

**HOUSE COMMITTEE ON AGENCY OVERSIGHT AND EFFICIENCY**

May 8, 1997 Hearing Room H-170

1 P.M. Tapes 50-51

**MEMBERS PRESENT:**

Rep. Jane Lokan, Chair

Rep. Ryan Deckert

Rep. Steve Harper

Rep. Eldon Johnson

Rep. Mike Lehman

**MEMBER EXCUSED:**

Rep. Tom Brian

Rep. Richard Devlin

**STAFF PRESENT:**

Brad Harper, Administrator

Valerie Luhr, Administrative Support

**MEASURE/ISSUES HEARD:**

SB 512A 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 50, A		
004	Chair Lokan	Calls the meeting to order at 1:09 p.m. Opens public hearing on SB 512A.
<u>SB 512-A - PUBLIC HEARING</u>		
018	Michelle Kennedy	

		<b>Manager, Fiscal, Performance and Planning, Oregon Employment Department, submits and presents testimony [EXHIBIT A] in opposition to SB 512.</b>
		<b>Explains "being in conformity" and how conformity issues are addressed.</b>
<b>087</b>	<b>Chair Lokan</b>	<b>Asks Kennedy to clarify withdrawal standards and retroactive cases.</b>
	<b>Kennedy</b>	<b>New applies to pending cases and amounts have already been paid by the employer into the unemployment compensation trust fund. Payments are not erroneous under that law. Refunds cannot be made.</b>
	<b>Chair Lokan</b>	<b>Once an employer has paid into the fund, no corrections can be made.</b>
	<b>Kennedy</b>	<b>Look at law in effect at time payments were made into the fund.</b>
	<b>Chair Lokan</b>	<b>Previous law supersedes new law.</b>
	<b>Kennedy</b>	<b>Based on what has been provided by the federal government. Continues testimony. In response to Rep. Harper's question about the number of cases with an inconsistency between how the agencies viewed the independent contractor's status, says there is only one since the independent contractor law was put in place in 1989.</b>
<b>122</b>	<b>Rep. Harper</b>	<b>One?</b>
	<b>Kennedy</b>	<b>That is correct.</b>
	<b>Rep. Lehman</b>	<b>Would that be this case?</b>
	<b>Kennedy</b>	<b>Yes.</b>
<b>127</b>	<b>Rep. Johnson</b>	<b>What we are doing here is bad public policy. States his opposition to the bill. We are seeing an effort to avoid payment of fees every other employer has to pay for the workers' benefit. Does not think we can allow the public to define the law the way they want.</b>
<b>143</b>	<b>Kennedy</b>	<b>In initial hearings on the Senate, the department did not oppose it. They did not have the opinion from the U. S. Department of Labor. They opposed the bill after receiving information from the federal government.</b>
	<b>Lehman</b>	<b>States his understanding of the problems created by the A-engrossed version of the bill.</b>
	<b>Kennedy</b>	<b>Concurs.</b>
	<b>Rep. Lehman</b>	<b>Mannix's amendments create more problems.</b>
	<b>Kennedy</b>	<b>Concurs.</b>
<b>158</b>	<b>Chair Lokan</b>	<b>How does an agency know when they are dealing with an independent contractor and when they are not. Inconsistency of definition among agencies.</b>

	Kennedy	A 1989 law included 8 criteria for independent contractors. You must meet all of them to be considered an independent contractor. Believes most agencies are applying the law.
	Donna Hunter	Manager, Unemployment Insurance Tax Unit, Oregon Employment Department, says the Construction Contractors Board does not make separate determinations under ORS 670.600. Explains the presumption created in their registration process. Revenue is in income tax compliance audits. Revenue has held three to four conferences on the employee-employer relationship since 1989; have had one hearing. Workers' Compensation Division can no longer apply ORS 670.600 due to a 1994 court case.
206	Hunter	Continues. About 50 independent contractor hearings are held a year. If the bill passed, the Employment Department would be binding the other agencies. Comments on consistency.
226	Chair Lokan	There should be consistency for the public's sake.
	Rep. Lehman	There is no question from the Employment Department's standpoint that this situation being dealt with does not qualify as an independent contractor.
	Hunter	Absolutely.
233	Rep. Lehman	Is there way to make it known the Employment Department is the final arbiter of independent contractor status?
	Hunter	Would not want to be the only decision-makers.
252	Rep. Harper	What about the basic concept if it is not retroactive; or if there is a ruling in an agency, it becomes the ruling for the future.
	Kennedy	Conformity issue would be there anyway because of the fair hearing and methods of administration pieces.
271	Chair Lokan	Would be helpful to have one agency come up with a description.
	Hunter	In practicality, that is the way it has turned out. We make all the determinations. Comments on what they look for when they do payroll audits.
297	Rep. Lehman	There are probably court decisions where it is determined that someone who claimed to be an employee is really an independent contractor or vice versa. How do those impact this process.
304	Hunter	We can't ignore those; we win most of the cases we take up.
316	Rep. Lehman	How do we get back to the original bill?
321	Rep. Harper	Asks to hear from Kevin Mannix.
328	Chair Lokan	Asks Kevin Mannix to speak to Rep. Lehman's question.
334	Kevin Mannix	Salem, Oregon, appreciates cooperation from the Employment Department. Is disappointed to hear they now oppose the bill. SB

