

SENATE COMMITTEE ON BUSINESS & CONSUMER AFFAIRS

January 29, 199 Hearing Room C

1:00 p.m. Tapes 17 - 18

MEMBERS PRESENT: Sen. David Nelson, Chair

Sen. Lee Beyer, Vice-Chair

Sen. Rick Metsger

Sen. Randy Miller

Sen. Charles Starr

MEMBER EXCUSED:

STAFF PRESENT: Y. Sherry Sheng, Administrator

Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD:

SB 121 Public Hearing and Work Session

SB 178 Public Hearing and Work Session

SB 180 Public Hearing

SB 181 Public Hearing and Work Session

SB 285 Public Hearing and Work Session

SB 286 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 17, A		
003	Chair Nelson	Opens meeting at 1:00 p.m. Announces that SB 214 will not be heard today.

SB 121 PUBLIC HEARING

010	Bob Shiprack	Secretary, Oregon Building and Construction Trades Council. Supports SB 121. Presents background on SB 121. SB 121 extends training time from three weeks to five weeks without losing unemployment benefits.
048	Tom Lindberg	Operating Engineers #701. Explains that #701 has 170 trainees that would be affected by SB 121.
060	Chair Nelson	Asks if there will be any problems with the unemployment trust fund from SB 121.
068	Shiprack	Explains that in earlier legislation, the charges go directly to the employer who employs the trainees.
101	Jerry Galarneau	Training Director, Sheet Metal Apprenticeship. Explains the training of sheet metal workers in the Portland Training Center. Says there are 300 apprentices. Discusses benefits for sheet metal workers. Supports SB 121. The state of Washington has five weeks unemployment rules. Presents (EXHIBIT A) .
118	John Snyder	Sheet Metal Workers Local #16. Supports SB 121. Explains needs of the training center.
122	Sen. Starr	Asks if the three weeks paid now is funded differently.
131	Galarneau	Says it is the same.
137	Chair Nelson	Asks for John Gervais & Associates to speak.
141	Robert Blake	Sheet Metal Contractors' Association. Represents the contractors. Supports SB 121.
147	Annette Talbot	Employment Department. States the Department supports SB 121. Says no major impact on trust fund is expected. Employees want the bill. Presents (EXHIBIT B) .
170	Jack Roberts	Commissioner, Bureau of Labor and Industries (BOLI). Testifies for SB 121.
	Chair	Asks for questions. Closes public hearing. Opens work session.

SB 121 WORK SESSION

190	Sen. Miller	MOTION: Moves SB 121 to the floor with a DO PASS
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		recommendation.
190		VOTE: 4-0-1 Beyer: Excused
	Chair Nelson	Hearing no objection, declares the motion CARRIED. SEN. NELSON will lead discussion on the floor.
191	Chair Nelson	Closes work session. Opens public hearing on SB 178.
<u>SB 178 PUBLIC HEARING</u>		
195	Roberts	Testifies in support of SB 178. Explains the reason for the bill. States payment to workers who are deported will be held for them to receive. Says integrity in the system is the goal. Says the Mexican consulate supports the bill. Says SB 178 is in response to concerns that were brought to the BOLI.
267	Chair Nelson	Asks where the money goes.
268	Roberts	Says BOLI will hold it in trust; the employer holds it now.
284	Sen. Miller	Asks if this is to protect illegal workers.
289	Roberts	Says they are protecting the system. Says BOLI believes those who have earned wages should be paid.
304	Sen. Miller	Asks if those who are working know they are in violation of law by working illegally and that they may be returned to their country before they are paid.
306	Roberts	Explains BOLI's view that people should get paid for their work.
316	Metsger	Asks who is responsible for finding out if money is owed.
340	Roberts	Responds the employer is supposed to report. There are penalties for not reporting.
349	Sen. Metsger	Asks if he knows if employers willfully do not pay wages.
356	Roberts	Responds he thinks employers are willing to pay.

