

HOUSE COMMITTEE ON LABOR

March 13, 1997 Hearing Room E

8:30 A.M. Tapes 38 - 39

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:

HB 2635 Public Hearing

HB 2444 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 |
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| TAPE 38, A | | |
| 004 | Chair Harper | Calls meeting to order at 8:34 a.m. |
| 006 | Cara Filsinger | Committee Administrator, explains two bills committee will hear: * HB 2635 introduced by Rep. Rasmussen |

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| | | * HB 2444 introduced by Rep. Markham |
| 011 | Chair Harper | Opens public hearing on HB 2635. |
| <u>HB 2635 - PUBLIC HEARING</u> | | |
| 013 | Rep. Anitra Rasmussen | State Representative, District 11 Introduces constituent, Robin Lawson and her attorney Paul Robson. Provides information leading to formulation of HB 2635. Says Ms. Lawson's business stands between a need and a service; relationship between client and broker is one of independent contractor as defined by Internal Revenue Service. Explains problem arises from Oregon statute that treats brokers like Ms. Lawson as having and employer/employee relationship. HB 2635 clarifies the law. |
| 039 | Paul Robson | Attorney, Portland Presents proxy letter for the record from Kelly Clark, Attorney-at-Law (EXHIBIT A). Compares definitions of independent contractor versus employee; describes functions of "employee" unrelated to services performed by his client as broker for translators. |
| 088 | Rep. Rasmussen | Clarifies that during bill draft, Employment Department was cooperative in clarifying the matter. Submits proposed -1 amendment (EXHIBIT B). |
| 097 | Robin Lawson | Owner, Passport to Languages, Portland (EXHIBIT C) Explains how her business uses language interpreters throughout the state; encourages committee to pass HB 2635. |
| 126 | Rep. Sunseri | Asks if confusion in employee/employer relationship versus independent contractor affects any other industries. |
| 129 | Robson | Asks for clarification of the question. |
| 130 | Rep. Sunseri | Asks if other industries might take advantage of bill passage to claim employees as independent contractors. |
| 132 | Robson | Answers proposed amendment (EXHIBIT B) stipulates only interpreter services, avoiding broad language to prevent use by other industries. |
| 134 | Rep. Markham | Asks Ms. Lawson how many people operate in Oregon as language interpreter brokers. |
| 136 | Lawson | Replies Portland Yellow Pages has two pages; most people contacted were reluctant to testify because they felt intimidated by Employment Department. |
| 144 | Rep. Minnis | Questions language in section 2, line 5 with reference to "employment." |
| 151 | Rep. Rasmussen | Refers to proposed -1 amendment (EXHIBIT B) which attempts to define contractual relationship with interpreter. |

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| 162 | Rep. Sunseri | Asks for confirmation that Internal Revenue Service classified interpreters as having independent contractor status. |
| 164 | Rep. Rasmussen | Replies affirmatively. |
| 165 | Chair Harper | Asks how other states define providers of interpreter services. |
| 166 | Lawson | Answers every other state considers interpreters as independent contractors. |
| 171 | Rep. Minnis | Asks how interpreters are paid. |
| 172 | Lawson | Answers they receive pay for service when client pays her. |
| 186 | Michelle Kennedy | Manager, Fiscal Performance and Planning, Oregon Employment Department Neither supports nor opposes HB 2635. Provides information regarding impacts of HB 2635 exempting translators and interpreters from paying unemployment insurance taxes (EXHIBIT D). Says proposed -1 amendments addresses concerns of Employment Department with bill conforming to federal law. |
| 205 | Kennedy | Discusses: * unless specific exemption, all remuneration for services is considered covered employment unless individual meets test for independent contractor * unemployed workers may have sufficient hours or wages to qualify for unemployment insurance benefits * defines laws governing independent contractors; HB 2635 would exempt language interpreters from the current law |
| 256 | Rep. Sunseri | Asks clarification that service providers would pay higher unemployment taxes if IRS reversed their position. |
| 258 | Kennedy | Answers affirmatively. |
| 265 | Rep. Sunseri | Asks if any other industries would be included in statute change. |
| 268 | Kennedy | Responds amendments clearly specify statute would apply only to temporary agencies providing translation or interpreter services. |
| 274 | Chair Harper | Asks why discrepancy between state and federal version of independent contractor with respect to temporary agencies of interpreter services. |
| 281 | Donna Hunter | Tax Manager, Oregon Employment Department Explains department considers relationship between employer and employee during payroll audits; IRS looks at income tax compliance with business expenses rather than employer/employee relationship. Says attention is brought to the department by workers filing |

