

SENATE COMMITTEE ON GENERAL GOVERNMENT

February 4, 1999 Hearing Room C

3:00 p.m. Tapes 14 - 15

MEMBERS PRESENT: Sen. Verne Duncan, Chair

Sen. Cliff Trow, Vice-Chair

Sen. John Lim

Sen. Marilyn Shannon

Sen. Frank Shields

STAFF PRESENT: Marjorie Taylor, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: SB 388 Public Hearing and Work Session

SB 399 Public Hearing and Work Session

SB 430 Public Hearing and Work Session

SB 347 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
TAPE 14, A		
003	Chair Duncan	Calls meeting to order at 3:10 p.m. Opens public hearing on SB 388.
<u>SB 388 PUBLIC HEARING</u>		
008	Rudolph S. Westerband	Assistant Attorney General, Department of Justice (DOJ). Testifies in support of SB 388 (EXHIBIT A). Summarizes written testimony. States that SB 388

		authorizes labor arbitrators to issue subpoenas in order to compel necessary witnesses to testify. States that labor arbitrators have been issuing subpoenas on a daily basis in Oregon without legal sanction. States that SB 388 is a "fix of a legislative oversight," and that it would simply sanction the current activities of labor arbitrators.
052	Sen. Lim	Asks why interested parties would fail to respond to an arbitrator subpoena if their side may be hurt in the proceedings in their absence.
055	Westerband	Replies that the parties usually have an interest in coming to the proceedings, and that they usually comply. States that most cases where a subpoena is necessary are those where a witness is a disinterested third party. States that SB 388 would allow the arbitrator to proceed in such a case by enabling them to procure the necessary evidence by bringing in such witnesses.
080	Chair Duncan	Asks for clarification that subpoenas have been issued for years without legal backing by labor arbitrators.
084	Westerband	Replies that the chair is correct. Adds that knowingly issuing a subpoena without legal authority is a felony. Mentions that it is highly unlikely that an arbitrator would be prosecuted for issuing a subpoena. Adds that, since the issue has come up, it is prudent to give labor arbitrators the legal backing for their current activities by passing SB 388.
097	Sen. Trow	Asks why this issue has suddenly emerged.
100	Westerband	Answers that it did not come up for any particular reason, but rather is a "house keeping" measure that the Department of Justice has decided to act upon.
109	Sen. Lim	Mentions that the subject of the bill makes it look more like it would fall under the umbrella of the Judiciary Committee.
111	Chair Duncan	States that the bill was definitely assigned to General Government.
114	Sen. Trow	Replies that the Judiciary Committee could act upon the bill and that it has attorneys, unlike the General Government Committee. States that the bill is non-controversial, however, and that this committee can act upon it.
118	Westerband	States that SB 388 is a "neutral" bill without any opposition.
122	Sen. Lim	Mentions that if arbitrators have been issuing subpoenas without punishment, then SB 388 seems unnecessary.
124	Chair Duncan	Replies that, since the practice of issuing subpoenas without jurisdiction is now on the record, it would be a good idea to move forward.

129	Sen. Trow	Mentions that the committee staff could check with the Judiciary Committee to see if they have a compelling need to have the bill.
133	Marjorie Taylor	Mentions that she would check with Judiciary.
138	Sen. Trow	Asks Westerband if he knows of any opposition to the bill.
139	Westerband	Replies that he knows of no opposition.
140	Rich Peppers	Oregon Public Employees Union (OPEU). States that OPEU attorneys have not investigated the matter of labor arbitrators issuing subpoenas, but that they would support SB 388.
<u>SB 388 WORK SESSION</u>		
156	Sen. Lim	Asks if there are many cases where labor arbitrators are issuing subpoenas.
163	Westerband	States that the subpoenas are issued often and that they will continue to be, since they are standard practice.
164	Sen. Trow	MOTION: Moves SB 388 to the floor with a DO PASS recommendation.
170		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Duncan	The motion CARRIES. SEN. TROW will lead discussion on the floor.
178	Chair Duncan	Closes work session on SB 388. Opens public hearing on SB 399.
<u>SB 399 PUBLIC HEARING</u>		
180	Keith Kutler	Assistant Attorney General, DOJ. Testifies in support of SB 399 (EXHIBIT B). States that the Oregon Attorney General currently cannot give legal advice to federal agencies directly, but instead must go through an intermediary state agency. States that SB 399 would allow the Attorney General to deal with federal agencies directly. States that there is no fiscal impact.

