

HOUSE COMMITTEE ON LABOR

April 17, 1997 Hearing Room E

8:00 A.M. Tapes 62 -65

MEMBERS PRESENT:

Rep. Steve Harper, Chair

Rep. Mike Fahey, Vice-Chair

Rep. Chris Beck

Rep. Dan Gardner

Rep. John Minnis

Rep. Ron Sunseri

MEMBER EXCUSED:

Rep. Bill Markham

STAFF PRESENT:

Cara Filsinger, Administrator

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 2249 Public Hearing

HB 2750 Public Hearing

HB 3590 Public Hearing

HB 3652 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 62, A		
003	Chair Harper	Calls meeting to order at 8:07 a.m. Opens public hearing on HB 2249.

<u>HB 2249 - PUBLIC HEARING</u>		
011	Mark Comstock	Attorney, Salem [EXHIBIT A] . Representing debtors and creditors before state and federal courts. Explains intent of HB 2249. Clarifies coverage of the Oregon Safe Employment Act (OSEA).
054	Comstock	Refers to compromise language in attached amendment [EXHIBIT A, pp. 13] .
075	Mike Scott	Attorney, Tigard [EXHIBIT B] . Representing Power Rents & Oregon Equipment Rental Association. Says HB 2249 is a policy issue that defines "owner" under OSEA. Says his client's proposal defines "owner" as one having: * ownership * custody * control Supports HB 2249 with amendment.
111	Chair Harper	Comments the definition of "owner" remains undefined.
113	Scott	Agrees.
115	Rep. Minnis	Asks if Supreme Court's definition of "owner" in <u>Moe v. Beck</u> included the leasing company.
120	Scott	Refers to [EXHIBIT B, pp. 7] that suggests OSEA may not apply to finance lessors.
138	Rep. Minnis	Confirms court did apply definition because contract did not exclude that right.
140	Scott	Replies affirmatively.
141	Rep. Minnis	Asks confirmation that one option would be to write out that exclusion.
141	Scott	Answers yes.
145	Peter DeLuca	Administrator, Oregon Occupational Safety and Health Administration (OR-OSHA). * Expresses dilemma when the agency is unable to cite lessee or lessor and safety issue is apparent. * Says alternative is to prevent use of the equipment in question.

		* States amendment language clarifies "owner" for purposes of citing safety violations. * Supports HB 2249 with amendment.
175	Chair Harper	Asks how OR-OSHA would handle the situation today.
176	DeLuca	Replies generally OR-OSHA would cite the lessee, the person who has control or custody of the equipment. States in unusual circumstances that decision could reverse, citing the lessor for failure to properly maintain equipment.
186	Chair Harper	Confirms the latter is an unusual situation.
190	DeLuca	Answers ambiguous cases do occur but only rarely.
188	Chair Harper	Asks if OR-OSHA has faced unusual cases recently.
198	Rep. Fahey	Asks how OR-OSHA views the scenario of a cab driver leasing a car.
203	DeLuca	Answers OR-OSHA would be able work in that hypothetical situation with HB 2249 with amendment language. States determination must be made with respect to control of the leased equipment.
212	Rep. Fahey	Asks how second party liability suits factor under workers' compensation laws.
216	DeLuca	Replies that is a different issue.
220	Rep. Fahey	Agrees a definition should determine outcome of lawsuit.
224	DeLuca	Agrees, but the question falls under a different body of law.
227	Chair Harper	Closes public hearing on HB 2249. Opens public hearing on HB 2750.
<u>HB 2750 - PUBLIC HEARING</u>		
239	Rep. Liz VanLeeuwen	State Representative, District 37. Explains HB 2750 exempts from unemployment compensation law coverage managers and members of limited liability companies. Refers to proposed -1 amendments [EXHIBIT C] . Suggests amending similar language from SB 811 into HB 2750.
259	James Jordan	Attorney, Albany. Explains HB 2750 clarifies members of limited liability company are not subject to workers' compensation law exempting them from receiving benefits and assessments. Defines limited liability company (LLC) as a hybrid between a corporation and a partnership.
292	Jordan	Explains differences between LLC and limited liability partnership (LLP).
		Lists three reasons amendment is advisable:

