

SENATE COMMITTEE ON LABOR

May 9, 1991                      Hearing Room 50 03:00 p.m.                      Tapes 96- 98  
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,  
VICE-CHAIR SEN. BOB KINTIGH SEN. BOB SHOEMAKER MEMBER EXCUSED: SEN.  
PETER BROCKMAN

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,  
COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 848 PH SB 1021 PH  
Contracting, Privatization (Informational) SB 588 PH SB 756 WS

. 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 96, SIDE A

001 CHAIR KERANS calls the meeting to order at 6:21 p.m. as a  
subcommittee with Sen. Kintigh and Chair Kerans present and announced  
that other members will be arriving.

020 CHAIR KERANS opens the public hearing on SB 1021 (and SB 848).

SB 848 - REQUIRES SCHOOL DISTRICT CONTRACTING WITH PRIVATE ENTITY FOR  
STUDENT TRANSPORTATION TO REQUIRE CERTAIN EMPLOYMENT PRACTICES OF  
CONTRACTOR - PUBLIC HEARING

102 1 - REQUIRES MASS TRANSIT DISTRICT TO PROTECT RIGHTS OF EMPLOYEES  
WHEN CONTRACTING WITH THIRD PARTIES - PUBLIC HEARING

WITNESSES:              Ron Heintzman, Amalgamated Transit Union Wallace Feist,  
Amalgamated Transit Union Eldon Flagg, citizen, HillSB or Rick Van  
Cleave, Tri-Met Peter F. Gregg, Portland Public Schools John Fairchild,  
Oregon Department of Education Karen Hafner, Oregon School Boards  
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024 RON HEINTZMAN, Business Representative, Amalgamated Transit Union  
introduces Wally Feist, Financial Secretary-Treasurer and Eldon Flagg.

MR. HEINTZMAN: Mr. Feist will give a brief description of what our  
responsibilities are.

032 WALLACE FEIST, Financial Secretary-Treasurer, Amalgamated Transit  
Union, Local Division 757. I am here to testify on behalf of SB 1021.  
The Amalgamated Transit Union is probably one of the most diversified  
local unions in this state. We represent 21 different collective  
bargaining agreements. We have one in Walla Walla, Washington and 20  
agreements in Oregon. We represent both the public and private sector.  
Most of our members deal in the public sector, with Tri-Met being our  
largest group. Over the past ten years or so we have noticed the  
privatization within our industry to subcontracting work that  
traditionally has been done by union members within our local.

044        RON HEINTZMAN, Amalgamated Transit Union: We are in support of SB  
1021 and SB 848. Both bills address subcontracting issues. SB 1021  
pertains to mass transit and transportation districts. The union's  
involvement and interest in this legislation is for two purposes. One is  
to provide protection for the people we represent and secondly, to  
provide safety toward the general public that they serve. SB 1021 says

if a subcontractor is under contract with a mass transit or transportation district, and a new subcontractor takes over that subcontract they must recognize the existing employment rights of the workers. As subcontracting and privatization has taken a wide strand in the state, we have recently experienced problems where a subcontractor may have a contract for 10 or 15 years with employees working for those subcontractors and when a new subcontractor wins the contract bid these employees essentially start over. They are stripped of their seniority, vacation, wages, benefits, working rules and conditions. SB 1021 simply says if a person is under contract with a transit district and a new contractor wins that contract they must recognize the existing work force and recognize their existing seniority, pay, retirement and associated benefits. 076We are also testifying for SB 848. It does basically the same thing except it addresses schools. We experience the same situation with public school districts that subcontract out for school transportation. 112 ELDON FLAGG, HillSB oro: I worked for four years, nine months with Broadway Transportation. Just before Broadway got the bid, Special Mobilities had it. The wages were up to about \$5.60 an hour. When Broadway took over, they dropped everybody \$1.00 and everyone lost vacations and everything else. Another company took over April 1 and they are doing the same thing. Everyone has lost their seniority and everything and have to start from day one as of April 1 of this year. 131 RICK VAN CLEAVE, attorney in private practice and chief labor counsel for Tri-Met: My testimony will be brief because I just got the amendments to SB 1021 (EXHIBIT A). Three specific points occur to me. One is in these types of situations, Tri-Met does subcontract a number of services. Most importantly would be our elderly and handicapped service. We put that out for public bid because we are required to by the Urban Mass Transit Administration

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(UMTA). I believe UMTA would view SB 1021 as a restriction which would be in violation of their federal bid guidelines. It unnecessarily restricts the free flow of competition and unnecessarily inflates wage rates and benefits. UMTA's policy is to have free and open bidding and I believe that is also consistent with the policy of this state.

