

**CONFERENCE COMMITTEE ON HB 2236**

**June 12 -13, 1997 Hearing Room 357**

**7:30 A.M. Tapes 1 - 2**

**MEMBERS PRESENT:**

**Rep. John Minnis, Chair**

**Sen. Kate Brown**

**Sen. Neil Bryant**

**Sen. Ted Ferrioli**

**Rep. Floyd Prosanski**

**Rep. Lane Shetterly**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Gina Cross, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 2236A 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 1, A</b>		
002	Chair Minnis	Opens the meeting at 7:40 a.m. on June 12, 1997.
<b><u>HB 2236A - WORK SESSION</u></b>		
002	Chair Minnis	Opens the work session on HB 2236A.
003	Chair Minnis	Explains the purpose of the meeting.

006	Kevin Campbell	<p>Oregon Association of Police Chiefs</p> <p>&gt;Submits a letter from Julie Brandis, Theresa Martin, Steve Marx, and himself (<b>EXHIBIT A</b>).</p> <p>&gt;Goes through the -A6 amendments with suggested changes (<b>EXHIBIT B</b>).</p> <p>&gt;proprietary security officer</p> <p>&gt;private security</p> <p>&gt;primary responsibility</p> <p>&gt;bankers' exemption</p>
057	Chair Bryant	Referring to those who stand watch, but aren't required to take any enforcement action, if they see unlawful activity and they detain an individual, they aren't required to have any type of security training?
062	Campbell	Our intention is not to prevent incidental responses to situations. We want to get at what a job responsibility entails.
064	Sen. Brown	Referring to page 3, lines 4-12, are you intending that all four requirements apply, or just one of them?
069	Campbell	When I talked with Legislative Counsel (LC), the "or" in line 10 applies back to everything.
074	Chair Minnis	I think the answer is "or" for all four requirements.
077	Rep. Shetterly	Goes through the definitions of contract security services. Talks about proprietary security services. You are saying that detaining an individual is just an incidental function, and they don't have to follow the training requirements?
096	Campbell	That is correct. I believe that the fifty-one percent does come into play at some point.
097	Rep. Shetterly	The fifty-one percent relates to their watching the property.
100	Rep. Prozanski	We are talking about having an exception for people who "incidentally" detain an individual. What is that? Who are we going to hold accountable?
108	Campbell	That is what you need to qualify for proprietary service. In combination, it is difficult to not reach that fifty-one percent.
115	Bill Taylor	Referring to page 2, primary responsibilities means fifty-one percent. You may meet the definition of primary, but you won't be considered a private security officer unless you meet the four provisions on page 4. My concern is with the aspect of detaining an individual. We are allowed to make a citizen's arrest. The security officer is at a disadvantage.
135	Rep. Prozanski	I can see that as a loophole. We need to make sure that they have training.

141	Chair Bryant	I want citizens to be proactive. The amendment doesn't seem to be clearly worded.
149	Julie Brandis	Associated Oregon Industries >This amendment is intended for small businesses.
164	Sen. Brown	I assume that you aren't trying to include the retail store clerks.
170	Brandis	That is correct, but we are trying to get at those who would rarely use detention. There are people whose primary responsibility is to guard helicopters and call 9-1-1 if there is an emergency.
181	Chair Bryant	Detaining can be almost by accident. I want people to use their own good judgment.
193	Rep. Shetterly	Would it be helpful to delete "detaining persons or" on page 3, line 11? We would allow someone to hold another individual until a police officer can make an arrest.
203	Campbell	Maybe if we integrate "as a matter of public policy?"
208	Sen. Ferrioli	Are we trying to get at the issue of "is authorized to take action by detaining a person?" Is there training for detaining persons? I would suggest there needs to be authority for doing that.
216	Chair Minnis	Everyone has the right to make a citizen's arrest. We need to make a distinction regarding the primary purpose of security being there in the first place.
223	Sen. Ferrioli	Some who do security are not authorized to make an arrest or detain. Everyone, due to their citizenship, has the authority to make an arrest. Some companies tell their employees that they will make an arrest, while others say that employees will not arrest. I am trying to make the distinction by what the employer uses in the job description.
238	Rep. Shetterly	Referring to page 3, lines 4 - 12, you may not anticipate arresting someone.
249	Chair Minnis	Offers conceptual amendments for (d).
258	Rep. Prozanski	I don't have a problem with people who have to detain and arrest. Refers to a letter from Starplex, I want to have people who are trained and knowledgeable in diffusing situations which may arise.
294	Chair Bryant	That is just good management. You want to train your personnel right, or else you could be sued.
296	Chair Minnis	Starplex requires all their supervisors to be trained in crowd control.
305	Rep. Prozanski	Does that mean that the employees will detain individuals?
307	Chair Minnis	I don't know.
		I assume that Rep. Prozanski is talking about the exemption on page 4, line

