. Explains that the amendments would exempt from the definition of "farm labor contractor" individuals who recruit or employ temporary workers or who employ domestic workers under the same statute.
TAPE 115, A		
012	John McCulley	Representative, Tree Fruit Growers. Testifies in support of the ñ2 amendments to SB 1267. Explains that the amendments completely change the bill, which was deemed by the committee and its sponsors to be unnecessary during a previous hearing. Asserts that requiring a state license is excessive, given the stiff regulation by the federal program.
028	Sen. Dukes	Asks if the State of Oregon has the ability to enforce federal law.
032	McCulley	Replies that federal enforcement would apply, through the Department of Labor. Adds that the state would have jurisdiction over any area where an overlap exists.
040	Sen. Fisher	Suggests that the federal licensing process is similar enough to the state process so as to make the latter excessive.
051	Thom Nelson	Executive Director, Hood River Grower-Shipper Association. Testifies in support of the ñ2 amendments to SB 1267 (EXHIBIT C). Says that the federal H-2A program is already in place and should not be superceded by the state program. Explains that the federal program is more protective of farm workers than the state program.
080	Michael Dale	Representative, Oregon Law Center. Testifies in opposition to the ñ2 amendments to SB 1267 (EXHIBIT D). Outlines the regulations that Oregon law imposes upon employers of farm workers. Says that all state regulations are enforceable by Oregon courts and the Bureau of Labor and Industry (BOLI).

		Indicates that federal rules are enforceable only by the federal government. Argues that the federal program has not been successful. States that the proponents of the amendments are simultaneously working to repeal the H-2A program requirements through legislation in the U.S. Senate.
135	Chair George	States that if the Oregon Legislature were to pass SB 1267 with the ñ2 amendments and Congress repeals the H-2A program, there would be no protections for farm laborers.
140	Dale	Concurs with the chair. Says that the state should not provide an incentive to avoid employing U.S. workers by passing such a law. Adds that foreign workers should not be discriminated against by the refusal to protect them under Oregon law, which may violate the North American Free Trade Agreement (NAFTA). Explains that the H-2A program requires recruitment of domestic workers before seeking migrant workers and that such a search would also be exempt from Oregon law should the amendments become law.
172	Bob Castagna	Representative, Oregon Catholic Conference. Testifies in opposition to the ñ2 amendments to SB 1267. Recalls an occasion when employers were forced to supply food and shelter to migrant workers who had arrived to find that promised jobs were not yet ready to start. Says the requirement to feed and shelter workers in such a situation would be repealed by the amendments.
193	Jose Luis Alvarado	Deputy Counsel General, State of Oregon. Testifies in opposition to the ñ2 amendments to SB 1267. Asserts that passage could exacerbate problems between employers and workers. Reiterates that the NAFTA requires equal rights for all workers and that passage of the amendments would violate those agreements. Mentions that 95 percent of Oregon farm workers come from Mexico.
227	Chair George	States that there is no intention on the part of the committee of violating treaty. Asks if other states maintain state requirements in addition to the H-2A requirements.
233	Alvarado	Indicates that other states do maintain state programs and suggests that doing so is not excessive.
253	Nelson	Asserts that the H-2A revisions being considered by Congress would not remove any worker protections. Adds that the President would likely veto such legislation anyway.
270	Chair George	Asks if the ñ2 amendments would set up a different program than the H-2A program.
276	Nelson	Explains that every state's program is a little different. Mentions that if Oregon had only the federal farm labor law in effect, there would be no need to register with the Federal government.
290	Larry Klineman	Secretary and Treasurer, Northwest Tree Planters and Farm Workers United.

