

HOUSE COMMITTEE ON LABOR

March 6, 1997 Hearing Room E

8:30 A.M. Tapes 35 - 36

MEMBERS PRESENT:

Rep. Steve Harper, Chair

Rep. Mike Fahey, Vice-Chair

Rep. Chris Beck

Rep. Dan Gardner

Rep. Bill Markham

Rep. John Minnis

Rep. Ron Sunseri

MEMBER EXCUSED:

STAFF PRESENT:

Cara Filsinger, Administrator

Linda Spaulding, Administrative Support

MEASURE/ISSUES HEARD:

SB 25 Public Hearing and Work Session

SB 23 Public Hearing and Work Session

SB 26 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 35, A		
004	Chair Harper	Calls the meeting to order at 8:34 a.m. Opens public hearing on SB 25.
<u>SB 25 - PUBLIC</u>		

<u>HEARING</u>		
009	Dan Kennedy	Administrator, Department of Administrative Services (DAS), Human Resource Services Division Submits written testimony (EXHIBITS A, B, C). Discusses issues of civil service addressed by state agencies during interim. Bills update language to avoid misunderstanding when referring to departments versus divisions; defines Employment Relations Board (ERB) .
056	Rep. Sunseri	Asks how public can follow name and organization changes and understand the structure of agencies designed to serve them.
061	Kennedy	Agrees; says all branches of government continually change. Gives examples of how DAS attempts to streamline and simplify public telephone directories to ease public access.
076	Chair Harper	Closes public hearing on SB 25. Opens work session on SB 25.
<u>SB 25- WORK SESSION</u>		
081	Rep. Gardner	MOTION: Moves SB 25 to the floor with a DO PASS recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Markham
	Chair Harper	The motion CARRIES. REP. FAHEY will lead discussion on the floor.
093	Chair Harper	Closes work session on SB 25; opens public hearing on SB 23.
<u>SB 23 - PUBLIC HEARING</u>		
094	Dan Kennedy	Explains SB 23 establishes a plan to correct under-representation of people with disabilities in the work force; eliminates existing program of automatic interviews. DAS will return to 1999 session with outline of new plan. If proposed legislation passes, current provision for automatic interview will be deleted effective June 30, 1999.
132	Rep. Fahey	Asks how many people without disabilities apply and are hired by state.
138	Kennedy	Replies he does not have the number.
140	Rep. Fahey	Clarifies question; asks how number of able-bodied applicants is determined.
		Answers DAS wants to keep in statute the definition of people with

144	Kennedy	disabilities. DAS intends to explore under representation; many do not identify themselves as having disabilities.
160	Rep. Fahey	Asks if department managers receive training with respect to persons with disabilities.
168	Kennedy	Replies process must include better job of educating managers; must define federal mandates of Americans with Disabilities Act (ADA) with respect to accommodations for handicapped personnel.
179	Rep. Fahey	Says downsizing in private sector means eliminating employees with job-related injuries. Comments similar practices must occur in state jobs as well.
184	Kennedy	Agrees similar employment practices may occur in state government; if so, the practice must stop.
187	Rep. Minnis	Comments State of Oregon has no idea if handicapped persons are victims of discrimination.
205	Kennedy	Says DAS has identified people in work force who acknowledge their disabilities; problem is tracking those who have disabilities but choose not to identify their handicap.
210	Rep. Minnis	Says hostile environment keeps disabled people silent. Asks why government has not rectified problem that keeps disabled employees from identifying themselves.
220	Kennedy	Responds steps have been taken to correct the system. DAS constantly attempts to improve workplace for people with disabilities.
230	Rep. Minnis	Asks if he can point to research or analysis by DAS regarding this issue.
233	Kennedy	Answers no; analysis will come about as a result of current legislative proposal.
244	Chair Harper	Closes public hearing on SB 23. Opens work session on SB 23.
<u>SB 23 - WORK SESSION</u>		
247	Rep. Minnis	Requests amendment to SB 23 with stronger language charging DAS with responsibility of research and analysis relevant to injured and disabled workers. Asks DAS to report findings by next legislative assembly. Requests postponing movement of SB 23.
274	Chair Harper	Closes work session on SB 23. Opens public hearing on SB 26.
<u>SB 26 - PUBLIC HEARING</u>		
		Administrator, Department of Administrative Services (DAS), Human Resources Division