308	Sen. Brown	15?
311	Rep. Prozanski	Yes.
312	Rep. Shetterly	Referring to page 4, line 21, is that still in the agreement?
319	Brandis	You are talking about the amendment from Portland General Electric?
323	Rep. Shetterly	I am talking about subsection 9. If that is still in the bill, that will solve our problems.
328	Campbell	That section is taken out.
330	Dan Jarman	Starplex Corporation >We went over the training requirements which Starplex goes through. >Law enforcement is readily available. >The supervisor is licensed and trained in crowd management.
380	Rep. Prozanski	Will there be people who will have the primary responsibility to take enforcement action?
385	Jim DiLoretto	Starplex >Yes.
386	Rep. Prozanski	The others who don't have this power, will know how to get law enforcement?
390	DiLoretto	Yes.
391	Rep. Prozanski	What is the company policy if the employee doesn't do this?
393	DiLoretto	They will be in some way disciplined. We do try and not make arrests.
408	Rep. Prozanski	What is the ratio of supervisors to employees?
401	DiLoretto	It is about one to seven at any event.
413	Sen. Brown	What is the ratio of crowd management employees to the crowd?
418	DiLoretto	We prefer to have a ratio of one crowd management personnel to two hundred people.
434	Chair Bryant	I would like to delete "detaining persons." It is good public policy. I want everyone to be able to make a citizen's arrest.
<b>Tape 2, A</b>		
012	Rep. Shetterly	It sounds like we are going in the right direction.
014	Rep. Prozanski	What type of sanctions are already in law if someone doesn't comply with these acts?

019	Theresa Martin	Board on Public Safety Standards and Training (BPSST) >class A misdemeanor >civil sanctions >ORS 181.991
025	Rep. Prozanski	What are "civil sanctions?"
026	Martin	It would be a monetary fine.
027	Chair Minnis	These are sanctions under the Administrative Procedures Act (APA)?
028	Martin	These are sanctions under the ORS statute.
029	Chair Minnis	Is it an APA process?
030	Martin	The investigator would conduct an investigation and then submit that to the Attorney General's Office.
032	Chair Minnis	I am assuming that this is like any other state agency where the person would get an administrative hearing.
034	Martin	That is correct.
036	Rep. Shetterly	Are we deleting "detaining persons?"
037	Chair Minnis	Chair Bryant suggested that, also. Just that deletion and "or"
039	Sen. Bryant	<b>MOTION: Moves to AMEND HB 2236A on page 3, in line 11, by deleting "detaining persons or".</b>
041	Committee	Discusses whether or not "or" needs to be added to the end of lines 5 and 8.
042	Chair Minnis	I don't think you do.
042	Rep. Shetterly	I think under standard legislative construction, as long as there is an "or" after the last one, it is okay.
		<b>VOTE: 6-0</b>
047	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
047	Chair Bryant	You had language to insert on page 3, line 12 after the statute, "except in the case of an emergency?"
048	Chair Minnis	Yes, "except in the case of response to an emergency incident?"
050	Rep. Shetterly	"Except in response to an emergency incident?"
	Chair	

050	Minnis	Yes.
052	Bill Taylor	Anyone would have the same powers in an emergency situation to make a citizen's arrest?
056	Chair Minnis	Correct.
056	Campbell	Is there a reason for taking "detaining persons" out?
060	Chair Minnis	I think that detaining persons relates to a momentary stop. This would make the intention be, to take the individual into custody.
063	Campbell	Is there any understanding of detaining persons in the statute?
065	Chair Minnis	I don't know if there is a specific statutory definition. We could cite the citizen's arrest statute.
069	Rep. Shetterly	ORS 133.225 is that statute.
070	Chair Minnis	We could insert "except as authorized in ORS 133.225."
070	Bill Taylor	We are stating that by placing an individual under arrest, they are performing a proprietary security service. We don't want to go in the wrong direction.
081	Chair Minnis	I am late for another meeting. I would like to go into recess. I would like to get some language drafted for this.
086	Sen. Brown	I had just taken out lines 11 and 12 of page 3.
089	Martin	That would remove the majority of all in-house propriety security.
091	Rep. Shetterly	That is all right with me. A private person has the right to place another under arrest if a crime is committed in our presence. We are disabling people from being able to do that.
098	Brandis	That would serve our purposes. We still need the background checks provided by Board on Public Safety Standards and Training (BPSST) through this law.
109	Chair Minnis	What is the BPSST's position?
110	Martin	We are opposed to removing "proprietary security." The need for criminal background checks as well as training is important.
114	Rep. Shetterly	Physical force is allowed by ORS 133.225. Maybe we need to put some wording in that allows force, and if your job doesn't allow it, you will be exempt.
126	Chair Minnis	We should be saying that the primary purpose is to take enforcement action. That takes in store detectives whose purpose is to detain.
135	Sen. Brown	I am assuming that is a limited number of people.
135	Chair Minnis	It is supposed to be. There are very few who actually make arrests.