Another objection is in most of these cases we are dealing with entities that are not public employers, but rather private employers. Therefore, those employers have rights under the National Labor Relations Act. It is often viewed by many that employers do not have rights under the National Labor Relations Act. That is an incorrect view; they do have rights, although the act is aimed primarily at employees.

I believe there is a substantial question, which I have not had time to study tonight, whether this bill may be preempted or run afoul of the National Labor Relations Act in certain situations. A classic example would be under the National Labor Relations Act, if I purchase your business and hire a majority of your former employees, they become my employees. I am not obligated to accept whatever collective bargaining agreement you may have had with your employees. I am required to bargain with your employees, but I am not obligated to accept that contract unless I do so as a matter of contract. As I read SB 1021 and the proposed amendments, it runs afoul of that rule.

176 For these reasons, on behalf of Tri-Met, we would oppose SB 1021.

183 PETER F. GREGG, Assistant Director of Transportation, Portland

Public Schools: I am here to submit testimony for SB 848. He submits and reads a prepared statement for Michael J. Hutchens in opposition to SB 848 (EXH1 BIT B).

228 JOHN FAIRCHILD, Pupil Transportation Coordinator, Oregon Department of Education, submits and summarizes a prepared statement in opposition to SB 848 (EXHIBIT C).

254 KAREN HAFNER, Oregon School Boards Association: We obviously oppose the bill and I think it has already been said.

260 CHAIR KERANS: I will leave the record open for anyone who wants to submit testimony. On both SB 1021 and SB 848, the proponents have their work cut out in lobbying the members not present at the meeting. We will bring the bills back up when we see there is significant interest and support.

273 CHAIR KERANS closes the public hearing on SB 848 and SB 1021.

#### INFORMATION - CONTRACTING, PRIVATIZATION

280 CHAIR KERANS: In the 1989 session the Legislature passed SB 982 calling for an interim study of contracting of public services to private contractors. That task was given to the Interim Senate Labor Committee. Ms. Talbott has done exhaustive study and exhausted herself in gathering material and beginning to frame the issue. The members have been given the result g material and beginning to frame the issue. The members have been given the result of the work which is a draft copy (EXHIBIT D) and would hope the committee would be able of the work which is a draft copy (EXHIBIT D) and would hope the committee would be able to adopt the report when it is finalized. Senate Co littee on Labor May 9, 1991 - Page 4

304 The Chair would like those who have any view on the issue and think they can make a valuable contribution, to submit written remarks to the committee. It is my desire to adopt the report and transmit it to the President and Speaker and use SB 588 as a vehicle for adopting the principles which will be recommended by the report.

341 CHAIR KERANS opens the public hearing on SB 588.

(Tape 96, Side A) SB 588 - REQUIRES SPECIFIED FINDING AND PUBLIC HEARING BEFORE PUBLIC EMPLOYER MAY CONTRACT WITH PRIVATE ENTITY TO PERFORM DUTIES OR PROVIDE SERVICES PERFORMED OR PROVIDED BY PUBLIC EMPLOYEES - PUBLIC HEARING

WITNESSES: Mari A. Gest, Oregon School Employees Association Jeanine Meyer Rodriquez, Oregon Public Employees Union Kathy A. Peck, Attorney Mary Griswold, Salem Area Mass Transit District Judy Vale, Salem Transit District Art James, Executive Department Sandra Burt, Department of General Services Valerie SaliSB ury, League of Oregon Cities David Biedermann, City of Eugene Beth Bridges, City of Eugene Karen Hafner, Oregon School Boards Association Fred Van Natta, Association of Engineering Employees

348 CHAIR KERANS: We have received the SB 588-1 amendments (EXHIBIT E).

357 MARI ANNE GEST, Oregon School Employees Association, submits and paraphrases a prepared statement in support of SB 588 with the SB 588-1

amendments (EXHIBIT F).

