

HOUSE COMMITTEE ON AGENCY OVERSIGHT AND EFFICIENCY

May 27, 1997 Hearing Room H-170

1 P.M. Tapes 55-56

MEMBERS PRESENT:

Rep. Jane Lokan, Chair

Rep. Richard Devlin, Vice-Chair

Rep. Ryan Deckert

Rep. Steve Harper

Rep. Eldon Johnson

Rep. Mike Lehman

MEMBER EXCUSED:

Rep. Tom Brian

STAFF PRESENT:

Brad Harper, Administrator

Valerie Luhr, Administrative Support

MEASURE/ISSUES HEARD:

HB 3731 Work Session

SB 766A 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 55, A | | |
| 004 | Chair Lokan | Calls the meeting to order at 1:30 p.m. Explains why the committee is convening late. The work session for HB 3162 will not be held because the amendments are not ready. Opens work session on HB 3731. |
| | | |

| | | |
|---------------------------------------|-------------------|--|
| HB 3731 - WORK SESSION | | |
| 020 | Brad Harper | Committee Administrator, reviews provisions of HB 3731. |
| 024 | Kevin Mannix | Attorney, Salem, explains the HB 3731-2 amendments [EXHIBIT A]. |
| 076 | Mannix | Continues testimony. |
| 090 | Rep. Lehman | We should allow this exemption. Is it for people working for not-for-profit entities. |
| | Mannix | Yes. |
| | Rep. Lehman | Referring to the definition in Section 2(1)(a) of the -2 amendments, is it conceivable or likely that the agent or contractor will be circulating and gathering petitions for profit. |
| 098 | Mannix | Concurs. |
| | Rep. Lehman | We are describing as independent contractors people who may be working for profit-oriented businesses. |
| | Mannix | They are working for themselves, but engaged in profit-making activities. Point of non-profit has to do with political action committees. Refers to ORS 260. |
| 112 | Rep. Lehman | Gives a hypothetical situation. You say they are independent contractors, not employees. |
| | Mannix | They would have to be free to call whenever they wish. Secondly, they would have to agree that they are independent contractors; they have chosen to provide their services on their own. |
| | Rep. Lehman | I am a carpenter; I own my own tools; I travel from job site to job site. I come on your job site for profit, and I say I'm willing to work for money to frame this house. I will be considered an employee. |
| 134 | Rep. Mannix | That may well be; it is another problem that cannot be addressed in this bill. |
| 137 | Chair Lokan | There are other bills looking at the issue of independent contractors other than political workers. There are others who wish to be excused from the laws of employer-employee relationship. |
| | Mannix | Problem that is arising is the reading of some as to definition of independent contractor. Comments on action in the 1989 legislature. Statute is interpreted incorrectly. Perhaps in the next session there ought to be an ironclad definition of "employee." |
| 175 | Vice-Chair Devlin | Referring to page 2, lines 3 through 7, -2 amendments, says it addresses concerns about political workers. It is a good amendment. |
| | Chair Lokan | Says Mannix has worked with agencies involved. |
| | Mannix | I've read and listened to their testimony and have tried to address their issues. The same goes for SAIF. |

| | | |
|------------|--------------|--|
| 191 | Chair Lokan | Calls Mr. Mobley forward and apologizes for not hearing his testimony at the last committee meeting. |
| 194 | Al Mobley | Testifying on his own behalf, says he is a graduate bureaucrat. Comments on the power he had over independent contractors. What he sees happening with some agencies is the tinkering of free enterprise. |
| 250 | Mobley | Continues testimony. |
| 277 | Rep. Johnson | Asks if he is favor of the bill. |
| | Mobley | He is in favor of the bill. |
| | Rep. Johnson | Says he could not detect whether he was for or against the bill in his presentation. |
| | Mobley | Is talking about what is already in place and how it is being interpreted. |
| 285 | Rep. Johnson | Testimony should be related directly to what is in the bill. |
| | Chair Lokan | You are welcome to make additional remarks; I detected that is what you have already done. |
| 295 | Rep. Lehman | Asks Mobley if he thinks a 65 year old person on social security should have a right to go to a McDonald's saying he is not an employee but an independent contractor and I'm going to serve hamburgers. |
| 301 | Mobley | No. |
| | Rep. Lehman | Asks Mobley what the distinction is between a person who goes in to a company and says he will make phone calls and the person who says he will sell hamburgers at a fundraiser for a candidate. |
| | Mobley | The manager who runs a McDonald's is the independent contractor. If your time, activities are supervised, then you cannot be an independent contractor. If you control you own time, your own hours, where and when you go, that is an independent contractor. |
| 326 | Rep. Lehman | Under this bill I cannot set their hours of employment. I can tell them where to work and what to do. Cannot tell them when to show up and when to leave. What is the distinction between that and McDonald's other than the hours of service. |
| | Mobley | Is a tremendous difference; comments on choosing the place you want to gather signatures. |
| 345 | Chair Lokan | Comments on testimony heard last week on what defines an employee. Believe this bill deals with a different situation. Calls on Mr. Knobble. |
| 368 | Paul Knobble | Comments on his experience as a petitioner for fifteen years. Supports HB 3731. |
| TAPE 56, A | | |
| 003 | | |