		Argues that there is not a level playing field for farm workers in Oregon. Says that a migrant worker's status is dependent upon employment, which creates a type of servitude.
306	Chair George	Asks if a worker can be deported if he loses his job
311	Klineman	Replies that such occurrences can and do happen.
312	Sen. Corcoran	Mentions that workers entering the United States under the H-2A program do not choose the employer for whom they will work.
316	Chair George	Concurs with Sen. Corcoran. Says that there are strong written agreements made prior to employment.
319	Klineman	Says that the situation creates a "climate of fear" among workers, in that speaking out against employer violations creates the possibility of being deported. Says that there is "under-enforcement" of violations of existing law and that rolling back the meager protections that do exist would be unwise.
338	Sen. Fisher	Asks what types of problems exist in the states that rely solely upon the federal program.
341	Klineman	Replies that he is not well versed in the problems faced by other states. Mentions that Oregon has problems with violations even with the dual protection of federal and state regulations.
358	Sen. Corcoran	Suggests that it may be beneficial to receive testimony from BOLI.
374	Paul Tiffany	Government Relations Manager, BOLI. Indicates that BOLI has taken a stance of opposition to the two amendments to SB 1267. Says that there has not been a situation necessitating the elimination of the state program.
387	Chair George	Wonders if current law would allow a grower to set up an H-2A process today.
393	Tiffany	Replies that a contractor could not be exempted from state law for that reason.
400	Dale	Mentions that SB 980 would allow associations to apply for and obtain a license to establish such a program.
TAPE 114, B		
002	Chair George	Suggests that BOLI should be allowed to provide a waiver to employers who qualify for H-2A programs. Acknowledges that there are problems associated with providing both adequate farm labor and acceptable conditions for workers.

010	Tiffany	Expresses willingness to work out a compromise.
015	Dale	Indicates that he would not support a waiver option. Explains that H-2A workers are exempt from the federal act and would have no rights if the Oregon rules did not apply.
028	Chair George	Asks Mr. Alvarado if the Mexican government reviews the credentials of recruiters of migrant workers.
031	Alvarado	Replies that a review process is being put together but that there is nothing currently in place.
036	Nelson	Mentions that when a certificate of labor is achieved, the workers go to the consulate and pick up a form. Explains that if workers come to the United States and find the situation is not palatable they have nowhere to go, even under current Oregon rules. Asserts that such problems will not be prevented by duplicate rules.
055	Dale	Clarifies that a violation of NAFTA would occur only if Oregon were to provide protections to its workers that it did not also offer to Mexican workers. Says that Oregon law requires recruitment disclosure at the time of hire or recruitment, whichever comes first, which is important for workers. Says that workers often leave relatively good jobs in their home towns in Mexico, only to find that the promised job is less than expected upon arriving at the consulate. Asserts that recruiters should be required to make known the terms at the time of recruitment, as is required by Oregon law.
088	Chair George	Wonders if the H-2A process prohibits Oregon to add standards in addition to the federal program.
090	Dale	Replies that federal law requires the employer to meet federal standards as well as any state standards that are higher, such as in the case of minimum wage, which in Oregon is higher than the federal minimum.
096	Chair George	Asks if the federal wage is \$7.32 per hour.
097	Nelson	Replies that is the adverse effective wage rate, set by the Federal government with regards to the H-2A program.
102	Sen. Shannon	Refers to Mr. Dale's testimony, which considers the H-2A program to be "a sad story of exploitation and broken promises." Asks Mr. Dale if he believes that the amendments would make the situation worse.
108	Dale	Replies that they would in that they would remove "a significant tool" for protecting workers by eliminating BOLI's authority.
114	Chair George	Suggests that the issue be worked out during the interim and brought back to the

		legislature during the next session.
140	Sen. Corcoran	Disagrees with the assertion that there is a labor shortage in Oregon. Mentions that there is high unemployment in some areas of the state. Asserts that the legislature should not assume that a labor shortage problem exists.
156	Chair George	Closes the work session on SB 1267 and adjourns the meeting at 6:00 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Brad Harper,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SJR 38, -1 amendments, staff, 2 pp.

B ñ SB 1267, -2 amendments, staff, 3 pp.

C ñ SB 1267, testimony, Thom Nelson, 3 pp.

D ñ SB 1267, testimony, Michael Dale, 1 p.