

HOUSE COMMITTEE ON COMMERCE SUBCOMMITTEE ON LABOR

May 10, 1993 Hearing Room D 8:30 a.m. Tapes 112 - 113

MEMBERS PRESENT: Rep. John Watt, Chair

Rep. Lee Beyer Rep. Michael Payne

Rep. Charles Starr

Rep. Bob Tiernan

STAFF PRESENT: Marilyn Johnston, Committee Administrator Kimberly Burt,
Committee Assistant

MEASURES CONSIDERED: HB 2351 HB 3369 HB 2815

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These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. [--- Unable To Translate Graphic ---]

TAPE 112, SIDE A

CHAIR WATT: Calls the meeting to order. (9:40 a.m.)

PUBLIC HEARING ON HB 2351 Witnesses: Brad Witt, Oregon AFL-CIO
Diane Rosenbaum, Oregon State Industrial Union Council

MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Describes HB 2351; submits preliminary staff measure summary, (-1) amendments, hand engrossed version, fiscal and revenue impact statement, (EXHIBIT A).

016 BRAD WITT, OREGON AFL-CIO: Testifies in opposition to HB 2351; we understand the intent of the bill, but are concerned that parties could charge frivolous appeals at infinitum.

REP. BEYER: How would you suggest it be more balanced?

WITT: What the bill is attempting to do is difficult.

040 DIANE ROSENBAUM, OREGON STATE INDUSTRIAL UNION COUNCIL:
Testifies in opposition to HB 2351 and the amendments; this is a gradual narrowing of a workers right to hearing.

_ The bill attempts to discourage workers from having the hearing; litigation has increased since the 1990 workers' compensation special session.

092 ROSENBAUM: (In response to Rep. Beyer) There are penalties that

can be administered against insurance companies that withhold payment or

unreasonably deny a claim, but this bill doesn't attempt to address the problem of insurance companies prolonging litigation. REP. BEYER: Relates testimony from previous hearing.

ROSENBAUM: The system is set up over time to try to provide a balance.

125 REP. TIERNAN: What would be your idea to make the people who want a hearing to ascertain if this was the kind of claim there needed to be a hearing for?

ROSENBAUM: What I know about workers compensation litigation is that there is a high volume and probably neither side looks into the situation until they are close to a hearing.

_ My fear is that some lawyers would drop the case even if it was a good case.

REP. TIERNAN: I disagree; the standard here is minimal.

_ The problem I see is that by filing something the other side has to respond and we are trying to get the person filing the claim to review the file and look at it and intend to go through with the hearing.

ROSENBAUM: The current system has the same effect.

WORK SESSION ON HB 2351

CHAIR WATT: The Workers Compensation Board has a back log of 800 cases and this would be a tool for them.

191 MOTION: REP. TIERNAN MOVES THE (-1) AMENDMENTS BE ADOPTED TO HB 2351.

REP. BEYER: I am uncomfortable with the definitions in the amendments; states opposition.

209 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: BEYER MEMBER EXCUSED: PAYNE

MOTION: REP. TIERNAN MOVES THAT HB 2351, AS AMENDED, BE SENT TO THE FULL COMMITTEE

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: BEYER, MEMBERS EXCUSED: PAYNE CARRIER: TIERNAN

PUBLIC HEARING ON HB 3369 Witnesses: Royal Inman, Southern Oregon Employer's Council Brant Rigby, Medford/Jackson County Chamber of Commerce Connie Gibbs, Medite Corporation Ray Stalnaker, Croman Corporation Robert A Luoto, Vice President, Luoto Logging Inc. Dave Heida, Oregon Loggers Association George W. Goodman, Cummins, Brown, Goodman, Fish & Peterson, P.C. Fred VanNatta, Oregon State Home

Builders Association Frank Biehl, Association of Western Pulp and Paper Workers Burton Weast, Special Districts Association of Oregon, Oregon Fire Chiefs Association and Oregon Fire District Directors Association

235 CHAIR WATT: We have been advised that the "relating to" clause on this particular bill is too narrow to do what we would like; there are senate bills we could use to broaden the issue.