141	Brandis	This has a broad base affect across the industries.
150	Chair Minnis	If their primary purpose is not to take enforcement action by placing people under arrest, they are okay.
159	Chair Bryant	What happened to the part concerning injured workers being put on light duty?
162	Campbell	We thought that it was taken care of, but there is a concern on page 2, line 16. After "employee" it needs to say "of an independent contractor." The employee is not defined there.
182	Chair Bryant	As long as an injured worker doesn't have the duties we have talked about, he can be the night watchman forever?
184	Campbell	Yes.
185	Chair Bryant	That concerned me.
187	Campbell	Yes. That does remove any time limit.
190	Chair Minnis	<b>MOTION: Moves to AMEND HB 2236A -7 on page 2, line 16, by inserting "of an independent contractor" after "employee" as stated by Kevin Campbell.</b>
		<b>VOTE: 6-0</b>
194	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
196	Chair Minnis	<b>MOTION: Moves to AMEND HB 2236A -6 on page 3, line 11, by inserting "has as one of the person's primary purposes " before "takes" as stated by Kevin Campbell.</b>
198	Rep. Prozanski	We would leave the detaining in at this point? You are now limited to the primary purpose. With this phrase, everyone should be taken into consideration.
206	Chair Bryant	My concern is with "detaining."
210	Rep. Prozanski	There are two points which concern store detectives: the apprehension and the inquiry.
227	Chair Bryant	What about saying "detaining persons and?"
234	Rep. Prozanski	We have already made the distinction by using "primary purpose."
245	Chair Bryant	As long as we know the primary purpose of the job has to detain or place under arrest, it's okay.
249	Chair Minnis	Are we all agreeing to add this language?
		<b>VOTE: 6-0</b>
255	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>

257	Campbell	On page 4, line 3, we want to add "including persons regulated by the United States Nuclear Regulatory Commission." We want to eliminate subsection 9 on page 4.
275	Rep. Shetterly	Where does it say that a proprietary security officer is exempt when they aren't performing activities which fall under subsection 12 of section 1? Where does it say that the night watchman is exempt from licensing?
289	Campbell	I think its that threefold test.
290	Chair Minnis	If they do not do these functions, they aren't covered.
291	Rep. Shetterly	Where does it say that if they are just doing it for their employer, and they aren't armed, they are exempt? Shouldn't we put some kind of exception on that?
299	Martin	Referring to page 3, if the watchman wasn't in uniform, didn't carry a deadly weapon, and their primary purpose wasn't to detain, they would not be covered by this statute.
303	Chair Minnis	I think that Rep. Shetterly is arguing for something more explicit.
306	Campbell	This is a difficult subject.
311	Chair Minnis	Let's get back to the suggested language on page 4, line 3 and lines 21 through 28.
328	Chair Minnis	<b>MOTION: Moves to AMEND HB 2236A -6 by inserting "including persons regulated by the United States Nuclear Regulatory Commission" after "States" and deleting lines 21 - 28, as stated by Kevin Campbell.</b>
		<b>VOTE: 6-0</b>
321	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
321	Campbell	There is a period of time in which a temporary permit can be issued by the FBI. Sometimes the background check can take 90 days or more. We want to increase that time to 120 days.
331	Bill Taylor	Referring to page 3, lines 18-20 of -A7 amendments <b>(EXHIBIT C).</b>
336	Chair Minnis	<b>MOTION: Moves to AMEND HB 2236A -7 by changing "90" to "120" as stated by Kevin Campbell.</b>
		<b>VOTE: 6-0</b>
339	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
340	Campbell	We want to reintegrate the requirement that BPSST reports back to the legislature.
	Chair	



345	Minnis	Do we have draft language for that?
346	Campbell	It is at the end of the -A7 amendments.
348	Chair Minnis	Is there any objection to BPSST having to report?
350	Chair Minnis	Not other than any other responsibility we have.
351	Chair Minnis	<b>MOTION: Moves to ADOPT the amendments offered by Kevin Campbell to HB 2236A.</b>
		<b>VOTE: 6-0</b>
352	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
354	Campbell	The last issue deals with person felonies. The law currently says that if you haven't committed a person felony within the last 10 years, you can be certified. We want the law to say that if you commit a person felony, you can't be certified.
367	Rep. Prozanski	It would seem to me that we want to be consistent.
377	Chair Minnis	To be consistent, we want to make sure that people's records are clear for 10 years.
381	Rep. Prozanski	If we want to increase it, we could go up to 15 years.
383	Chair Minnis	I think we have in law a concept that states if you have been clean for 10 years, your record can be expunged.
386	Rep. Shetterly	They are talking about taking off the time limitation completely.
391	Martin	We have received a grouping of FBI reports which show a number of people convicted of sexual crimes applying to be security guards.
408	Sen. Brown	I don't think that these people should be security officers
415	Chair Minnis	This is a new issue. How does everyone feel about this?
420	Sen. Ferrioli	I think that a felony conviction would be grounds for elimination.
422	Chair Minnis	A person felony?
126	Chair Minnis	<b>MOTION: Moves to AMEND HB 2236A by inserting Section 6 of the -A7 amendments as stated by Kevin Campbell.</b>
		<b>VOTE: 6-0</b>
431	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>

