

SENATE COMMITTEE ON LABOR

May 6, 1991 Hearing Room 50 03:00 p.m. Tapes 87-88 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 43 WS SB 965 PH SB 716 PH SB 594 PH

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 87, SIDE A

005 CHAIR KERANS calls the meeting to order at 3:20 p.m. as a
subcommittee and announces that Senators Shoemaker and Brockman are in
the Senate Judiciary Committee and are on call for work session and that
Senator Hill is in conference and will arrive later. He also announces
that SB 734, at the request of the sponsors, will not be heard today.

035 CHAIR KERANS temporarily interrupts the opening of the public
hearing on SB 965 for purposes of reconsideration of the vote by which
SB 43 was sent to the Floor.

SB 43 - SPECIFIES GROUNDS FOR EMERGENCY SUSPENSION OF FARM LABOR
CONTRACTOR LICENSE OR FARM-WORKER CAMP OPERATOR LICENSE

037 MOTION: CHAIR KERANS moves that the vote by which SB 43 was sent
to the Floor be reconsidered. 038 CHAIR KERANS: The reason for
reconsideration is after the bill left this committee, we were given an
\$80,000 fiscal impact and I would like to either make some amendments or
send the bill to Ways and Means. VOTE: CHAIR KERANS, hearing no
objection to the motion, declares the motion PASSED. SENATORS BROCKMAN
and SHOEMAKER are EXCUSED. Senate Committee on Labor May 6, 1991- Page 2

022 CHAIR KERANS opens the public hearing on SB 965.

(Tape 87, Side A) SB 965 - ALLOWS VETERAN OR DISABLED VETERAN TO USE
VETERANS' PREFERENCE ONLY FOR ONE CIVIL SERVICE PROMOTION TEST. (SEE
ALSO TAPE 88, SIDE B AND PAGE OF THESE MINUTES)

WITNESSES: Randy Leonard, Portland Firefighters Association Richard
Grace, Portland Firefighters Association (PFA) Jim Hyland, PFA Patrick
S. Carbone, public constituent Wes Homes, public constituent

The Preliminary Staff Measure Summary is hereby made a part of these
minutes (EXHIBIT A).

046 RANDY LEONARD, President, Portland Firefighters Association: We
asked that SB 965 be introduced on our behalf. Two of our members have
developed testimony. 051RICHARD GRACE, Lieutenant, City of Portland
Bureau of Fire, Rescue and Emergency Services and a member of Portland
Firefighters Association: > Testifies in support of SB 965. This is not
an anti-veteran bill. It is to clarify portions of the Veterans'
Preference statute that are vague and open to varying interpretations. >
City of Salem and the Tualatin Valley Fire and Rescue both prohibit use
of preference points on promotional exams. > SB 965 does not change
eligibility requirements and it still allows a permanent civil servant
who is granted military leave to use preference points on promotional

exam. Also, the bill does not interfere with the unlimited use of Veterans' Preference for disabled veterans on open, competitive exams. > This bill prohibits use of preference points on competitive promotional exams which are open only to applicants employed by the agency for which the test is given on page 1 of the bill in line 30. The one exception which has already been mentioned would be found in ORS 408.230 (2), beginning on page 1, line 13 of the bill. This refers to a person who has permanent civil service employment status, who is granted military leave and who is subsequently qualifies as a veteran or disabled veteran. Upon return to duty in a permanent civil service position, the person shall be allowed preference on "one" successfully completed promotion test (line 16 of the bill). 106 If the intent of ORS 408.230 (2) was to allow the use of veteran preference on any successfully completed civil service exam, including promotional exams, then this section would be redundant and unnecessary. Our proposed amendment to the statute would clarify this ambiguity. By replacing "any" with "one" in line 16, it merely clarifies the original intent when the section was added to the statute. 136 JAMES HYLAND, a Portland Firefighter and a member of Local 43: We are not opposed to veteran preference. Nearly 200 veterans are now employed by the Portland Fire Bureau that used Veterans' Preference at the time of their employment. > Outlines his objections to the use of Veterans' Preference points because of inequity. The purpose of the proposed amendments is to correct the inequity and create a fair system of promotions. - The minutes contain materials which paraphrase and/or summarize SB amendments 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 May 6, 1991 - P - e 3

> Displays chart with copy of the current captain's promotional exam results. Adding 10 points to the lowest person on the list moves them way ahead of others who did well. Any veteran who passes the examination process using points, gets a job.

