

HOUSE COMMITTEE ON LABOR

March 4, 1991
-52

Hearing Room D 8:30 a.m.

Tapes 51

MEMBERS PRESENT: Rep. Gene Derfler, Chair Rep. Kevin Mannix,
Vice-Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob
Repine Rep. John Watt STAFF PRESENT: Victoria Dozler, Committee
Administrstor Guadalupe C. Ramirez, Committee Clerk MEASURES
CONSIDERED: HB 2091 - Public Hearing HB 2532 - Public Hearing HB 2472
- Public Hearing HB 2473 - Public Hearing

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in ql otation
marks report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

TAPE 51, SIDE A

003 CHAIR DERFLER: Meeting called to order at 8:31 a.m.

PUBLIC HEARING ON HB 2091 - Witnesses: Karen Roach, Administrator,
Personnel and Labor Relation Division. Art James, Executive Department

014 KAREN ROACH: Summarizes purpose rationale and impact of HB 2091 >
Purpose: requires arbitrators to consider the comparability of value of
work in making salary awards for employees prohibited from striking. >
Additional criteria would require all interested parties to use same
criteria: Unions, the state of Oregon, management and arbitrators. Have
invested enormous amount of money, time and resources to achieve the
comparability of value of work in the state's compensation and
compensation system. > 2500 employees affected so that it be considered
policy. > These employees are in general fund agencies; state police and
Department of Corrections; the receipt of arbitrators awards come in
after legislature has approved budgets for state agencies. This means
that likely unforeseen program cuts will result, if arbitrator's award
was greater than salary budgets. > Fact Finders who issue
recommendations for strikable employees as part of

negotiation process also use arbitrator's criteria, so indirectly
influence fact finders report which have influence in settling strikable
employees settlements as well.

039 REP. MANNIX: HB 2091 doesn't apply to fact finding process,
correct?

040 ROACH: No, but often fact finders use same criteria in issuing
their salary recommendations.

041 REP. MANNIX: Could HB 2901 also apply to fact finding process?

042 ROACH: It could but not sure if there is any place in statute it
could be inserted. Arbitrators, in general, use what is in the statute.

045 REP. MANNIX: Fact finders look at what the arbitrators do, verses
the other way around. 046 ROACH: Doesn't want this bill to cause cuts
in anyone's wages. > This would affect future arbitration awards if and
when statute became law. > Recommendation of due pass on HB 2091.

057 CHAIR: CLOSING PUBLIC HEARING ON HB 2091. PUBLIC HEARING ON HB
2532 Witnesses: Leslie Thompson, President, Oregon Trail Section of the

American Camping Association. Twila Jordahl, American Camping Association Frank WasHB urn, Legislative Chair, American Camping Asso. John Mestowlgy, Salem YMCA Randy Robinstein, Salem Family YMCA Camps Peggy Robinette, Campfire Council For Salem Area Jeff Laan, American Camping Association, Jewish Community Center Miriam Callaghan, Camp Administrator, YWCA, Portland Tom Stoltz, Council Executive, Cascade Area Council American Camping Association 084 LESLIE THOMPSON: Presents written testimony (13xli~ A) for HB 2532. > Wants to get \$275,000 gross income limit deleted from statute. 100 JEFF LANN: > 350 campers/week, employ 80 seasonal staff people. Average age - Senior staff member - 19 years, Junior Staff- 16 years. > Senior average pay: \$750-900/season, Junior: \$350-500/season (eight week season). > Want exemption status approved by Federal Fair Labor Standards Act of 197 7. >EXHIBIT A - (See: Fair Labor Standards Act of 1938, as Amended, pg. 16 & 17, Section 13(3). > Staff people are seasonal, not family bread winners employed by non-profit agencies. > Counselor on call 24-hrs/day, can't afford paying them minimum wage for 24 hours. > If required to pay minimum wage, many children couldn't afford to go to camp.