TAPE 97, SIDE A

MS. GEST continues with presentation of her prepared statement.

090 MS. GEST: SB 588 speaks to displacement of minority workers. Three-fourths of OSEA members are women. When they contract out, they are displacing a huge minority group. If those women go to work for the private contractor, they work for lower wages, and have lost their health and retirement benefits. We are very concerned about that.

167 JEANINE MEYER RODRIGUEZ, Oregon Public Employees Union, submits and paraphrases a prepared statement in support of SB 588 (EXHIBIT G).

357 MS. GEST: We have one amendment to propose to the SB 588-1 amendments that will alleviate some of the fiscal impact. In line 8, after "by" insert "current bargaining unit" 381 MS. TALBOTT: The language can be worked on. Your intent is that you are not interested

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in every contract by a public employer be reviewed in this fashion, but only contracts in which they are proposing to contract services being provided currently.

390 KATHY A. PECK, Management Labor Law Attorney with the law firm of Williams, Zoqualos, Peck and Assoc.: We represent both public and private sector employers. I believe there are good people on both sides and I do not believe that private sector employers are uniformly out to rape their employees and the public sector employers are the opposite. You have heard stories of abuse; I have many clients who have success stories. Always, when they go into a subcontracting situation, there is uncertainty on the part of the employees. It is a difficult transition period for people to make in moving from public to private sector employment. My clients do things like volunteer to hire everyone and work that into the contract, credit seniority, credit sick leave pay. It is not a situation where there is uniform abuse. I question statistics such as 40 to 90 percent turnover and some of the comments that were made. I don't think they were objectively and statistically well founded.

TAPE 96, SIDE B

008 MS. PECK: It was my understanding when SB 982 was passed last session, there was a directive to ensure some very legitimate goals. That is, when private sector contracting is considered, the public sector employers look to both short and long term costs and to some of the indirect advantages and disadvantages. I am not going to suggest those are improper goals. It is just that I think there are things lacking in this legislation that are very important and needed. One of the things I feel is important is that this statute is so broad that it covers many things that no one would have a problem about. When you read the statute, a public sector employer would have to do an impact study and hold a public hearing before they could call a Kelly person in to cover for someone who was on parental leave for six weeks, or to cover

for someone who was unexpectedly injured the previous day. It covers many services that are discretionary management types of decisions. It covers people who negotiate collective bargaining agreements. 029 When you look at the broad spectrum of all these services that can be subcontracted, this legislation is more germane to the abuses you heard in the examples and not the rank and file, everyday, subcontracting that few people would have a problem with. I also have a concern that the factors requested to be studied are imbalanced. For instance, the cost the public sector employer incurs in attorney fees in the transition, etc., costs like how much they would incur in attorney fees if they had retained the work force and had to go through grievances and employment discrimination suits, etc. There are offsetting costs. I don't see an objective cost comparison in this legislation.

048 This legislation has considerable overlap and during the previous testimony I was thinning if these examples are so germane, then somebody from the union should be bargaining about it. If the suggested language is added to the amendment, it is important for the committee to understand that in Oregon a decision to subcontract is a mandatory subject of bargaining with very few exceptions. Two issues must be addressed: the decision to subcontract and the effects of the impacts on the work force. The kicker is that the employer cannot legally implement the decisions until after they have completed bargaining.

079 Another concern is when I read the statute, I see injunction problems because in the effort to be . . . . Senate Committee on Labor May 9, 1991- Page 6

fair and to take into consideration all that ought to be considered to avoid abuse, there are very broad terms used and they are ambiguous terms. I see it as a breeding ground for probably public sector unions to file injunctions to enjoin the subcontracting of work out while many thousands of dollars are burned up in attorney fees arguing about whether the public sector employer satisfied the criteria outlined in the impact study.