303	Jordan	<ul style="list-style-type: none"> * clarity * consistency * LLC is desirable form of business; those in partnerships should not be penalized for transferring entities to LLC <p>Recommends passage of HB 2750 with amendments to include language of SB 811.</p>
325	Rep. Fahey	Asks confirmation that members must be corporate officers.
330	Jordan	Explains provision exempting corporate officers who have substantial ownership in the corporation.
338	Rep. Fahey	Asks if all individuals in a family must be owners to be exempt.
341	Jordan	Answers yes.
350	Rep. Fahey	Comments working family members without ten percent ownership would be covered by workers' compensation.
355	Jordan	Believes that is correct, but is not sure.
358	Rep. Minnis	States that clean-up language is needed to clarify statutes.
376	Chair Harper	Asks Rep. VanLeeuwen if SB 811 language would be the best.
377	Rep. VanLeeuwen	Answers yes.
384	Donna Hunter	Employment Department. Comments that language in SB 811 would accomplish purpose of HB 2750.
400	Chair Harper	Agrees that clean-up is needed.
405	Chair Harper	Closes public hearing on HB 2750. Opens public hearing on HB 3652.
TAPE 63, A		
<u>HB 3652 - PUBLIC HEARING</u>		
011	Chair Harper	Submits written testimony from May D. Dasch [EXHIBIT D] .
018	Rep. Kitty Piercy	<p>State Representative, District 39 [EXHIBIT E].</p> <ul style="list-style-type: none"> * Reads from written testimony. * Supports HB 3652.
057	Rep. Judy Uherbelau	<p>State Representative, District 52.</p> <ul style="list-style-type: none"> * Co-sponsor of bill. * Service providers in adult foster care homes are subject to injuries. * Most service care providers earn minimum wage and have no

		health coverage.
085	Rep. Uherbelau	1995 Legislative session passed a law exempting resident managers from overtime laws in which she at first supported, now opposes.
106	Rep. Minnis	Asks if workers are given minimum wage laws. Can employer charge back to employee the cost of housing for those workers who sleep at the residence.
116	Rep. Uherbelau	States that "resident manager" needs to be defined. Not all resident managers are live-in.
130	Rep. Minnis	Agrees.
133	Rep. Beck	Confirms that current minimum wage law exempts adult foster care workers.
137	Rep. Uherbelau	Replies the section refers to overtime. Identifies section that refers to workers' compensation.
145	Rep. Beck	Asks for background information for understanding why workers were consciously exempted.
150	Rep. Piercy	Replies original statute was a result of someone running adult foster care facility as a cost-saving move. Says legislators misinterpreted information.
162	Chair Harper	Comments a clear definition of "resident manager" will clear confusion.
164	Rep. Uherbelau	Explains that it is unfair to not allow overtime for those who are not resident managers.
181	Rep. Beck	Asks if childcare employees are treated differently with respect to minimum wage and workers' compensation.
186	Rep. Piercy	States that in-home care workers are their own bosses, not employees.
191	Rep. Beck	Asks the same question with respect to childcare facilities.
193	Rep. Peircy	Answers yes.
194	Chair Harper	Asks if for knowledge of fiscal impact.
195	Rep. Uherbelau	Answers no, but someone from Senior and Disabled Services may be able to provide the answer.
200	Nelson Grubbe	Eugene [EXHIBIT F] . * Supports HB 3652. * Higher wages bring better workers resulting in better quality care. * States that resident managers are not tax exempt, and urges they be able to benefit from recent minimum wage laws.
245	Jean Williams	Tigard. Supports HB 3652.

