

HOUSE COMMITTEE ON LABOR

March 15, 1991 Hearing Room D 8:30 a.m. Tapes 62 - 64

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 Administrator Edward C. Klein, Committee Assistant MEASURES CONSIDERED: HB 2562 - Public Hearing HB 2825 - Public Hearing & Work Session HB 2871- Public Hearing - 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.

TAPE 62, SIDE A

003 CHAIR DERFLER: Calls the meeting to order at 8:33 A.M.

PUBLIC HEARING ON HOUSE BILL 2562-EXHIBITS A to E

Witnesses: Olivia Clark, City of Salem Ron Hutchinson, Risk Manager, City of Salem John Hoffman, Rick Management Division, City of Portland Larry Young, Deputy Administrator, Workers' Compensation Division, Department of Insurance and Finance Maria Keltner, League of Oregon Cities and Association of Oregon Counties Bill Blair, Assistant City Attorney, City of Salem

CHAIR DERFLER: Opens the Public Hearing.

009 OLIVIA CLARK, City of Salem: Describes the bill.

-She presents amendments (EXHIBIT A).

-We submitted this bill for two reasons.

-1. To remove a redundancy in the statute requiring self-insured cities to carry a surety bond. House Committee on Labor March 15, 1991- Page 2

-The statutes as well as the Federal Government accounting standards strictly govern local government budget practices. There are several areas of protection currently in place that make the surety bond unnecessary.

-2. To save tax payers' dollars.

-We met with the Department of Insurance and Finance and made significant progress and gained a better understanding of how self-insured local governments operate.

-She describes the amendments.

055 CHAIR DERFLER: Would the local governments be prohibited from using these funds as an asset for borrowing? 059 RON HUTCHINSON, Risk Manager, City of Salem: To the best of my knowledge these funds would not be specific collateral for bonding or loans.

-The funds in these reserves are part of the investment pool.

CHAIR DERFLER: If the city went broke would those funds be available to cover the reserves?

HUTCHINSON: Is advised by legal counsel that this language would be binding on our city council to use these funds for the purpose defined in the statute.

CLARK: We have legal counsel who can address that.

-Section 5 of the amendment addresses a concern that the bill could create a shortfall in the Selfinsured Employer Loss Adjustment Reserve within the Department of Insurance and Finance.

-We removed the population threshold and substituted other statutory criteria.

-We changed the amendments so that any city or county that meets these requirement would be exempt from the surety bond requirement.

-Any newly self-insured city or county would have a three year waiting period.

-We would continue to submit an annual independent audit that would verify that the designated workers' comp reserve is being maintained in an actuarially sound basis.

102 REP. JOHNSON: Refers to subsection (4) of the amendments. This refers to paragraph (2) of subsection 3. There is no subparagraph (2).

CLARK: That should be 3(b).

REP. JOHNSON: It should be 3(a).

CLARK: Correct. - House Committee on Labor March 15, 1991 - Page 3

REP. JOHNSON: What does "actuarially sound basis" mean?

HUTCHINSON: It doesn't require we have an actuarial study performed, but requires that it meets actuarial criteria.

-The new standards for public entities coming into place in June 1993 requires us to maintain our reserve funds in the risk management program under an actuarially sound basis, but doesn't specifically require an actuarial study.

-This language is in response to the new standards.

REP. JOHNSON: The audit that will determine if this is actuarially sound is performed by the Department of Insurance and Finance?

HUTCHINSON: No.

-He describes the two forms of independent audit.

REP. JOHNSON: We might want to add language to make it clear no actuarial study is required.

149 CLARK: Actuarially sound is the language we are using to avoid an actuarial study.

-The independent audit should be adequate.

REP. JOHNSON: Would you object to language that said an actuarial study won't need to be required?

HUTCHINSON: No.

159 REP. MANNIX: We're dealing with terms of Art. "An actuarial sound basis" means that if anyone did a study it would be found to be actuarially appropriate.

-If we required an actuarial study, that would be another term of Art and it would have to be stated.

