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.

CONFERENCE COMMITTEE ON SB 39

June 26, 1991Hearing Room C 10:15 a.m.Tapes 1 - 2 (See also minutes dated June 25)

SENATE MEMBERS PRESENT: Sen. Kerans, Chair Sen. Brockman Sen. L Hill

HOUSE MEMBERS PRESENT: Rep. Derfler Rep. Brian Rep. Watt Rep. Mannix

STAFF PRESENT: Annette Talbott, Committee Administrator
Roberta White, Committee Assistant

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TAPE 1, SIDE A

(NOTE: TAPE 1, SIDE A FROM 000 TO 049 CONTAINS RECORDING OF CONFERENCE COMMITTEE MEETING ON JUNE 25, 1991.)

SB 39 - REQUIRES CERTAIN EMPLOYERS TO GRANT MEDICAL LEAVE TO EMPLOYEES UNDER CERTAIN CONDITIONS OR SICKNESS, TO CARE FOR FAMILY MEMBERS WHO SUFFER SERIOUS HEALTH CONDITION, FOR PREGNANCY DISABILITY ACCOMMODATION AND FOR PARENTAL CARE OF CHILD.

049 CHAIR KERANS calls the conference committee meeting to order at 10:22 a.m.

049 CHAIR KERANS: We have had distributed to us a hand-engrossed version of what had been the B-7 amendments by Rep. Mannix. I will call on Mr. Mannix and/or Mr. Derfler to speak to those because they represent at the moment some consensus of the House view.

057 REP. MANNIX: I will defer to Rep. Derfler since he is Chair of the House Labor Committee.

058 REP. DERFLER: I move the...

058 CHAIR KERANS: Let's go through them and see what they are first so we can get an idea of what we are looking at. Then we can go from there. Section 1 and 2 seem rather familiar.

062 REP. DERFLER: I don't think there has been a lot of changes in Section 3. I think there has been some changes in the definitions, but they are basically the same as the previous SB 39. I think the "family member" has stayed the same. "Serious health condition" has stayed pretty much the same. I think we did add on the terminal prognosis--the addition of "death expected during the period of the leave." We thought in terminal prognosis that everything is terminal.

We did add the notice. Rep. Mannix is concerned about the illness of a child and the parent being able to take care of a child who is sick at home.

074 REP. MANNIX: There is an error. Where it says "and" on page 2, line 5, it should read "or" because we are talking about two forms of definitions of serious health condition. One is, as Rep. Derfler is pointing out, the eminent danger of death, terminal prognosis, or mental or physical condition that requires constant care. All of those have to be according to the medical judgment of the treating physician. Then there is the additional category which is simply the category "of an illness of a child of an employee requiring home care" as a separate alternative category.

083 REP. DERFLER: The next item is the treating physician. We felt that should be an MD, which we have added. When you get to Section 4, we took out "oral" and left it as a written request. The next section has a change which I think better explains what we are trying to accomplish. That is, that vacation can be used and depending on the company policy or the bargaining agreement additional leave can be used. I think the reason primarily for that is because a lot of companies have company policies and a lot of variations of types of use of leave. I think this allows that to occur. If we didn't make it that way, there would be a lot of companies that would have to be changing a lot of policies. Some would be more restrictive and some perhaps better, but I think it perhaps would end up more restrictive so we end up with a better policy with that direction.

100 REP. MANNIX: On that point I also wanted to clarify that we weren't really addressing unpaid accrued leave. We are trying to address employer policies about the kinds of leave that the employer has arranged for as defined here. I just wanted to make that clear.

103 REP. DERFLER: Basically, the next areas are the same.

407 CHAIR KERANS: I have just a question. How can you know 15 days before taking a family medical leave that you are going to need it? Even if it is not an emergency, how do you know that there is going to be some developing illness which may be chronic in nature which will flare up in such circumstances that you will know 15 days before?

113 REP. DERFLER: I think that would be classed as an emergency. I think it is very difficult for an employer when you come up to him and say I am going to be gone for the next 12 weeks without giving him warning where you possibly could. I think there are illness that are not an emergency where there would be adequate time to notify the employer.

117 CHAIR KERANS: I would like to flag that because that is quite different from what the Senate did requiring three work days after the commencement of the medical leave, it was not an emergency to provide written notice and the treating physician's written notice that the

condition existed and was qualified under the act as something providing or permitting a medical leave.

125 REP. MANNIX: I would like to explain that we have kind of defined this as either an emergency or not emergency. In a way the 15 days almost self-defines what is an emergency. That is, if this is something that you could not have anticipated more than 15 days ago, it is automatically an emergency and an emergency in the basic dictionary definition is something that you didn't expect, something that has come up in an unforeseen circumstance. The concept ought to be if your family member has cancer and it has become a protracted disease and you want to take advantage of the leave, normally you will be able to plan ahead and say 15 days from now I want to take off and start caring for this family member. However, if suddenly that condition flares up in such a fashion that you immediately need to be caring for that person, that is an emergency even though you knew the condition was there. It is meant to just say you have to give 15 days notice when you were planning ahead, but if it is an emergency, there is no notice requirement.

140 CHAIR KERANS: We need to go through the rest of the amendment, but my concern is that we don't provide the kind of instruction and the kind of certainty to the employer and the employee about what their rights and obligations are with this kind of language where it could be open to the broadest kind of interpretation of what is or is not an emergency and what is was not something that could have been predicted today. Today is the 26th. On the 10th or before of this month, I knew or should have known that today I would need to start a family medical leave of some duration for a family member. I just have a very hard time getting my mind around that one. So it is something to be looked at.

157 REP. DERFLER: I understand what you are saying. On the other hand I think it is difficult for an employer to make plans when somebody comes up and says I am not going to be here for the next 12 weeks. I think the employer needs to get as much notification as possible so they can make their plans.

160 CHAIR KERANS: I am quite alright on as much notice as possible under the circumstances, or as practicable or is reasonable under the circumstances or those kinds of words which represent fact situations that are as unique as there are individuals and circumstances. My great concern is that we find ourselves in a situation where someone has an absolute certainty of a medical leave need and not have met this standard. We need to think about that one.

168 REP. DERFLER: We did add the last sentence where the employer may require the employee to provide written verification from a treating physician.

170 CHAIR KERANS: That is alright. We have done that in all the other versions.

172 REP. DERFLER: I think the rest is not changed until we get...

173 CHAIR KERANS: On line 28, I have a big star. Let's talk about that one.

176 REP. DERFLER: To give my feelings on that one, let me give an example. If someone worked in a branch bank and while they were on

family leave that bank branch closed down and there wasn't a bank within 20 miles, if the statement wasn't in there, that bank would be required to take that employee back under the previous description.

182 CHAIR KERANS: I have a hard time interpreting paragraph (d) as being not included in paragraph (c) as we have already always understood it and as it appears in other leave policy in the statutes. Let me give you an example. Let's take an example other than a bank because banks have lots of branches and lots of places and they might have suitable and available work somewhere else. If we look at paragraph (c), it says if the employer circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job, the employee shall be reinstated in any other position that is available and suitable. However, the employer is not required to discharge any other employee in order to reinstate the employee to any job other than the former or equivalent job unless required under agreement between the employee and employer by a collective bargaining agreement or by employer policy.

That says that you go out on a medical leave, 10 weeks later due to business necessity there is a reduction in force and your job is eliminated and you come back and say I want available and suitable, and you say, one, your old job has been abolished as a result of business necessity in your absence and you would have been riffed even if you had been in it, and b) I have no available and suitable, and c) this is a non-union shop and d) we don't have an employee policy on this so you don't have a job here. That is the way I read (c). (d) is subsumed in (c) and could lead us into a thicket of confusion where we would get into problems. It is a thing to look at. I think you and I mean exactly the same thing about (d). I believe it is in (c) by definition that if your job has been eliminated as a result of business necessity.

215 REP. DERFLER: I believe it is ambiguous, personally, and I think (d) would clarify it but not add anything other than what is there.

216 CHAIR KERANS: We will look at it and see if there is something we can do about it.

218 REP. DERFLER: The next big step is where we are on the numbers and the hours worked. I think the rationale we are using is certainly the federal laws that they are talking about. We are talking about 50 employees. I think even looking at the 30 hours per week would probably cover about 80 percent of the employers in the job place. I don't think that is an unreasonable request.