374	Sen. Starr	Says he thinks since it is not a big problem, legislation should wait until the nursery association and the farm associations are heard from.
388	Roberts	Says this issue was brought to BOLI as a proposal. States BOLI felt it should be addressed.
TAPE 18, A		
004	Sen. Metsger	Comments that he likes the idea of the bill. Says he does not know how much of a problem this is.
010	Chair Nelson	Asks for questions.
015	Donald Lamm	Oregon Catholic Conference. Comments on employees picked up by Immigration and Naturalization Service (INS). Describes a raid in Creswell to deport Latinos. Lane County workers fear that they will be picked up by INS if the money is kept by the government for them. Says an employer, Foster Farms in the Eugene area, has a large number of illegal workers who were deported.
052	Sen. Beyer	Asks if this is similar to the law that says if a worker is fired, he needs to be paid for work.
055	Roberts	Responds it is based on that premise. States the proposal says that if the worker leaves the country, BOLI would hold their money.
061	Sen. Miller	Asks if the workers know they are here illegally, should they still receive their pay.
066	Lamm	Responds he thinks a worker should receive their pay for work.
068	Sen. Miller	Asks if they should be paid even if they are depriving legal workers of that work.
072	Lamm	Responds he thinks the employer is obligated to pay for work done, whether the worker is here legally or illegally.
074	Sen. Miller	Asks if Lamm is asserting that Foster Farms is knowingly hiring people who should not be in the U.S.
076	Lamm	Responds that there are a large number of Mexican workers at Foster Farms whether they are all legal or illegal is not known. Says there are very few local people working there.
081	Betsy Earls	Associated Oregon Industries (AOI). Says members reported that the current practice is for employers to write a paycheck and hold it for that person. Says the

		members do not believe it would be a burden to send it to BOLI.
090	Sen. Beyer	Asks Lamm if he supports the bill.
092	Lamm	Explains his experience with the Latinos is that they fear the government agencies are helping the INS. Says they will be afraid to come to the government to pick up their wages.
100	Sen. Beyer	Responds that BOLI's proposal would be in the employee's interest.
104	Lamm	Responds he believes that to be true, but he is not surprised that the Hispanic workers are not present to support this due to their belief of government agencies assisting the INS.
122	Nelson	Closes public hearing. Opens work session. Asks committee for comments on what to do with bill.
<u>SB 178 WORK SESSION</u>		
128	Sen. Starr	Says he wants to hear from the nurserymen.
130	Chair Nelson	Suggests holding the work session over for more information from nurserymen and the farming community. Closes work session. Opens public hearing on SB 180.
<u>SB 180 PUBLIC HEARING</u>		
146	Roberts	Explains SB 180. Gives background on BOLI's position to give notice of claims for wages against a contractor's bond, without assignment of workers.
180	Sen. Beyer	Asks what BOLI's reaction is to the contractor's position that this action ties up their bond and limits their ability to bid on other contracts.
182	Roberts	Responds they try not to tie up the bond for two years. Says they try to move expeditiously.
189	Sen. Byer	Asks if BOLI takes action when they get a claim.
195	Roberts	Responds that they do act when they get a claim (and go from there). Says estimates of wage claims are made from information they get.
201	Sen. Beyer	Asks what is the average processing time is for wage claims.

204	Roberts	Gives example of a reputable contractor and one who is not reputable. Says BOLI tries not to hold up contractors and still protect workers. Says processing a claim usually takes a few months.
210	Sen. Beyer	Asks if processing a claim takes months or years.
215	Roberts	Responds it is not more than two years.
235	Sen. Miller	Refers to opposition to SB 180. States that the assertion is that the commissioner needs more than one reason to believe that one or more workers have not been paid in full. Says there should be proof to BOLI before taking this action.
255	Roberts	Responds that different language could be proposed, and yet none has been offered. Asks if it is appropriate for BOLI to help workers. Asks who should make the decision. Says BOLI has helped without complaints.
264	Sen. Miller	States there are remedies for claims by workers to get unpaid claims.
288	Roberts	Says BOLI does not believe the law is adequate. Discusses the prevailing wage rate. States the enforcement tool has been important.
307	Sen. Metsger	Asks how often they have used the authority and how long it has taken for the situation to be remedied.
335	Roberts	Responds it is not a tool that has been used in most cases. States the timeframe is relatively expeditious. Believes it is a beneficial tool.
353	David Douthwaite	Associated General Contractors (AGC). Objects to SB 180. Explains the bill ties up contractors' finances for two years. States there are already two remedies. Explains that a worker can file a bond claim within 120 days. Says the statutes allow a worker to file a wage claim with BOLI. States a surety has an effect on owners, and could limit contractors' ability to get future work. Presents (EXHIBIT C) .
TAPE 17, B		
004	Sen. Miller	Asks if AGC has specific language to suggest to BOLI's claims.
013	Douthwaite	Responds AGC has no language proposals. States that public officials' action should include a reasonable belief that they have the right to act. Says factual criteria should be presented to support basis for the action.
026	Sen. Miller	Asks if Douthwaite agrees that it is not easy for the workers to understand what they should be paid.