142 MIRIAM CALLAGHAN: Operate 2 camps, saving approximately 1200 campers during summer season. Employ about 40 staff members. Average age: 19-20 years old. > Many benefits to being a staff member, few jobs provide these opportunities. > Many staff people go in with certain expectations but leave with much more. 172 TOM STOLZ: Serve about 5000 youth members in Marion, Polk and Linn Counties. > Hire about 30 seasonal people, that vary between ages of 16-18. > Supports HB 2532 because of the difference between them and commercial employers. >Leadership training that employees receive working for them is more valuable than making money. 196 REP. MANNIX: How was minimum wage situation handled last summer? 198 THOMPSON: Exemption on minimum wage but want the \$275.000 cap deleted. > Some camps coming close to that gross income cap. > Most camps are under. Pay staff weekly salary plus room and board. 205REP. MANNIX: Considered option of raising the cap? Taking into consideration the possibility of future multi-million dollar commercial camp which could take advantage of removing the cap. 214 STOLZ: Original federal legislation established the \$275,000 to deferentiate whether camps would come under federal or state mandates. > Those under that level would be under state control. 222 REP. MANNIX: Some of your groups are potential for-profit organizations? 223 THOMPSON: One small camp in the area is for-profit, the majority are non-profit. 226 REP. MANNIX: If cap was taken off for non-profit and left the one for-profit? 229 THOMPSON: Don't know. 230 STOLZ: Difficult to answer as they are concerned about the non-profit organizations. 232 REP. MANNIX: "Is it hard to imagine someone really operating much in the way of a for-profit type of camp anyway?" 233 THOMPSON: No, the for-profit camp is struggling. >Doesn't think anyone could operate any kind of a camp if paying minimum wage because of the 24-hour/day situation. 240 REP. MANNIX: Also, the for-profit camp wouldn't be able to offer the same kind of atmosphere that a non-profit camp would offer because camp counselors would be there for the pay as opposed to the experience? 243 THOMPSON: The for-profit camp, mentioned has same kind of atmosphere that they try to portray and has been in business since 1924.

249 REP. MANNIX: If they remove cap, will you come back to warn us if the for-profit organizations begin to take advantage of it? 250 THOMPSON: Yes.

253 REP. REPINE: Addresses question to Rep. Mannix with reference to: EXHIBIT A, pg. 2, lines 17-18, of HB 2532. > Should this be the sentence

that should be amended? > The other one is for purpose of forprofit camps.

266 REP. MANNIX: Would these organizations fit in some kind of IRS classification where you fit into organized camp rather than non-profit conference ground or center? 276 REP. REPINE: Camps could operate year-round or offer some type of activities year round.

278 REP. MANNIX: Could the for-profit camp operating since 1924, hit the \$275,000 cap? 288 REP. REPINE: Could adjust for the economy. > More discussion about other ways of looking at this problem.

294 REP. JOHNSON: Where did \$275,000 figure come into play?

296 STOLZ: Carry over from the federal legislation, not sure how it got into Oregon's statute.

298 THOMPSON: Assume it was picked up in error. Thinks original intent of statute was not to have any kind of cap. > They don't think they should have to be faced with a cap because of the numbers of kids they run through their program. 308 CHAIR DERFLER: If employees are gaining as much as the kids, "even if it were for profit, I wouldn't mind seeing it disappear."

324 FLETCHER, IRV: EXHIBIT B: Wasn't present but letter was accepted as testimony. > Opposed to HB 2532. WORK SESSION ON HB 2532:

333 REP. REPINE: Should cap be adjusted? Need to have a cap for profit business. Even if they aren't faced with it now. > Concerned with possible future exploitation of not having a cap. >Lifting cap for profit type camps situations, and helping non-profit status to include camps to be able to be exempt. 347 REP. MANNIX: Consumer Price Index (CPI) has gone up at least 2.5 times since 1977. > Assumes from looking at beer and wine tax, CPI has gone up 2.5 times since then. > Open to changing cap to \$500,000 and putting in organized camp. > Proposes to make motion based on Rep. Repine's approval.

361 CHAIR DERFLER: Agrees. Do you propose to raise to \$500,000 for profitable organizations?. 362 MOTION: REP. MANNIX: moved to amend HB 2532, Line 15 - 16, to delete phrase: "that generates gross annual income of less than \$275,000", be changed to \$500,000. > On line 17 (11): phrase "or an organized camp" be inserted after word "center"

377 REP. REPINE: Would the organizations presented today meet that test? 379 REP. MANNIX: Yes, they are all non-profit organizations.

