

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

May 29, 1991Hearing Room D 8:30 a.m.Tapes 153 - 156

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 Johanna Klarin, Committee Assistant

MEASURES CONSIDERED: SB 35 - Public Hearing SB 741 - Public Hearing and Work Session SB 24 - Public Hearing and Work Session SB 826 - Public Hearing SB 3579 - Work Session SB 540 - Work Session SB 962 - Work Session

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TAPE 153, SIDE A

PUBLIC HEARING, SB 35 (Exhibit A and B)

Witnesses:Marilyn Coffel, Bureau of Labor and Industries Paul Tiffany, Bureau of Labor and Industries

CHAIR DERFLER: Opens public hearing on SB 35.

010 DOZLER: Describes the bill.

020 MARILYN COFFEL, Executive Assistant to the Commissioner, BOLI: Introduces Paul Tiffany. Testifies in support of SB 35, Exhibit A.

084 CHAIR DERFLER: What protection do the people have who normally use the retainage for their protection?

PAUL TIFFANY, Administrator, Wage and Hour Division, BOLI: It is true that the bill would provide for access to any and all contract funds that are available, that would include the retainage. The other source of revenue funds would be the bond. State agencies and local agencies could take an action against the bond for the payment of these funds.

CHAIR DERFLER: It would be easier to collect the retainage than to go after the bond?

TIFFANY: Yes, absolutely.

107 RONALD D. SCHMITZ, Tigard Electrical, Inc.: Testifies in opposition to SB 35. He discusses the following questions:

-What is the real goal for BOLI? -To whom is this bill proposed? -Who would benefit? -Who would pay the added expense? -What is the reason for introducing this bill?

-Neither the employer nor the employee will gain from this bill.

233 REP. DOMINY: We have no impact statement stating that this is going to cost more. Don't you think that it is Boli's responsibility to enforce the labor laws of the state?

SCHMITZ: I am asking that they remain and operate within the statutes.

-Rep. Dominy and Mr. Schmitz discuss this issue further.

SCHMITZ: Discusses the additional costs involved.

-This bill would bring in a witch hunt.

324 LARRY GILBERTSON, Masonry Institute: Testifies in support of SB 35. This is a fair piece of legislation.

341 SCOTT EVERIST, Mason Contractors Association: Testifies in support of SB 35. This is a tool to deal effectively with the dishonest contractors who are taking advantage of their workers.

CHAIR DERFLER: Why cannot a person go to file a claim with Boli?

EVERIST: They are afraid of being fired.

384 JAY MILTON, Davidson's Masonry: This bill is a benefit for all the contractors.

412 REP. DOMINY: What kind of retaliation fines and penalties are available? Do we need to have better retaliation laws if we don't have this bill?

MILTON: It is difficult for the employees to come forward against their employer and say that they are not getting what they should be paid. The employees are concerned about their job security.

REP. DOMINY: Would you see this resulting in anonymous tips coming to BOLI?

MILTON: It could be that or it could be an employee calling BOLI.

TAPE 154, SIDE A

015 JOHN MOHLIS, Bricklayers Local #1: Provides examples of malpractices from local work sites. Employees are often branded as trouble makers and will have problems to find other jobs in this area. The main beneficiaries of this bill will be the fair and honest

contractors.

CHAIR DERFLER: I have a problem with your attitude that all the employers are bad.

MOHLIS: That is not the intent of my testimony. We need a level playing field. It is a small minority of the contractors who are constantly taking advantage of the system.

062 VALERIE SALISB URY, League of Oregon Cities: Testifies in opposition to SB 35, Exhibit B. We feel that cities will be adversely affected. This bill will serve to transfer a great deal of the risk and the burden and the cost of enforcing prevailing wage claims from BOLI to the contracting agencies, and specifically to cities.

100 REP. DOMINY: Don't you have an agreement that they will pay the prevailing wage?

SALISB URY: Yes, absolutely.

REP. DOMINY: If there were a violation and BOLI had taken that reserve, would you not still have a contract that you can enforce upon that contractor?