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| | | unemployment insurance claims. Oregon uses a different and more specific independent contractor test than the federal government. |
| 342 | Rep. Minnis | Asks what is the chance of federal law changing. |
| 343 | Hunter | Answers IRS continues to study issue for clarification; Oregon statute is held as the model. |
| 358 | Rep. Minnis | Asks what tests were not met for independent contractors by agencies hiring interpreters. |
| 360 | Hunter | Replies they were not represented to the public as independently established businesses. |
| 368 | Rep. Minnis | Asks how they would establish their businesses. |
| 369 | Hunter | Gives examples of telephone directory advertising or business cards. |
| 377 | Rep. Sunseri | Comments that tests are a matter of interpretation. Describes dilemma: * not required to be state licensed; no fees involved * function as independent agents on call; paid fee Says significant number of test criteria defining independent contractor have been met. |
| 403 | Bob Shiprack | Presents viewpoint based on his experience with developing independent contractor law. Presents history and conflicts surrounding definition of employer/employee relationship. |
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| 016 | Shiprack | Explains methods used to codify employer/employee relationship; describes objective tests to define relationship. Says intent was to protect employers from audit by stipulating specific criteria. Advises caution with respect to exempting service providers who may later file workers' compensation claims as employees. |
| 047 | Rep. Sunseri | Asks if several exemptions are clear to independent contractor's status, and no misunderstanding results. States if interpreters sign agreement, status with respect to unemployment or workers' compensation should be clear. |
| 056 | Shiprack | Replies not necessarily; service providers consistently sign contracts defining status; continue to file claims as employees. |
| 072 | Rep. Sunseri | Says people who sign independent contractor status understand implications. |
| 077 | Rep. Minnis | Asks if bill passes, will there be necessity to adjust workers' compensation to address independent contractors. |
| 081 | Shiprack | Answers providers of interpretation services are either employees or they are not. |
| 086 | Rep. Minnis | States committee could agree to one exemption; question may arise under worker's compensation law. |
| | | Comments Department of Revenue considers same test for independent |

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| 087 | Shiprack | contractor. |
| 090 | Rep. Minnis | States before exempting, committee needs assurance of consistency with workers' compensation law, Department of Revenue, and federal tax issues. |
| 096 | Chair Harper | Calls Mr. Robson to testify on tax question. Asks if Federal IRS may change ruling on status of independent contractors. |
| 099 | Robson | Answers he does not know extent of IRS investigation. |
| 103 | Lawson | Affirms IRS audit of her business in 1991; determination was independent contractor status with respect to interpreters. Refers to letters from Phillips, Sager, interpreters, and translators (EXHIBIT C, pp. 2-4). |
| 120 | Rep. Sunseri | Asks if she has concern with Department of Revenue and workers' compensation. |
| 123 | Robson | Replies issue involves more than independent contractor statute. Identifies two exemption tests with respect to unemployment tax: * independent contractor test as defined in ORS 670.600 * independently established business test under common law |
| 163 | Chair Harper | Closes public hearing on HB 2635. Opens public hearing on HB 2444. |
| <u>HB 2444 - PUBLIC HEARING</u> | | |
| 184 | Cara Filsinger | Committee Administrator, gives background of HB 2444 and -1 amendment, explaining new bill will allow either side to request an executive session during labor negotiations. |
| 216 | Rep. Markham | States public is entitled to know activities taking place in labor negotiations. |
| 248 | Rep. Fahey | Agrees, saying if opening one area, all areas should be open to the public. |
| 259 | Rep. Sunseri | Says if Rep. Fahey will introduce a bill, he will co-sponsor. Asks the purpose of the -1 amendments. |
| 263 | Chair Harper | Explains original bill reads all meetings are open. Amendment allows closed meetings under specific circumstances. |
| 268 | Rep. Sunseri | Asks if amendment negates intent of the bill. |
| 271 | Chair Harper | Answers decision for closed meeting must be publicly stated. |
| 276 | Rep. Markham | Agrees some items may merit being conducted in closed meetings. |
| | | Administrator, Human Resource Services Division, Department of Administrative Services (DAS) |