226 CHAIR KERANS: It is not unreasonable to request anything. The problem is getting what you ask for. If you don't ask, you don't get.

A CALL OF THE HOUSE.

233 CHAIR KERANS: Can you tell me what the issue is? Are they voting on something or are they debating something.

236 JUST STARTING.

236 CHAIR KERANS: Would you go and ask to be excused and we will await your notice to us.

236 MS. TALBOTT: My understanding is that they have been excused but they have a quorum call.

239 CHAIR KERANS: We will excuse you for a quorum call. We will stand in recess.

CHAIR KERANS declares the meting in recess at 10:36 a.m.

241 CHAIR KERANS calls the conference committee back to order at 10:50 a.m.

241 CHAIR KERANS: When we left we were looking at 50 persons/30 hours and flagged that.

246 SEN. HILL: I would want to flag line 5 on page 4. That is the days for qualification.

248 CHAIR KERANS: Where were we, Ms. Talbott?

247 MS. TALBOTT: We were at 90 days.

249 SEN. HILL: This version doubles that.

249 CHAIR KERANS: Let's go back to the top and see where we are. Sen. Hill had a question on page 2 on lines 3 and 4. I had a question. We had dropped in-patient care which is a concern of mine because in a lot of cases you are talking about circumstances where that may be necessary. But you have also added "is terminal in prognosis with death expected during the period of the leave." Sen. Hill may want to express it better than I do.

260 SEN. HILL: I think it is probably impractical to require the person obtaining the leave to be able to accurately predict the death of the loved one they are leaving to take care of. It is impractical and certainly inhumane to require them to certify they expect their loved one to die in the next number of weeks and give an estimate of time it will take to accomplish that end. I had a parent who had a terminal disease for a long period of time and several times we thought she was on the edge of death and she pulled through. But it was a long period of time and it was a very difficult situation. I don't think we need to add this particular language.

274 CHAIR KERANS: I would agree. I think it is a bit much to suggest that an employee will be able to predict with any kind of certainty that death is expected. The negative, are there penalties if the loved one doesn't die? I am being serious about that. Do you find yourself in a situation where you violated your terms of a family medical leave if your relative did not expire.

285 We are under a call so we will flag that one. We will go up and I will ask you to stand by. We will send word down if we are going to be a while and whether we need to recess or whether we will stand at ease for a little bit. While we are walking out of the room, I wanted to note that Senator Hill and I noted on line 10 of page 2 the loss of "or oral" in request for medical leave. And wanted to suggest on line 2 of page 3, it is so difficult to determine 15 days ahead of time what is going to happen, we would like to substitute the word "anticipate" for the word "not an emergency" on line 2. We will talk about that. We will stand in recess for a couple of minutes.

CHAIR KERANS declares the meeting in recess at 10:58 due to a call for a quorum by the Senate.

305 CHAIR KERANS calls the conference committee back to order at 11:04 a.m.

311 REP. MANNIX: How would you like to proceed? I have been trying to talk to folks about ideas to address the concerns of you and your fellow Senators.

313 CHAIR KERANS: We have a fairly comprehensive list of the items that are of concern to the various members. I would like to take a few minutes to go over those and have people expand their thinking about them so we flush out our views. I don't want to come to a conclusion right now, but I would like to make a list of those things that are worthy of consideration and concern. Then I would like to recess for a little bit to an agreeable time today because I think we can come to an agreement today. That is my belief. I think if we work hard we can do that and conclude. I would like to divide these into major and minor concerns by virtue of the philosophy or the politics that surround them. Before we do that, I want to say that the reason I feel optimistic is that the House amendments presented this morning show a significant amount of flexibility already.

348 REP. DERFLER: We would have preferred the other bill we wrote but knowing time frames those problems couldn't have been worked out. So we are willing to compromise and go back.

353 CHAIR KERANS: That ought to be noted and I appreciate the fact that you have done that and show a willingness to work on a reasonable compromise on this issue. That is what gives me optimism.

If I were dividing these between major and minor, I would say that major would be the number of employees and the number of hours worked as the most critical issue. I think that is where we have to avoid becoming high centered because I think that is a place where we stand every chance of losing the bill. Settlement of that is necessary in order to get a measure. Following that I think there is a significant problem and I would say that is the question of subparagraph (b) of subsection (4) of Section 4. That is the language on line 2 of page 3, in case where the serious health condition is not an emergency. Also in that category is Section 4 (1) the question of written or oral by virtue of the fact it is very difficult to transmit written notice to your employer when the emergency occurs in the night and you have to not appear the next day, but must give an oral communication to the employer requesting this leave and notifying the employer of that leave.

Then I would classify the rest as things that need to be settled or clarified or determined, specifically paragraph (d) of subsection (6) of Section 4. I think we have talked about that and I would hope that we could come to an agreement that (d) is actually in (c) or if not, we come to some agreement that we understand what (d) does in addition to (c). The rest I see as things that need to be settled, but ones that are not earth shattering.

398 REP. DERFLER: What other items do you see as needing to be settled?

398 CHAIR KERANS: The only ones that I have underlined are the question of death expected during the period of the leave. I think it is possible to live with that, but I think it is exceedingly strange to have the person have to say mom is going to die in 10 weeks. I think that is asking an awful lot of a person to face the fact of death that is not only eminent, but you can predict it. I find that to be onerous

on any person. Then the in-patient care was raised and 180 days was raised. I would classify those as major and minor.

421 REP. MANNIX: I wanted to leave with you folks some suggestions for consideration in regard to some of these issues. One suggestion is on page 2, lines 3 and 4, the prospect of changing that language to "is terminal and prognosis with a reasonable possibility of death in the near future."

430 CHAIR KERANS: I think that would be far more humane as language and that would fit the human circumstances of the situation in my opinion. It would be fine with me. Is it alright with you, Senator Hill?

437 SEN. HILL: I am trying to picture the rules that define reasonable proximity to death in the near future.

439 REP. MANNIX: This is just left up to the treating physician's medical judgment. If the treating physician gives that opinion, as far as I am concerned, that opinion has been stated. I like that idea because we say it is according to the medical judgment of the treating physician. I think the treating physician's judgement should be given that consideration.

447 REP. DERFLER: I have no problem with that.

446 CHAIR KERANS: I don't have a problem with that and would like to clear that as underbrush out of the way.

450 SEN. HILL: I would suggest we accept the suggested language with the reference to the treating physician.

455 CHAIR KERANS: It says that.

460 SEN. HILL: I think it is not without problems, but it is certainly better than the current language.

462 CHAIR KERANS: I think we agree on that and we can strike that from the minor issues. Does anyone else have a suggestion on some of the language, either major or minor, they would like to discuss before we recess?

469 REP. DERFLER: It has been suggested on page 3, line 25, that we take out "or an equivalent job."

474 REP. MANNIX: On that point, we have conferred with the Labor Commissioner's staff and they advise us that they have no problem removing that phraseology that actually would run counter to their current practice in any event. People shouldn't be fired in order to reinstate unless someone took the former job.

487 CHAIR KERANS: Just on line 25--"However, the employer is not required to discharge any other employee in order to reinstate the employee to any job other than the former job."

492 MS. TALBOTT: That is their current practice under their rules. They would not require you to discharge someone to replace the equivalent job.

495 SEN. HILL: That would be acceptable to me.

TAPE 2, SIDE A

041 CHAIR KERANS: That would be fine with me. Any objections to that? Then let's note that for the record. Anything else?

043 REP. MANNIX: I think a legitimate concern has been raised in regard to this written request. The mom or dad with the kid who has the flu, what are they going to do? Drive into the office and drop off the written request? I would like to suggest some language for your consideration. If we put this at the end of line 12 on page 2, I think it would deal with that concern: "An oral request confirmed in writing within three days constitutes a written request."

051 CHAIR KERANS: That is how we did it and we liked it. It was Sen. Shoemaker's concern and addition to the bill. It would be fine with me.