<b>Tape 1, B</b>		
001	Chair Minnis	We will go into recess until 11:00 a.m. We will have LC draft language for all the amendments.
002	Campbell	There is a memo for the record.
003	Brandis	It discusses the agreements made between the parties involved.
008	Chair Minnis	We will accept that memo as part of the record.
008	Rep. Shetterly	That is the memo <b>(EXHIBIT A)</b> dated June 11, 1997?
009	Campbell	Thank you for your patience.
009	Chair Minnis	Recesses the meeting at 8:35 a.m. on June 12, 1997.
010	Chair Minnis	Reopens the meeting at 8:35 a.m. on June 13, 1997.
012	Chair Minnis	Refers to the -A8 amendments <b>(EXHIBIT D)</b> .
017	Rep. Shetterly	Referring to page 2, line 15, contract security services is defined. Proprietary security services is defined on page 3. We should follow through with the distinction between employee and for whom the services are being provided.
032	Chair Minnis	That is a valid point.
034	Rep. Shetterly	I think it is on page 3, lines 1-3.
037	Rep. Prozanski	Right after "means," we could insert Rep. Shetterly's language.
039	Chair Minnis	What would you be inserting?
051	Rep. Shetterly	It could be sufficient if we say "performance as an employee." Employee is defined on page 2, line 2. If we use employee, it will flow back to that definition.
057	Chair Minnis	Your motion is to insert "as an employee" after "performance." Are there objections?
059	Sen. Ferrioli	We are extending the definition of an employee. You can perform these proprietary services as an owner.
070	Sen. Bryant	We could say the performance as an employee or an owner?
071	Chair Minnis	That makes sense.
076	Sen.	What about "one who performs the following services?" It doesn't exclude an owner. My concern is that we are mixing the concepts of the proprietary

	Ferrioli	services with the definition of owner or employer.
090	Bill Taylor	Refers to a conversation with Kevin Campbell and the workers' compensation, there was no intent of affecting the issue of an employer and employee.
102	Chris Davie	State Accident Insurance Fund (SAIF) >If the record was clear that it was not the intent to not cover injured workers, that is okay.
112	Bill Taylor	When you mean not to cover injured workers, what are you saying?
113	Davie	It doesn't require injured workers to be licensed unless they perform one of the activities stated on page 3 of the -A6 amendments.
115	Chair Minnis	The record should show that "person" should define employer or employee. We could define "person" for this act. I am assuming that "person" means anyone.
124	Rep. Shetterly	Maybe it would be best to leave this the way it is.
126	Sen. Bryant	I agree. There is a distinction between person and employee.
128	Chair Minnis	Is there any objection to any motion to adopt the -A8 amendments?
132	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2236A-A8 amendments dated 6/12/97.</b>
		<b>VOTE: 6-0</b>
138	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
142	Sen. Brown	Referring to the felony portion of the bill, what did we do?
145	Sen. Bryant	Explains what was added to the -A8 amendments.
147	Sen. Brown	That would also cover domestic violence?
148	Sen. Bryant	I don't know.
148	Bill Taylor	Under federal law, if you have committed domestic violence, you can't get a gun permit. You could become a security guard, but you can't carry a gun.
152	Chair Minnis	It would be unlawful to have a gun.
154	Chair Minnis	Repeats the motion.
		<b>MOTION: Moves HB 2236A to the floor with the recommendation</b>

163	Sen. Bryant	that the House concur in Senate amendments dated 5/22/97 and that the bill be further amended by the -A8 amendments dated 6/13/97 and the measure be repassed.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye.
166	Chair Minnis	The motion CARRIES. SEN. BROWN AND REP. SHETTERLY will lead discussion on the floor.
171	Bill Taylor	Everyone has to sign the committee report.
178	Chair Minnis	Adjourns the meeting at 8:47 a.m. on June 13, 1997.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2236A, written materials, Kevin Campbell, 2 pp.

B - HB 2236A, -A6 proposed amendments, staff, 7 pp.

C - HB 2236A, -A7 proposed amendments, staff, 5 pp.

D - HB 2236A, -A8 proposed amendments, staff, 10 pp.