281	Vicky Hughes	Foster care worker, [EXHIBIT G]. Reads from written testimony. Supports HB 3652.
331	Hughes	Describes incidents with doctors and injuries she has incurred.
356	Hughes	Describes her endeavors to contact government representatives to express her concern over not having workers' compensation insurance.
406	Hughes	Says other workers were unaware they did not have workers' compensation.
TAPE 62, B		
008	Rep. Fahey	Asks the total amount of her bills.
009	Hughes	Replies that she is continuing to see a physician.
021	Rep. Fahey	Asks for confirmation that her husband's employer picks up her health care.
023	Hughes	Answers yes.
024	Ellie Jenny	[EXHIBIT H]. * Supports HB 3652.
060	Jenny	* Encourages legislators to find ways to invest resources for creation of long-term care facilities. * Says HB 3652 is a starting place for fair wages and compensation for residential care workers.
067	Chair Harper	Asks if she has knowledge of cost.
067	Jenny	Answers no. Comments that to make money, the state has to invest money.
078	Rep. Minnis	Asks wages for foster care workers.
080	Hughes	Answers starting wage of \$5.00 per hour for uncertified workers.
092	Rep. Minnis	Says workers earning \$6.50 per hour are within the current minimum wage law.
097	Hughes	Agrees, but clarifies workers on night shift earn less than minimum wage.
100	Rep. Minnis	Explains ORS 653.035 allows employer to deduct for costs for meals and lodging.
105	Hughes	Responds the language refers to resident managers, not shift workers.
108	Rep. Minnis	Comments that minimum wage applies unless you are living there.
113	Hughes	Explains that she went to state labor board, and was told there was no law pertaining to that.
115	Rep. Minnis	Comments that being domiciled is not defined in Oregon, and that if you don't live there, minimum wage should apply.

124	Hughes	States that she never received minimum wage around the clock.
130	Chris Davie	SAIF Corporation [EXHIBIT I]. States that SAIF intends to make sure law is clear as to who should be paying premiums and whose claim should be accepted in cases of job-related injuries.
142	Patrick Gallagher	SAIF Corporation. * Reads from previous written testimony [EXHIBIT I]. * Refers to Oregon statutes [EXHIBIT I, pp. 2-3].
180	Rep. Fahey	Confirms that foster care workers are exempt from workers' compensation and can therefore take civil action.
182	Gallagher	Answers yes.
185	Rep. Fahey	Comments that is the reason for workers' compensation, so they could take no civil action.
188	Gallagher	States that when law was passed that made foster care workers exempt, notice was given to foster care homes insured by SAIF. Of 128 homes, one third elected to continue coverage.
193	Rep. Beck	Asks if anyone from SAIF has talked to sponsors of HB 3652 about their concerns.
195	Gallagher	Answers no.
197	Davie	States that they would be happy to work with sponsors about the language in HB 3652.
200	Rep. Minnis	Asks what the current premium cost per hundred is.
202	Gallagher	States that he does not have that information.
205	Rep. Fahey	Asks why there would be a difference.
206	Gallagher	Responds that this is basically considered nursing industry. There are different classifications: food preparations, professional care givers, maintenance workers.
Rep.	Rep. Fahey	Asks what the highest risk is.
212	Gallagher	Responds that maintenance has the highest rate.
218	Rep. Fahey	Asks for incident rate for accidents on workers who are covered.
219	Gallagher	Answers no.
222	Rep. Fahey	Asks how you set the rate if records are not available.
223	Gallagher	Responds that the rates are set for the broad industry.
226	Rep. Fahey	Asks for copies of records that are available.
227	Gallagher	Agrees to provide information.
230	Grover Simmons	Representing adult foster care home owners and managers in Oregon. Indicates concern for compensation of resident managers and substitute caregivers who are there 24 hours.