057 MS. TALBOTT: I think it works but we might want to work with Legislative Counsel on the language.

059 SEN. HILL: It satisfies the purposes of this subsection.

060 CHAIR KERANS: We have the concept. Is there any objection to that?

061 REP. DERFLER: I would like to see it written down, but I think it is acceptable.

061 CHAIR KERANS: We will accept that in concept and we will take a look at the words.

063 REP. MANNIX: I have one more for you, Mr. Chairman. On the emergency business, I also agree with those concerns. We did try to make a record here, but I think it might be better to change the language. What if, on page 3, line 2, instead of saying, "in cases where the serious health condition is not an emergency," instead say, "In cases where the serious health condition is anticipated, the notice shall be provided."

068 CHAIR KERANS: I think that is really what we want. I think you are correct because you know mom is going in for surgery and the doctor has told you it is a 50/50 deal and if she makes it she is going to need some time and the survey has been set for July 10. That means on the 25th of June you had better tell your employer because you knew it was coming and you knew you were going to take the time.

074 REP. DERFLER: The thing is we need to give the employer as much time as possible to make arrangement to run his business.

075 CHAIR KERANS: I think that is exactly the issue. When you have effective notice you are going to need it, then I think you have an obligation to tell the employer. I think that is what this means by anticipated--you have effective notice that the leave will be needed and you have an obligation to tell your employer.

080 REP. DERFLER: I don't have a problem with that.

081 CHAIR KERANS: Is that alright with the committee? Hearing no objections, that is now anticipated.

084 REP. MANNIX: I wanted to ask about the other issues to see if there is something that can be taken care of. I had one technical point that

was made during the break. A couple of employer representatives brought this up. I will bring you attention to page 2, line 18 where it says, "In addition, subject to the policies of the employer, a collective bargaining agreement or an agreement between the employer and the employee, an employee shall be entitled to use other categories....." It was pointed out to me that there may be an agreement that only relates to appropriate uses of leave and it was requested that I suggest this language. I think it is a good idea. We would say on line 18, "or an agreement between the employer and the employee concerning appropriate uses of leave." So we are limiting ourselves to an agreement regarding appropriate uses of leave. People may want to think about that.

098 CHAIR KERANS: It begins on line 17. We strike "and" and insert, "in addition, subject to the policies of the employer"...

100 REP. MANNIX: "a collective bargaining agreement or an agreement between the employer and the employee concerning appropriate uses of leave, an employee shall be entitled to use....".

102 CHAIR KERANS: So we simply delete the bracketed material "concerning appropriate uses of leave, an employee shall be entitled to use other categories of paid leave including sick leave or other compensatory leave during the leave of absence."

106 REP. MANNIX: Yes.

108 CHAIR KERANS: You are restricting it to appropriate uses of leave. Let's restore the bracketed language beginning at the end of line 18 and the beginning of line 19 and insert "leave." It would read, "and the employee concerning the appropriate uses of leave, an employee shall be entitled to use...". Is there any problem with that?

RESPONSE: No.

116 CHAIR KERANS: Okay. (GAVEL). Anything else?

118 SEN. BROCKMAN: In that same general area on line 16, page 2, it was suggested that the last few words on line 16, we insert "or unpaid" because some of it is and some of it isn't.

120 MS. TALBOTT: I think the intent of the language, Sen. Brockman, was that the employee would be entitled to any unpaid accrued leave.

124 CHAIR KERANS: We have already agreed that anything that is unpaid, they have banked.

124 SEN. BROCKMAN: Fair enough.

CHAIR KERANS: The agreement now goes to questions of leave and others that are not paid. That is why we put "paid" on line 19.

128 MS. TALBOTT: You could state, if you wanted to add a sentence, that the employee is entitled to use any unpaid accrued leave if you want to make that clear. But that is why the "paid" was referenced in all the others.

130 SEN. BROCKMAN: If you have it covered, it is okay.

131 CHAIR KERANS: We have said "paid" and thus excluding unpaid. That

belongs to the employee. It is not subject to the agreement. Anything else?

134 CHAIR KERANS: Sen. Hill was concerned about the 180.

136 SEN. HILL: What is the current waiting period for parental leave?

137 MS. TALBOTT: Ninety days.

138 SEN. HILL: I would like to keep it consistent with 90 days. That is the current practice with the other major leave program. That is three months and often probationary periods are three months or less in my experience. I don't see the benefit of denying this protection to someone simply on the basis they haven't been there six months, even if they are full time permanent employes.

144 CHAIR KERANS: I would concur in that and would like to leave that on the table as a unresolved issue at the moment.

148 REP. MANNIX: In regard to the inpatient care, part of the discussion and part of the reason that was deleted was the notion that someone who is receiving inpatient care is already being attended by someone else. On the other hand, there is a counter argument that actually they may be attended by someone else but that doesn't mean they are getting the TLC that you may want them to get from a family member. No negative commentary intended on nursing homes or hospitals but they just don't have the staff to have someone sit by someone's bed and hold that person's hand. The person doesn't have to be terminal in prognosis or have to be in imminent danger of death in order to be in a situation--- The one thing, though, under (c) if you have any mental or physical condition that requires constant care---

160 CHAIR KERANS: That is the question, whether that is not subsumed under (c) by definition. I read that to include inpatient.

163 SEN. HILL: I read, "is any medical or physical condition requires constant care" to be constant care at home with a sick child or a sick parent or sick spouse, constant care in a hospital, institutional setting. It reflects the seriousness of the illness or injury.

167 CHAIR KERANS: The problem we have, and I think it is one of do you need an extended (leave) up to 4, 6, 8, 10, 12 weeks for someone who is in a static condition in an institutional setting in which the prognosis is going to go on for years. That is not what we are talking about. We are talking about someone who might be receiving inpatient care but needs a person, family member, to care for them when they make transitions from hospital to long term care facility and the traumatic kind of problems that are entailed in that of having to have someone physically take the personal belongings and physically go and secure the living quarters of the person who is institutionalized and seeing to those kind of family matters. Also providing care and comfort to the person, not medical care, but rather the kind that is TLC. That was my concern.

184 REP. WATT: I would suggest that the key language to go back to and remember is that this is according to the medical judgment of the treating physician. This is the physician saying, even if it is in a hospital or a mental facility, you really need to be here, a family member really needs to be here. I think that is the phraseology that keeps that very clear.

190 CHAIR KERANS: I have no problem keying on that if we include or understand that (c) could mean transition from one physical location to another that might be inpatient care either at both ends or at one end of that transfer. But in the mind of the treating physician, the physician says, look, mom is going to go from the hospital bed to an acute care nursing home. It is a traumatic situation and we sometimes lose patients in the transition because of the shock or trauma of this and we need you to be there with her during the transition. If we understand that is what is meant by (c), it is a "physical condition that requires constant care" could include inpatient attendance, then I have no problem with accepting it that way.

206 SEN. HILL: I think a good example would be a parent suffers a heart situation or another critical situation and requires some long term inpatient care. They are being given the care by the professional caretaker, whether it is institutional or at home care with an attendant nurse or attendant, but the individual employee may want to go see this parent some distance away and take a week or two to do that. It is not the intent of the bill to prohibit that by virtue of the parent not being in imminent danger of death, simply in a critical care setting. Also we don't want to prevent the individual employee from taking the leave because the employee his/herself would not be delivering the care, it is being delivered by the institutional attendant. The opportunity here is for the employee to respond to the critical nature of the illness and to participate in the healing of that loved one. That healing may or may not be delivering the care. In the institutional setting the loved one doesn't deliver the care. The nurse or attendant does.

225 CHAIR KERANS: I think we understand that. I think Rep. Watt defined that. I think you are correct. It is treating physician's determination that governs.

228 REP. BRIAN: Your notion of clarifying the constant care might be limited to transitional care or care where extensive travel is involved.

231 CHAIR KERANS: I was just using those as examples.

233 REP. BRIAN: I am wondering if we should be more clear so that if you have a loved one in the hometown hospital for two months, that it doesn't mean you can take 12 weeks off to visit because you do have evenings.