224	Sen. Trow	Asks why the Oregon Attorney General would need to give advice to federal agencies when those agencies could receive advice from the United States Attorney General.
228	Kutler	Replies that the case is similar to private businesses asking for legal counsel. States that it is necessary for federal agencies to receive representation from the state Attorney General, who acts as a representative of the state's agencies, rather than providing their own legal advice.
240	Chair Duncan	Adds that the State Attorney General is the source of legal advice.
244	Sen. Lim	Asks who pays for the opinions supplied by the state Attorney General to a federal agency.
246	Kutler	Responds that currently the agency is billed for the advice, and that it would also be the case after passage of SB 399, but that the paperwork would move through different offices.
256	Sen. Trow	Asks if the difference would be who sends the letter to the federal agency.
260	Kutler	Clarifies that the difference would not be who sends the letter, but rather who the letter is sent to.
264	Sen. Lim	Asks if there would be any change in workloads as a result of passage of SB 399.
266	Kutler	Replies that there would be no appreciable change in workload.
268	Sen. Trow	Discusses the change in the paper trail.
273	Kutler	States that currently a state agency needs to pass information to federal agencies from the state's Attorney General, whereas SB 399 would allow a direct path to the federal agency, while removing the middle step.
285	Marilyn Lorange	Legislative Coordinator, Aeronautics Division, Oregon Department of Transportation (ODOT). Testifies on behalf of the Assistant Attorney General in charge of Aeronautics in support of SB 399 (EXHIBIT C). Summarizes written testimony.
331	Sen. Trow	Says that SB 399 would seem to solve the Aeronautics Division's problem.
335	Chair Duncan	Closes public hearing on SB 399. Opens work session on SB 399.
<u>SB 399 WORK SESSION</u>		

344	Sen. Trow	MOTION: Moves SB 399 to the floor with a DO PASS recommendation.
352		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Duncan	The motion CARRIES. SEN. DUNCAN will lead discussion on the floor.
356	Chair Duncan	Closes the work session on SB 399. Opens a public hearing on SB 430.
<u>SB 430 PUBLIC HEARING</u>		
360	David Stiteler	Chair, Employment Relations Board (ERB). Testifies in support of SB 430. Describes the ERB and the effect that SB 430 would have on the board. States that board members currently cannot perform any activity which provides compensation while serving on the ERB. States that SB 430 would prevent abuse of the position on the board while enhancing its stature. States that current restrictions on serving on the ERB may dissuade individuals from serving in the future.
TAPE 15, A		
030	Rita Thomas	Member, ERB. Testifies in support of SB 430 (EXHIBIT D). Summarizes written testimony. Mentions that when she took the position on the ERB she asked legislators and the Governor's office to remove the provision that hinders the ability of board members to teach on their own time while serving on the board. Says that nothing within SB 430 would interfere with the board's operation.
073	Katherine Whalen	Member, ERB. Testifies in support of SB 430.
074	Sen. Trow	Asks if there are safeguards to prevent abuses, such as individuals being involved in non-board activities that might interfere with their ERB duties.
077	Stiteler	Answers that such conflicts would be unlikely.
086	Sen. Trow	Asks about a board member teaching a night class. Asks if the individual would need to be on leave to do so.