| | | |
|-----|--------------|--|
| | Chair Lokan | To Mr. Knobble, says we are not mentioning the right to petition; only whether they are paid employees or independent contractors. |
| | Knobble | Comments on the onerous of the state bureaucracy saying a person has to be an employee. |
| 017 | Rep. Johnson | Asks Mr. Knobble if he has seen the -2 amendments and if he is in favor. |
| | Knobble | He has seen them and is in favor. |
| | Rep. Johnson | Says that is what they want to hear; has heard enough testimony. |
| | Knobble | Comments on his belief in free speech. |
| 031 | Mary Neidig | Administrator, Workers' Compensation Division. States their opposition to any bills that create further exemptions to worker laws. This creates an additional exemption; they are opposed to it. |
| | Chair Lokan | There are several pages of exemptions in the amendments and in other legislation. |
| | Neidig | Concurs. This is the 26th exemption. |
| 050 | Chair Lokan | In some situations, the law is so firmly applied that it does not allow for the independent contractor status even though person is functioning in that matter. |
| | Neidig | Concurs. |
| | Rep. Johnson | Asks Neidig if the labor-management committee review any of the legislation. |
| | Neidig | Not this particular bill. |
| 061 | Rep. Johnson | Comments on bills relating to workers' compensation not being heard without their approval. |
| | Neidig | Has been true for this bills related directly to workers' compensation. |
| 065 | Rep. Harper | We had one of these in Labor. So narrow in scope. They did not get into the fray. The bill passed out of committee. |
| 074 | Gary Stewart | Employer/Compliance Sanctions Supervisor, identifies himself. |
| 079 | Ruth Bendl | Responds to Employment Division's definition of independent contractors. Is in favor of HB 3731. Clarification is needed to avoid harassment. |
| 097 | Chair Lokan | Comments on her sponsorship of this bill. It is opening the door to more people to participate in the legislative process. |
| 125 | Rep. Johnson | Is not opposed to the concept. What is important is what the Employment Department says about the -2 amendments. |
| | Chair Lokan | Does not know if the Employment Department has seen them. The amendments are hot off the press. |
| | Rep. Johnson | Wants to hear from the Employment Department. |
| 140 | | |

| | | |
|-----|------------------|--|
| | Michelle Kennedy | Manager, Fiscal Performance and Planning, Employment Department, has reviewed the -2 amendments. There is still language needed for conformity; the issue was brought forward in earlier testimony. |
| | Chair Lokan | Do you have proposed amendments. |
| | Kennedy | Language was in testimony. And at the chair's request, the conforming language says, "provisions of this section do not apply to services performed for a non-profit employing unit as described in ORS 657.072 for this state or for a political subdivision of this state." |
| 155 | Chair Lokan | Asks for clarification. |
| | Kennedy | Referring to testimony in the previous meeting, this particular conformity language does not cause any problems. Does not reverse intent of this bill. Language needs to be there to keep us in conformity with federal laws. |
| | Chair Lokan | If the language were there, would you feel comfortable with the bill? |
| 165 | Kennedy | Would still refer to previous testimony--erosion of coverage of workers under the unemployment insurance program. |
| 172 | Mannix | Says he brought that language to Legislative Counsel; they said it should not be there. Refers to ORS 260. The language is redundant. |
| 178 | Donna Hunter | Employment Department, says the Department of Labor requires the language to be in. Explains. |
| | Chair Lokan | Asks the committee how they feel about adding the language. |
| 199 | Rep. Johnson | Must stay in compliance. |
| 205 | Kennedy | One piece in the written testimony and also in the amendments that would be in conflict with the law (page 1, lines 22 and 23 of the -2 amendments). They may indeed be an employer; this would muddy the issue in terms of whether the individual was or was not an employer. |
| 216 | Hunter | As an example under their chapter, you become an employer if you hire someone for services; if you have paid \$225 in a calendar quarter. Discusses what the Employment Department is then required to do. |
| | Chair Lokan | Would want to work out those differences. |
| 233 | Mannix | If you added the phrase on line 17 as to that individual or business entity, you would cover that concern. |
| 247 | Rep. Harper | We have done this 25 other times; why do we have to do this. |