236 CHAIR KERANS: That is exactly correct. We understand that. If the person is in a static condition and happens to be in a hospital, the treating physician doesn't tell you that in medical judgment that we need someone here giving that extra care or the fact the doctor says it is not long now. When they use those kinds of words, that is when you have to go to the hospital and they are receiving inpatient care and it may be six, eight, or 10 days and the loved one dies. That is what we are talking about. Or it may be that the treating physician says I need you there to help out and provide contact with the patient as we transition from acute care to the intensive to acute to hospital bed to long term facility, this is a dangerous period for your mom, she is 86 and we have to go through this process. It is those kinds of things. It is not that they are in there because they had a gallbladder operation and are sitting up and you want to go down there and play pinochle. That is not what we are talking about. I think we can divide pinochle from the need to provide family medical leave to be in contact

with the loved one. I think you and Rep. Watt have defined that along with Rep. Mannix and Sen. Hill. As long as we understand subsumed under (c) is that it could be family medical leave to be at the side of a loved one who is receiving constant care in an inpatient setting. Do we understand that to be correct?

266 SEN. HILL: The ultimate control on abuse of this leave, if this passes into law, is the fact that few people can afford to be off work very long without pay.

270 CHAIR KERANS: All of us who are living paycheck to paycheck are going to be limited by looking at our hold card which is our wallet and seeing how much is in there and how much we can afford to do and how much sacrifice is involved in this kind of situation. I hear no objection to that definition of (c) and what is included in it and we expect the rules to be written to reflect that. People can test the rules against the written record here. Is that satisfactory to you, Sen. Hill?

277 SEN. HILL: Yes. I want to point out the agreement with the change that is in Rep. Derfler's draft. That is to specify MDs and DOs as the treating physicians. I have some reservations, but I think it is acceptable and reasonable that we do that and retreat from the broader language in the first version.

283 CHAIR KERANS: That leaves us then, to my knowledge, the question of 180 days, 50 persons and 30 hours versus other things. I think we can do this today and if there are others who have concerns, they need to see various members of the conference committee. I am amiable to some change above 90 that reaches somewhere between 90 and 180 and it could be 180 .

I have a significant problem with 50 and I need to take a look and ask staff to tell us how many persons are actually included in that. I have a real problem with the 30 hours. We have already said for the purposes of health benefits in SB 935 in the last Session and in SB 1076, and now under consideration of 17.5.

307 REP. DERFLER: This is an entirely different issue than what we are talking about in health care. This is a new program.

308 CHAIR KERANS: I understand that, but I think we need to get to the meat of the issue. That is where our contention will be and we have to find a way to resolve that. How many hours are in the other leaves?

313 MS. TALBOTT: In the parental and pregnancy, there is no distinction between part-time and full-time.

315 CHAIR KERANS: If you work an hour, you have the right. So we are talking about a vast change in where that is now. I have no problem moving from the standard which are in pregnancy disability leave and in parental leave because you have been good enough to set those aside here and not lay them with this new leave situation. I am not going to argue for comparability because you have already been kind enough to set those issues aside in order to come to an agreement here. I am saying I am willing to set a standard different from those and agree with you that it is alright to do that in this new employee right. My problem is that I have a concern over the number of hours and the number of employees. I am going to ask staff to get us some information about how many people are in or out at 50 and then we will counsel among ourselves over the

other.

335 We have a four o'clock full committee meeting of Ways and Means. Would you be available in a couple of hours here? Could we try to meet at three o'clock? Let's recess until 3:00 p.m. But before we do, I want to compliment the members for the great amount of flexibility they have shown and the compromising attitude which has been brought to the table here and also our ability to clear some of the other items out so we can get to the main point of what is at issue. I think if we can come to agreement today on those items we can have a bill that will be acceptable to the parties.

358 SEN. BROCKMAN: The 90 days versus the 180 days bracket is already on the table. If we are going to mull this over in the meantime between now and three o'clock, how would you like to throw something on the table on the 50 and the 30 that we might be considering?

364 CHAIR KERANS: I will tell you where I would be. If I were writing this and could get it into law, I would say 25 which is the comparable to virtually everything else we can find out there for anything that has been done in Oregon statute relative to small business and also to employee rights. I like 15 as the number of hours which segregates out a whole bunch of people who are part time workers, but I am flexible on that. It isn't 30. We need to talk about that. But I think that is about all we need to talk about in public. We need to take a break and mull these over and have some other conversations.

381 SEN. BROCKMAN: Are we going to have this printed up?

380 MS. TALBOTT: I will take this to Counsel right now.

383 CHAIR KERANS declares the meeting in recess at 11:37 a.m.

384 CHAIR KERANS reconvenes the meeting at 3:17 p.m.

387 CHAIR KERANS: The committee has had distributed to it the B-13 amendments. I would ask the committee members and the audience to set those aside. They have significant errors in them coming from Counsel. Some words and phrases have been dropped out and rather than try to scan them now, we will return to the Mannix amendments (B-7 scratched) (EXHIBIT A) we were working with this morning which represents a complete bill which the committee can work with.

434 CHAIR KERANS: When we left, we had decided that we had three items which had not been addressed. One was on page 3.

440 SEN. HILL: They all had numbers attached to them as I recall.

442 CHAIR KERANS: They do, days and hours, but we also have the question unresolved of paragraph (d) "...if the former job (page 3) does not exist at the end of the leave" whether that is included in (c) and whether there is weasel words that we can come up with that will create an understanding in paragraph (c) what is explicitly stated in (d) and then we have 180 days, 50 persons and 30 hours. As memory serves, there was to have been some words or did Rep. Mannix have some suggestions about paragraph (d).

457 REP. MANNIX: I was going to suggest if you take a look at (c) where it says, "If the employer's circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job" and if

we add, "or if the former job does not exist at the end of the leave, and the employer establishes that the employer's financial position or business circumstances have materially changed so as to cause a prudent business person to eliminate the employee's position, the employee shall be reinstated in any other position that is available and suitable..." and then we go on with the rest of the language in (c).

TAPE 1, SIDE B

020 CHAIR KERANS: So we say "However, the employer is not required to discharge any other employee in order to reinstate the employee to any job other than the former job unless required under agreement between the employee and employer by collective agreement or by employer policy."

Can you read that to us again slowly? I like your language. So it says, "If the employer circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job,---

026 REP. MANNIX: Then we bring the phrase up from (d), "or if the former job does not exist at the end of the leave and the employer establishes that the employer's financial position or business circumstances have materially changed so as to cause a prudent business person to eliminate the employee's position,--

030 CHAIR KERANS: "...the employee shall be reinstated to any other position that is available and suitable. However..."

031 REP. MANNIX: Yes.

031 CHAIR KERANS: That is excellent. I believe that does what we want it to say. Is there any objection to that?

034 SEN. BROCKMAN: To embellish on that--the Wilhelms amendments (EXHIBIT B)--would that cover it.

035 CHAIR KERANS: That is not needed now. It would be covered by "collective bargaining agreement or by employer policy."

036 SEN. BROCKMAN: I don't think so.

037 REP. MANNIX: I think we could do that and the Wilhelms amendment. That could be the new (d).

039 CHAIR KERANS: Let's do this one first and then we will go to the Wilhelms amendment.

041 MS. TALBOTT: Rep. Mannix, the intent of that then is--I'm trying to track the difference between the first part, "if the employer circumstances have so changed that the employee cannot be reinstated" and the difference between "if the former job does not exist at the end of the leave because of the financial circumstances" and to understand what the two categories are and do they overlap at all.

046 REP. MANNIX: They do overlap some. The reasoning here is that you could have circumstances having changed that the employee cannot be reinstated to the former or equivalent job where the former job still exists under (c). Under (d) you are saying the former job doesn't exist and you are talking about what kind of circumstances lead to it not

existing. I had a consideration for Rep. Derfler's idea trying to put the two together. Theoretically, you could have the job still be there but your circumstances have so changed that you cannot reinstate the employee to that job or an equivalent job under (c). And adding the language of (d) we would say actually the job might not exist and you could establish the reasons why. That is meant to prevent the employer from eliminating the job as a device for not reinstating the employee. There is a standard then the employer's financial position or business circumstances materially change so as to cause a prudent business person to eliminate the employee's position. It sets a standard for eliminating the job. The best example would be that branch burned down so that job is eliminated. On the other hand the branch is still there and everyone else is still working there and the person leaves and the employer says I have eliminated that job, you say why did you eliminate the job. You don't just have your circumstances changed. We have a pretty specific standard.