220 CHAIR KERANS: With your bill, you would get to do this once. Are you saying that there are people who are using this every time a job opening comes up?

224 MR, LEONARD: The statute originally required certain criteria to be defined as a disabled veteran. It was somewhat tough to be classified as a disabled veteran. In 1989 the statute was amended to say that any veteran that was discharged and received a purple heart would also be a disabled veteran and could use those points on every promotional test. What you have is a group of firefighters who are guaranteed the rank of Battalion Chief without ever opening a book in their career to study. That is the inequity we are talking about. This situation has created dissension and inequity in the fire bureau. This is an exam that people study for up to a year. It is disheartening. 258 CHAIR KERANS: How many ranks are there that you move forward by examination? How do you move up?

262 MR. LEONARD: The ranks are lieutenant, captain and battalion chief.

MR. LEONARD: We support the concept of veterans and disabled veterans being able to use 10 points to become a firefighter. After a disabled veteran or veteran becomes a firefighter, they are working shoulder to shoulder with us. We think we ought to all compete on an equal playing field.

290 CHAIR KERANS: Are there people who are actually using this to move

up the ranks, since this was not changed very long ago, or is this the first round?

293 MR. LEONARD: This actually has had some impact on us since the early 80's when the disabled veterans used the points for the first time.

307 SEN. KINTIGH: There's no choice of when to use this; you can only use it to get a job in the first place. It could not be used for subsequent promotions.

310 MR. LEONARD: That's right.

311 SEN. KINTIGH: How can a guy classified as disabled be a firefighter considering the rigid physical demands?

317 MR. LEONARD: That's why we're here. We don't believe the Legislature intended "disabled veteran" to be defined the way it's being defined today. The definition has become too broad; it includes people who have received the Purple Heart without permanent injury. Veterans receive five points on the entrance exam only and get to use it once; disabled veterans get ten points and get to use them over and over.

349 MR. HYLAND: Our amendments will affect only the use of points in closed promotions, not in open exams when applying for civil service employment outside your own agency. The

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 May 6, 1991 - Page 4

purpose of the bill is to preclude use of points in closed examinations only. 396 PATRICK S. CARBONE, a private citizen: I am here today as a private citizen but am a member of the Disabled American Veterans (DAV), Viet Nam Veterans of America (VVA) and a benefits counselor with the Oregon Department of Veterans Affairs for 17 years. This bill is not about equity; it is about gratitude. But how long will that gratitude last? I hope you vote no on this bill. I don't like the implication that the individual with a Purple Heart will get ahead by sleazy means without working for it. I believe the preference points should last at least as long as the scars.

TAPE 88, SIDE A 040 WES HOMES, a private citizen: I appear as a concerned citizen. I am a veteran and feel this is an important issue. I suggest you leave it as it is, especially when we are welcoming home those persons who served in Desert Storm. I have a problem with the bill the way it is written. The reference to one successfully completed promotion test does not make mention if that person was hired for that position. I feel this is wrong. The veterans deserve the preference.