| | | |
|---------------------------------------|----------------|--|
| 252 | Hunter | The others have been extremely narrow exemptions, such as golf caddies in training, etc. |
| | Rep. Harper | We did not get into any of these discussions the last time I did this. |
| | Hunter | Two things happened. We did not have the opportunity to express some concerns and became more cautious as the bill worked its way forward. |
| 277 | Chair Lokan | Does not see this as employee or worker erosion. It is worker expansion. |
| | Rep. Johnson | With this proposed addition, are you okay with the bill? |
| | Hunter | This language as presented resolves a conflict within our chapter and resolves our conformity issue. Other concerns were philosophical. |
| | Johnson | You are talking about five additional words. |
| 288 | Chair Lokan | The committee is at ease (2:18 p.m.) Reopens the meeting at 2:20 p.m. Amendments will be drafted on SB 512. Closes work session on HB 3731. Opens work session on SB 766 |
| <u>SB 766 - PUBLIC HEARING</u> | | |
| 313 | Brad Harper | Committee Administrator, reviews the provisions on SB 766. |
| 335 | David Cooper | Public Affairs Manager, Oregon State Lottery, introduces himself |
| | Jessica Harris | Legislative Assistant to Senator Jeanette Hamby, testifies in support of SB 766. Burns is the most earthquake proof in the western region. Best place to put the facility. Fiber optics would link the area with rest of the state. This legislation will extend the time to complete the project. |
| 369 | Chair Lokan | Asks Cooper to testify on the project's progress. The project was approved in the last legislative session. |
| 376 | Cooper | Issues: <ul style="list-style-type: none"> * lottery sales about \$2 million a day * need for a back-up center * bringing fiber optics to the Burns area * more time to complete the RFP process |
| 418 | Chair Lokan | The RFPs are just going out. |
| | Cooper | |

| | | |
|-------------------------------------|-------------------|--|
| | | DAS has not received response to the RFP. Good comments from the private sector. Suggestions to make it more feasible. Hopeful for October 1, 1998, completion date. |
| 435 | Rep. Johnson | Asks about revenues to bring fiber optics to the area. |
| TAPE 55, B | | |
| | Cooper | The demand in the Burns area does not justify linking it to other areas. Lottery does not have legal ability to run infrastructure across the state. Can pay for its share. This is an unfunded mandate. Comments on Attorney General opinion. |
| | Rep. Johnson | Have you started building yet. |
| | Cooper | No. Looking at becoming a tenant in a multi-use facility. |
| 016 | Vice-Chair Devlin | Is it a forgone conclusion you would have to have land line of some type? |
| | Cooper | That is correct. Land line fiber optics give speed, reliability, and security necessary. |
| 030 | Vice-Chair Devlin | As an aside, comments on the military in Bosnia walking around with cellular telephones. |
| | Cooper | What can be done with cellular is an option; but goal is to bring fiber to this area of the state. Opening up economic opportunity in this area of the state. |
| 050 | Chair Lokan | Clarifies legislation extends the time. Closes public hearing on SB 766; opens work session on SB 766. |
| <u>SB 766 - WORK SESSION</u> | | |
| 051 | Rep. Devlin | MOTION: Moves SB 766A to the floor with a DO PASS recommendation. |
| | | AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Brian |
| | Chair Lokan | The motion CARRIES. REP. DEVLIN will lead discussion on the floor. |
| 064 | Chair Lokan | Closes work session on SB 766A. Declares the meeting adjourned at 2:33 p.m. |

Submitted by, Reviewed by,

Valerie H. Luhr Carolyn Brooks

Administrative Support Specialist Support Services Manager

EXHIBIT SUMMARY

A - HB 3731, proposed -2 amendments, staff, 8 pp.

B - HB 3731, written testimony, Ruth Bendl, 2 pp.