088	Stiteler	Says that currently the individual could collect vacation pay or serve on unpaid leave. States that such cases would not be likely due to the size of case loads.
100	Sen. Trow	Asks if there is a heavy case load or a backlog.
101	Stiteler	Replies that there is not a heavy case load. Says that there has been an increase of cases filed, but not a pattern of where those cases are originating. States that they have been tracking case load numbers since 1995.
115	Chair Duncan	Asks if ERB members turn in a time slip to keep track of their activities.
130	Stiteler	Replies that the ERB time slip is similar to all state employees, in that they need to account for their activities. Discusses safeguards on arbitrator activities and mentions that the Governor is free to remove them. Adds that the Senate can refuse to confirm re-appointees if they are found to have abused their position.
141	Sen. Lim	Asks if there is a chance of a conflict of interest where an arbitrator may be deciding issues in which they have a vested interest.
145	Stiteler	Says that there would be no potential for conflict, since such cases would not be taken by an arbitrator. States that arbitrators would not feel it appropriate to take cases in which their own districts would fall under their jurisdiction.
152	Sen. Lim	Asks if SB 430 would open up the opportunity for such conflicts of interest.
155	Stiteler	Says that the bill contains provisions that would prevent such occurrences in section 3.
159	Sen. Shields	Asks if there are other states that have similar boards which serve a similar function, and if they have backlogs.
170	Stiteler	Replies that other states have similar boards to the ERB, but that their practices are different. States that members of those boards are allowed to teach in states other than their own while arbitrating within their state.
185	Sen. Trow	Asks if there may be cases of uncomfortable situations, where an individual may be considered an "unfair arbitrator"?
192	Stiteler	Replies that he does not believe so.
202	Sen. Trow	States that receiving payment for a speech, for example, may create such a situation.
203	Stiteler	Says that such activities would not be appropriate.

205	Sen. Trow	Asks if it would be forbidden by the bill.
206	Stiteler	Says that the bill is very limited in what it allows arbitrators to do. Says that there are limited exceptions to the prohibitions made by the bill.
218	Sen. Shields	Asks if the motivation behind supporting the bill is philosophical, or if the primary motivation is financial. Asks if the state should allow more compensation to prevent the need to earn additional funds, rather than allowing board members to participate in potentially conflicting activities.
240	Stiteler	Says that there is great self-interest in the bill, which makes members uncomfortable. Says that, for him, it is about what is right, not about making more money.
255	Thomas	Answers that there was initial concern in regards to serving on the board for pay. States that there is a frustration of not being able to teach. Says that, for her, it is a matter of professionalism. States that board members need to be able to circulate within their own community.
269	Chair Duncan	States that he understands the desire of board members to remain active within their chosen fields.
280	Sen. Trow	Mentions the fact that the ERB deals with employment problems that arise within other agencies. States that there is a great deal of teaching done by public sector agencies. Discusses the difference between teaching within public and private sector agencies. Asks if there is a potential conflict of interest when a board member is employed by a private sector agency that has an employment problem which comes before the board. States that SB 430 would have an impact on future members of the ERB as well.
306	Thomas	Replies that a member could teach on their own time, but that they would need to make a decision as to whether there would be a conflict of interest.
312	Chair Duncan	Offers the suggestion that the bill be clarified so as to make a distinction regarding public and private teaching institutions. States that a change would address Sen. Trow's concerns.
320	Thomas	Replies that she is unsure how such an amendment would be phrased. Says that perhaps it could state that a board member would not be on the payroll of another state agency, but that such a distinction is implicit in the existing language of the bill. Says that working for an agency that has a pending ERB case would be a conflict of interest.
329	Chair Duncan	Asks if the intent of SB 430 was not to include teaching in public universities.
334	Thomas	Replies that the intent was that board members would not be receiving compensation from public universities.