068 CHAIR KERANS temporarily closes the public hearing on SB 96S and opens the public hearing on SB 716.

(Tape 88, Side A) SB 716 - ESTABLISHES LICENSING AND REGISTRATION SYSTEM FOR INVESTIGATORS AND OPERATIVES - Public Hearing

WITNESSES: Harold C. Nash, Oregon Association of Legal Investigators (OALI) AL Wolfe, National Association of Legal Investigators Bruce

Buffington, Oregon Association of Legal Investigators Bill Anton, Alexander Christian, Ltd. Jim Kosel, citizen, Oregon City Walter A. Brandenberg, public constituent Jason Yurgel, Sr. Investigator, Metropolitan Public Defenders Office, Portland

The Preliminary Staff Measure Summary and Legislative Fiscal Analysis are hereby made a part of these minutes (EXHIBIT B).

066 HAROLD C. NASH, President, Oregon Association of Legal Investigators submits and summarizes a prepared statement (EXHIBIT C) and offers to work with the committee on revising the bill. ~ The bill is a good start but it is not ready. There needs to be a grandfather clause for established businesses. Surety bonds are a real problem; maybe have a set amount of insurance. Continuing education requirements need to be addressed. We need to be careful not to violate defendants' rights. There are too many exemptions. All people who do investigatory work should be covered by the bill.

128 SEN. HILL: Is there currently a certification process?

130 MR. NASH: No. . 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 May 6, 1991 - P - e S

129 SEN. HILL: What is a "certified legal investigator?"

132 AL WOLFE, member, The National Association of Legal Investigators (NALI): NALI is the only body in the U.S. that has the ability to certify investigators.

134 SEN. HILL: Is it a private association and are members certified according to set standards?

135 MR. WOLFE: That is true, except it is not just members. Anyone can be certified, but it is the only association that requires an examination, a white paper and continuing education to retain certification. 139 BRUCE BUFFINGTON, Past President of Oregon Association of Legal Investigators (OALI): I have worked on the bill for the past five years. I am a private investigator in Beaverton and have been an investigator for 19 years. We need to establish credibility for investigators and a way for the average person we might work with to be able to lodge a complaint. The bill needs to identify those that are exempt. I think the fiscal analysis is not accurate. It will have a great impact on part-time investigators and subcontractors which we rely on heavily.

175 AL WOLFE, an investigator in Eugene: I am opposed to this bill because I don't think it addresses the problems. Believes that education should be required for investigators; this is not in the bill. Also, most investigators work for the individual. This bill excludes all of the corporations, insurance companies, State Accident Insurance Fund, the attorneys, the U.S. government, the State of Oregon, all of the cities and everybody else except the individual who has to hire a private investigator because no one else is interested in their problem. I am concerned about the fiscal impact. The median income of investigators is \$25,000-30,000 a year; I don't believe there are enough investigators to raise the funds. I want to professionalize investigators but we need some money and some help and we need to

educate people. As a practical matter, if this bill were passed, in 1991 there would be no funds coming in. I would suggest there would be no more than 100 to 150 people who would apply for licenses in the next year.

Also, there is no mention about working out of state. I think investigators work in the Western part of the United States. It costs a lot of money and once the state gets involved, they will be investigating complaints all over the United States. It will cost a lot of money and there are not enough people to take care of that.

228 SEN. HILL: How do other states deal with this? 228 MR. WOLFE: Some states require a license. California does require a license, but not if the investigator is employed by an attorney. California has a vast number of investigators and they have been able to handle it. We just don't have enough people.

235 SEN. HILL: Are you bound by attorney-client privilege? 235 MR. WOLFE: Yes, we are.

SEN. HILL: Are you compelled to give testimony against your employer unless you are

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report & speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor May C, 1991 - Page 6

employed by an attorney?

247 MR. WOLFE: It is possible.

248 SEN. HILL: Do we have instances why the standards in the profession must be raised?

252 MR. WOLFE: I think there are in the Portland metropolitan area.

266 MR. NASH: I think there are problems with some investigators ripping people off, and by getting more members in the associations, we can raise the standards. The associations can do more than licensing will do to clean up our act.

275 CHAIR KERANS: I had the bill introduced to raise the issue of licensing and to deal with privacy in the work place and employee testing and monitoring. What if we were to strike all of the bill, and provide in its place that employers that use investigators in the work place have to give notice to employees that they may be under surveillance?

