

SENATE COMMITTEE ON LABOR -

March 25, 1991                      Hearing Room 50 03:00 p.m.                      Tapes 42 - 43  
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,  
VICE-CHAIR SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB SHOEMAKER

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,  
COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 54 - CREATES INTEREST  
BEARING ACCOUNT FOR STATE EMPLOYEE BENEFIT PLANS - WORK SESSION SB 37 -  
PROVIDES FOR LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGE AND  
OVERTIME WAGES - WORK SESSION SB 45 - PROVIDES ADMINISTRATIVE REMEDY FOR  
COLLECTION OF UNPAID MINIMUM WAGES, OVERTIME WAGES AND LIQUIDATED  
DAMAGES WITHOUT NECESSITY OF WAGE ASSIGNMENT - WORK SESSION SB 42 -  
REMOVES EMPLOYER RIGHT TO TRIAL WHEN COMMISSIONER OF BUREAU OF LABOR AND  
INDUSTRIES BRINGS WAGE CLAIM MATTER UNDER ADMINISTRATIVE PROCEEDING -  
WORK SESSION - These minutes contain materials which paraphrase and/or  
summarize statements made during this session. Only text enclosed in  
quotation marks report a speaker's exact words. For complete contents of  
the proceedings, please refer to the tapes.

TAPE 42, SIDE A

WITNESSES: PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION, BUREAU  
OF LABOR AND INDUSTRIES Name

001 CHAIR KERANS called the meeting to order at 3:09 p.m.

SB 45 - PROVIDES ADMINISTRATIVE REMEDY FOR COLLECTION OF UNPAID MINIMUM  
WAGES! OVERTIME WAGES AND LIQUIDATED DAMAGES WITHOUT NECESSITY OF WAGE  
ASSIGNMENT - WORK SESSION SB 42 - REMOVES EMPLOYER RIGHT TO TRIAL WHEN  
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LABOR AND INDUSTRIES BRINGS WAGE CLAIM MATTER UNDER ADMINISTRATIVE  
PROCEEDING - WORK SESSION

024 ANNETTE TALBOTT, COMMITTEE COUNSEL: > SB 45 and SB 42 were  
introduced by the Bureau to provide for administrative remedies for  
collecting certain unpaid wages. SB 42 was at the suggestion of their  
attorney general to ensure that the administrative remedies that they  
have are compatible with an employer's right under the constitution to a  
jury trial. > Article I, Section 10 of the Oregon Constitution, provides  
that there should be a remedy for injury to person or property. Certain  
things are provided under Common Law, such as a wage claim, and  
therefore there was a constitutional guarantee that remedy and that  
right to a jury trial would be continued. There are those types of  
claims that are based in the constitution, because they were common law  
claims that SB 42 wants to preserve. > SB 42 is designed to guarantee  
that procedure guarantees the right to trial when it's required, and  
makes clear that there are other instances when it's not. > The Attorney  
General felt, after talking with the Bureau, that combining SB 45 and SB  
42 was the best approach. 064 PAUL TIFFANY, ADMINISTRATOR, WAGE AND  
HOUR DIVISION, BUREAU OF LABOR AND INDUSTRIES: > We hope to incorporate  
within our wage collection procedure an administrative procedure for  
collecting minimum wage and overtime without a wage claim. 123 CHAIR  
KERANS: Tell us the purpose of Section 4.

TIFFANY: The leading language in line 21 and 22 correlates to the new  
language we are proposing. We don't need the language in 21 and 22 if we  
are to add the language in 24. We don't need to say that the

commissioner can collect wages through a court action. CHAIR KERANS: You are saying that the commissioner is going to act administratively, except in those cases where an employer has outbid her by taking that question to court. TIFFANY: That's correct, we don't have any option in that case. If the person requests a jury trial, we have to go that route.

138 CHAIR KERANS: What is ORS 279.334(7), which is bold faced on line 30?

TIFFANY: That is the liquidated damages for failure to pay prevailing wage overtime.

CHAIR KERANS: What about 2(c)? TIFFANY: That is language we are taking out. Parties are putting employers in there - we are narrowing it to the constitutional right, if applicable. All of that language is intended to get to the proposal.

153 SENATOR SHOEMAKER: Is there any problem with limiting the employer's constitutional right to a jury trial through statutory 20 days time to demand it? - 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. Senate Committee on Labor March 25, 1991- Page 3

TALBOTT: That is the current law - here we are assuring the ability to do this for both employer's right and administrative role. This is how it is currently prescribed in procedure, and I don't believe it has been challenged to date.

TIFFANY: No it has not.

CHAIR KERANS: Page 2, subsection (5), the order of determination.