275 ROYAL INMAN, SOUTHERN OREGON EMPLOYER'S COUNCIL: Testifies in support of HB 3369.

345 BRANT RIGBY, MEDFORD/JACKSON COUNTY CHAMBER OF COMMERCE: Testifies in support of HB 3369.

_ Small employers can't incur the costs; it is increasingly important for the challenges if the citations are incorrect; there needs to be a way for employers to have balance.

395 CONNIE GIBBS, MEDITE CORPORATION: Testifies in support of HB 3369; submits written testimony, (EXHIBIT C).

_ Fines are growing increasingly large and if they aren't overturned, there are repeat citations, so employers do need to challenge them.

_ We believe this would make OR-OSHA more accountable, would make them cite specifically what the violations were and we believe this is appropriate.

460 RAY STALNAKER, CROMAN CORPORATION: Testifies in support of HB 3369; submits written testimony, (EXHIBIT D).

TAPE 113, SIDE A

070 CHAIR WATT: How much do you pay annually to OR-OSHA and how many of the violations for fines could have caused time loss accidents?

STALNAKER: The citations are a mixed bag; I would estimate during the last six years we have averaged approximately \$2000 a year in citation penalties.

_ Had we pursued them further, approximately 1/4 could have been turned over had we gone for litigation.

_ Of the 3/4 we couldn't overturn, nearly half were probably items that could have resulted in injury to the worker; some are from neglect on the part of the worker.

115 INMAN: My concern is that there has been a change from going in and working with OSHA inspectors to make the workplace safer.

_ Even if we negotiate this, because of repeat violations, we can't

afford the fines; we are looking at more litigation.

GIBBS: We don't find that the majority of accidents are caused by unsafe conditions, but unsafe procedures, but OR-OSHA rules don't cover that.

220 CHAIR WATT: You refer to "cite carelessly"; does that happen a lot?

GIBBS: We see a lot of general citations and that causes a lot of repeat violations.

REP. TIERNAN: There was one plywood mill in Portland, where basically the employees owned the mill and their biggest problem there was getting the co-workers or co-owners to follow procedures.

275 ROBERT A LUOTO, VICE PRESIDENT, LUOTO LOGGING INC: Testifies in support of HB 3369, submits written testimony and informative material, (EXHIBIT E).

360 CHAIR WATT: If OR-OSHA dismisses the penalty, is it counted?

LUOTO: No.

380 DAVE HEIDA, ASSOCIATED OREGON LOGGERS: Testifies in support of HB 336 9.

455 GEORGE W. GOODMAN, CUMMINS, BROWN, GOODMAN, FISH & PETERSON, P.C.: Testifies in support of HB 3369; submits written testimony, (EXHIBIT F).

TAPE 112, SIDE B

035 GOODMAN: Continues summarizing written testimony, see Exhibit F.

_ This bill assumes there is a large amount of abuse going on; the problem that employers feel exists is that there is no remedy or accountability within the agency.

_ Referring to statistics included in written testimony, see Exhibit F.

120 GOODMAN: We haven't yet felt the effect of the new penalty schedule.

_ The Equal Justice Access Act is part of federal OSHA; I think that is what this bill is trying to accomplish.

_ If OR-OSHA is trying to mirror the federal system, then let's bring in the part that protects employer also.

CHAIR WATT: Please give us information on states that are under federal OSHA and also, how many states administer their own programs and have this kind of statute.

GOODMAN: Reviews changes of Division 1. 205 FRED VANNATTA, OREGON STATE HOME BUILDERS ASSOCIATION: testifies in support of HB 3369.

215 FRANK BIEHL, ASSOCIATION OF WESTERN PULP AND PAPER WORKERS: Testifies in opposition to HB 3369; this system currently encourages informal

dispute resolution.

_ California and Washington both do not do this.

235 REP. PAYNE: Penalties are going up while safety is improving; do you believe that 85% of the businesses where your members work are out of

compliance?