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| 286 | Dan Kennedy | States DAS has no position on HB 2444; agrees with principle that public has a right to know. Describes additional workload due to notice requirements: * 20-30 separate bargaining sessions per week * logistics difficult over statewide area * recording minutes of all open meetings would be burdensome |
| 332 | Rep. Gardner | Asks if negotiations might be driven underground under open meeting law, "staging" open meeting to satisfy new law. |
| 340 | Kennedy | Replies the scenario described could happen. |
| 349 | Chair Harper | Says current law defaults to closed, executive session meetings. HB 2444 defaults to open meetings, adding executive session option. |
| 358 | Kennedy | Says under current law executive session negotiations are not subject to notification requirement; new law would require notification. |
| 363 | Rep. Fahey | Asks how location will be determined in the case of state wide negotiations. |
| 366 | Kennedy | Answers most meetings are in Salem or Portland. |
| 376 | Rep. Fahey | Asks ramifications of scheduled meetings that are adjourned after a short session. |
| 380 | Kennedy | Answers those are problems that must will be incurred with notification requirements; it is additional workload to be absorbed. |
| 384 | Rep. Fahey | States in his opinion negotiations are conducted fairly. Asks if DAS conducts fair negotiations. |
| 394 | Kennedy | Affirms DAS has had good, fair negotiations. |
| 399 | Rep. Fahey | Asks if DAS has given too much during labor negotiations. |
| 400 | Kennedy | Answers that would be hard to do given present salary levels. |
| 402 | Rep. Minnis | Asks if news media has open access to negotiations under current law. |
| 405 | Kennedy | Replies news media is not present. |
| 420 | Rep. Minnis | Asks confirmation that media is not allowed access to open sessions. |
| 422 | Kennedy | Answers media can be excluded. |
| 423 | Rep. Minnis | Says news media should have access to open sessions; executive sessions may exclude news media. |
| 444 | Rep. Markham | Asks if Mr. Kennedy is "head negotiator" at DAS. |
| 448 | Kennedy | Responds affirmatively. |
| 449 | Rep. Markham | Asks how administration operates negotiations. |
| 456 | Kennedy | Answers governor's proposed budget contains salary package; negotiations occur during legislative session. |