SALISB URY: Yes. The enforcement would be very difficult and very expensive. Explains why.

126 REP. DOMINY: What would you see to be the best way to enforce the prevailing wage?

SALISB URY: The law now allows the contracting agencies to use retainage to satisfy wage claims. That is often done. Cities voluntarily pay the wage claim out of retainage.

-This bill leaves us very vulnerable by providing BOLI with a very easy remedy against us.

142 REP. MANNIX: How about if we strip away the provision that the public agency should pay, how would you feel about the bill?

SALISB URY: We don't have a problem with that. We are interested in the laws being enforced.

154 REP. REPINE: Who establishes the 5% retention?

SALISB URY: That is established by state law as a maximum.

-Rep. Repine and Ms. SalisB ury discuss the appropriate percentage to establish the retainage fund.

184 CHAIR DERFLER: Wouldn't that increase the cost of the project also if more retainage were to be withheld?

SALISB URY: Yes that would be my expectation.

197 BILL WILKENSON, Floor Covering Local #1236: Testifies in favor of SB 35. We have problems with people not stepping forward for the fear of losing their job. It makes it difficult for the contractors who are playing by the rules to compete in the market place.

-Doesn't like the idea of increasing the retainage fees, that would create quite a problem.

236 KIM MINGO, Associated General Contractors: Testifies in opposition to SB 35. We are concerned about BOLI's ability to file or adjudicate wage claims without them being assigned to the bureau.

-We are also concerned about subsection 6 in section 2. This would hurt not only prime contractors but subcontractors as well.

-The language on line 12 is vague.

-This bill would hurt complying contractors. Provides an example.

308 REP. DOMINY: How do you put together a contractor with a subcontract? Do you have some strong language concerning them having to pay the prevailing wages?

MINGO: If it is a public works project, we are required by statute to put in the provisions that require the subcontractor to pay prevailing wages.

REP. DOMINY: This bill would address only those who are not complying with the law. Has trouble with the notion that this law would create additional expenses to all contractors.

MINGO: Explains her position. There are situations where the subcontractor is noncomplying and has not paid the prevailing wages. BOLI will go after the funds of the prime contractor because he posts the payment for performance bond. There is only so much that a prime contractor can do.

-Rep. Dominy and Ms. Mingo discuss this issue further.

PUBLIC HEARING, SB 741 (Exhibit C)

Witnesses: Renee Mason, Employment Appeals Board

CHAIR DERFLER: Opens public hearing on SB 741.

358 DOZLER: Describes the bill.

404 RENEE MASON, Employment Appeals Board: Testifies in favor of SB 741, Exhibit C.

TAPE 153, SIDE B

005 -Discusses the following goals to be achieved by this bill:

>To establish a consistent statutory standard for review;

>To establish a standard under which the Board must make explicit credibility findings;

>To establish the degree of weight or deference the Board must give to implied findings in a referee's decision.

020 CHAIR DERFLER: Discusses the shortcomings of a written report.

027 REP. MANNIX: Provides an example from his experience as a workers

compensation referee. Are you telling us that you at the board need to try to figure out whether the referee believed or disbelieved somebody?

MASON: Yes that is correct.

037 -Rep. Mannix and Ms. Mason discuss this issue of implicit findings of credibility.

WORK SESSION SB , 741

CHAIR DERFLER: Opens work session on SB 741.

112 MOTION: REP. MANNIX: Moves to refer SB 741 to the House floor with a "do pass" recommendation.

VOTE: The motion carries 6-0.

EXCUSED: Rep. Watt [He votes AYE later during the hearing.]

CARRIER: Rep. Mannix

PUBLIC HEARING, SB 24 (Exhibit D)

Witnesses:Chris Davie, SAIF Shirley Gold, State Senator, District 7
Diane Rosenbaum, Oregon State Industrial Union Council. RCA Moore,
Oregon Trial Lawyers

140 CHRIS DAVIE, SAIF: Testifies in opposition to SB 24, Exhibit D.

-Explains the Unfair Claims Settlement Practices Act.

-We are not opposing regulation, we are opposing unnecessary legislation. This act is inappropriate for workers compensation.