I don't mind going even a little further and using that full standard for all of it if you prefer. That is, to just say if---

068 CHAIR KERANS: I am not sure I am going to go beyond that.

069 REP. MANNIX: There is a lot of overlap, counsel.

071 MS. TALBOTT: It is not that I am concerned. I am not sure I can think of an instance where they couldn't be reinstated unless it was for a business purpose. It is not like an injured worker who cannot go back to their job because they can't perform that job any longer. I want to make sure the record is clear about how the two overlap or if they do, if they are supposed to overlap, how you would construe which standard.

076 REP. MANNIX: I still think that (d) is subsumed within (c), but I was trying to put both in there out of spirit of accommodation. On the other hand, if committee members are satisfied that the loss of a job is covered within (c) we could just do the Wilhelms amendment and put that in. I look to Rep. Derfler for some direction on his preferences on that.

061 MS. TALBOTT: One alternative, Rep. Derfler, might be to just define what that change in circumstance is. That was the attempt by the ones dated today, 6/26 submitted by Sen. Kerans (EXHIBIT D).

084 CHAIR KERANS: Those come out of the rules on pregnancy disability, "Such change in circumstance means a change which compels a reasonable business person to eliminate the position..." It could be compels or convinces, whichever. I have no trouble with using the words and I think Rep. Mannix is correct that there are two classes of circumstances. One, in the first part of the sentence on lines 21 and 22 down to the comma, that represents one class, "The employer circumstances are so changed that the employee cannot be reinstated to the former or an equivalent job." We have all agreed to that language. We know what that means. "..., or if the former job does not exist..." Now we have a new class. Those are two separate classes. There may be overlap in there, but I don't know how we do if it says the former job does not exist at the end of the leave..." and the employer establishes the employer's financial position or business circumstances such that he had to eliminate the person's position. I see those as not overlapping, particularly. Circumstances means the job is there and what are the circumstances that you are not going back to that job. The second one is there is no job to go back to and you've still got "suitable and

available."

102 REP. WATT: I wonder if I could suggest delining those and still including (d) into (c) by leaving the first circumstance complete as it is the sentence after suitable, then insert "if the former job does not exist at the end of the leave and the employer establishes that the employer's financial position..." as opposed to inserting into the middle of the sentence that kind of muddies the water.

109 CHAIR KERANS: That is a friendly amendment to your motion.

109 REP. MANNIX: I do need to point out that if we do that, the earlier version, the version of (d) says that if the position has been eliminated for these reasons, then the employer is not required to reinstate the employee at all. I didn't mind saying I will still run you through the available and suitable traces, so to speak. Under this approach, we are taking away from the reinstatement if we put all that language up there. It depends on how you play it.

I guess the policy issue is still to be addressed. If the position has been eliminated, do we want to require that the employer reinstate the person to some other available and suitable job.

120 CHAIR KERANS: Yes.

119 REP. MANNIX: It seemed to me that if there isn't an available and suitable job there, why not require reinstatement because the elimination of the job had nothing to with that employee.

123 CHAIR KERANS: That is why I like your insertion of it after the comma and before the work "the" on line 22. Rep. Watt, it is more cumbersome, but it inserts this ahead of the term, "the employee shall be reinstated to any other position that is available and suitable." We can repeat that language by putting a period after "suitable" and repeating "if the former job does not exist so as to cause a prudent business person to eliminate the employee's position, which would have been eliminated with or without the leave, the employee shall be reinstated in any other position that is available." Would that be satisfactory?

131 REP. DERFLER: Say it again.

131 CHAIR KERANS: We would simply parallel it. The first sentence of (c), lines 21, 22 and 23, would stay the same. Lines 28, 29 and 30 (1) and (2) down to the comma would stay the same and after the comma you would insert the same language you find on lines 21, 22 and 23, "the employee shall be reinstated in any other position that is available and suitable."

139 MOTION: REP. MANNIX moves to eliminate (d) and that (c) be modified to read as follows: "If the employer's circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job the employee shall be reinstated in any other position that is available and suitable." Then insert, "If the former job does not exist at the end of the leave and the employer establishes that the employer's financial position or business circumstances have materially changed so as to cause a prudent person to eliminate the employee's position, the employee shall be reinstated in any other position that is available and suitable." Then we run on with the rest of (c).

151 SEN. BROCKMAN: That has the agreement of the employee and employer, collective bargaining and all that tagged on to the end of the Mannix amendment?

152 CHAIR KERANS and REP. MANNIX: Yes.

153 MS. TALBOTT: It is the same sentence that is already in (c).

152 CHAIR KERANS: Is that understood and okay? Any objection?

153 VOTE: CHAIR KERANS, hearing no objection, declares the amendment ADOPTED. All members are present.

161 CHAIR KERANS: Before we leave this, we have the Wilhelms amendment. Does this clarify the circumstances if we were to add that? It does no damage.

164 MOTION: REP. MANNIX moves that the Wilhelms amendment (EXHIBIT B) BE ADOPTED.

166 REP. MANNIX: It does clarify it because it would allow for an employer who has a collective bargaining that has specific reinstatement provisions, if they deal with something other than former or equivalent job, they could have a collective bargaining and that would tell them how to do it. I think it is great to allow them to bargain that out.

171 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the Wilhelms amendment ADOPTED. All members are present.

172 CHAIR KERANS: The amendment will have to be renumbered and reordered to fit.

180 CHAIR KERANS: We are getting down to the hard part. We have 180 days, 50 persons and 30 hours. Do we have some report or suggestions about what might be possible?

179 REP. DERFLER: I don't think I will vary from those three numbers.

182 SEN. HILL: I would like to address the purpose of those three numbers. The purpose of the (c) on line 10 is to exempt the small businesses in recognition that small businesses often don't have the cash flow and flexibility of larger businesses. Whether we choose 25 or 50, the purpose is the same--to differentiate between the larger businesses and the smaller businesses. On lines 12 and 13, which is the eligibility based upon the number of hours worked, there is a different purpose which I don't understand. You could have a person working for a very large wealthy flexible business with lots of cash flow who works less than 30 hours a week. Why should that person be denied the protections of the Act if we are attempting to address the problems that smaller businesses have. I don't see the rationale in lines 12 and 13 that we see in lines 10 and 11 which is why I have disagreement with its insertion at all. I understand the House has an interest in it and I am willing to look at some middle numbers. The numbers that Senator Kerans and I have discussed is go with 180 days, which I consider a significant compromise, to go with a 25 person employer threshold which is in (c). The 180 days would be in (1) on line 5. The 25 threshold would be on line 10 and on line 12 strike a compromise at 17.5.

207 CHAIR KERANS: The reason I am suggesting that is we are going from zero hours, no threshold, in other leaves to a hard and fast rule. We

can also discuss some other matters. We don't have any motions yet. We are still trying to find whether there is consensus.

212 REP. BRIAN: I agree with the 180 days because it is a frequently found probationary status period for those who are under PERS employment. It is a benefit that kicks in at six months and it also is in line with a lot of other pension benefits, etc. in the private sector. So six months or 180 days is a very commonly reference period of time. It seems logical. My thought here is that we are discussing a very substantial new employment leave right relating to family members, even in the case of a child with sniffles. So I think it is a very significant step we are considering taking here. For that reason, I think it is sufficient regarding the 30 hours that this benefit apply to persons working at least 30 hours. I might note that the memorandum that was distributed to us from Ms. Talbott would indicate that of 1.3 million employees in the work force, 1,086,000 of them would be covered by the 30 hour or more requirement (EXHIBIT E). I think that is an extremely good start on an extremely good benefit for the work force.

233 CHAIR KERANS: You are right about that except there is a double threshold because you have to take off all the employes who failed the first threshold, who are at 24 employes or less or 49 employes or less. So when you take off that number, you have taken, as I understand it, some 56 percent of the employes would be at 50 and above. So you have eliminated 44 percent going in. Then of the 56 percent remaining you would then eliminate those who at 29 hours or less. So you would be well below half of the work force at that point because there is a double threshold. First, you have to be a business big enough and then you have to work enough hours.

248 REP. WATT: I appreciate the numbers the Chair brought up. I think Rep. Brian raises a very, very good point that we are about to embark on some historic legislation that will, in effect, grant employes something they haven't had in the past. But it is an extremely new mandate to employers. I had an opportunity to talk to quite a number of employers from my region. I think from my position I would certainly remain firm on the numbers we have talked about, see how the program works and at this point as we approach late in the Session, I certainly don't think that is something that wouldn't be acceptable as opposed to not having the program at all. From my perspective at this point, I would think that is a question I would certainly stay firm on--the numbers we talked about previously.