-We're not saying that and it's not being required.

-We determine it's actuarial soundness by an independent audit.

-REP. JOHNSON made a good point.

-He is concerned about adding that language, because the department might want to challenge whether or not there is an actuarial sound loss account and might want to require it.

186 JOHN HOFFMAN, City of Portland: This is a key issue.

-We would not expect or desire an actuarial study to be done.

-The annual financial report that is required for all cities and counties is the sufficient basis for verifying that these funds are being maintained appropriately.

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-He presents testimony in support of HB 2562 (EXHIBIT B).

243 REP. MANNIX: How would you feel if we added language such as, "An actuarial study is not required to establish the actuarially sound basis of a loss reserve account"? CLARK: We have no objection. CHAIR DERFLER: Are you satisfied? CLARK: Yes. REP. JOHNSON: What is the loss reserve account? HOFFMAN: It is a separate fund that is set aside to pay claims specifically for workers' compensation. 268 LARRY YOUNG, Deputy Administrator, Workers' Compensation Division, Department of Insurance and Finance: We previously testified in opposition to HB 2562. -He presents a letter from the department to the City of Salem (EXHIBIT C). -The problem with an ordinance of resolution is that it can be changed overnight. A charter change would give us an advance notice of a change of the reserve fund. -We have a concern with subsection (5) of the amendments. -The Self-Employment Adjustment Reserve is funded by assessments charged to all self-insured employers. -If a self-insured employer defaults and injured workers are not paid and the funds in the deposit are used up, the next avenue to pay injured workers is the reserve. 310 CHAIR DERFLER: Does that happen regularly? YOUNG: We had about two or three where we had to dip into the reserve. CHAIR DERFLER: Over what period of time? YOUNG: Since 1982. -There's no reimbursement from that reserve. They are giving up payment to the injured workers if they default on payment. -Our other concern is that this language would open it up to any and all counties. -Three of the cities currently have \$2.5 to \$3 million in losses. -As it's expanded, the risk increases.

With the increase comes the necessity to increase the premium assessment to fund the reserve.

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-One other point we made that's not in the letter is that we want the Self-Insured Employers Association to agree with the concept before we offer our support.

REP. MANNIX: We could take care of your concern about the financial verification by putting the word "annual" in front of "independent audit".

-We could require the city ordinance or resolution be legal as long as there is a balance.

-Is the department saying you want to require an actuarial study for any city or county that wants to go through this process?

365 YOUNG: Is not sure how you have an actuarial sound accounting system unless it's looked at by an actuary at some point.

REP. MANNIX: Doesn't an actuarial study require you look at every pending claim and study the reserves as to that claim? It's pretty comprehensive.

YOUNG: The Department is going through an actuarial process to make sure the methodology used to come up with the establishment of the reserves was actuarially sound.

-He believes that somewhere in the process there would have to be an actuarial study. He is not certain whether or not it would have to be done more than once.

405 CHAIR DERFLER: How often do you do this? Is it done annually?

YOUNG: We annually verify the reserves of the self-insured employers to develop what their outstanding liabilities are on their claims.

-That becomes the figure to develop the surety deposit, which is being deleted by this recommendation.

421 REP. JOHNSON: The department appears to be disregarding the different nature of a city or county from any other self-insured employer.

-Cities and counties can technically go bankrupt, but they can tax. These kinds of obligations come at the front of their spending habits.

-The city or county has to take care of their debts first.

YOUNG: That's why we're trying to compromise.

-The concern is defaulting on a payment. The priority of who gets paid and when they get paid becomes the issue.

-The purpose of the deposit and reserves is to make sure there is money available to pay injured workers.

-The point is, if there is a default, where will the money come from during that period of time?