280	Dan Kennedy	Explains SB 26 would remove Employment Relations Board (ERB) as the appeal board when persons are terminated from management service. Discusses proposed amendments. Identifies two anticipated results of amended measure: * streamline process by forcing dispute resolution to agency level * provide avenue for evidentiary hearing
330	Rep. Minnis	Asks for rationale given by attorney general for management service employees to have evidentiary hearing upon termination.
331	Kennedy	Answers persons fired for cause must have avenue for hearing.
334	Rep. Minnis	States Oregon is "at will" state and persons terminated are not represented.
336	Kennedy	Clarifies "at will" does not apply to members of management service; executive service is "at will."
339	Rep. Minnis	Clarifies employees terminated from management service are not represented.
340	Kennedy	Confirms terminated employees are not represented but not "at will."
342	Rep. Minnis	Asks what statute differentiates employees from executive service.
344	Kennedy	Replies ORS 240.560.
350	Rep. Minnis	Asks if statute could be repealed.
351	Kennedy	Replies statute could be repealed making management service "at will" employees; state managers need protection from arbitrary firing.
358	Rep. Minnis	Says firing for political affiliation is violation of civil rights statute.
368	Kennedy	Replies there must be cause for firing member of management service.
381	Rep. Minnis	Asks if management service employees could legally form their own bargaining unit.
383	Kennedy	Answers by statute they can form a union, but cannot be represented in collective bargaining.
388	Rep. Minnis	Asks if that is because of SB 750 of last session.
389	Kennedy	Replies because of Public Employee Collective Bargaining Act.
396	Rep. Fahey	Asks if "at-will" refers to downsizing.
397	Kennedy	Answers affirmatively; explains "at will" employees are agency heads, senior managers, and principal assistants who may change with administration.
405	Rep. Fahey	Asks if downsizing transfers members back to previous department.

408	Kennedy	Answers that is part of the process.
412	Rep. Fahey	Asks if "at will" members of executive service can be hired into management service.
426	Kennedy	Replies DAS is attempting to clarify statute. Currently statute permits someone in management service who held prior position in classified service to be able to bump back to his/her old job. DAS wants to remove that reference in statute. Explains two issues under discussion involve firing someone for cause and protecting senior employees during downsizing.
TAPE 36, A		
030	Rep. Fahey	Asks if senior employees move laterally or to previous management status when downsized.
035	Kennedy	Answers seniority is not an issue of job qualifications.
040	Rep. Minnis	Asks if person can be terminated for political affiliation.
042	Kennedy	Replies he, himself, could be fired because of membership in executive service.
048	Kennedy	Explains proposed amendments to SB 26 (EXHIBIT A, pg. 3). States "for cause" language will be generalized. ERB will rule on whether agency has complied with standard.
068	Chair Harper	Asks for clarification that ORS 240.555 makes explicit reasons for cause.
070	Kennedy	Answers affirmatively; intention is for broad rather than specific language.
074	Rep. Sunseri	Asks if revised language would eliminate other reasons for cause.
075	Kennedy	Replies no; those reasons and any others for cause fall under inability or unwillingness to perform duties.
080	Rep. Sunseri	Says for clarification that statute be read to the committee.
087	Rep. Fahey	Asks how one would interpret "any other reason that renders the employee unsuitable"
089	Kennedy	Replies just cause would be a judgment acted upon by ERB.
094	Rep. Fahey	Asks for confirmation that initial action may be brought by one individual; expresses concern for employee unjustly accused.
100	Kennedy	States other parts of bill address that issue.
100	Cara Filsinger	Committee Administrator, reads ORS 240.555.
107	Rep. Sunseri	Says language appears to have been deliberated extensively before becoming law; questions eliminating specific reasons in preference to someone's judgment.
114	Kennedy	Says DAS believes amendment language would broaden and streamline the process.
		Says amendment language "any other" covers same as ORS 240.555;