267 CHAIR KERANS: I hope nobody gets so firm that we can't come to an agreement this afternoon. While Senator Hill and I have stated some numbers, those are not go-home numbers yet. I would hope we can work to some accommodation of trying to find where the outside parameters are and in front of God and everybody here we will see whether there is a middle ground between numbers people like the most. If we can work to numbers that are someplace where we can come to a true compromise.

277 REP. MANNIX: We have to take a step back and take a deep breath for a moment. I will not pontificate, but I want to explain. If I was writing this bill for myself and if I was writing social policy, this bill would be a lot different. Some people saw a version of a bill I helped write that came over to the Senate that nobody concurred with in the Senate. Even that wasn't the bill I might have tried to write for my own social policy. But we are trying to navigate this current in-between of employers on one side and workers on the other and come up

with some social policy that benefits families. I am interested in social policy that benefits families because I am looking at a society where our family nature is becoming increasingly dysfunctional. I am really concerned that if we take hard and fast attitudes at the get-go we aren't getting at what this bill is trying to get at which is moms and dads who work and who have kids that get sick and in our modern society we have 50 percent of these two-parent households having both working and day care centers won't take the sick kids and they need to have a place to go to take care of those sick kids. So when we start talking about that, then I hear labor saying we want it all and on the other hand I hear management saying we want nothing. I am one of those guys in the middle saying I am sick and tired of some people who want nothing and other people who want it all. We have to get together and that is what we are trying to do here. I appreciate the fact that the Senators have shown so much of a willingness to work with us on this and that our House delegation has been willing to and I hope we won't get frozen in. I am starting to pontificate. I will back off.

The reality is that any large employer ought to be able to accommodate every single employee in terms of hours worked. I have been hearing they have to be identified with the employer, they have to have worked there long enough. Okay, the short term employee I can see dropping off. Once they have been there for 180 days, I don't care if they work 10 hours a week if they need to not come in one day, I would like them to be able to not come in one day and not lose their job. But I recognize I can't get that. Thirty hours a week seems to me to be pretty high because we are dealing with a work force where the people who are most in need of this kind of protection often have to get two jobs where they are working 15 hours on each job or 20 hours on each job, or one of the parents has the 20 hour job and the other has a 35 hour job. These are the people I want to help. I have been hearing the argument that all reasonable employers don't need this law. Great. The ones I want to go after then are the unreasonable ones and I want to come up with a standard to hammer the unreasonable ones with.

I think we could probably agree on the 180 days. I think if we look at what we did on parental leave and what we did on pregnancy disability leave and what we did this very day in Judiciary in the House on health insurance where we say 25 employes is a good standard. I would like to see more and more of our laws relate to that clean break. I would like to propose that the 25 employee standard is appropriate here.

335 CHAIR KERANS: Let me see if we can't come to an agreement. I would like to have made an argument between 90 and 180, but I am willing to yield on the 90 and accept 180. But we have come a long way here and we have all had to give and take some. I would like to get some final giving and taking here.

343 REP. WATT: Before we get too far, would you like to make that 180 days in the form of a motion?

344 CHAIR KERANS: No, not yet. I think we are going to come to closure on the final here pretty quick. I think we all recognize that while it may be a given, we haven't adopted it yet. I agree with Rep. Mannix that the 25 represents the critical threshold of employees and I think we ought to maintain that. We have that in 1076 and 935 and we have it in the two leaves we have already adopted. That is really the threshold. That is most of the employes and only a minority of the employers would then be covered. We have already established that.

Then the question is what shall we do for hours per week. The problem is the people we are talking about here are primarily women working part time, many of them working two different part-time jobs in order to maintain a family where they are the single head of household and have desperate need to be a caregiver and have no one else to call upon. We have a lot of women who are getting by on less than 30 hours work per week waitressing. You don't find too many 40- hour per week waitresses. They are working split shifts for an employer and working some place else in the middle, taking kids back and forth to day care and home. We are not talking about the big employers. They are all doing well and very much in concern to their human resource departments about retention of good employes. We are not worrying about them. We are at the margin.

We suggested 17.5. Is that what we did in 1076?

386 REP. MANNIX: That was passed out by the subcommittee and it is in front of the full House Judiciary Committee this afternoon.

395 CHAIR KERANS: So the Republican House Judiciary Committee has come down on behalf of 17.5 hours. Allow me just that little one. I am about to leave that standard and move up. Let me suggest 20 hours which is exactly half-time which is what we treat our state employees at. Would that be acceptable?

398 REP. DERFLER: I think I have expressed where I am and I am going to stick with the numbers we have. I think this is a mandate that we are putting on employers. I think them accepting that part of the thing is really adequate.

406 CHAIR KERANS: Let me make a motion so we can come to closure. I agree with you, Rep. Mannix, on the threshold of employes but I am going to go outside the agreement which I have had with the parties of interest here who have been working with me on this bill from the beginning. This is a very low numbered bill and we have been working on it since practically the day it was printed. It was printed the first day. I am willing to go outside that agreement and the understandings I have had with all the people who have supported SB 39 and the commissioner by virtue of the fact that I vote here and she doesn't and make an offer which is a true compromise offer to the members and ask that you consider it as the final and best offer. I would offer 25 and 25. Twenty-five employees because I think that is exceptionally important. There is only four percent difference.

426 REP. DERFLER: Except the federal laws are going to be 50 and I think we need to coincide with the federal laws.

430 CHAIR KERANS: The problem with the federal law is they are dealing with places where small employers have 500 or less and that is a big employer here. I am not dealing with the federal statute, Rep. Derfler. I am making a motion which represents, I think, a true compromise between the one hour threshold of pregnancy disability and the one hour threshold on parental leave and the 30 hours you have asked. My offer is 25 which is 24 hours and 59 minutes more than the standard we've got now in either of those two leave bills and it represents 5/6 of the standards you have asked. Let me put that in the form of a motion.

448 REP. MANNIX: I think it has a certain poetic symmetry to it--25 and 25. It is something people can understand and it certainly does reflect an effort to compromise, Mr. Chairman. So I would support that.

454 REP. BRIAN: On the other hand we haven't seen many other poetic things work around here. My concern is still what basis in fact, what information we have that moves us between 30 and 25. The numbers don't split out well enough for us to really tell. I still try to make the point that 30 hours includes 1,086,000 of the 1.3 million work force with the exception of the... If we were to consider lowering the employes from 50 down to 25, I think even a smaller portion of the work force is exempted. I think we are somewhere around, and we don't know, it could be 700,000, 800,000 or 900,000 employes covered by this bill even at 30 hours. I would again hope, especially if we go to 25 employes, that we stay at 30 hours.

014 CHAIR KERANS: I think I can count pretty well, although I am making an assumption about Rep. Watt. Twenty-five and 25 would be something that would not go. Let me try and see whether there is anything on the other side. Is there anything that can be done.

019 MOTION: REP. MANNIX moves 25 persons and 30 hours.

020 REP. DERFLER: I have already stated where I am.

022 SEN. HILL: I don't think I can support that. I think that is penalizing a lot of the single mothers who have to work part time and take care of kids the rest of the time. That is exactly the people who most need the help. I think that is unacceptable.

024 REP. BRIAN: The other side of that is I know when we did 935 last session, I am not condoning the practice, but I do know there were a number of employes who were working 20, 22 or 25 hours a week who suddenly found themselves suddenly working 16 hours a week and therefore depriving their family of that income because the employer was trying to get out of the 935 mandates. I think we start doing some of that when we go under 30. We start having employers who will start gearing back those very employes we are trying to help.

032 REP. WATT: There is nothing here that precludes that reasonable employer, as Rep. Mannix alluded to, to following these kinds of... or whatever amount of hours they work. Once again, what is important to me is we are walking out on new ground. This is a mandate that I would like to see how it works first. We can come back and revisit it in the next biennium. I would prefer at this point in time just to stay where I am at on the existing numbers.