336 MR. NASH: I believe employers should give notice if they do that. My own experience is that in over half the cases police departments have hired investigators to go under cover regarding drugs. 345 MR. NASH: I don't do any of that kind of work. My work is financial and relates to mergers and investments. We are all specialists. It's like the difference between a podiatrist and a brain surgeon.

356 SEN. HILL: You don't do all the work yourselves, do you? You have

employees?

356 MR. BUFFINGTON: Sometimes employees, sometimes subcontractors. Also, today paralegals are doing much of the work that we were doing.

356 SEN. HILL: Is the intent here to license everyone who does investigations, including the employees, or just the business? That is a question for Sen. Kerans. In trying to improve the standards of the industry, it would make sense to me to include operators of the business but also any subcontractors or employees because they have to perform to the standards.

370 MR. BUFFINGTON: To gain the 100 hours required to get licensed in California, anyone could work for any attorney or private investigation company to achieve it, but a registration fee was not required. A license was not required until the person went on their own. They have gone up to 3,000 or 4,000 hours or more now and the fees have gone up but no where near what we would have to pay in Oregon.

393 SEN. SHOEMAKER: Is there a relationship between NALI and OALI, or is there competition between the two? 396 MR. BUFFINGTON: NALI requires that the majority of the work be done in plaintiff work. The majority of my work is done for corporations. By their definition I am not a legal investigator. But by the fact that I am in OALI, I have been invited to join NALI. \

These minutes contain materials which paraphrase and/or summarize "datemet" 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 May 6, 1991 - Page 7

428 MR. NASH: For 10 years I was a staff investigator for a private attorney, then I went out on my own. At the present time I have between 80-100 cases in my office. They are mostly plaintiff cases -- car wrecks and so on -- and I have maybe 5 percent insurance cases where I am working for the defense, insurance companies. The majority of my work is for attorneys who have clients.

TAPE 87, SIDE B

022 SEN. HILL: One approach is to have a state board to test and license. Another is to have something like the Oregon State Bar or a quasi-public, or recognized organization that takes on the burden of regulating its profession. The MDs are the same way. How about using a self-regulating board recognized by the state to develop a code of ethics, standards of knowledge and experience and performance, and have the private entity to certify or license the investigators?

044 MR. WOLFE: That's precisely what we're working toward. We want to regulate ourselves--to provide education, testing, certification, etc. That is our goal.

046 SEN. SHOEMAKER: There surely must be times when somebody wants to check out something that they can't do themselves. Would this direction that you're headed make that illegal?

064 MR. BUFFINGTON: I don't think that would be a problem if it was just between you and that friend. But the type of searching they might want done is public access information, like in a courthouse and that

doesn't require anything. I don't think it would affect that situation. In Washington and California, if you are working for just one employer you don't have to be licensed, so that isolated transaction would still be exempt under Sec. 2 of this bill.

094 BILL ANTON, Vice President, Alexander Christian, Ltd. submits a prepared statement (EXHIBIT D). > Wants to go on record in favor of licensing. > Urges inclusion of anyone in the private sector who does investigative work. Just as all doctors and pharmacists, etc. are required to be licensed no matter where they work, so too should all investigators. This would ensure the public of at least minimum standards for all those involved in private sector investigations and broaden the financial base. > Urges education and continuing education and a provision to substitute related education in lieu of a portion of the stated two year OJT.

123 SEN. SHOEMAKER: Why do you think investigators who are employed by attorneys should be licensed?

132 MR. ANTON: Everybody should be treated in the same manner and pass some standards in order to be called an investigator.