		<p>512A has no impact whatsoever on any pending cases. The bill before the committee only has a future impact. Past findings are not binding. The Kaib case will not be helped by SB 512A. Look at the original bill as a separate policy issue for the future.</p> <p>In response to Lehman's question, it is possible for the committee to amend the bill to remove whatever sections you want.</p> <p>In response to Rep. Harper's question in regard to policy issues in the original bill, it spoke only to future findings.</p>
401	Rep. Harper	Comments on a conversation with Mannix in which Mannix said he believed the Department of Labor misinterpreted the bill and the amendments. Can they write us a letter saying that this is okay.
414	Mannix	If there is a clarification available from the Department of Labor, it should be available within seven days. And if not, this committee will still have time to say yes or no. He did not know until today the Employment Department had a problem with the bill. What came over from the Senate was unanimous.
	Rep. Harper	Let the bill sit until we hear back.
TAPE 51, A		
007	Rep. Johnson	Does not see that the agencies have to join in conformity. The implications of failure to comply for the Employment Department are so great that we don't want to take that risk.
015	Chair Lokan	Asks Mannix if he would be willing to obtain the letter.
	Mannix	Yes. With respect to Rep. Harper's position, if we can't get the clarification, he can understand fully what Rep. Harper would find necessary to do. Encourages the committee to no let the original bill go away without this issue being considered.
029	Mary Mann	Independent Contractors of Oregon, and president, Goose Hollow Window Company Inc., Lake Oswego, Oregon, submits and presents testimony [EXHIBIT B] in support of SB 512A.
052	Rep. Harper	Who is the case you are talking about.
054	Mann	Involved with pending worker's compensation carriers. Can get names of people involved.
	Rep. Harper	They are identical but treated differently.
	Mann	Using that as an example.
	Rep. Harper	We need to fix that.
	Mann	Continues testimony.
083		Echoes what Rep. Harper said about seeing examples.

	<b>Rep. Deckert</b>	
	<b>Mann</b>	<b>Knows of examples she considers to be abuse by SAIF.</b>
<b>096</b>	<b>Chair Lokan</b>	<b>SAIF interprets the rules differently.</b>
	<b>Mann</b>	<b>Concurs.</b>
<b>101</b>	<b>Johnson</b>	<b>SAIF is not an agency of state government. Same statutes as other carriers. There is an appeal board that handles about forty-two states.</b>
	<b>Mann</b>	<b>Concurs with Rep. Johnson. To be fair to all citizens, let's try to get all states agencies to be talking the same thing at the same time. Let's identify the problem. We should not be afraid of the federal government. Lets find out why other agencies are out of conformity with the Employment Department.</b>
<b>130</b>	<b>Chair Lokan</b>	<b>Asks Mann to supply situations where there have been different interpretations of the bill. Reads testimony from Ken Keudell, Construction Contractor's Board, into the record. They have no problem with the bill. Does not believe the committee is ready for a work session on SB 512A. Encourages the stakeholders to pursue agreement on the bill. Closes public hearing on SB 512A. Adjourns the meeting at 1:54 P.M.</b>
		<b>SB 512-A5 amendments [EXHIBIT C] become part of the record.</b>

Submitted by, Reviewed by,

Valerie H. Luhr Brad Harper

Administrative Support Specialist Committee Administrator

**EXHIBIT SUMMARY**

**A - SB 512A, written testimony, Michelle Kennedy, 9 pp.**

**B - SB 512A, written testimony, Mary Mann, 1 p.**

**C - SB 512A, proposed -A5 amendments, Kevin Mannix, 1 p.**