TIFFANY: The order referred to here is the order of determination, and again, the language assessing the civil penalty under this section is applicable to the entire order instead of just to the penalty part of it. > Our Attorney General says this bill is okay, and this is virtually his language.

SENATOR KINTIGH: Why do we need an emergency clause on this?

192 TIFFANY: The original SB 45 did carry an emergency clause. The reason is that it will allow us to begin the administrative process for collection right away under minimum wage without a wage claim, instead of waiting for 3 months

206 SENATOR KINTIGH: What is the purpose of this bill? How will it be better than what you have now?

TIFFANY: > There are several advantages. The current procedure is somewhat convoluted. > This bill will be combined into regular procedure now for wage claims generally, and incorporate this other procedure for taking care of these remedial pieces of legislation. CHAIR KERANS: You have set up the administrative procedure to be parallel in all those cases where you may legitimately use an APA hearing to adjudicate the question.

270 MOTION: SENATOR HILL moves for the adoption of the amendments as shown in the hand-engrossed 3/25/91 version (Exhibit B). VOTE: Hearing

no objection, the motion carries. 278 MOTION: SENATOR HILL moves SB 45 as amended to the floor with a "do pass" recommendation. VOTE: Hearing no objection, the motion carries. 340 MIKE McCALLUM, OREGON RESTAURANT ASSOCIATION: > What this bill actually does is, whether statutorily or constitutionally, there was a right to trial for remedy for employers who dispute the minimum wage or overtime claim. This bill does not guarantee this right. > The right to trial is removed and replaced by administrative action as the sole cause for remedy in that case.

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CHAIR KERANS: There is a change in process, but is there much change in outcome?

TIFFANY: > This bill would reduce time and expense for the Bureau, but it would also provide a check on the Bureau by the courts.

408 MOTION: SENATOR SHOEMAKER moves that SB 45 as amended be subsequently referred to the Judiciary Committee with a "do pass" recommendation, by which motion SENATOR HILL'S previous motion was effectively withdrawn. VOTE: Hearing no objection, the motion carries.

TAPE 42, SIDE A

SB 42 - REMOVES EMPLOYER RIGHT TO TRIAL WHEN COMMISSIONER OF BUREAU OF LABOR AND INDUSTRIES BRINGS WAGE CLAIM MATTER 11NDER ADMINISTRATIVE PROCEEDING - WORK SESSION

431 MOTION: SENATOR KINTIGH moves SB 42 be tabled.

VOTE: Hearing no objection, the motion carries.

TAPE 43, SIDE A SB 37 - PROVIDES FOR LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES - WORK SESSION

016 CHAIR KERANS: Summarizes the bill for the committee.

024 TALBOTT: > The Fair Labor Standards Act uses liquidated damages as a term which provides it is asum to be paid in lieu of performance. > It has been tested as to its constitutionality in the U.S. Supreme Court, and it was upheld. 052 SENATOR SHOEMAKER: This would preempt any prior right of action an employee might have against his employer for consequential or other damages for failure to pay the wages contracted for. TALBOTT: Given the way the courts have described liquidated damages, that would be a double recovery. SENATOR SHOEMAKER: So this is the sole remedy against an employer for failing to pay proper wages. TALBOTT: I think the way that the courts have described the term liquidated damages that would lead to that result because otherwise they would be both recoveries for the same sort of injury. ~ ~- . These minutes cont ~ 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. Senate Committee on Labor March 25,1991- Page 5

167 MOTION: SENATOR SHOEMAKER moves the "-1" amendments to SB 37 (Exhibit C) be adopted. VOTE: Hearing no objection, the motion carries.

174 MOTION: SENATOR SHOEMAKER moves SB 37 as amended to the Judiciary committee with a "do pass" recommendation. VOTE: Hearing no objections, the motion carries.

TAPE 43, SIDE A SB 54 - CREATES INTEREST BEARING ACCOUNT FOR STATE EMPLOYEE BENEFIT PLANS WORK SESSION WITNESSES: JIM McINTOSH, ADMINISTRATOR, STATE EMPLOYEES' BENEFITS BOARD, EXECUTIVE DEPARTMENT LEWIS LITTLEHALES, PROGRAM EXECUTIVE, DEPARTMENT OF INSURANCE AND FINANCE TERRY MEAGHER, CHIEF INSURANCE EXAMINER OF DOMESTIC INSURERS, DEPARTMENT OF INSURANCE AND FINANCE 210 TALBOTT: Summarizes the amendments and how they affect the bill for the committee.

260 SENATOR SHOEMAKER: Do the "-4" and "-5" amendments make SEBB and BUBB conform to other self-insurers in terms of control requirements?