151 JIM KOSEL, citizen from Oregon City: I support the bill and am against some of the exclusions in it. A private investigator went to my former employer with bogus information about my lifestyle including information that I had a problem of drinking on the job, which I don't. My former employer hired the private investigator who continued to fabricate information

These minute. contain materials which paraphrase and/or summarize staterneDts made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contenb of the proceedi gB, please refer to the tapes. Senate Committee on Labor May 6, 1991 - Page 8

about me both on and off duty. The company used that information to terminate me. I applied for unemployment benefits and that private investigator appeared on behalf of my former employer and continued to fabricate information about instances I was involved in, conversations that never took place and places I never was.

I later found out that this investigator is still doing similar things for similar companies. That is the reason we need to have investigators licensed. Their license could be revoked and there would be an opportunity for a hearing and I could have filed a complaint against the actions of this individual.

175 CHAIR KERANS: Was the hearing denial upheld? 178 MR. KOSEL: It was upheld. The firing was eventually overturned by the three-person board and I was awarded a lump sum unemployment benefit. I also sued the former employer and that was litigated and settled two days before the trial was due to start. I also found out later there may have been some action against the private investigator, but I was not aware of it. However, the two-year time frame had since expired.

218 WALTER A. BRANDENBURG, citizen, Tillamook: I am here in support of the bill. There needs to be some standards. I was a private investigator in California which does regulate private investigators. Things such as what happened to Mr. Kosel don't happen there without some recourse. However, this bill doesn't quite go far enough. It should also address

private security companies and their employees.

253 JASON YURGEL, Senior Investigator, Metropolitan Public Defenders Office, Portland, Oregon: As Senior Investigator, one of my duties for our staff of 24 professional investigators is ongoing training. Another part is training new investigators that are hired and training attorneys to work with the investigators.

I, and most of my staff, agree there is some need for licensing of investigators in Oregon. We consider ourselves legal investigators as opposed to what you might call a private investigator. We work with attorneys and law firms. Our investigators also work for the private bar, both civil and criminal, and on occasion for private parties. There is a certification process in Multnomah County. In order to do court-appointed criminal defense, we must be certified by the State of Oregon. That includes five letters of reference, two of which must come from law enforcement personnel. In addition, the names and contact information of five attorneys we have worked with and proof of the types of cases we have done. There is a certification level to do misdemeanors, juveniles, C felonies and on up through homicide.

I believe there are too many exemptions in the bill.

315 CHAIR KERANS closes the public hearing on SB 716 and opens the public hearing on SB 594 .

(Tape 87, Side B) SB 594 - SPECIFIES RIGHTS OF PUBLIC EMPLOYEE TRANSFERRED FROM ONE PUBLIC EMPLOYER TO ANOTHER PUBLIC EMPLOYER AS TO CERTAIN CONDITIONS OF EMPLOYMENT, RIGHTS AND BENEFITS - Public Hearing

These minutes contain material. 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 May 6, 1991 - P - e 9

WITNESSES: Barry Donenfeld, Area Agencies on Aging Tim Nesbitt, Assistant Executive Director, Oregon Public Employees Union Art James, Executive Department

The Preliminary Staff Measure Summary and Legislative Fiscal Analysis are hereby made a part of these minutes (EXHIBIT E).

312 TIM NESBITT, Assistant Executive Director, OPEU submits and summarizes a prepared statement in support of SB 594 (EXHIBIT E,. > There are a lot of omissions and loopholes in the statutes about transfer of state employees. There is no solid guarantee of continuing employment with the receiving jurisdiction. There is no requirement that the worker receive the same rate of pay, no commitment to maintain benefits other than PERS, and no protection from being subjected to a new waiting period for health coverage for pre-existing conditions. There is a lot of confusion about the employee's right to carry over accumulated vacation time and sick leave. > SB 594 fixes some of these problems; sets up minimum standards. > Not only should the employees who end up doing the same job for the same client but with a different agency because of a transfer of program not be deprived of employment, they should also not have their terms of employment reduced. That is the principal point of SB 594. > Sec. 3 specifies that transferring employees are to receive at least the same rate of pay or higher. There also is a provision so employees will not lose sick time and vacation.