382 REP. REPINE: Are they operated for educational, charitable or religious purposes? 384 Members discussed at length the wording and the cap of \$500,000. 402 REP. MANNIX: Accepts as friendly amendment. Agreed: "or center, or an organized camp, operated for educational, recreational, charitable or religious purposes."

VOTE: In a roll call vote, the amendment passes, with Rep. Johnson, Rep. Mannix, Rep. Repine, Rep. Watt, Chair Derfler voting AYE, Rep. Edmunson voting NAY, and Rep. Dominy excused.

422 MOTION: REP. MANNIX: moved that HB 2532 be amended to House Floor with a do pass recommendation. VOTE: In a roll call vote, the motion carried, with Rep. Johnson, Rep. Mannix, Rep. Repine, Rep. Watt, Chair Derfler voting AYE, Rep. Edmunson voting NAY, and Rep. Dominy absent.

440 CHAIR DERFLER: Rep. Johnson to the carry the bill. 441 CHAIR: Closed hearing on HB 2532.

PUBLIC HEARING ON HB 2472.

WITNESSES: Donna Hunter, Tax Manager, Employment Division Carol Munson, Department of Justice Janey Martin, Central Operations Tax. Dale Derouin, Supervisor, Field Operations

TAPE 52, SIDE A.

011 DOZLER: HB 2472 brought by Employment Division to recover attorney fees for collection actions related to unemployment compensation taxes. > Committee asked that the Employment Division present proposed amendments. > No amendments have been adopted on this bill, still in original form.

022 DONNA HUNTER, TAX MANAGER, EMPLOYMENT DIVISION: > HB 2472 needs to be narrowed. Section 1 (2): Proposed amendment to delete "chapter" in line 10, and insert "section." > This would clarify that this action would only be used for the tax collection efforts. 035 CHAIR DERFLER: What does the changing of the word accomplish

035 HUNTER Using "chapter" could be interpreted to mean that unemployment insurance claims for employers and benefits on the unemployment insurance side would fall under this regulation. > Intent of agency to limit to tax collection effort. 042 REP. JOHNSON: Was the possibility of changing the language in HB 2472, lines 11- 12, beginning with "fees to be fixed trial", to deleting"state" and entering "prevailing party", taken to your attorneys? 049 HUNTER: Agency finds that this is a public policy issue and would be up to the committee to decide what to do but they would not oppose prevailing party language. 054 REP. JOHNSON: Comments on current law and asks how changing current law

would affect their decision making process. 063 HUNTER: Assistant Attorney General believes fewer cases would be brought. > Emphasis is on negotiation, prepayment plans, working with the party to recover cost. > Taking case to trial is used as last alternative and only if they have solid factual case. > Generaly prevail on them because they are solid and they want the track record to remain credible. 075 WORK SESSION ON HB 2472: 076 REP. REPINE: Clarification on language of "prevailing party vs. state." Is this appropriate for equity on both sides of these kinds of litigations? 081 CHAIR DERFLER: Yes. 089 MOTION: REP. REPINE: Move the Dash One amendments to HB 2472, line 10 delete "chapter" and insert "section". VOTE: In a roll call vote, the motion carried, with Rep. Dominy, Rep. Edmunson, Rep. Johnson, Rep. Mannix, Rep. Repine, Rep. Watt, Chair Derfler voting AYE. 102 MOTION: REP. REPINE: HB 2472, line 12, moved to delete the word "state" and add "prevailing party". On line 10, delete ", ssistant director" and add "prevailing party". 111 REP. WATT: Is it correct that only the division would bring a civil action? 113 REP. MANNIX: "If division brings a civil action, and someone defends against it and they win, they're the prevailing party." > So because they were forced to go to court this proposed language would allow them to recover attorney's fees from the state. > The state is confident that they will not be bringing cases that they don't think they can win. ,

118 REP. WATT: By changing this the prevailing party isn't going. If you change assistant director to prevailing party, doesn't that perpetuate the idea that is who will win.

121 REP. MANNIX: Would be neutral to have prevailing party instead of assistant director and state, you've taken any reference to state out. Prevailing party means whoever wins.