TAPE 63, SIDE A . 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 House Committee on Labor March 15, 1991- Page 6

031 REP. MANNIX: We could put in a qualifier. To my suggested language, "An actuarial study is not required to establish the actuarially sound basis of a loss reserve account"; we could add, "unless the director finds probable cause to question the financial viability of the loss reserve account." -Does this sound reasonable? YOUNG: It's difficult to think of all the possibilities. We'll look at it. CHAIR DERFLER: Perhaps you can get us some amendments you both can live with. REP. MANNIX: Will ask counsel to draft some amendments. We can schedule a work session after we get the department's reaction.

054 MARIA KELINER, League of Oregon Cities and Association of Oregon Counties: Our concern with the amendments is how the loss reserve account is defined and whether it requires a trust account with a third party management fee. CHAIR DERFLER: If you check with the department they can tell you how that is set up and functions. KELTNER: Didn't believe they had it defined. CHAIR DERFLER: He thinks they have a program set up. 065 REP. MANNIX: We're referring to the generic loss reserve account most people set up. -He assumes the self-insured cities have a special account in which they set up funds. He doesn't think they have to have a special trust administrator. 070 BILL BLAIR, Assistant City Attorney, City of Salem: The account would be set up by ordinance or resolution and would not require a separate trust manager. -Under the local budget laws and restrictions, the conditions for the disbursement of those funds are restricted. -The amendments impose an additional restriction, they would only be disbursed for administration payment of claims of the workers' comp program. REP. MANNIX: Would you be comfortable with a provision that would say, the city or county ordinance or resolution shall not be rescinded unless the city or county qualifies under sections 1 (a) or (b), posting a bond or getting a guaranteed contract for insurance coverage? BLAIR: That's the intent of the amendments. -He has no problem with it. -There are at least two other locations in the statutes where the term, "actuarially sound basis" is used. In none of those instances is a specific study required.

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CHAIR DERFLER: Closes the Public Hearing.

PUBLIC HEARING ON HOUSE BILL 2825-EXHIBIT F & G Witnesses: Rep. Bob Shiprack, District 23 Bill Miller, Business Manager, IBEW Local 125 Greg Teeple, IBEW 125 Doug Heider, Northwest Association of Line Constructors

CHAIR DERFLER: Opens the Public Hearing.

110 VICTORIA DOZIER: Describes the bill.

115 REP. BOB SHIPRACK, District 23: Testifies in support of HB 282 5.

-He refers to the Oregon Administrative Rules and Federal OSHA Laws (EXHIBIT F).

-Federal law allows linemen to work high voltages with bare hands or with rubber gloves (the "barehand method").

-The State of Oregon does not allow the "bare-hand method". We use the "hot-stick method".

-This is the highest concern of line people in this state.

-He hopes we can do everything we can for worker safety and do not want to allow the use of barehands or rubber gloves on voltages exceeding 5,000 volts. 166REP. EDMUNSON: What about under 5,000 volts? Why do we allow them to bare-hand any of these volts? REP. SHIPRACK: We're trained professionals, but there is a limit. -Most distribution voltages are under 5,000 volts. 193 BILL MILLER, Business Manager, IBEW Local 125: Presents testimony in support of HB 282 5 (EXHIBIT G).

-Everyone is trained for 5,000 volts and below. Above 5,000 volts there is a different training scenario.

-He doesn't think any utilities oppose this.

242 REP. REPINE: What is the stick-method?

MILLER: Explains. REP. REPINE: Are leather gloves used in conjunction with rubber gloves considered barehanded?

MILLER: There are rubber gloves under the leather gloves.

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-Under 600 volts it's common practice to use bare-hands or leather gloves.

274 GREG TEEPLE, IBEW Local 125: Presents an amendment.

-On line 5 after "bare-handed" insert "or rubber glove".

295 DOUG HEIDER, Northwest Association of Line Constructors: Testifies in support of HB 2825.

REP. REPINE: Do you have any problem with the amendment?

HEIDER: It is appropriate and satisfactory.

CHAIR DERFLER: Closes the Public Hearing.

WORK SESSION ON HOUSE BILL 2825

CHAIR DERFLER: Opens the Work Session.