030	Douthwaite	Responds that he thinks most workers know what they are supposed to get paid.
036	Sen. Miller	Asks if workers know how their wage fits in with the prevailing wage law.
038	Douthwaite	Says he does not know; but most workers are aware of what the prevailing wage is.
047	Sen. Metsger	Asks for specific examples of contractors being harmed by BOLI's administration of this issue.
060	Douthwaite	Responds he knows of none. Says members have not heard of this practice. States the unpaid workers are not the general contractor's workers. Says sometimes the subcontractor's workers have not been paid.
090	Sen. Metsger	Asks Commissioner to respond to subcontractor pay.
092	Roberts	Answers it is already in the law. Says if there is dispute between a contractor and a subcontractor, that is better than the worker trying to figure out where to go.
100	Sen. Metsger	Asks Douthwaite if he would work with the commissioner to determine more specific language for the bill.
03	Douthwaite	Responds he will.
107	Bob Shiprack	Oregon Building Trades Council. Explains the new prevailing wage system and that the wages are set when the job is advertised. Discusses getting a bond, and how rates are in bid specifications. Says when wages are not paid, it is probably deliberate. Says there should be evidence that a worker has not been paid before any filing for claims.
130	Metsger	Wants to hold SB 180 over to be amended.
132	Sen. Beyer	Asks if they will get together and bring forth an amendment.
134	Roberts	Verifies that language to tighten up the circumstances to file claims is what is requested.
138	Chair Nelson	Asks Douthwaite to suggest language.
142	Douthwaite	Says they will work with Roberts on language.
147	Sen. Beyer	Comments that the system that has been working but needs some tightening.

152	Chair Nelson	Closes public hearing on SB 180.
<u>SB 181 PUBLIC HEARING</u>		
156	Chair Nelson	Opens public hearing on SB 181.
158	Roberts	Gives background on SB 181 regarding fees. Says in 24 years there has never been a request for this permit. BOLI feels this law can be removed.
167	Chair Nelson	Asks for any questions. Closes public hearing on SB 181. Opens work session on SB 181.
<u>SB 181 WORK SESSION</u>		
171	Sen. Miller	MOTION: Moves SB 181 to the floor with a DO PASS recommendation.
172		VOTE: 5-0
	Chair Nelson	Hearing no objection, declares the motion CARRIED. SEN. MILLER will lead discussion on the floor.
173	Chair Nelson	Closes work session on SB 181. Opens public hearing on SB 285.
<u>SB 285 PUBLIC HEARING</u>		
174	Jim Harlan	Deputy Administrator, Division of Finance and Corporate Securities, (DFCS), Department of Consumer & Business Services (DCBS). Introduces David Tatman who is chief of the enforcement unit.
175	David Tatman	Chief of Enforcement, DFCS. Supports SB 285. Explains viatical settlement contracts, and the need to include them in the securities laws. SB 285 allows sale of insurance proceeds on a life insurance policy to a third party. Presents (EXHIBIT D) .
230	Tatman	States this practice is growing and investors need to have securities protected.
308	Tatman	Explains concerns of confidentiality, such as cases of persons with the disease of AIDS.