088 Because of the collective bargaining statutes and the inter-relationship between this type of legislation and collective bargaining, timing becomes a critical consideration. Very frequently we see it is difficult for a contractor to tell a public sector employer with specificity what kind of cost savings they are going to incur because, for instance, they don't know what the effect on the employees will be because they don't know if those employees will accept employment with them. They can't calculate unemployment benefits because they don't know if the employees were formally employed by the public sector employer. All of those things make it difficult for some of the judgement calls that are required to be made during that time juncture.

120 CHAIR KERANS: I would ask that you, objectively as possible, assume I am one of your public employer clients and that I know nothing, and somebody has come to me and asked about taking part of the services in my government unit and do it for less. Could you give me a laundry list of things that I would be interested in knowing in order to have full disclosure or as much disclosure as possible as a public agency has with a fiduciary responsibility to the taxpayers?

152 MS. PECK: I think I can come up with some ideas. I think in the eyes of the public sector employers, many would throw their hands up in the air and say "I don't know what you mean." Scope is the key. You are talking about things that should go in a written contract.

269 MARY GRISWOLD, Personnel Manager, Salem Area Mass Transit District, submits and reads a prepared statement for the district in opposition to SB 588 and SB 1021 (EXHIBIT H).

315 JUDY VALE, Legal Services Specialist, Cascade Employers Association: I am here at the request of Salem Transit District. Much of what I came to say has already been addressed. Our concern is the scope and the vagueness of the proposed legislation as it currently exists. It is our understanding that subcontracting has traditionally been used, at least with the Transit District, in areas where they are not normally equipped or staffed. The legislation as written, if passed, would basically impact the Transit District's ability to contract out for painting of the facility or do heavy equipment repair which is not currently provided by bargaining unit members. The way it is written, addresses duties provided by public employees regardless of whether this person is currently employed or has past employment. If there is a public employee somewhere in the state doing this work, when does or does not the Transit District have a responsibility to not contract this out without resorting to some of the hoops that have been provided by this legislation.

By accepting this legislation, the Legislature is effectively interfering with the parties rights to bargain over issues concerning wages, hours and working conditions. These are mandatory subjects of bargaining. There are mechanisms in place to protect the bargaining unit employee. The collective bargaining agreement itself provides for grievance arbitration if an unfair labor practice results. If there is any question about the arbitrator's decision, the parties can go into court and get an injunction.

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Within any contract is the implied covenant of good faith and fair dealing. This means that the general rule is that the employer has the right to subcontract if the employer does deal in good faith. This is a reasonable business decision. There is no subversion of the collective bargaining agreement. It doesn't seriously weaken the bargaining unit. I would also like to address the Uniform Mass Transit Act of 1964 and as amended in 1983. We were previously talking about federal funding and protections under 13(c). The funding that is provided through the federal government under Section 3 basically provides funding, which, for many smaller districts comprise up to 80 percent of their capital operating budget. It covers everything up to building a road to run the busses over. There are mechanisms in place which are incorporated into any transit district contract which provides for additional protection. If we are looking at the employer's pocket book, this is a highly effective mechanism that the unions have at their disposal of making the employer sit up and take notice.

433 My concern is that you are doing more than adding duplicated protection to public employees and those covered under collective bargaining agreements. You are introducing a new player into the arena and the player is the court. I think you will generate a great deal of litigation and injunctions.

011 CHAIR KERANS: Does Cascade Employers, in working with its clients in the public sector, have an off-the-shelf check list or other kind of written boiler plate information in assisting your clients? 017 MS.

VALE: I will be more than happy to share information and submit it to the committee but we do not indulge in using boiler plate because that would be an adhesion contract and we don't do that. 031 ART JAMES, Executive Department, introduces Barbara Carranza with the Budget and Management Division. 033MR. JAMES: I too would like to acknowledge the work of Ms. Talbott on the contracting out report. You have my written testimony on SB 588 (EXHIBIT I). SB 588, along with the SB 588-1 amendments would require a public employer to make findings on 13 different factors in addition to their normal feasibility or cost benefit analysis before entering into a contract. Many of these factors, in my estimation, are somewhat ill defined. They would be almost impossible to determine and almost certainly subject to challenge regardless of what findings were made by the employer. The bill also requires that public hearings be conducted before contracting with a private entity. This would be a very costly process which would have little value. There are a myriad of laws, rules, legal precedents and collective bargaining agreements which regulate and restrict the ability of public employers to contract for services. Personal services contracts which the state enters into are regulated by ORS 291 and Executive Department rules. Service contracts administered through the Department of General Services are governed by other statutes. Other public employers are regulated through ORS chapters.