317 MOTION: REP. DOMINY: Moves to adopt the suggested amendments. On line 5 after "bare-handed" insert "or rubber-glove".

REP. JOHNSON: As a friendly amendment he would change "glove" to "gloved".

CHAIR DERFLER: Hearing no objection the amendment is adopted.

338 MOTION: REP. DOMINY: Moves House Bill 2825 as amended to the Floor of the House with a do pass recommendation. VOTE: The motion passes 6 to 0. EXCUSED: REP. WATT. CARRIER: REP. SHIPRACK

PUBLIC HEARING ON HOUSE BILL 2871-EXHIBITS H to M

Witnesses: Karl Frederick, Associated Oregon Industries Diane Rosenbaum, Oregon State Industrial Union Council Irv Fletcher, President, Oregon AFL-CIO Marilyn Coffel, Bureau of Labor and Industries Sue Jordan, Deputy Administrator, Civil Rights Division, Bureau of Labor and Industries Raleigh Lewis, Administrator, Civil Rights Division, Bureau of Labor and Industries Jeanne Meyer Rodriguez, Oregon Public Employees Union Gary Weeks, Director, Department of Insurance and Finance Tom Malloy, Joint Council of Teamsters

CHAIR DERFLER: Opens the Public Hearing. - House Committee oa Labor March 15, 1991- Page 9

359 VICTORIA DOZIER: Describes the bill (EXHIBIT H).

KARL FREDERICK, Associated Oregon Industries: Presents testimony in support of HB 2871 (EXHIBIT H).

TAPE 62, SIDE B

020 DIANE ROSENBAUM, Oregon State Industrial Union Council: Presents testimony in support of HB 2871 (EXHIBIT I). 102IRV FLETCHER, President, Oregon AFI -CIO: Presents testimony in support of HB 2871 (EXHIBIT -This is not an attack upon the employees of the Bureau of Labor and Industries, this is a negative critique of the administration of the program. 109 REP. MANNIX: Would rather hear commentary on the concept where this program ought to be. -Usually the Bureau of Labor and Industries handles unlawful employment practices. -If there is a problem with the administration we can talk to the Governor and the official in charge of BOLI. -He wants to hear arguments on the concepts and efficiency of moving the program. FLETCHER: You've heard that argument already. -We would want to make sure there would be no negative impact in the wages, hours and working conditions of the laborers in the Bureau of Labor and Industries if there was such a transition.

131 FREDERICK: Was confused by the analysis by the staff, "OR-OSHA is one of the few agencies that is not required to promulgate rules ...."

-He refers to ORS 654.290.

-He assumes they are subject the rule making process.

CHAIR DERFLER: Appreciates the clarification.

144 REP. DOMINY: IRV, do we have a copy of the U.S. Department of Labor's audits?

FREDERICK: That is attached to my testimony.

REP. EDMUNSON: Refers to the aforementioned letter.

-They identified the deficiencies were due in part to extremely high caseloads.

-Reducing the caseloads by increasing the staff would be the obvious solution.

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-The Department of Insurance and Finance is funded through assessments on employers.

-Is it Associated Oregon Industries's position that the employers should pay?

FREDERICK: Half the funding is from the Federal Government.

-My understanding is that instead of contracting out they will do it internally with the same amount of money.

REP. EDMUNSON: Why could OR-OSHA do it better and would they have to ask for more money to do the job?

FREDERICK: You'll have to ask the Director of Insurance and Finance. -We feel they will do a better job. The track record for Bureau of Labor and Industries has not been that good the last three years.

REP. EDMUNSON: The U.S. Department of Labor identified one of the reasons was not the quality of the investigators, but the high case load.

FREDERICK: Could present statistics.

REP. EDMUNSON: He thinks there is an inconsistency.

FREDERICK: Has a suspicion that the \$200,000 is not specifically being used for these cases. He can't substantiate that, but considering their performance that's probably the case.

REP. EDMUNSON: What in the bill would prevent OR-OSHA from doing the same thing?