TALBOTT: It is my understanding that there is no insurance code regulation for self-insurers at this point. 267 LEWIS LITTLEHALES, PROGRAM EXECUTIVE, DEPARTMENT OF INSURANCE AND FINANCE: > The Insurance Division does not regulate self-insurers to any extent. > Followed Florida legislation in drafting these amendments that regulates multiple employment welfare arrangements. That was our model. 295JIM

McINTOSH, ADMINISTRATOR, STATE EMPLOYEES' BENEFITS BOARD, EXECUTIVE BOARD > The amendments do not impact the estimated fiscal impact we originally submitted. 310 TERRY MEAGHER, CHIEF EXAMINER OF DOMESTIC INSURERS, DEPARTMENT OF INSURANCE AND FINANCE > I concur that there will be significant savings under this proposed plan. 331 CHAIR KERANS: What happens when you have a financial deficiency?

McINTOSH: When we show the Department of Insurance and Finance what kind of a program

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we are going to run, we are also going to show how much reserve we have, and we also are going to show where we are in terms of stop loss and occurrence. If we put the program together accurately and put the premiums together correctly, we're not going to have the deficiency.

TERRY MEAGHER: I would agree with his statement and assessment. It appears if there were a deficiency, SEBB files a remedial plan for correcting that deficiency with the Department of Insurance and Finance for review and approval. If it appeared that plan would be successful, apparently DIF would simply monitor it. If not, it would notify the Division of Audits with the Secretary of State, and apparently it would be up to them to take further action or look further.

376 CHAIR KERANS: Could we reach a situation where, before you get to stop loss insurance, you end up with a liability created that is almost insurmountable?

TERRY MEAGHER: Technically, I believe you could. In all practicality or reality, I think it's remote.

386 TALBOTT: They do have a base of knowledge that will enable them to do a good job in assessing premiums because of a long history of rate setting. CHAIR KERANS: If you follow all the procedures and still end up in trouble so that DIF refers the situation to the Secretary of State's Of fice, what can that of fice do to you?

McINTOSH: I'm not sure what the Secretary of State's Office does. I don't see how these types of problems will occur. 460 CHAIR KERANS: I just want this on the record that there is a down side, and I just want to ensure that the Department of Insurance and Finance is ensuring the actuarial soundness and fiscal stability of the plan, and that the management of it be maintained in order to avert any deficiency. Do we think that we have that safeguard in these amendments?

TERRY MEAGHER: Yes.

LITTLEHALES: I agree.

SIDE 42, SIDE B

033 MOTION: CHAIR KERANS moves the "-3" amendments be adopted.

VOTE: Hearing no objection, the motion carries. 040 MOTION: CHAIR KERANS moves the "-4" and "-5" amendments be adopted for purposes of discussion. VOTE: Hearing no objection, the motion carries. SENATOR SHOEMAKER: Line 20 of "-4" and "-5" should be changed from "must" to "should" unless you mean that they should approve all plans whether they are adequate or not.

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CHAIR KERANS: Did I mean to say that "you must approve the remedial plan developed by the Board, even if you believe that the remedial plan itself is deficient? LITTLEHALES: That is not our intent. We meant that a plan must be submitted to us which is subject to our approval. If the wording is unfortunate, it should be clarified. Our meaning was that it is subject to our approval or disapproval.

SENATOR SHOEMAKER: Then, line 20 on page 2 of the "-4" and "-5" amendments should read "must approve or disapprove" any remedial plan developed by the board. 079 MOTION: CHAIR KERANS moved to adopt the changes to the amendments to SB 54.

VOTE: Hearing no objection, the amendments are adopted.

085 AL THOMPSON, STANDARD INSURANCE COMPANY: > Does not believe that there will be \$1 million savings as suggested in the bill.

120 MOTION: SENATOR SHOEMAKER moves SB 54 as amended to the Ways and Means Committee with a "do pass" recommendation. VOTE: The motion carries. Senator Brockman objects to the motion. 137 The meeting was adjourned at 4 45 p.m.

Submitted by:      Reviewed by: Roberta White      Annette Talbott  
Assistant              Committee Counsel

EXHIBIT LOG:

- A - Amendments to SB 45 - Staff - 4 pages B - Hand-engrossed version of SB 45 - Staff - 5 pages C - Amendments to SB 37 - Staff - 1 page D - Hand-engrossed version of SB 37 - Staff - 2 pages E - "-3" "-4" and "-5" amendments to SB 54 - Staff - 14 pages F - Hand-engrossed version of SB 54 - Staff - Staff - 17 pages G - Fiscal Analysis of SB 42 - Legislative Fiscal - 1 page