039 CHAIR KERANS: On the existing number--180, 50 and 30. Is that correct?

039 REP. WATT responds affirmatively.

040 CHAIR KERANS: Is that correct also for you Rep. Derfler?

040 REP. DERFLER: Yes.

040 CHAIR KERANS: Is it also for you at the moment, Sen. Brockman?

042 SEN. BROCKMAN: Yes, I sense...

041 CHAIR KERANS: Is that also your position, Rep. Brian?

041 REP. BRIAN: I would concede the employee number, but not the hours.

044 SEN. HILL: I sense there is a hard and fast position from our colleagues in the House and Senator Brockman. I respect their position. I don't think there is any reason to get into a personal situation. I am real disappointed. I would simply like to reference the fact there is an awful lot of folks interested in achieving this legislation, probably to the point of a significant initiative campaign which is always a very expensive proposition. I expect that will be the immediate result of the failure of this Legislature to adopt this legislation and we won't have the luxury of waiting until the next session. I am simply referencing that, making a personal observation that it is very likely. In making our decisions before we shut down this discussion, I think we should simply be aware that is a very likely outcome of the failure of this conference committee.

056 SEN. BROCKMAN: In response to Sen. Hill's observation, I am not in collusion with anybody and I think anybody sitting out there will know that I have worked very hard on this bill. I have been conciliatory and to be honest I voted against this bill on the Floor. I am here because I am statutorily required to be, either I or Senator Kintigh who also voted against it. So if we lose this it is no sweat off my back, although I want to see it work, contrary to what others may think. But I am sticking to those numbers because as it has been eloquently said by other members of this panel it is brand new. I think we should take it as it comes and I think we should stop bickering over it and pass the 180, 50 and the 30.

069 CHAIR KERANS: We may be high centered. I was hoping that the kind of cooperation we had today especially with what the House members brought to the committee could have carried over to our afternoon session.

074 REP. DERFLER: I think we did bring a lot. We backed off from the original bill and I think we are at the area where we need to hold fast.

076 REP. MANNIX: I can't help but observe that 49 members of the House voted for a bill that applied to 25 employes and 20 hours a week.

078 CHAIR KERANS: That is exactly the problem I have. I am sitting here working on new ground but the problem is that we have left where the House was and where the Senate was and come up with something that is more stringent than either body passed. I am willing to go out on that ground a little ways and say it will be more stringent than what 21 or 22 members of the Senate said and what the House has said as far as both hours and employes. I hate to find ourselves coming back now on this that doubles the numbers and 50 percent higher in hours. And the same with us. I think we ought to strike the balance in there somewhere and say we are higher than we were when you sent it over to us and we are higher than it was when we sent it out of the Senate twice, but it is worthwhile agreeing to more stringent terms as far as employes and hours than either chamber did in order to accomplish a bill. I want a bill.

098 REP. DERFLER: We wouldn't have come as far as we have if we didn't expect a bill.

098 CHAIR KERANS: You would have agreed, however, in the other bill to 25 employes and 20 hours, which is what your committee sent out and which the House passed, in the combination bill. Somehow when those got severed the number of employes had to go up and the number of hours had

to go up substantially. I understand that and you understand that. What I am trying to do is see if there is anything that will get you between your first position and this position.

105 REP. DERFLER: We need to sit back and think about it.

106 CHAIR KERANS: Do you want to recess?

107 REP. DERFLER: We have a caucus to go to.

108 CHAIR KERANS: We have to finish this today because if we don't have a bill today, we don't have a bill because we have to take up timber workers tomorrow.

111 REP. DERFLER: Could we recess until after the session.

113 CHAIR KERANS: Why don't we recess on call of the chair and I will get back to you and we will post it. But I think you and I have to talk directly and see whether there is any point in coming back or not.

115 CHAIR KERANS declares the meeting in recess at 4:12 p.m.

117 CHAIR KERANS reconvenes the meeting at 7:34 p.m.

117 CHAIR KERANS: There have been quite a lot of conversations that have taken place this afternoon. I appreciate the willingness of the House conferees to listen to the entreats of myself and others. We have had some additional movement and I think we have come to the point where I would like to make a motion unless there is someone else who feels that they have to.

128 REP. MANNIX: To the extent we are relying on this new B-15 set (EXHIBIT C), can it be agreed that to the extent we had our previous B-7 (EXHIBIT A)set we were working from, if there are any clerical errors or changes that we are relying on the original B-7 set. Counsel may not have had time to carefully proof read it.

132 MS. TALBOTT: We actually have gone through word for word and I have several questions for the committee.

134 CHAIR KERANS: We will take those up after we get through the motion.

135 MOTION: CHAIR KERANS moves to retain the 180 days on line 14, retain the 50 employes or fewer on line 19 and to strike 30 hours and substitute 25 hours.

142 CHAIR KERANS: The reason I am willing to do this and go this far and come closer to the position of the House is this is new law and a new benefit. The question is how high up do we go. We are at zero now and the question is how much of a benefit do we extend and to whom we extend it. So anything that is given is in fact wholly new and good to the people who receive it. The question is how far do we extend that. If we can meet on those terms, I think we can have a bill.

153 REP. DERFLER: I appreciate the work you have done on it and the movement you had. I think it is important that we protect small businesses and that has been my main goal. This is brand new and it is a mandate and I think that the business community has given a lot in allowing this mandate to take place. I appreciate the movement we have

had in the bill.

161 SEN. HILL: May I clarify that Rep. Derfler is saying he supports the Chair's proposal?

163 REP. DERFLER: Yes.

163 CHAIR KERANS: Is there objection to the motion?

164 SEN. HILL: In deference to the committee and the fact that you and the Chair of the House committee have obviously struggled over this and come to a meeting of the minds and also in view of the fact that the House has retreated from its total proposal, it's original version, as we have retreated from our version to an extent, I won't object, but I will note that if using the sheet about statistics that the net effect of this would be to extend the protections to just about half of the working persons in the state, that is good. It would not extend these protections to the other half and that is unfortunate. But half is better than none. I look at the glass as half full rather than half empty. I will not object, but I will note that those persons will wonder why they don't get protections, too, when their children are sick or when their parents are dying.

181 CHAIR KERANS: I understand that and I concur with your feelings, but you can get an empty glass around here any day you want. I agree with you. We must be optimistic. We can take the half and work for another day. The Legislature meets every two years and I am certain this issue will be with us. Before we vote on this, are there other comments?

186 SEN. BROCKMAN: I would like to throw this out in light of the half of the glass. I learned this in logic in College. Half a loaf is better than nothing. Nothing is better than heaven; therefore, half a loaf is better than heaven.

191 MOTION: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

192 CHAIR KERANS: I would ask Counsel to explain the questions. We have some technical corrections and some interpretations to make as far as the words are concerned.

196 MS. TALBOTT: Rep. Mannix has a concern on the definition of subsection (3) of Section 3 and I will let him speak to changing (a) to (b).

199 REP. MANNIX: I would like to see line 8 brought up and put in first so it would say, "Serious health condition means" and that subsection (b) would become (a), "An illness of a child of an employee requiring home care." What is currently (a) would then follow. That just makes it easier to read because there are so many subsections under the small letter (a) that it gets confusing. If you start off with the other item first, it is easier to read.

206 When we say "an illness of a child of an employee requiring home care" it is obvious that it is the child who requires home care.

MOTION: REP. MANNIX moves that the changes as just stated BE ADOPTED.

211 CHAIR KERANS: Is there any objection to that? It is just a matter

of ordering.

211 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

212 MS. TALBOTT: On page 3, in regards to the notice provisions that the committee spoke to earlier in the day, there seems to be a little bit of an internal inconsistency. Lines 4 and 5 provide that the employee has to provide notice of the family medical leave of absence in a reasonable and practicable manner, yet in lines 6 through 11 you have stated very specifically what kinds of notice and what periods of time notice should be given. I would suggest that perhaps one way to conform that would be to actually delete lines 4 and 5 and in line 10, before "an oral request" the sentence say, "in cases where the serious health is not anticipated, an oral request confirmed in writing within three days constitutes a written request." So you still have to provide a written request where you can anticipate the condition.

228 CHAIR KERANS: In essence, you are taking what is paragraph (b), subparagraph (a), "provide the employer with notice of family medical leave of absence in a reasonable and practicable manner" which conflicts with the idea of written notice and oral notice followed by written notice. We would simply strike that so we have only the sense of what we did in (b), the more stringent language. You've got to have written notice where you anticipate the need and you say that an oral request confirmed in writing within three working days constitutes a written request in cases where the serious health condition is not anticipated.