FREDERICK: They will only have one type of discrimination case to handle.

199 FLETCHER: The Bureau of Labor and Industries has alleged we didn't present our problems to them.

-We mailed a report to the bureau in March 1990, outlining our concerns.  
REP. MANNIX: This program is half-funded by the Federal Government.

-If the money is shifted to OR-OSHA, will we see their discrimination activity subsumed within all the other health and safety investigations?

FLETCHER: Can't tell.

REP. MANNIX: This could be a blessing in disguise for BOLI.



-OR-OSHA may be hard pressed to get an increase from Ways and Means.  
-BOLI won't get any more federal money, but will have a reduced caseload. House Committee on Labor March 15, 1991- Page 11

-Where do we go with the funding?

-We should deal with the conceptual issue of where this program belongs.

237 REP. DOMINY: Refers to the letter from the U.S. Department of Labor.

-Is there any reason to believe OR-OSHA would be able to put the training into place and make that shift rapidly and effectively?

FREDERICK: Is confident they can do it. They have a very good track record.

-He understands they are asking for two additional FTE's.

FLETCHER: OR-OSHA has a successful track record.

268 REP. REPINE: Refers to the letter from the U.S. Department of Labor.

-He refers to a letter from MARY WENDY ROBERTS to TED KULONGOSKI (EXHIBIT L).

-Our notice of concern is important, but we should see if they have made the corrections and adjustments to meet those concerns.

FLETCHER: Doesn't know if they've responded in writing.

REP. REPINE: He finds it's amazing that BOLI wasn't given the courtesy of being informed about what was going on.

316 ROSENBAUM: We don't want to reduce this to an inter-agency turf battle.

-The fundamental reason to make the change is that we believe the program would be more effective.

-We don't want these complaints to be filed to begin with.

-OR-OSHA is perceived as an aggressive enforcer of health and safety laws. Since they are the point of contact for the employers and workers we hope this will allow them to create a climate where discrimination will be stopped before it has occurred.

338 CHAIR DERFLER: We need to be looking at whether an agency is doing a better job for the worker. REP. JOHNSON: If we move the responsibilities from one agency to another we don't want to adversely effect the employees in the former agency.

FLETCHER: It's easy to amend the bill.

REP. JOHNSON: Do we give them more money and less work?

FLETCHER: REP. DOMINY, has the history of similar amendments. House Committee on Labor March 15, 1991- Page 12

REP. JOHNSON: Do we pay them the same and employ same number, but give them less to do? 361 REP. DOMINY: We moved the jobs programs last session and basically said they lost nothing. We gave them the option of transferring or staying in their current class)fication. FLETCHER: We can get you the language. REP. JOHNSON: We're talking about discrimination cases, not safety cases? ROSENBAUM: That's correct. REP. JOHNSON: There are investigators in the Bureau of Labor and Industries good at investigating discrimination cases. -Are there any personnel in DIF that are good at investigating discrimination cases as opposed to safety problems? 394 ROSENBAUM: My understanding is that part of the Mahonia Hall reform package was the addition of staff to deal with criminal prosecutions for health and safety violations. Those are the only staff who would have overlapping skills. -She assumes they would seek people with a civil rights background. FLETCHER: Our amendment would allow staff to transfer from the Bureau of Labor and Industries to OR-OSHA. REP. JOHNSON: If we have experts at investigating discrimination cases of all kinds, in one month there may be several sex discrimination cases while in another month there may be no sex discrimination cases but several workers' comp discrimination cases. If they work out of one agency they can absorb and level out the workload. If there are two separate agencies they may be overworked at times and underworked at other times. ROSENBAUM: That may be one of the strongest arguments for the present system. -These cases are paid for on a per case basis. -If the case load varies there is a question whether money is being used for the purpose for which it's designated. FREDERICK: We're not talking about workers' compensation cases. We're talking about unlawful employment practices under ORS Chapter 654, the Oregon Safe Employment Act. -This belongs under OR-OSHA.