336	Chair Duncan	States that the bill could be amended to make a distinction that would set apart teaching at a school outside of the jurisdiction of the ERB. States that the bill could be brought back, at a later date, with an amendment for consideration.
365	Stiteler	Clarifies how such an amendment could be worded so as to address Sen. Trow's concern regarding conflict of interest.
375	Bob Livingston	Oregon State Fire Fighters Council. Testifies on behalf of SB 430. Says that the Oregon State Fire Fighters will take no position on the bill, as it is currently worded. Expresses appreciation for the committee discussion.
394	Sen. Lim	Asks a question regarding the meaning of the terms "arbitrator, fact finder or mediator" from line 20 of SB 430, which would be allowed by the bill.
400	Chair Duncan	Says that one could serve as an arbitrator outside of the state without violating the provisions of the bill.
402	Stiteler	Discusses the jurisdictional area of the ERB and the potential for arbitration cases. States that the ability to serve as an arbitrator would be limited, but adds that changing it to "out of state only" would make it practically impossible to have a conflict of interest.
TAPE 14, B		
023	Sen. Lim	Discusses the possibility of serving as one's own juror. States that SB 430 would seem to be "opening up doors" for ERB members that were closed for a reason in Oregon law.
027	Chair Duncan	Offers the suggestion that an amendment be made that would eliminate the potential for serving as an arbitrator, fact finder, or mediator in the State of Oregon.
035	Stiteler	Replies that such an amendment would be acceptable.
037	Chair Duncan	Closes public hearing on SB 430 and opens a work session on SB 430. States that there will be no final action taken on the bill during the work session.
<u>SB 430 WORK SESSION</u>		
048	Sen. Trow	Discusses the leave status portion of SB 430. Mentions that there is a distinction between leave and vacation, and that a person may wish to teach at night without taking leave. Asks if a person would need to go on leave at night in order to teach, while remaining active for board duties during the day.
055	Thomas	Replies that she is unsure how to amend SB 430 so as to not prohibit teaching at

		night, as in the example given by Sen. Trow.
061	Sen. Trow	States that an amendment could clarify the language within SB 430 to make the distinction.
062	Chair Duncan	States that Thomas and Stiteler could work with committee staff and legislative counsel to draft amendments which would speak to the concerns raised by the committee.
065	Thomas	States that the bill should have a provision that would make it effective immediately upon passage.
074	Sen. Shields	Asks how many potential amendments are being considered.
075	Chair Duncan	States that there are four potential amendments. Closes work session on SB 430 and opens a public hearing on SB 347.
<u>SB 347 PUBLIC HEARING</u>		
080	Erik Gabliks	Testifies in support of SB 347 (EXHIBIT E). States that the bill is basically a housekeeping measure to clarify existing law.
115	Sen. Trow	Asks if there is any opposition to SB 347.
117	Ken Armstrong	Representative, Oregon Fire Chiefs Association (OFCA). Replies that he is not aware of any opposition, and that the OFCA supports SB 347.
121	Sen. Trow	Asks if there are any portions of the bill that require amending.
122	Armstrong	Replies that there are none.
123	Chair Duncan	Closes public hearing on SB 347 and opens a work session on SB 347.
<u>SB 347 WORK SESSION</u>		
125	Sen. Trow	MOTION: Moves SB 347 to the floor with a DO PASS recommendation.
127		VOTE: 4-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 n Shannon

	Chair Duncan	<p>The motion CARRIES.</p> <p>SEN. SHIELDS will lead discussion on the floor.</p>
132	Chair Duncan	Closes work session on SB 347. Discusses the list of committee bills remaining for consideration and asks the committee members for input on the committee schedule.
142	Chair Duncan	Adjourns the meeting at 4:16 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Marjorie Taylor,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 388, Testimony, Rudolph S. Westerband, 1 p.

B ñ SB 399, Testimony, Keith Kutler, 1 p.

C ñ SB 399, Testimony, Marilyn Lorange, 2 pp.

D ñ SB 430, Testimony, Rita Thomas, 3 pp.

E ñ SB 347, Testimony, Erik Gabliks, 2 pp.