124 DOZLER: If assistant director is not talcen aut, it could be read to mean that only the assistant director could recover attorney's fees.

131 VOTE: In a roll call vote, the motion to amend the Dash 1 amendment carried, with Rep. Dominy, Rep. Edmunson, Rep. Johnson, Rep. Mannix, Rep. Repine, Rep. Watt, Chair Derfler voting AYE.

136 MOTION: REP. REPINE: moved that HB 2472 as amended to the floor with a do pass recommendation. 140 REP. JOHNSON: What kinds of defenses do employers raise to these kinds of suits that you are contemplating? "What issues come up that you argue about?" 146 CAROL MUNSON, DEPARTMENT OF JUSTICE: The 3 major types, in collection of taxes area: Deposit suits, Records suits, various kinds of collection actions. > Addresses deposits and records types of litigation since those are the ones she does. > Seek to require a deposit: problems encountered: Corporation B doesn't owe the deposit because the tax that was really accumulated by Corporation A which may be very closely related to Corporation B in fact. > Factual defenses are the only ones they see as opposed to legal defenses. > Once litigation is filed, employer will make some payments and argue that the fund is not insecure and they are now current with payment of taxes. > Defenses are weak and are always rejected by the court. > Haven't lost deposit suit claim, settled out of court and have lost one record suit claim. > Some don't involve money (seek production of records) incur extensive attorney's fees.

182 REP. JOHNSON: Are they required to keep these records?

183 MUNSON: Yes, sometimes they use the defense that they don't keep them. 186 REP. JOHNSON: If this law passed, would the recognition of this additional potential penalty of attorney fees, help you in your collection efforts short of a final judgement? > Do you think that you will be able to settle these cases more favorably, more often?

192 HUNTER: Minor decrease in the number of frivolous cases because of the risk of having to pay attorney's fees.

195 REP. JOHNSON: With out-of-court settlement, would you attempt to recover attorney fees if there was no final judgement?

199 HUNTER: Depends on case, passage of this law address our attorney fees for court costs.

200 REP. JOHNSON: If case is sealed, would you require payment of attorney fees to date?

202 MUNSON: Would take into consideration, times the employer had problems. > If they do, it would have to be an amount fixed by the court. 210 REP. JOHNSON: If the court is not involved there shouldn't be any fees.

216 MUNSON: Often enter stipulated ordersljudgement with employers. 218 REP. JOHNSON: Attorney fees would be part of the order?

219 MUNSON: Yes.

220 REP. JOHNSON: Can a public body calculate the amount of attorney

fees incurred? 223 HUNTER: Tracking system that attorneys use to keep track of time for billing clients. 226 REP. JOHNSON: Is there an hourly rate?

227 MUNSON: \$62.00/hour. Legislation this session to raise to \$72.00.

234 REP. JOHNSON: Should be the same as indigent defense attorneys get which is about \$30.00.

236 MUNSON: No response. 237 REP. JOHNSON: Giving state more power to collect fees, puts more burden on the employer. Concerned about the "innocent" employer forced to comply with government agency rule because of fear having to pay the attorney fees. > Wants to prevent potential government harassment to small business person.

280 REP. WATT: Views as the opposite, sees it as a limitation to the state to bring those types of cases to the court. > Presently they are only bringing cases that they are more likely to collect on. > Doesn't think this is an opportunity to get the small business person.

293 REP. JOHNSON: Agrees that prevailing party language should be included. > Both parties have some motivation not to file a case because they are afraid of losing.

306 REP. MANNIX: Government civil action not taken until administrative remedies are pursued. > Prevailing party attorney fee provision should be in all civil actions to force business people to take responsibility for their actions and not depend on the public. >This is balancing the scales on enforcement, this isn't about initial administrative

action, this is only after all administrative remedies have been exhausted.

344 VOTE: In a role call vote, the motion carried, with Rep. Dominy, Rep. Edmunson, Rep. Mannix, Rep. Repine, Rep. Watt and Chair Derfler voting AYE and Rep. Johnson voting NAY. 347 REP. REPINE: Agrees to carry the bill. 349 CHAIR DERFLER: Closed work session. 350 PUBLIC HEARING ON HB 247 3:

351 DOZLER: Employment Division seeking to hold employers and those responsible for paying unemployment compensation taxes, liable for failure to pay taxes. > HB 2473 defines responsible person without the emphasis on corporation.