TAPE 63, SIDE B

022 REP. DOMINY: Refers to the portion of the report supplied with DIANE ROSENBAUM's testimony. Everyone got a copy of that report last session. - House Committee on Labor March 15, 1991Page 13

CHAIR DERFLER: Recesses at 10:00 A.M.

-He reconvenes at 10:11 A.M.

043 MARILYN COFFEL, Bureau of Labor and Industries: Presents testimony in opposition to HB 2871 (EXHIBIT M).

-We never received a letter from the Seattle office referred to in earlier testimony.

-We never received a letter from the AFL-CIO in regard to these issues.

-We had the first meeting of the Labor Advisory Board a few weeks ago and no one raised this issue.

-She approached the AFL-CIO about the impetus of this bill and was told to wait until today.

143 CHAIR DERFLER: You mentioned a duplication, having to go to two different agencies. Doesn't that happen now? -How would you respond that OR-OSHA could better deal with the claim? 149 SUE JORDAN, Deputy Administrator, Civil Rights Division, Bureau of Labor and Industries: They are completely different areas: Employment retaliation as opposed to a safety complaint. -With regard to duplication: Quite often there is

an injured worker issue along with an OSHA retaliation issue. CHAIR DERFLER: If the transfer was made and you were transferred, would there be more continuity than there is today? JORDAN: Doesn't think so. -The actual safety point is not usually the major issue in these types of investigations. -The employment venue facts are what are important. -OR-OSHA has been very helpful when we've had specific safety questions. CHAIR DERFLER: There is no duplication when they hear a claim and then you have to start over? JORDAN: Not necessarily. Quite often when there is safety complaint the retaliation has not taken place yet. CHAIR DERFLER: We're more interested in how the person is served. COFFEL: Would like RALEIGH LEWIS talk about our audits. -We have complied any time we have received any suggestions.

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-Our last audit summary indicated we were 100 percent timely.

190 RALEIGH LEWIS, Administrator, Civil Rights Division, Bureau of Labor and Industries: Has gone over all over the evaluations from the federal monitor since 1988. Most of the issues raised are fixable.

-Is surprised to hear that the quality of our work is an issue. That has never been raised in any evaluation.

-He discusses some of the issues that came up in the evaluations.

-We provide ongoing training and have some of the best trained staff in the region.

-In spite of the high caseload our processing time is impacted by two days.

-All our OSHA cases are completed in four months, many in three months.

-Our work has been commended by EEOC and HUD.

-He does not see how the state will gain with the transfer.

-This program is only costing \$135,000 and we're negotiating a different fee rate. If that rate is agreeable the costs will go down.

-Duplications will occur. Many complaints also have another basis as a justification for the allegation.

-Even if the responsibility was transferred, two agencies may still investigate complaints filed by one individual.

-We have fixed all the problems raised in the evaluations.

-We have been commended for our work.

-We invite the federal OSHA monitor to meet with our staff to make sure we do what we are expected to do.

252 CHAIR DERFLER: Appreciates the remarks.

REP. DOMINY: It's my understanding you only have one or two FTE's that work on these cases. What kind of backlog do you have?

-Give us some examples of what's happening and how you can shorten that period of time.

JORDAN: OSHA retaliation cases have to be completed within 90 days of filing.

-We are continuing to look at ways to get them processed faster.

-Our caseloads have gone down and the cases are worked much more quickly. \~ . . These minutes contain materials which paraphrase and/or summarize rtaternenta 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. House Committee on Labor March 15,1991- Page 15

REP. DOMINY: What have you done since the federal report said you needed more training?

282 JORDAN: We had a major training in September 1989.

-We have continual training and have made a concerted effort to do more training.

REP. DOMINY: How many workers work on this and how many are trained?

JORDAN: They are all trained and all do OSHA retaliation cases.

REP. DOMINY: How many FTE's do you actually have?

JORDAN: One clerical and one investigative staff.

315 REP. REPINE: It appears deficiencies have been identified.

-You referred to a preliminary report. Is there any way this committee can receive the report you referred to?