241 REP. MANNIX: As an alternative to that, because I am concerned about confusion, if we simply added a phrase where it says (lines 4 and 5) "provide the employer with notice of the family medical leave of absence in a reasonable and practicable manner" we could simply add the phrase, "and within the time limitations specified herein." Then we have tied it to the other time limitations and we are changing it around a little bit less.

249 CHAIR KERANS: The problem is though is what reasonable and practicable really means notice with more than 15 days when it is anticipated and an oral request followed by writing within three working days if it is not anticipated.

254 REP. MANNIX: Why don't we just say, "provide the employer with notice of the family medical leave of absence as provided herein. Then you go into the rest of the provisions.

256 MS. TALBOTT: And also add "that in cases where the serious health condition is not anticipated" phrase?

257 CHAIR KERANS: The problem we have is that... We have been thinking that paragraph (b), subparagraph (a) is what we are going to do when it is not anticipated, but we actually did it again in the bottom of subparagraph (b) by saying "an oral request confirmed in writing within working days." That is for the unanticipated. So we have two ways to address unanticipated.

267 REP. MANNIX: Where do you want to place that sentence?

266 MS. TALBOTT: I think you have to put a phrase in line 10 after the word leave and the period. Start a new sentence that says, "In cases

where the serious health condition is not anticipated, an oral request confirmed in writing within three working days constitutes a written request.

271 CHAIR KERANS: And strike the other one.

272 REP. MANNIX: So the rest of that will mean we are saying you have to have it in writing on the 15 days notice, there is no oral request. On the unanticipated it can be an oral request confirmed in writing within three days.

273 CHAIR KERANS: That is right.

REP. MANNIX: That is fine.

275 CHAIR KERANS: That is what the Senate did in our version. That is what Senator Shoemaker did on his three day notice. That is where the three day notice came from.

277 MOTION; CHAIR KERANS moves to strike paragraph (d), subparagraph (a), lines 4 and 5, and include the phrase on line 10 after the period, "In cases where the serious health condition is not anticipated,." The sentence would go on.

283 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

286 MS. TALBOTT: On line 20, the last thing we caught when we read through word for word is that the "of" should be deleted and after the word "absence" "commenced" should be inserted. That was a change that Rep. Mannix had made in his amendments this morning. That was to ensure that the restoration was from the time the leave commenced.

299 MOTION: CHAIR KERANS moves that in line 20, delete "of" and after the word "absence" insert "commenced."

299 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

301 MS. TALBOTT: On page 4, Rep. Mannix, in his motion that clarified these two, the materially changed and the business position issue, didn't read the word "business person" on the record. I think that is what he wanted and the actual amendment says "business" on line 1, page 4. I want to clarify that you do want that included because it was not on the tape.

308 REP. MANNIX: Prudent business person? Yes.

309 MS. TALBOTT: In lines 8 through 12 on page 4, the Wilhelms amendment, it doesn't have the same parallel structure that we now have in paragraph (c) which is the issue of the material change in the business. So if you would like to make that a mirror image of (c), it could easily be done by repeating the same language about "if the former job does not exist at the end of the leave and the employer establishes the financial position or business circumstances have materially changed..." That could all be added again to paragraph (d) so they were mirrors.

321 MOTION: SEN. BROCKMAN moves that lines 8 and 12 on page 4 be amended to

have the same parallel structure in paragraph (c) as stated by Ms. Talbott.

323 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

330 REP. BRIAN: I have a question regarding lines 19 and 20. Would you like to address those now or let staff finish the technical cleanup?

330 MS. TALBOTT: That is it.

332 REP. BRIAN: On page 4, lines 19 and 20, my only question there is it says "an employer employs fewer than 50 persons..." Is that 50 persons excluding seasonal and temporaries? I think to be consistent in our logic and good faith, we want to say something like, "employer employs fewer than 50 persons excluding employes of Section 7 (b)."

340 CHAIR KERANS: That is just a nose count. That is the way we treat the others. You count the noses and when you come to 50, then you say okay on this day immediately prior to the first day of the family medical leave, you have 50 folks. But if you are a seasonal employee among those 50 under (b), you don't get it.

350 REP. BRIAN: I appreciate the explanation. I guess my concern is that you would have a business that typically operates with 10, 15 employees, maybe it is a farm or whatever. And during a seasonal situation you have 35 more or 40 more temporaries come in. All of a sudden those 10 or 12 full time people become of benefit to a lot of those not otherwise intended.

360 CHAIR KERANS: That is our understanding of where we are in the current law on leaves with employees. In the discussion on parental leave especially, we went through that and we said yes, business contractions and business expansions will carry you back and forth across the line and that is a matter of the function of the law. The reason we put seasonal in here was to exempt those who came on board but does not prevent those who are permanent full time continuing career employees in the event they did go across the line and they had a need to have leave.

372 REP. DERFLER: That wasn't my thinking on it. I was thinking that there would be 50 full time employees.

378 CHAIR KERANS: Let me find out what Counsel has to say about this. Am I wrong about that? Let's stand at ease while the representative of BOLI and Counsel confer on how the rules apply now. I want to do what we are doing now in the law. If I have misstated the rules as they are interpreted by BOLI, then I will stand corrected.

386 MS. TALBOTT: Under current leave law where you have the 25 or more (and there would be no reason to interpret this differently) they would not count temporary or seasonal employees in the count.

390 CHAIR KERANS: They do not. So I was wrong.

396 SEN. HILL: Could you restate that for the tape so we know that is what that means?

397 CHAIR KERANS: Yes. We are saying this will be interpreted the same

way in which it is interpreted by rule for the current leave law that seasonal and temporaries are not included in the body count. If you have 50 full time career people who serve more than six months and have finished their probationary period and are on the payroll, and seasonal don't count and don't get the benefit. That is what keeps the count so low. We will have to do something about it next session.

408 SEN. HILL: I will get amendments prepared.

409 CHAIR KERANS: It is too late. LC draft 01 is already taken. Are there any other items?

413 REP. MANNIX: When we dropped the sub (b)(a) on lines 4 and 5 of page 3, that had talked about providing the employer with notice and I think to be precise with our new language, when we talk about lines 6 and 7 on page 3, "the notice shall be provided.." I believe we should put "to the employer" there and on line 10 where we are talking about the notice, we should again say, "should be provided to the employer."

425 CHAIR KERANS: "...request..confirm in writing to the employer within three working days constitutes a written request." That is no problem. Any objection? Show that in the record. Is there anything else?

429 REP. BRIAN: Did you get the one in there on line 7, too?

MS. TALBOTT: We did both.

434 REP. MANNIX: I don't have any more technical changes unless someone else does.

434 MOTION: REP. MANNIX moves that the bill, as amended, BE ADOPTED as the Conference Committee Report.

438 CHAIR KERANS: Rep. Mannix moves that the Conference Committee Report amend SB 39 where it says, "Report it back with the recommendation that the House recede from the House amendments dated June 12 and that the A-Engrossed bill be amended as follows and repassed."

446 Before we vote on that, I want to thank the House members for their willingness to work with us. I especially want to thank Rep. Mannix for his good work against long odds and is always true in this business, any good deed shall be punished. Your good deed in getting SB 39 to the Senate so we could not concur in it and come to conference committee--you were thoroughly and roundly punished in all areas for that, but I think the record ought to show there are some 500 ,000 workers who will receive a benefit for family medical leave by virtue of the fact that you persevered. Ours was, for myself, the easy part and the record ought to note that. I certainly appreciate it. I appreciate the good work.

477 VOTE: CHAIR KERANS, hearing no objection to the motion, declares the motion PASSED. All members are present.

078 CHAIR KERANS declares the meeting adjourned at 7:55 p.m.

Transcribed and submitted by, Reviewed by,

Annetta Mullins Annette Talbot Assistant Committee Administrator

EXHIBIT SUMMARY

A -SB 39, proposed amendments to SB 39, Rep. Mannix B -SB 39, proposed amendments to SB 39, Gary Wilhelms C -SB 39, SB 39-B15 proposed amendments to SB 39, Reps. Derfler and Mannix D -SB 39, proposed amendment to SB 39, Sen. Kerans E -SB 39, staff memo re hours worked and employer/employee statistics, staff