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Since SB 588 amends no particular chapter, it appears to affect all public employers. It seems it would add a new layer of regulation without any regard to those that already exist. The Employment Relations Board's decision regarding duty to bargain by a public employer of both a decision to contract and the impact on employees was rendered in 1985 (OSEA v. Coos Bay School District). Beyond legal requirements, the state has specific articles in nearly every collective bargaining agreement dealing with the subject of contracting.

Public sector contracting is already heavily regulated in Oregon. SB 588 does nothing more than add a burdensome list of requirements beyond what already exists. We believe these requirements are unnecessary and are not in the best interest of the state.

The Legislative Fiscal Analysis on SB 588 is hereby made a part of these minutes (EXHIBIT

080 CHAIR KERANS: We will work on the bill to try to dispel ambiguity, vagueness or doubt and I would hope you will be available to give us your best shot of what should be considered.

125 SANDRA BURT, Purchasing Division Administrator, Department of General Services, submits and reviews a prepared statement in opposition to SB 588 (EXHIBIT K).

186 VALERIE SALISBURY, League of Oregon Cities: Many of the concerns

we came prepared to address tonight have already been expressed. From our perspective, most of our city folk are trying very hard to take the very limited dollars they have and accomplish those responsibilities their citizens expect from them. Sometimes that process doesn't leave a lot of room for a very detailed analysis. The 241 cities range in size from the very large like Portland which has sophisticated contract administration abilities to very small cities of 250 population that have very little in the way of staff.

The requirements of this bill are not limited to recognizing the ability of a small city to perform an extensive analysis to bear the cost in relation to the size of its normal projects. The other major concern we have is the question of an emergency clause. If we have a hazardous environmental condition that needs to be cleaned up, there may not be time to engage in a long analysis process. ~ . CHAIR KERANS request that if they have available a list of guidelines that they submit them to the committee for review.

237 DAVID BIEDERMANN, financial Operations Director, City of Eugene, submits and reads portions of his prepared statement in opposition to SB 588 (EXHIBIT L).

280 BETH BRIDGES, Management Analyst, City of Eugene: I think it is important to recognize that these types of efforts will take a great deal of staff time and administrative overhead to do. The last study I did was on whether or not to contract out hardware maintenance which is an ongoing internal service. It took close to one-half of my time for three or four months and the study did not include the extensive list in the bill.

We will read the study (EXHIBIT D) and return comments on it.

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I don't understand what the difference is between (d) and (k). When I look at productivity factors in performance measures, I look at scope, frequency and quality. I am unclear as to what (d) is adding. Other people have mentioned, and I would like to echo from an analyst standpoint that it would be very difficult to put tangible figures on things like the effect on the skilled work force, the impact on women and minorities and the community in general.

The bill is unclear as to the cost estimates. If you are going to proceed with this, I would ask that you make it explicit that people are to look at both direct and indirect costs both internally and contracting out. Other questions are who holds the hearing, what kind of notice is require, and is there an appeal process after the hearing.

MS. SALISB URY agreed to provide the committee with a copy of her check list relating to public contracting.

354 KAREN HAFNER, Oregon School Boards Association: It seems like everything has been said. Our main concern is that school districts retain the ability to have the flexibility to consider contracting out for different types of services and possibly for construction, etc.

As I understand this, you are looking for some universal factors that should be considered any time a public body contracts out. We have a branch of our association that provides policy for school districts. I will check with them to see if there any universal types of things that



are required and whether they have suggestions on that. My concern would be that it might be difficult to write the same requirements for every kind of contract. We may not be able to come up with universal factors.