COFFEL: Someone from OR-OSHA could let you know the appropriate person to contact.

-She only has a draft report and was asked not to distribute it.

-This is not a turf battle.

-We have worked through all issues with OR-OSHA in which we are interrelated and we have managed to work well together.

-She has no concerns or fears about our relationship with OR-OSHA.

-Her only concern is that we continue to be able to use our expertise in cases of retaliation.

359 REP. EDMUNSON: Does the bureau have any position on a proposed amendment to transfer OROSHA to BOLI.

-That would be an obvious solution.

COFFEL: That is a policy decision.

REP. REPINE: Is there an audit report or annual report from the Housing and Urban Development or Equal Employment Opportunity Commission to submit as evidence to show that they are satisfied with your competency?

COFFEL: We will give you copies of any audit we have received in the last five years.

REP. REPINE: We've had testimony that there have been deficiencies reported in past audits. -He suspects a report would come from a higher level to indicate there is or is not a deficiency. icate there is or is not a deficiency. House Co littee on Labor March 15, 1991- Page 16

CHAIR DERFLER: We'd be happy to get that information, it's sort of a moving target; things deteriorate and things get better. REP. REPINE: That's the nature of the beast. -If we find that certain technical flaws were pointed out and following reports indicated those deficiencies were worked out, we could see a track record of addressing the issues.

423 JEANNE MEYER RODRIQUEZ, Oregon Public Employees Union: Testifies in opposition to HB 2871. -We all support protection of workers' rights in enforcing the safety and health and retaliatory discrimination. -She does not think a case has been made for this transfer. -Discrimination issues belong in BOLI. -If the transfer was made there would still be injured worker discrimination issues that BOLI would deal with. TAPE 64, SIDE A 018 RODRIQUEZ: The workers at BOLI feel they can't do as good a job as they would like to. -There are two reasons: -1. The workload is too high. The solution is to add staff. -There are inadequate resources. -Given the resources government is often asked to do too much. -2. Civil rights laws are frustrating. There is a heavy burden on the employee to prove discrimination has taken place. -If we have problems with workload and management let's deal with them. We don't need a statute. -If there is a problem with the law, let's change the law. -Transferring the program won't change the law. The employees at DIF would still have to deal with it and they'd have to do it with two employees. -There's been a failure to communicate. She never heard about some of the problems that were raised. -In most cases a change in statute ought to be a last resort. Groups should sit down and try to work out the problems.

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-Case law has made it more difficult for employees to prove discrimination.

068 GARY WEEKS, Director, Department of Insurance and FSnance: Does not view this as a turf battle and will do everything he can to prevent that from happening. -The principal interest we have is to get timely and fair hearings for workers at a reasonable cost. -There are two parts to the question: -1. There is a program administration side to the problem. -2. There is a policy side of the problem. -The director is ultimately responsible for the timeliness. -We pay BOLI \$853 a case no matter how long it takes or no matter the outcome. -The case goes to court the Department of Insurance and Finance pays the court costs. -Over half the cases averaged over 135 days. -BOLI has staff problems. -One alternative is to reduce the time load and the number of hours it

takes on each case. -We could look at how DIF might do it. -He met with MIKE KAIEL, Deputy Administrator, Bureau of Labor and Industries. We are interested in working out this problem as best we can. -The bureau has committed to a new formula for charges which should reduce the charge for each case to around \$600. -They have committed to giving our cases priority. -If the program was moved to DIF we have the staff to handle the cases. -There's no exchange of funds. We have a 50/50 funding. In the last two federal years the bills have been approximately \$196,500. -If the bureau can reduce it's charges, that cost would substantially come down. -The policy question is, where should these disputes be resolved? -The bureau has made the argument that all discrimination concerns should remain in one place. -The department can make the argument that there are linkages between the safety and health activity, the decisions made against an employer, which may result in adverse actions on employees.