173 REP. WATT: Are other insurers who insure workers compensation subject to this?

DAVIE: In the statutes SAIF is the only insurer who is specifically excluded from this. In practice this act is not used by the Department of Insurance and Finance to regulate workers compensation. They rely on ORS 656 which is what SAIF and the other insurance companies are subject to.

REP. DOMINY: DIF could do this to all insurance companies except SAIF?

DAVIE: They could if they found a way how this act would apply to workers compensation insurers.

REP. DOMINY: Shouldn't we regulate SAIF more because SAIF is a quasi public agency?

DAVIE: SAIF is regulated as much as any other insurance company through ORS chapter 656.

215 SHIRLEY GOLD, State Senator, District 7: Testifies in favor of SB 24. I believe the public would benefit for having the same provisions in law for this carrier.

256 REP. EDMUNSON: Disputes the notion that this law has not been enforced. Discusses the reasons why SAIF was exempted from this act and

the changing profile of SAIF.

-This was suggested during the special session because the employers were complaining about SAIF. This would benefit employers far more than it would benefit workers.

336 GOLD: This is an insurance client kind of bill.

347 REP. DOMINY: Has this issue been to the Management-Labor Committee?

REP. EDMUNSON: They pretty much ignored the interim task force. We were not asked to appear.

360 DIANE ROSENBAUM, Oregon State Industrial Union Council: The whole group of bills that came out of the Joint Interim Committee Task Force were rejected simply because nobody from the task force was appearing.

REP. EDMUNSON: Was there any effort made to contact the chairs of the task force.

ROSENBAUM: I don't recall that there was.

-Testifies in support of SB 24. Provides examples.

TAPE 154, SIDE B

-We felt that the practices were invalid and merited some investigation. It was disturbing that SAIF was the only insurance company not subject to the claim settlement practices act. It could have been a remedy at that time.

035 REP. MANNIX: In the hundreds, perhaps thousands of cases that I have handled I can recall only one instance where the claims attorney even made a reference against my private insurance client of the act we are talking about today. The enforcement mechanisms in chapter 656 are much more specific.

056 ROSENBAUM: More importantly you should also send a public policy message to the citizens of the state. This would do that. I don't see why SAIF should not be subject to the same guidelines.

REP. MANNIX: If we want to do this, if we want to send a message, shouldn't we just have a bill that says that these provisions apply in workers compensation to all insurers who practice in workers compensation, and the compliance section of the workers compensation division should make sure that no fair claims practices are occurring in workers compensation.

084 REP. EDMUNSON: Provides the task force's point of view. The act does apply to all regulated insurers except SAIF. Exempting SAIF is no more valid in view of SAIF migrating to a more private insurance mode.

REP. MANNIX: What is the harm to SAIF to put them under these provisions?

REP. EDMUNSON: Discusses how the handling of these claims affect employers.

ROSENBAUM: The employers suffer because they have to pick up the

expenses of that claim in other areas where they should not have to.

111 RCA MOORE, Oregon Trial Lawyers and Oregon Workers Compensation Attorneys: Echoes Ms. Rosenbaum's testimony.

PUBLIC HEARING, SB 826 (Exhibit E)

Witnesses:Chris Davie, SAIF

CHAIR DERFLER: Opens public hearing on SB 826.

125 DOZLER: Describes the bill.

126 CHRIS DAVIE, SAIF: Testifies in opposition of SB 826 (Exhibit E) for the following reasons:

-Grants unrestricted access to employers' records and claimant files and applies only to SAIF corporation.

-Only one special interest has appeared to support this bill. No SAIF insureds have come forward to complain about the service received. In fact, 99% of our insureds are sufficiently satisfied with our service to renew their coverage with SAIF.

-Information obtained from claim files could be used to abuse the rights of claimants.

-If this bill is good public policy, it should apply equally to all insurers. This bill is directed only at SAIF.

188 REP. REPINE: How do you assess that 99% of renewals is based on access to files?

DAVIE: There are other factors too.

WORK SESSION, SB 540 (Exhibit F)

CHAIR DERFLER: Opens work session on SB 540.