393 DOZLER: Engrossing the bill entails the elimination of lines 43 and 44 on pg. 4. "Responsible person" defined and inserted appropriately instead of "employer" to "employing unit." or "responsible person". 407 REP. REPINE: Is this about the protection someone like a public accountant doing work for someone who is in violation of a law? 412 REP. MANNIX: Yes, the approach was to use a check-off method. > Responsible person defined on pg. 1 of the proposed amendments. Someone having a significant relationship: > On behalf of employee unit, the person may control the work of the individual direct the manner it is done. > This person must have direction and control. The title that someone has such as an accountant or bookkeeper, what matters is what position or responsibility they have. > They must have the authority to cause unemployment compensation taxes to be paid. > Have the authority to prefer one creditor over another, to sign or cosign checks, make

fiscal decisions, incur debt on behalf of the employing unit. > Get 5% or more of the gross annual income. > SUBSECTION B: Person who acts under the employing unit under the duty to perform certain acts: TAPE 51, SIDE B

006 REP. WAIT: Does every test have to be met by the responsible party?

008 REP. MANNIX: Must be someone that on behalf of employing unit, controls the work of an individual and directs the manner it is done and one of the options mentioned before. ~ Option 2: Someone who is under a duty to perform the acts required under the chapter and one of the following applied (from the proposed amendments): Have the authority to cause unemployment comp to be paid, can prefer one creditor over the other, you have the authority to sign or cosign, make fiscal decisions, incur debts or you receive more than 5% of the gross annual income. > These would signify that this person is running the company.

023 WORK SESSION ON HB 247 3: MOTION: Rep. Mannix moves the Dash 2 amendments.

034 REP. JOHNSON: Needed a little more time for clarification.

035 DOZLER: Originally under the "responsible person", the definition is repeated because legislative council was not able to determine how to make both parts of the definition apply to all those factors. 044 REP. MANNIX: Changes were in response to the questions from the first hearing where the concern about who was considered in a responsible capacity.

046 REP. JOHNSON: From the things listed, you apply one or more? > A responsible party would fall under one of these conditions? 048 REP. MANNIX: Yes, in addition to having direction and control.

051 REP. JOHNSON: Who would "duty" in the second option, apply to? > Would it be as part of the employment? 053 REP. MANNIX: It would include part of their work with the company or corporation. 056 REP. JOHNSON: Which of these 6 definitions is the weakest? 061 REP. MANNIX: The word "authority" is in each line. > In comparison to a clerical function in which this person would not have authority to cause unemployment compensation. 065 CHAIR DERFLER: Preferring one creditor over another would probably be the weakest.

067 REP. WATT: What about incurring debt? Makes point that some people are in the position of doing taxes and also hold the responsibility of ordering office supplies. 069 REP. MANNIX: The definition of incurring debt from the statutes applies to someone who can borrow money from a lending institution.

075 REP. JOHNSON: Control and direction interpretation: > Have person with no authority to cause unemployment taxes to be paid; > Is the one who does have authority to prefer on creditor over the other; > Doesn't have authority to sign checks; > Doesn't have authority to make fiscal decisions for employer; > Doesn't have authority to incur debt on employer's behalf; > But, this person will be held personally liable for these actions.

081 REP. MANNIX: Points out that preferring and authority are distinct points. Uses example of someone in his office who doesn't have the choice of picking one creditor over another. > Further points out that

someone may choose to do one thing over the other, but that doesn't mean they had the authority. > Points out the difference between two equally situated businesses. > Meeting statutory lien for example, would not be preferring one creditor over another.

094 REP. JOHNSON: Is unemployment taxes what the statute is about? > This person wouldn't have any authority to deal with unemployment taxes, correct? > Only authority this person would have is to prefer one creditor over another on corporation's behalf which has nothing to do with unemployment taxes. > Is this person going to be held responsible for the company's unemployment taxes?

095 REP. MANNIX: Yes, but it also has to be someone who can control and direct the manner in which the work is done.

100 REP. JOHNSON: Define individual. 102 REP. MANNIX: A supervisory person with the company with the employing unit. > Individual has not been defined, it means any person working for the company.