321	Tatman	Gives examples of sales of investment opportunities. Explains a program that was a scam. Says regulatory oversight needs to be instituted.
360	Sen. Beyer	Asks who the purchasers are.
362	Tatman	Responds viatical contracts are being sold on the internet and through advertising. Explains sales to many different kinds of people.
393	Sen. Beyer	Asks if the sales package these investments.
394	Tatman	Says they are more likely to fractionalize the larger policies.
TAPE 18,B		
006	Sherry Sheng	Committee Administrator. Says securities investment people were contacted for their input.
010	Chair Nelson	Asks for questions. Closes public hearing on SB 285. Opens work session on SB 285.
<u>SB 285 WORK SESSION</u>		
013	Sen. Metsger	MOTION: Moves SB 285 to the floor with a DO PASS recommendation.
		VOTE: 5-0
014	Chair Nelson	Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.
015	Chair Nelson	Closes work session on SB 285. Opens public hearing on SB 286.
<u>SB 286 PUBLIC HEARING</u>		
016	Tatman	Supports SB 286. Asks for an amendment to clarify statutes that the director has the authority to take action to stop offers, as well as sales that violate the securities law. Explains circumstances when securities language was amended to change the definition of a sale. Asks to raise civil penalties. Presents (EXHIBIT E).

060	Tatman	Asks for a change in wording, and to raise the monetary amount of civil penalties. Seeks to have penalties reflect the current economy. Proposes \$20,000 and \$100,000. Says deterrents need to be meaningful.
081	Sen. Metsger	Asks if the defendants would have relief from fines.
099	Tatman	Responds that is the court's decision, with the right to appeal. Says nearly all administrative proceedings are settled and agreement reached including the penalty.
100	Chair Nelson	Asks for explanation regarding the authority to stop attempted violations.
113	Tatman	Proposes "offer" be included in the definition of sale for the director's authority to bring action.
123	Chair Nelson	Asks if there is a problem in proving "attempt".
127	Tatman	Responds it is the same burden of proof; if somebody complains about fraud. DFCS wants to prevent it. Says it should say "offer" rather than "attempt."
150	Sen. Miller	Comments that the language is uncertain.
170	Tatman	Responds that former legislation's purpose was to prevent nuisance filing of fraudulent attempts.
173	Sen. Miller	Comments there was no discussion of intent either purposefully or not. Says the department's assumption was that it was not intentional.
187	Chair Nelson	Asks for further questions. Asks for discussion.
188	Sen. Beyer	Moves for a do pass.
194	Sen. Miller	Says he will not support this bill at this time. States he is not sure it is needed; concerned about the penalties.
211	Sen. Metsger	Supports the bill. Assumes burden of proof is with the department.
218	Sen. Beyer	Assumed the maximum as a deterrent.
228	Harlan	Says he believes that 85 percent of the cases involved with fines are nowhere near the maximum penalties; DFCS works with the cases to make sure the penalties are appropriate. Says the primary area where the need for increases is, in large securities and egregious cases.

243	Tatman	Agrees. Says the average is one large securities case a year. States these companies pay monetary penalties in excess of \$100,000.
245	Sen. Miller	Comments that the law has worked the way it is; change due to only one incident is not warranted.
269	Sen. Beyer	Asks how this compares to SEC fines.
280	Tatman	Responds he does not have those figures.
290	Chair Nelson	Suggests continuing SB 286 in a work session at a later date.
300	Sen. Beyer	Withdraws motion.
305	Chair Nelson	Closes public hearing on SB 286. Asks for any further business. Announces there will be no meeting February 1 nor February 12. Adjourns meeting at 2:47 p.m.

Submitted By, Reviewed By,

Nancy Masee, Y. Sherry Sheng,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 121, Written testimony, Jerry Galarneau, 2 pp

B ñ SB 121, Written testimony, Annette Talbott, 4 pp

C ñ SB 180, Written testimony, David Douthwaite, 1 p

D ñ SB 285, Written testimony, David Tatman, 12 pp

E ñ SB 286, Written testimony, David Tatman, 8 pp