261	Simmons	Asks how 24 hour employees who are not domiciled are compensated.
286	Chair Harper	Confirms that each facility would have one resident manager.
288	Simmons	Answers yes. Says compensation for resident manager is \$50-\$60 per day, plus the value of amenities.
334	Simmons	Comments that none of the employees are paid below \$5.50 per hour. Opposes HB 3652.
349	Rep. Fahey	Asks if live-in is a condition of employment for residential care managers.
354	Simmons	Answers yes.
354	Rep. Fahey	Comments that they have to stay there as a condition of the job.
365	Simmons	Explains that some care givers also live on premises, but not resident managers.
371	Rep. Fahey	States that resident managers compensation of \$60 a day divided by 24 hours doesn't even meet minimum wage.
376	Simmons	Comments that time to do job is 6-8 hours a day.
386	Rep. Fahey	Asks if resident owners are willing to accept personal liability by exempting workers from compensation.
394	Simmons	Explains that he is not arguing whether or not they have compensation. Indicates need for fiscal impact statement.
401	Rep. Fahey	Says he wants to know the impact from other companies that have nothing to do with the injuries but pay for them.
413	Chuck Sheketoff	Oregon Law Center, representing Oregon Citizen Coalition for Quality Long-Term Care, United Seniors of Oregon. * Supports HB 3652. * Clarifies resident manager versus substitute caregiver under current law.
TAPE 63, B		
011	Sheketoff	Describes adult foster home and its role. Reiterates previous discussion.
053	Sheketoff	Explains that employees can be exempted from overtime if they sleep 8 hours uninterrupted on site. Continues commenting on exemption status.
088	Chair Harper	Closes public hearing on HB 3652. Opens public hearing on HB 3590.
<u>HB 3590 - PUBLIC HEARING</u>		
105	Rep. Ryan Deckert	State Representative, District 8. Supports HB 3590.

110	Rep. Peter Courtney	State Representative, District 33 [EXHIBIT J] . Supports HB 3590.
153	Rep. Courtney	Comments that he will help change bill if needed to fit everyone's needs.
169	Chair Harper	Asks for comment on the amount of additional hours mentioned in HB 3590.
172	Rep. Courtney	Responds.
177	Rep. Deckert	Comments that -1 and -2 amendments [EXHIBITS K, L] will give more flexibility to employer and will be part of family leave.
184	Rep. Fahey	Asks if it is limited to 5 hours per month.
187	Rep. Deckert	Responds 35 hours per year.
197	Rep. Courtney	Comments on lines 15-16 is stated that employee cannot take more than 5 hours in one month.
211	Laurie Wimmer	Oregon Education Association, Oregon Association of Classified Employees [EXHIBIT M] . * Supports HB 3590.
257	Wimmer	* Supports amendments.
278	Marcia Latta	Representing Women's Rights Coalition [EXHIBIT N] . Supports HB 3590.
289	Amy Klare	Research and Education Director, Oregon AFL-CIO. * Supports HB 3590.
308	Betsy Earls	Representing Associated Oregon Industries (AOI). * Opposes HB 3590. * HB 3590 mandates higher standard than the floor of acceptable behavior. * Enactment of HB 3590 would make Oregon's law less consistent with federal law.
334	Rep. Fahey	Asks for percentage of employers' workforce that actually used family leave last year.
338	Earls	Replies she does not know.
344	Chair Harper	Closes public hearing on HB 3590. Re-opens public hearing on HB 3652.
<u>HB 3652 - PUBLIC</u>		

HEARING		
362	Sheketoff	Comments that resident manager exemption from last session was too broad.
381	Chair Harper	Asks him to collaborate with Rep. Piercy.
384	Jacqueline Zimmer	Director, Oregon Association of Area Agencies on Aging. * Supports HB 3652. * When caregivers get hurt on job, they need to get back to work right away.
TAPE 64, A		
008	Klare	Submits written testimony [EXHIBIT O] . Supports HB 3652.
029	Rep. Minnis	Asks to clarify wage issue.
045	Sheketoff	States that he is not familiar with statute about deducting costs of food. HB 3652 only deals with resident managers who are domicile and on-call 24 hours a day.
072	Sheketoff	Comments that there are some homes where care workers will get 8-10 hours sleep, others have care workers getting up during the night.
084	Chair Harper	Asks what care workers get paid to work a full weekend.
087	Sheketoff	Responds that is a substitute care giver and is not a subject of HB 3652.
093	Paul Tiffany	Intergovernmental Relations Coordinator, Bureau of Labor and Industries (BOLI). * BOLI rules say if workers working 24 hour shifts do not get at least 5 hours uninterrupted sleep, then employer cannot deduct 8 hours for sleep.
114	Sheketoff	Comments that they want this bill to make resident managers subject to minimum wage and overtime.
119	Rep. Minnis	States that he would like to see some math on some actual experiences, and does not understand how it is a benefit to the employees.
121	Tiffany	Explains that current BOLI rules allow deduction for cost of food, but with regards to lodging and other facilities, if benefiting employer, cannot be deducted.
137	Chair Harper	Asks what the fiscal impact is.
139	Sheketoff	Explains the reason there is no fiscal impact is because rates do not take that into consideration and many adult foster homes have no