104 REP. JOHNSON: Unclear about the first paragraph. > Reads off paragraph, "an individual" is unclear. > Doesn't see connection with unemployment taxes. 113 CHAIR DERFLER: Line 16 on page 4A of the engrossed version, wouldn't that person be included in that? > In the part where it says that you would have to have the authority to cause unemployment compensation. They would be required to that, correct?

115 DOZLER: Page 4a of the engrossed version: Subsection 11a.

122 REP. JOHNSON: The word Nindividualr is unclear. > The person to be held liable for unemployment taxes should be the person who had the duty to cause unemployment taxes to be paid or who had some control over that aspect.

126 REP. MANNIX: Could people from the Employment Division respond to this question. 128 DONNA HUNTER: Explains two amended sections: First section: person's relationship with the individual would result in the supervision of that individual. That individual doesn't have authority, may have duty to carry out direction of person from first section. > Second section: refers to person who does have the authority without supervision.

138 REP. JOHNSON: Understands, but there are some words missing. > The person referred to as "an individual" has no connection in this whole scheme.

141 HUNTER: Wasn't defined because that individual may be anyone that "supervise or determines should carry out those duties, depending on who that might be, that is the individual".

144 REP. JOHNSON: Can a supervisor or a cleric be substituted where "an individual" is?

148 DALE DEROUIN, Supervisor, Field Operations, Employment Division: That would be getting too narrow. Subsection A is holding the principles in the business liable whether or not they have any specific duty to pay the unemployment taxes. > Subsection B focuses more narrowly on the individual that has been given the authority by the company to pay the unemployment taxes. > Dividing line is the principles and the person who has the duty.

158 REP. JOHNSON: First section has nothing to do with the principles because only thing it says is that you have a supervisor. "The person who has control over some unnamed individual" > This supervisor has no authority considering the way this is written, you only need one of these 6 things to be invested in this supervisor, for him to be held liable. > Could have supervisor who has no authority/connection with unemployment compensation taxes at all for some huge corporation and works in some other department and has the authority to prefer one creditor over another and payment of regular on going debts, has no authority to sign checks, malce fiscal decisions, to incur debt and doesn't receive 5% or more of the gross annual income. > This individual is put into a category where he can be charged with personal liability for some corporations, unemployment taxes?

171 REP. MANNIX: This is the policy decision that has to be made today.

172 REP. JOHNSON: We need to focus on the people who do have something to do with unemployment taxes and fail to do their job.

176 MUNSON: You have described an extreme analogy of a factual situation. > Scope is much narrower now with changes. > The employment division could go after the kind of individual that you described as practical matter, that is not a kind of individual, that if a defense is raised, that is probably going to be ultimately be found liable.

186 REP. JOHNSON: His job is not to accept the government's word without questioning when it deals with controlling the lives of Oregon's businesses. > The language needs to be addressed at the people it is intended and not anyone else. > The wording is too broad and they need to be narrowed. > Maybe Subsection (A) needs to be added to Subsection (a), so only people dealing with are those who have authority to cause unemployment compensation taxes to be paid. > The wording needs to be refined to make sure that people are not going to be held liable when they shouldn't be. > If the wording says that people who are going to be responsible for unemployment taxes don't have to have any say with unemployment taxes, then we're missing the point.

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204 REP. MANNIX: Suggests that: "authority to cause unemployment compensation taxes to be paid" be put into Subsection A. Thus it would read: "A person who has the authority to cause unemployment compensation taxes to be paid when due and who on behalf of the employing unit etc. etc." followed with the options. > Replace authority with capability.

215 CHAIR DERFLER: Needed clarification.

219 REP. MANNIX: Should read that instead of saying the person has the authority should say the capability to cause unemployment compensation taxes. > What about authority to "initiate" or "act upon"?