200 DOZLER: Describes the bill and the proposed -2 amendments. Exhibit F.

250 MOTION: REP. EDMUNSON: Moves to adopt the -2 amendments.

-There being no objections, the amendments are adopted.

254 MOTION: REP. MANNIX: Moves to refer SB 540, as amended, to the House floor with a "do pass" recommendation.

REP. MANNIX: We are trying to return to the practice when attorneys who represented clients and succeeded in convincing the insurance company that the claim was good before going to hearing would be awarded attorney fee for their services as an assessed fee. With the amendments we are saying that any cases that are closed on the effective date of this act are not going to be reopened, but if a final order has not been entered as to this kind of issue then this will affect that case. Of course this will apply to future cases.

286 VOTE: The motion carries 5-2.

NAY: Representatives Johnson and Watt.

CARRIER: Rep. Edmunson.

WORK SESSION, SB 962 (Exhibit G)

CHAIR DERFLER: Opens work session on SB 962.

300 DOZLER: Describes the bill and the proposed amendments (Exhibit G).

MOTION: REP. MANNIX: Moves that the committee adopt the -3 amendments.

MANNIX: I want to see the vast majority of this income to be used for scholarship programs and not for administration.

348 CHAIR DERFLER: Suggests changing the word "injured" on line 6.

356 REP. WATT: Are we setting a precedence in the state? Are there other things that we award scholarships for? The intent is good.

CHAIR DERFLER: None that I am aware of.

TAPE 155, SIDE A

-The committee discusses the appropriate wording for the -3 amendments, with regard to line 6. Rep. Mannix suggests line 6 to read: "Children of workers who are killed or have received a permanent disability award on the job."

019 REP. JOHNSON: This is just a symbolic act. The amount of money involved is so negligible that it is not worth administering this program.

033 REP. MANNIX: A small scholarship can make a difference in a student's life.

048 REP. DOMINY: This is a good use for penalty monies. We are showing some recognition to the family that the state cares.

MOTION: REP. MANNIX: Moves to amend the -A3 amendments to read on line 6: "Children of workers who are killed on the job or who have received a permanent disability award."

-The amendments are adopted as modified.

073 REP. DOMINY: Suggests a new section to the bill as to who is going to administer the monies.

083 IRV FLETCHER, Oregon AFL-CIO: That is already in the bill.

MOTION: REP. MANNIX: Moves to change section 2 in the -A3 amendments into section 2, subsection 1. The section 2, subsection 2 in the bill be reinstated to read as follows: "The director shall consult with the Safe Employment Education and Training Advisory Committee established pursuant to ORS 654.189 in determining the appropriate scholarship standards and in selecting the recipients."

-The committee has no objections to the above motion.

117 MOTION: REP. MANNIX: Moves SB 962, as amended, to the Committee on

Ways and Means with a "do pass" recommendation.

VOTE: The motion carries 7-0.

136 CHAIR DERFLER: Recesses the meeting at 10:40 a.m.

WORK SESSION, HB 3579 (Exhibits H and I)

Witnesses:Terry Rogers, Governor's Office

CHAIR DERFLER: Opens work session on HB 3579.

141 TERRY ROGERS, Governor's Legislative Coordinator: One of the Governor's highest priorities during this session has been the proper funding of the Welfare Reform program. Provides background information and discusses the placement efforts of the welfare recipients.

-We do not see this bill as consistent with those efforts. The Governor does not support this legislation.

175 CHAIR DERFLER: The direction that this bill is taking is that the employers would train these people, not just place people in minimum wage jobs.

ROGERS: They are able to do that under the current law. Federal and state laws provide for on-the-job training now.

CHAIR DERFLER: I am disappointed that the Governor does not support this bill.

198 REP. WATT: How would the Governor respond to the majority of the people who passed Ballot Measure 7.

ROGERS: The Governor feels that the gubernatorial obligation has been met by applying for the necessary waivers. She would like to see that the Welfare Reform is successful.

REP. WATT: That doesn't answer my question.