394 FRED VAN NATTA, representing the Association of Engineering Employees: My people work in the Department of Transportation. I commend Annette Talbott on her study. She surfaced a couple of documents from the Department of Transportation, one being an admission that says it appears the personal service contracts of Central Services Division, DOT, entered into during this time period have not met the criteria as set forth in the law, and a letter to Jon Yunker that says "we generally assume the consultants cost us more than our own people, and that consultants often have to go through a learning period for work our people do routinely" and in addition n consultants historically charge an average \$55 to \$65 an hour. ~ I will present to you for your record ODOT's "Utilization of Preliminary Engineering and Inspection Consultants" which looks at preliminary engineering and consultant work that is done here and looks at studies done by the federal Department of Transportation in a lot of jurisdictions in a University of Texas study, which generally shows it costs more to contract out consulting work.

I also bring a study that is released for the first time today, "ODOT's Utilization of Fee Appraisers in the Right-of-Way Section" which indicates that 66 percent of the appraisals are now being contracted out to private appraisers, and an internal memorandum that talks about projects in the Department of Transportation that are being delayed because of a lack of staffing to even process what is going on inside.

The Right-of-Way Section hired a special person just to manage their contracts. Those are some of the things we find interesting as you try to do cost comparisons.

TAPE 98, SIDE A

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020 CHAIR KERANS: Was the full time manager or analyst reflected in the expected cost of any contract?

022 MR. VAN NATTA: Unquestionably not. In fact, they took a vacant position and rewrote the job specs to handle the contracting out of the appraisal work in the Right-of-Way Section.

035 CHAIR KERANS: Are you here opposing contracting out?

MR. VAN NATTA: There are different kinds of contracting out on a variety of things. The interest I am talking to here is the contracting out of preliminary engineering and inspection work. I have looked at the cost of contracting out preliminary engineering and inspection work as it is being done inside. The evidence we have been accumulating is that it costs a lot more to contract it out. Even the Department of Transportation admits it costs more to contract it out yet they continue to do it.

050 CHAIR XERANS closes the public hearing on SB 588 and declares the hearing in recess at 8:15 p.m. 058 CHAIR KERANS calls the meeting back to order and opens the work session on SB 756.

(Tape 98, Side A) SB 756 - IMPOSES ADDITIONAL RECORD KEEPING AND NOTICE

REQUIREMENTS ON PESTICIDE APPLICATORS - WORK SESSION

WITNESSES: Michael Dale, Oregon Legal Services

058 CHAIR KERANS: We have a hand-engrossed version of SB 756 (EXHIBIT M).

Information received by, but not presented to the committee are hereby made a part of these minutes: memo from Jack Pompei, Department of Agriculture and paper on agencies jurisdiction for pesticides (EXHIBIT N) and a letter from Robert Tallman (EXHIBIT O).

066 MICHAEL DALE, Oregon Legal Services: I prepared the hand-engrossed version based upon committee counsel's draft amendments except in one or two places where I have specifically noted differences.

Private right of action is in Section 6 of the bill. We have narrowed the employers to whom it would apply to those employers who are certified as private applicators or licensed as commercial pesticide operators. Those persons have received extensive training, have taken an exam on the importance of pesticide safety and they have been given extensive training about the importance of labels. These are also the pesticide applicators who handle the most dangerous chemicals. A farmer who is applying for himself a non-restricted use pesticide would be excluded by the amendment.

123 SENATOR SHOEMAKER: What does the language "...has not complied with rules..." mean in the new language in Section 6?

123 MR. DALE: Those rules require people who are loaders, applicators or mixers to be trained on

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the hazardous chemicals they will handle. On the other hand, for field workers all that is required is that you hand out a booklet that has been prepared by the Department of Agriculture which contains generic information about how to protect yourself from pesticide exposure.

131 SENATOR SHOEMAKER: The language " has not complied with rules adopted pursuant to ORS Chapter 654" can be real broad. It seems to reach far beyond wanton and reckless behavior.

138 MS. TALBOTT: We could put a specific citation into Chapter 654.194 that deals with hazardous communications per se. 142 SENATOR SHOEMAKER: What particular rules are there that noncompliance with would lead to this private right of action. 143 MR. DALE: It is basically providing employees with information about the hazardous chemicals they are handling and the safety precautions they need to take. For loaders, applicators and mixers, the rules require that they get fairly extensive training. There is a specific provision for agricultural workers. If you are a field worker, you get the booklet.