Finally, there is protection for maintenance of health benefits. > Sec. 4 clarifies that transferring employees get to keep their seniority. > Sec. 5 guarantees that the receiving employer will not lay off the incoming employees.

TAPE 88 SIDE B

MR. NESB ITT continues with his prepared statement.

059 CHAIR KERANS announces that SB 847 will be carried over until another meeting. 065 BARRY DONENFELD, Executive Director, Mid-Willamette Valley Senior Services Agency, representing the Oregon Association of Area Agencies on Aging submits and summarizes a prepared statement in support of SB 594 and suggesting amendments to avoid unworkable administrative situations (EXHIBIT G).

087 ART JAMES, Executive Department, submits and summarizes a prepared statement in opposition to SB 594 (EXHIBIT H). >In the wake of Measure 5 we are likely to see a lot more instances where programs and functions are transferred from one jurisdiction to another. The bill eliminates any potential for economies from doing that because it requires the same number of employees with the same number of conditions. >Under current law, many of the logistics of those transfers are handled through collective bargaining. That should continue. In my exhibit, I have pointed out section-by-section how to reach some mutually agreeable language. This bill would have a tremendous impact on local governments, too. The proponents and opponents of SB 594 agreed to work together to amend the bill. . . These minutes contain materials which paraphrase and/or summarize statements made during this session. ODIY 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 May 6, 1991 - Page 10

150 CHAIR KERANS closes the public hearing on SB 594 and reopens the public hearing on SB 965.

(Tape 88, Side B) SB 965 - ALLOWS VETERAN OR DISABLED VETERAN TO USE VETERANS' PREFERENCE ONLY FOR ONE CIVIL SERVICE PROMOTION TEST - Public Hearing

Witnesses: Walter R. Crews, Master Sergeant, United State Air Force Retired and Oregon State Deputy Legislative Affairs Representative, non Commissioned Officers Association · Ken Burdette, Portland Fire Bureau

150 WALTER R. CREWS, Legislative Affairs Representative, Non Commissioned Officers Association of the United States of America, submits and reads a prepared statement in opposition to SB 965 (EXHB IT I).

191 CHAIR KERANS reads into the record that each of the following people signed up to testify in support of SB 965: Eisner, Babcock, Pizzo, Olsen, Davies, Hartsock, Burdette, Mitchell and Shea.

209 KEN BURDETTE, a Captain with the Portland Fire Bureau: I, too, am a veteran. The way the law is written, disabled veterans get 10 points every single time they take a test. It's impossible to compete against them. On the chart that you saw earlier, I'm number 3 on that list. I should be number 2. It affects me in budget cutbacks. I won't be a captain after the first of July because there's a disabled veteran ahead

of me. I don't believe that's fair. I believe the intent of the bill was to give the disabled veteran a chance to compete. I am not opposed to that but the way the law currently reads, there are people who don't have a serious medical problem who are given a huge advantage in the closed examinations. This bill only addresses the closed examinations. It doesn't affect anything but the closed examinations that nobody else can compete for anyway.

241 CHAIR KERANS closes the public hearing on SB 965 and declares the meeting is adjourned at 5:49 p.m. Transcribed and Submitted
by: Reviewed by:

Annetta Mullins Annette Talbott Assistant Committee Counsel

EXHIBIT SUMMARY:

A - SB 965, Preliminary Staff Measure Summary, staff B - SB 716, Preliminary Staff Measure Summary and Legislative Fiscal Analysis, staff C - SB 716, prepared statement, Harold Nash D - SB 716, prepared statement, William Anton

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 May 6, 1991- Page 11

E - SB 594, Preliminary Staff Measure Summary and Legislative Fiscal Analysis, staff F - SB 594, prepared statement, Tim NeSBitt G - SB 594, prepared statement, Barry Donenfeld H - SB 594, prepared statement, Art James I - SB 965, prepared statement, Walter Crews

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