| TAPE 38, B | | |
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| 035 | Mary Botkin | <p>Political Coordinator, American Federation of State, County and Municipal Employees, (AFSCME)</p> <p>Supports HB 2444. Draws parameters:</p> <ul style="list-style-type: none"> * contract negotiations are tedious * press generally covers salary or benefit packages discussions; requests that press covers all aspects of contracts * concern with public bargaining infringing on time limitations |
| 098 | Rep. Minnis | Requests confirmation that news media is welcome; current language restricts media. |
| 102 | Botkin | Answers she thought SB 750 last session included press. |
| 126 | Brian Delashmutt | <p>Oregon Council, Police Associations; Oregon Nurses Association; Association, Oregon Corrections Employees</p> <p>Submits written testimony of Larry Burlison, President, Association of Oregon Corrections Employees (AOCE) (EXHIBIT E) Says "posturing" is a major concern during public session; substantive negotiations take place outside public forum.</p> |
| 171 | Tricia Bosak | <p>Governmental Relations Consultant, Oregon Education Association (OEA) (EXHIBIT F)</p> <p>OEA supports intent of HB 2444 to improve collective bargaining process and provide for public good. Express concerns over unintended consequences. Says either party being able to request open or closed meetings is appropriate.</p> |
| 217 | Tricia Smith | <p>Oregon School Employees Association</p> <p>Expresses appreciation for Rep. Markham's intention for public understanding of contract issues; says making all contract negotiations public adds complications for both management and labor. Confirms -1 amendments achieve what is available under current process. Foresees fiscal impact under notification requirement.</p> |
| 264 | Chair Harper | Asks how many collective bargaining sessions were held in the past year; how many were open. |
| 267 | Smith | Replies she does not know the number of contracts negotiated; has not tracked occasions open to the public. |
| 277 | Chair Harper | Requests confirmation she cannot speak to impact of HB 2444. |
| 278 | Smith | States both sides believe it is more efficient to reach contract agreement in closed meetings. |
| 293 | Rep. Sunseri | Reiterates amendments negate the bill. |

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| 299 | Smith | Comments although difficult to determine, there would be fiscal impact on original bill. |
| 308 | Maria Keltner | Executive Director, League of Oregon Cities; Association of Oregon Counties Clarifies two points: * press is not excluded * current law works for cities and counties |
| 342 | Rep. Minnis | Asks if media does have access in general negotiations. |
| 346 | Keltner | Answers that is her understanding. |
| 349 | Rep. Minnis | Reads from current law: "Labor negotiations <i>shall</i> be conducted in executive session." Language assumes all meetings to be executive sessions. |
| 356 | Keltner | Asks for clarification on the question. |
| 357 | Rep. Minnis | Says media has access in general, public meetings, but not executive sessions. |
| 370 | Keltner | Says section referenced designates management's representative who may restrict media coverage. |
| 399 | John Marshall | Oregon School Boards Association Expresses approval of HB 2444 and the proposed -1 amendment. Says discussions over open or closed meetings are part of advance negotiations when both parties decide ground rules. Questions suitability of 24-hour advance notification requirement as discussions reach final stages; asks committee to consider potential costs. |
| TAPE 39, B | | |
| 018 | Chair Harper | Asks Mr. Marshall to confer with Mr. Kennedy on removing language with respect to notification requirement. |
| 027 | Rep. Markham | Asks if Mr. Marshall has ideas for improving the collective bargaining laws. |
| 028 | Marshall | Answers others associated with School Boards Association who greater technical expertise in that area. Offered to meet with committee to make suggestions. |
| 036 | Gayle Ryder | Oregon Newspaper Publishers Association Says she sympathizes with shortness of sessions, would like to address the issue without eliminating notice entirely. |
| 046 | Chair Harper | Asks if an emergency clause exists in notice requirements. |
| 047 | Ryder | Says she believes law stipulates reasonable notice allowance. |
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| 054 | Rep. Minnis | Says he is still confused on public notice. |
| 056 | Ryder | Answers media is allowed access to deliberations in labor negotiations; only in executive session portion where media is excluded. |
| 071 | Chair Harper | Closes public hearing on HB 2444. Adjourns meeting at 10:17 a.m. |

Submitted By, Reviewed By,

Linda Spaulding, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2635, written testimony, Paul Robson, 2 pp

B - HB 2635, proposed amendment, Anitra Rasmussen, 1 p

C - HB 2635, written testimony, Robin Lawson, 10 pp

D - HB 2635, written testimony, Michelle Kennedy, 5 pp

E - HB 2444, written testimony, Brian Delashmutt, 1 p

F - HB 2444, written testimony, Tricia Bosak, 1 p