BIEHL: Yes, 85% of the places where my people work probably are out of compliance in one manner or another.

260 BURTON WEAST, SPECIAL DISTRICTS ASSOCIATION OF OREGON, OREGON FIRE CHEIFS ASSOCIATION AND THE OREGON FIRE DISTRICT DIRECTORS ASSOCIATION:

Testifies in support of HB 3369; for the most part OR-OSHA has been cooperative; our concern is that if you agree to accept a penalty, the repeat provisions could hurt us and we have a concern that the agencies should get their money back if the penalty is dismissed.

PUBLIC HEARING ON HB 2815 Witnesses: Frank Biehl, Association of Western Pulp and Paper Workers Brad Witt, Oregon AFL-CIO Karl Frederick, Associated Oregon Counties Jack Pompei, Administrator, OR-OSHA Connie Gibbs, Medite Corporation

MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Describes HB 2815; submits preliminary staff measure summary, fiscal and revenue impact statements, (EXHIBIT G).

310 FRANK BIEHL, ASSOCIATION OF WESTERN PULP AND PAPER WORKERS: Testifies in support of HB 2815, submits written testimony, (EXHIBIT H).

_ There have been some concerns about language in the bill; we are trying to encourage dialog with OR-OSHA and the safety committees.

400 REP. TIERNAN: You are asking for veto power over employers.

BIEHL: That is what the bill says; our concern is that safety committees are being ignored.

435 BRAD WITT, OREGON AFL-CIO: Testifies in support of HB 2815; our thinking is that the safety committee should be involved in the variance process, but in it's current form it requires the committees approval of the variance and we think it is more practical to involve

the safety

committee in the actual shaping of the variance and would suggest the bill be modified to accomplish that.

REP. TIERNAN: If the employer makes the request and the safety committee agrees, it will give weight to the request; an advisory role is good.

TAPE 113, SIDE B

055 KARL FREDERICK, ASSOCIATED OREGON INDUSTRIES: Testifies in opposition to HB 2815; this would create another step for OR-OSHA to go through.

_ This is a decision to be made by the employer and the director.

075 REP. BEYER: If this bill addressed not approval, but acknowledgement of the safety committee?

FREDERICK: I see no reason they can't do that under the current regulations.

095 JACK POMPEI, ADMINISTRATOR, OR-OSHA: Safety committees have the right to advise.

REP. BEYER: How many variances are you seeing?

POMPEI: A lot in the pulp and paper industry; other than that the normal variance in the state is the same.

REP. BEYER: Can you tell from the requests if they have been reviewed by safety committees?

POMPEI: In many scenarios I have management and labor in my office; after that I don't get involved; my staff looks at it and tell me if it is good, bad or indifferent.

_ I ask the people to come together, I do not mandate that.

130 CONNIE GIBBS, MEDITE CORPORATION: It is important to understand who the safety committees are comprised of; there are sometimes people appointed who are just there, not functioning members and it wouldn't be beyond

them to cause a disruption in the work place.

_ We believe that OSHA has the ability to check with workers now before they issue a variance.

CHAIR WATT: Having no further business to come before this committee, we are adjourned. (11:16 a.m.)

Submitted by, Reviewed by,

Kimberly Burt Marilyn Johnston Committee Assistant Committee
Administrator

EXHIBIT SUMMARY:

A - HB 2351: Preliminary staff measure summary, (-1) amendments,
hand engrossed version and fiscal and revenue impact statement
submitted by staff, pp 5

B - HB 3369: Preliminary staff measure summary, fiscal and revenue
impact statement submitted by staff, pp 4

C - HB 3369: Written testimony submitted by Gibbs, pp 3

D - HB 3369: Written testimony submitted by Stalnaker, pp 2

E - HB 3369: Written testimony and informative materials submitted by
Luoto, pp 6

F - HB 3369: Written testimony submitted by Goodman, pp 17

G - HB 2815: Preliminary staff measure summary, fiscal and revenue
impact statements submitted by staff, pp 2

H - HB 2815: Written testimony submitted by Biehl, pp 1