226 HUNTER: Concerned with ability to get at the principles, which is what the issue was about in the first place.

228 REP. MANNIX: Are there principles that don't have that authority?

230 DEROUIN: Intent was to hold corporate officers and directors liable for these taxes.

232 REP. EDMUNSON: Don't they (officers and directors) act upon the bylaws that designate a officer to be the responsible party. > If the person has the authority to "act upon" or "cause", then everyone with corporate authority is included, thus one person can't held responsible solely. 241 DEROUIN: If someone wants to abuse tbe process, the bylaws don't designate anyone as a responsible party to pay the unemployment taxes. 246 REP. EDMUNSON: These individuals do have the power to enact bylaws. > Suggests that they leave it to be determined on whether they have the power to act, not on how they act, thus they can't control their own destiny.

253 REP. MANNIX: Presents two options: 1) Person has capability to initiate the process to ensure the payment of unemployment compensation taxes. 2) Could say "an officer, director or shareholder, who on behalf of the employing unit..." > "Could anyone not be an officer or director or shareholder and also have duty to supervise and have one of the shopping list" 261 HUNTER: Is shareholder to be included in this?

263 REP. MANNIX: If they control the work of an individual as well as direct the manner in which it is to be done, and have one of these option, they are involved shareholders. 266 HUNTER: Those concerns are being addressed in current language which adds: duty, control, authority along with list of options.

271 REP. MANNIX: Representative Johnson's concern is to define the "individual". "Trigger lever. should be something other that "control and direction" to more specifically identify the individual responsible.

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> Better clarification is needed. Are officers, directors and shareholders the target of this language?

281 CHAIR DERFLER: "If the "authority to prefer one creditor over another" were eliminated, would this be acceptable to Representative Johnson?

286 REP. JOHNSON: Two things can be done: 1. Moving the language: "the authority to cause unemployment compensation taxes to be paid."so that it would apply to everyone. > "A" should be a part "a". 2. Language: "to whom one or more of the following apply" could be changed to two or three of the following apply. > These options are indicative of principle stems, so should have more of them apply to make sure that the people who are truly responsible are being held liable. > Not very satisfied with the argument even if it is defined more narrowly, because it is an ordinary corporate debt and not a fiduciary obligation like withholding taxes.

328 MOTION: REP. EDMUNSON: moved to amend the Dash 2 proposed amendment to HB 2473, to read as follows: Line 12, after second comma following unit, insert words: "Has the-authority to act upon, direct or cause unemployment compensation taxes to be paid when due and" > What this does is move language from lines 16 and 17 to make it a primary condition and expands in response to earlier concern, not to simply have the authority to cause the payment to be do to avoid the shell game but to say: "act upon, direct or cause". > This would bring it come as close

as it could be able to capture the decision makers in this. 345 REP. MANNIX: Repeat.

346 REP. EDMUNSON: Line 12: "A person who on behalf of an employing unit has the authority to act upon direct or cause unemployment compensation taxes to be paid when due and is in such relation to an individual going on". > Further motion would be: Line 14: Delete the word "one" and inserting the word "two". > By moving A into Subparagraph a, have added one of the conditions again requiring two additional to make three which should satisfy some concerns. 363 REP. MANNIX: Could you split the motion?

366 REP. EDMUNSON: Yes, and would withdraw the second aspect on line 14 move earlier amendment to line 12.

368 REP. MANNIX: Supports the amendment proposed by Representative Edmunson to the Dash 2 amendments to this first part. > This will define the kind of person that has been referred to as well as adding: "direction and control". > The second proposal will be addressed separately.

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373 REP. JOHNSON: Ihig is satisfactory and very helpful. _ 383 CHAIR DERFLER: Representative Mannix has withdrawn his original motion and now we will amend the Dash 2 amendments.

VOTE: In a roll call vote, the motion carried with Rep. Dominy, Rep. Edmunson, Rep. Johnson, Rep. Mannix, Rep. Repine, Rep. Watt and Chair Derfler Voting AYE. 394 MOTION: REP. 13:DMUNSON: moved for split motion to read as follows: Line 14 of the Dash 2, as amended, amendments, deleting the word "one", inserting the word "two" > This would mean that two of the five requirements be met.

402 CHAIR DERFLER: This would make it more restrictive. 403 REP. JOHNSON: There are two sections here that have the same list of things. Do we change to "two" in the second group as well? 407 REP. EDMUNSON: Would like to wait to see how this amendment goes first.