120	Rep. Sunseri	comments that by eliminating specifics, DAS will have ability to make determination or judgment.
132	Kennedy	Refers to amendment (EXHIBIT A, pg. 3) that reinstates ERB in termination process.
139	Kennedy	Explains hand-engrossed amendment clarifies intent that employee must meet position qualifications and collective bargaining contract protects employees from being "bumped" by someone removed from management service.
155	Rep. Minnis	Asks for explanation of effect of bill with amendments.
157	Kennedy	Answers bill clarifies reasons for removing employee from management service. Describes latitude given agencies: * downsizing and placing displaced personnel from management service * agency level internal process for dealing with employment discipline actions for management service employees allowing for mediation and final resolution
180	Rep. Minnis	Asks for confirmation that model policy is not yet developed.
181	Kennedy	Replies when bill passes development will be easy.
182	Rep. Minnis	Asks if mediator will be brought in for negotiations.
183	Kennedy	Replies yes, as part of model policy.
183	Rep. Minnis	Says bill as it reads does not guarantee mediator.
184	Kennedy	Replies mediator could be mandated in model policy.
197	Rich Peppers	Oregon Public Employees' Union (OPEU) Opposes SB 26 as written; will withdraw opposition with adoption of amendment restoring bargaining agreements to cases where people are removed from management service.
234	Chair Harper	Asks if amendment was proposed during Senate committee hearing.
237	Peppers	Answers the issue was discussed before committee. Mr. Kennedy made recommendation before Senate which initiated discussion; issue was inadvertently "lost" during work session.
246	Rep. Minnis	Asks for clarification of effects of amendments presented by Mr. Kennedy; questions relevance if language is removed.
260	Peppers	Agrees sentence should be relevant to rest of section; states intent is clear, but may not be after remaining language is deleted.
264	Rep. Minnis	Asks to what and from what "restored" refers.

268	Kennedy	Explains sentence in question will be moved to follow sentence that begins on line 44 (EXHIBIT A, pg. 3).
280	Rep. Minnis	Says proposed language change makes sense; amendment wording as presented does not.
286	Jane Edwards	Oregon Women's Political Caucus, Women's Rights Coalition (EXHIBIT D) Opposes SB 26. Says proposed amendments to SB 26 are improvement; bill as previously written offered no protection to management service employees. Describes problems with SB 26; discusses "cause" as opening doors for judgment.
380	Rep. Fahey	Asks Mr. Kennedy what predicated removal of one step in the process.
384	Kennedy	Refers to SB 26; intent is to remove another bureaucratic step by removing a review.
400	Rep. Fahey	Asks how many per year to get this far.
401	Kennedy	Replies he cannot answer the question.
TAPE 35, B		
005	Rep. Fahey	Asks if DAS is removing another level of protection for employee.
007	Kennedy	Comments director of DAS consistently trusts judgment of agency heads.
010	Rep. Fahey	Comments overruling becomes difficult once an individual is tarnished by executive judgments.
017	Rep. Minnis	Opposes legislation, stating SB 750 in 1995 session gave broad power to state and local governments to decide members of collective bargaining units. Expresses concern of excessive power by government leaving employees without advantage of collective bargaining.
038	Chair Harper	Asks for drafting of four amendments to SB 26.
052	Chair Harper	Closes public hearing on SB 26. Opens work session on SB 26.
<u>SB 26 - WORK SESSION</u>		
054	Rep. Minnis	MOTION: Moves to TABLE SB 26.
	Chair Harper	VOTE: 6-1 AYE: 6 - Beck, Fahey, Gardner, Markham, Minnis, Sunseri NAY: 1 - Harper
	Chair	

	Harper	The motion CARRIES.
061	Chair Harper	Closes work session on SB 26. Adjourns meeting at 9:33 a.m.

Submitted By, Reviewed By,

Linda Spaulding, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 23, SB 25, SB 26, written testimony, Dan Kennedy, 3 pp

B - SB 23, written testimony, Dan Kennedy, 2 pp

C - SB 23, written testimony, Dan Kennedy, 1 p

D - SB 26, written testimony, Jane Edwards, 2 pp