ROGERS: I am not sure that what is being discussed in this committee is the will of the people.

234 DOZLER: Outlines the hand engrossed -2 amendments, Exhibit H.

270 MOTION: REP. MANNIX: Moves to adopt the -2 amendments incorporating the hand engrossed changes as well as the changes outlined on the sheet titled "Proposed amendments, HB 3579" (Exhibit I).

REP. MANNIX: The -2 amendments clarify that we are trying to implement Ballot Measure 7, but if there is a conflict, this act is going to control. These amendments also make clear that we do not want to affect the unemployment insurance compensation program in the state in the next biennium. Section 21 makes it clear that we are looking for a fair and efficient implementation of the act, but we expect the executive branches to be innovative and flexible. The ultimate goal of this program is job placement.

323 REP. JOHNSON: Refers to section 21. Expresses concern that the broad wording gives the Governor too much power--possibly to ignore the whole bill. We want her to enforce every bit of this bill that she can.

360 MOTION: REP. MANNIX: Moves to incorporate the following language into section 21: "It is the intention of the assembly that the Governor, to the extent necessary to overcome a refusal of a waiver request, may by executive order

approve..."

375 REP. DOMINY: Discusses the fact that this bill does not address any labor disputes.

413 MOTION: REP. DOMINY: Moves that no person shall be required to accept employment where a labor dispute is in progress.

TAPE 156, SIDE A

021 MOTION: REP. MANNIX: Moves to amend Rep. Dominy's motion by adding a new section to read as follows: "No person eligible for benefits under this act shall be offered a full employment program job that is subject to any of the following conditions: -The job is vacant due a strike, lockout or labor dispute. -The remuneration, hours, conditions of the employment offered are substantially less favorable to the individual in comparison to other comparable work in the community. -If, as a condition of being employed the individual would be required to join a labor organization or be required to resign from a labor organization.

042 -The committee has no objections to the above motions.

MOTION: REP. MANNIX: Moves to rescind the subsequent referral to the Committee on Ways and Means.

057 REP. REPINE: Discusses the possible fiscal impact this bill might create.

-The committee has no objections to the above motion.

072 MOTION: REP. DOMINY: Moves to replace the sub-minimum wage provision with the prevailing Oregon minimum wage.

REP. DOMINY: Nobody should be required to work for less than the minimum wage.

REP. REPINE: Discusses how the original Ballot Measure 7 has failed the test. Supports Rep. Dominy's motion.

-There being no objections, Rep. Dominy's motion is adopted.

118 MOTION: REP. MANNIX: Introduces a technical amendment. In the -2 amendments, line 1, should read "delete lines 4-8."

-The committee has no objections to the motion.

MOTION: REP. MANNIX: Moves HB 3579, as amended, to the House floor with a "do pass" recommendation.

VOTE: The motion carries 7-0.

CARRIERS: Rep. Derfler and Rep. Mannix.

CHAIR DERFLER: This is an excellent bill and has a potential to become a nation-wide program.

WORK SESSION, SB 24

CHAIR DERFLER: Opens work session on SB 24.

DOZLER: Describes the bill.

148 MOTION: REP. MANNIX: Moves SB 24 to the House floor with a "do pass" recommendation.

VOTE: The motion carries 7-0.

CARRIER: Rep. Edmunson.

161 CHAIR DERFLER: Adjourns the meeting at 11:35 a.m.

Submitted by: Reviewed by:

Johanna Klarin Victoria Dozler Assistant Administrator

EXHIBIT LOG:

A - Testimony on SB 35 - Marilyn Coffel - 9 pages.
B - Testimony on SB 35 - Valerie SaliSB ury - 2 pages.
C - Testimony on SB 741 - Renee Mason - 5 pages.
D - Testimony on SB 24 - Chris Davie - 1 page. E - Testimony
on SB 826 - Chris Davie - 2 pages. F - Amendments to SB 540 -
Committee staff - 1 page. G - Amendments to SB 962 - Committee
staff - 1 page. H - Amendments to HB 3579 - Committee staff - 3
pages. I- Amendments to HB 3579 - Committee staff - 1 page.