		Medicaid recipients.
142	Chair Harper	Comments that our job is to take care of the state and they need to know if there is any impact.
144	Rep. Minnis	Confirms hourly wage for 24-hour workers.
155	Sheketoff	Explains that Medicaid Quality Longterm Care Advisory Committee has tried to get financial information from foster home industry to give advice to agency in setting rates, and foster care industry has refused to provide information.
164	Chair Harper	Confirms that workers are getting salary for a normal work day and this provision would make that work day 20-24 hours.
166	Sheketoff	States that for resident managers up until 1995, it was that way, and that's what substitute care providers are for.
183	Marcia Latta	[EXHIBIT N]. * Supports HB 3652. * Current wages are not enough to keep family of 3 above poverty level.
195	Jim Davis	Representing Advocacy Coalition of Seniors and People With Disabilities, State Council of Senior Citizens, Grey Panthers. * Supports HB 3652. * Turnover rates for foster home workers are extremely high.
219	Rep. Sunseri	Confirms wage for 24-hour workers. Asks what is this going to do to seniors paying for care if wages for workers go up.
241	Davis	Comments that it is uncertain to how much wages would go up, and inadequate salary is effecting quality of care for seniors. States that someone else may be better to answer that question.
255	Meredith Cote	State Longterm Care Ombudsman. * Three classes of foster care homes: 1, 2, 3. 1 being least care, 3 being most care. * Workers that work 24-hour shifts whether they sleep or not, need to be paid for 24 hours.
305	Cote	Comments that some senior citizens were being drugged at night so workers would not have to service them.
322	Rep. Minnis	Asks where the money to pay residence care comes from.
326	Cote	Responds that the residents pay for care through Medicaid or private pay. Private-pay residents can be assessed anywhere from \$1,200-\$3,000 per month.
347	Chair Harper	Asks that if wages were to go up, would residents pay more.

350	Cote	Answers not necessarily.
368	Sheketoff	Explains that he is concerned with avoiding the minimum wage law for everyone other than resident managers.
393	Rep. Sunseri	Asks if costs go up to owner, will they go up to the residents.
397	Sheketoff	States that he does not believe costs will go up.
400	Rep. Sunseri	Comments that if wages go up, costs will go up.
409	Sheketoff	Explains that homes had been relieved of costs in 1995 and rates did not go down.
TAPE 65, A		
004	Rep. Sunseri	Explains that he is just going by the numbers Sheketoff gave him. States that regardless of new costs, it will be passed on to residents.
014	Sheketoff	Says he understand the question, they may already be paying that.
023	Chair Harper	Closes public hearing on HB 3652. Adjourns at 10:26 a.m.

Submitted By, Reviewed By,

Steve Wermuth, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2249, written testimony, Mark Comstock, 13 pp.

B - HB 2249, written material, Mike Scott, 7 pp.

C - HB 2750, written material, Staff, 1 p.

D - HB 3652, written testimony, Staff, 1 p.

E - HB 3652, written testimony, Rep. Kitty Piercy, 1 p.

F - HB 3652, written testimony, Nelson Grubbe, 1 p.

G - HB 3652, written testimony, Vicky Hughes, 1 p.

H - HB 3652, written testimony, Ellie Jenny, 2 pp.

I - HB 3652, written testimony, Chris Davie, 3 pp.

J - HB 3590, written testimony, Rep. Peter Courtney, 3 pp.

K - HB 3590, written material, Staff, 1 p.

L - HB 3590, written material, Staff, 1 p.

M - HB 3590, written testimony, Laurie Wimmer, 3 pp.

N - HB 3590, written testimony, Marcia Latta, 1 p.

O - HB 3652, written testimony, Amy Klare, 2 pp.

P - HB 2750, written testimony, Staff, 1 p.