409 REP. MANNIX: Is opposed to this amendment because it has already been narrowed considerably in limiting to referencing to someone who has authority to act upon, direct or cause unemployment taxes to be paid when due. > Adding to this, they must direct and control an individual for the employing unit and one of the options. > If they change it to two on the list, companies could set it to be able to evade personal liability. 419 MUNSON: Agrees with this and also feels that litigation will also be affected negatively which may render this statute useless. > The addition of moving "A" into "a", which will make so there is direct correlation to the payment of responsibility to pay taxes. TAPE 52, SIDE B

004 REP. JOHNSON: Maybe the need to change this from one to two is not as great as before because of the change of "A" to small "a", but the principle status indicators are helpful because the goal is to deal with the principles.

010 REP. EDMUNSON: Because of the lack of support from the committee, withdraws motion.

012 CHAIR DERFLER: Would this be satisfactory to Representative Johnson?

014 REP. JOHNSON: Still unclear about the definition of who the individual is listed on line 13.

019 REP. EDMUNSON: The wording gives clarification that these people are in supervisory capacities and who the individual is not what is important, but the person who is going

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to be held liable has supervisory authority.

023 REP. JOHNSON: So the person being supervised could be anyone?

026 REP. EDMUNSON: All witnesses at the table are in agreement. 028 REP. MANNIX: DASH 2 amendments, Pg. 2, would be willing to change the wording to "two or more of following", three individuals would have to apply there.

035 MOTION: REP. MANNIX moved that the word "one" on line 4 of page 2 to read two .

038 CHAIR DERFLER: After no objections to the amendment, accepted as stated. MOTION: REP. MANNIX moves that the Dash 2 amendments, as modified to the full bill. 042 CHAIR DERFLER: After no objections, accepts.

043 MOTION: REP. MANNIX moved that HB 2473 be amended to the floor with a do

pass recommendation. 043 REP. JOHNSON: Objection because "we're talking about piercing the corporate veil here". State of Oregon already has this power as related to employers who have a fiduciary duty i.e. the withholding of employees taxes and on behalf of the employee is to forward them to the state of Oregon. > If it is not forwarded, they are personally liable that is their problem. > In this case, we are talking about unemployment taxes, not fiduciary thing, it is something the employer owes. > Dismantling the corporation status in the state, corporation obligated for the corporation's debts, and unless special circumstances arise, the shareholders are not personally liable for the corporation's debts, we start down the road and who knows where it is going to end. We end up with no corporation status available to people in this state, so they decide not to own corporations, they take their jobs and their money where they can have a traditional corporation status that is afforded to incorporate all over the country. > We're getting over zealous in trying to help the state collect all this money everything else doesn't matter. > Need to be careful to remember that all we're dealing with here is corporation debts, not fiduciary obligations and that distinction is simple to reasoning why we shouldn't give this extra power to state.

070 CHAIR DERFLER: Understands what he is saying but when someone doesn't pay their unemployment taxes, someone else has to pay.

073 REP. JOHNSON: If someone doesn't pay a debt to a private business, then this business has to charge higher to its customers in order to cover the losses. > Corporations are an accepted legal entity in this state, and they have the same rights

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as everyone else. > Leave it a corporate debt and not make it more than what it is.

VOTE: In a roll call vote, the motion carries, with Rep. Dominy, Rep. Edmunson, Rep. Mannix, Rep. Repine, Rep. Watt, and Chair Derfler, voting AYE and with Rep. Johnson voting NAY.

084 REP. REPINE: HB 2532 to reopen:

MOTIO6I: REP. REPINE moved the rules be suspended to allow Rep. Dominy to cast a vote on HB 2532, which will not change the outcome of the action.

088 VOTE: Rep. Dominy voted NAY.

090 CHAIR DERFLER: Adjourns meeting at 10:02 a.m.

Submitted by,
Dozler

Reviewed by: Guadalupe Ramirez

Victoria

Submitted for the record:

Testimony from Irv Fletcher, Oregon AFL-CIO (EXHIBIT B)

EXHIBIT LOG:

A - HB 2532 - American Camping Association - 12 pp. B - HB 2532 - Irv Fletcher, Oregon AFL-CIO - 1 p.

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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.