These minute' 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 order" of the proceedings, please refer to the tapes. House Committee e. L or March 15, 1991 Page 18

-He is prepared to believe the Division can do a better job.

-We feel we could take over this problem and perform as well or better.

165 REP. DOMINY: If we make a move, there is not only a policy decision, but there's a decision on the cost. -If we made this change, how much money would you expect to spend on training and who would pay?

WEEKS: The bill wouldn't be that large.

-The Investigative Unit has an attorney and pare-legal budgeted.

-If we had this responsibility we would look for an attorney with some discrimination background.

-There is the likelihood we would pick up the laid off worker from the bureau. That individual might welcome the transfer.

-Training is not a major issue.

REP. DOMINY: How many people would you expect to work on this program?

WEEKS: The pare-legal and attorney and one additional person.

-The advantage we have is this recently funded investigatory unit that could pick up these kinds of responsibilities.

217 REP. REPINE: What were the three major concerns?

WEEKS: Timely, fair and cost effective.

REP. REPINE: You indicated you hoped there would be some cost savings; that's your problem, not ours.

-If you want to contract on a case or hourly basis, that's your business.

-To hold BOLI as guilty, because they agreed to accept \$800 per case,

does not have a lot of value.

-BOLI has indicated they do things in a timely fashion.

-There are problems with timeliness in the workers' comp arena.

250 WEEKS: Doesn't think that 194 days and 14 hours on a case to determine no action is timely.

-If it's because they don't have enough staff, he would support more staff.

-He wouldn't expect this program to operate the way the workers' comp system operates. He'd like an improvement in the workers' comp system.

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-We are in control of the contract and have been told it takes roughly \$800 to handle a claim.

-They have agreed that they will substantially drop that cost if they continue to be the contract organization.

-If they remain the contractor we will negotiate a lower contract

279 REP. EDMUNSON: Tends to agree that the time line is too long.

-He is troubled that a decision shall be issued in a specific time. Some of these cases are very difficult and complex. -The more we compress the time, the more chance we have in not resolving the dispute in a fair way.

-Maybe one of the problems is that employers need not give reasons for discharge.

-Should the state require the employer to state the reasons for the discharge?

WEEKS: Even if we had that requirement, it wouldn't do away with disputes.

-He agrees that 90 days was not enough time if a case was being regularly worked.

-He has a problem that within 135 days a case is only worked 15 hours.

REP. EDMUNSON: Agrees.

331 TOM MALLOY, Joint Council of Teamsters: Testifies in support of House Bill 2871.

CHAIR DERFLER: Closes the Public Hearing.

-He adjourns at 11:01 A.M.

TAPE WAS NOT ON.

The committee was reconvened to allow REP. WATT to vote.

REP. WATT VOTES AYE to send House Bill 2825 to the Floor of the House

with a do pass recommendation.

CHAIR DERFLER: Adjourns AT 11:04 A.M.

Submitted by: Victoria Dozler, Committee Assistant  
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Reviewed by: Edward C. Klein,  
Committee Administrator

EXHIBIT LOG:

A - Amendments to HB 2562 - Olivia Clark - 1 page B - Testimony on HB 2562 - John Hoffman - 3 pages C - Letter to Olivia Clark from Geoff Guilfooy - Larry Young - 1 page D - List of self-insured cities and counties - Maria Keltner - 1 page E - Amendments to HB 2562 - Association of Oregon Counties - 1 pages F - Oregon Administrative Rules and federal OSHA law - Rep. Shiprack - 2 pages G - Testimony on HB 2825 - Bill Miller - 3 pages H - SMS on HB 2871 - Staff - 1 page I - Testimony on HB 2871 - Karl Frederick - 3 pages J - Testimony on HB 2871 - Diane Rosenbaum - 4 pages K - Testimony on HB 2871 - Irv Fletcher - 1 page L - Letter from Mary Wendy Roberts to Ted Kulongoski - Marilyn Coffel - 3 pages M - Testimony on HB 2871 - Marilyn Coffel - 5 pages



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