173 CHAIR KERANS: In the absence of this private right of action, how do I as a person seek redress. 176 MR. DALE: It is worker's compensation. 180 SENATOR SHOEMAKER: I am concerned with having the potential of opening up access to private rights of action where it violates the spirit of the agreement that lead to the worker's compensation laws. If we are talking about something tantamount to potential misbehavior, then I am okay. The language here is too broad and general to restrict it to the narrow window I am comfortable with.

192 MR. DALE: That is currently what the rules say. I understand your concern and suggest that the second clause of the private right of action is more important. If you are troubled by that clause

299 CHAIR KERANS: We could amend it to simply say "is injured by exposure to a pesticide, if the private applicator or licensed pesticide operator has knowingly used, handled or applied the pesticide in a manner inconsistent with its labeling." 207 SENATOR HILL: That would eliminate the trivial violations.

207 SENATOR SHOEMAKER: The language should read "...or a licensed pesticide operator is injured by exposure to a pesticide and the private applicator licensed pesticide applicator has knowingly used, handled or applied the pesticide in a manner inconsistent with its labeling."

212 CHAIR KERANS: The bottom line is the label will tell you about the things you need to know. Seealre Co~mhPP on I\_ May 9, 1991 - Page 12

MR. DALE: The label contains all the safety information.

216 SENATOR HILL: It may be more effective if it says "if a person is injured by exposure to a pesticide as a result of the private applicator licensed pesticide operator...."

236 MOTION: CHAIR KERANS moves to amend the new language proposed in Section 6 of the hand-engrossed SB 756 to read: "The provisions of ORS 656.018 shall not apply if an employee of a certified private applicator or a licensed pesticide operator is injured by exposure to a pesticide as a result of the private applicator or licensed pesticide operator knowingly using, handling or applying the pesticide in a manner inconsistent with its labeling." 237 VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED.

244 MR. DALE: There was some concern about supervising. It is contained on page 2a.

256 SENATOR HILL: Should the language read "... private applicator or licensed pesticide operator. . .?"

259 MR. DALE: In discussions with the Department of Agriculture, I was persuaded that it might get at the problem to limit the application to private applicators. Commercial operators generally have a far more comprehensive training program and supervision and there is a pesticide applicator trainee status that applies in that field.

269 MOTION: SENATOR HILL moves that the amendments, as amended and shown in hand-engrossed SB 756 BE ADOPTED. 295 VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. 296 MOTION: SENATOR HILL moves that SB 756, as amended, be sent to the Floor with a DO PASS recommendation. 301 VOTE: CHAIR KERANS, hearing three votes in favor and one opposed (Sen. Kintigh), declares the motion CARRIED. 302 CHAIR KERANS declares the meeting adjourned at 8:40 p.m.

Transcribed and Reviewed by: submitted by

Annetta Mullins Annette Talbott Assistant Committee Counsel

EXHIBIT SUMMARY A- SB 1021, SB 1021-1 amendments, staff B - SB 848, prepared statement, Peter Gregg / Senate Committee on Labor May 9, 1991-  
P - e 13

C - SB 848, prepared statement, John Fairchild D - Subject:  
Contracting, Privatization, draft report "Providing Public Services. A  
Study of the Legal, Financial and Social Considerations of Providing  
Public Services by Contracting with the Private Sector." Oregon Senate  
Labor Committee, May 1991, staff E - SB 588, SB 588-1 amendments,  
unknown F - SB 588, prepared statement, Mari A. Gest G - SB 588,  
prepared statement, Jeanine Rodriguez H - SB 588 & SB 1021, prepared  
statement, Mary Griswold I - SB 588, prepared statement, Art James J  
- SB 588, Legislative Fiscal Analysis, staff K - SB 588, prepared  
statement, Sandra Burt L - SB 588, prepared statement, David  
Biedermann M - SB 756, hand-engrossed SB 756, Michael Dale N - SB  
756, memo and paper on agencies jurisdictions for pesticides, Jack  
Pompei O - SB 756, letter, Robert O. Tallman

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