



**Advisory Council Meeting Minutes  
March 16, 2006**

**Members:**

**Diane Boly**  
*Boly/Welch Inc.*  
Management

**Tom Chamberlain**  
*Oregon AFL-CIO*  
Labor

**Al Dorgan**  
*United Steelworks of America*  
Labor

**Faith Dubin**  
*Serena Software*  
Public

**Margaret Hallock**  
*Wayne Morse Center for Law and Politics*  
Public

**Gwyn Harvey, Chair**  
*Oregon Workforce Investment Board*  
Public

**Sonja Henning**  
*Tonkon Torp LLC*  
Public

**Kathleen Nishimoto**  
*Duckwall – Pooley Fruit Company.*  
Management

**Linda Rasmussen**  
*Communications Workers of America*  
Labor

**Patrick Smith**  
*Lane, Coos, Curry, Douglas Building Trades Council*  
Labor

**Lisa Trussell**  
*Associated Oregon Industries*  
Management

**Vacant**  
Management

**Present**

Diane Boly, Gwyn Harvey, Kathy Nishimoto  
Linda Rasmussen, and Lisa Trussell,

**Not Present**

Tom Chamberlain, Al Dorgan, Faith Dubin, Sonja  
Henning and Margaret Hallock

**Employment Department Staff**

Laurie Warner, Greg Hickman, Tamara Brickman  
Renee Bryant and Maria Schirmer

**Place**

Employment Department Central Office  
875 Union Street NE, Rm 305  
Salem, OR 97311

The meeting began at 10:00 am.

## COUNCIL BUSINESS

**Gwyn Harvey**—Welcomed all to the meeting and called for introductions of those present. Gwyn stressed the importance of Council members' commitment to attending meetings on a regular basis. The only absences considered excused will be from those who RSVP.

**Tamara Brickman** – Welcomed Kathy Nishimoto from Hood River to the Employment Advisory Council and then asked Kathy to give a brief overview of her background. Kathy stated she is the Human Resource Director at Duckwall-Pooley Fruit Company, a fresh fruit packer of mainly apples. They are a Union shop that employs 375 seasonal employees.

## ADVISORY COUNCIL VACANCIES

**Tamara Brickman** – Discussed current and upcoming Advisory Council vacancies. There is one business management vacancy. Additionally positions currently held by Al Dorgan, Faith Dubin and Margaret Hallock will soon expire. They are all eligible for re-appointment.

## INDEPENDENT CONTRACTOR

**Renee Bryant, Tax Manager** - Gave an overview and explained Independent Contractor issues. In 1989 the Legislature defined independent contractor very specifically (ORS 670.600) as the definition applied to the Department of Revenue (DOR), Workers' Compensation Division (WCD), Employment Department (OED), Construction Contractors Board (CCB), and the Landscape Contractors Board (LCB). The intention was to develop a bright line test so that businesses and workers would have more certainty so they could operate their businesses more efficiently. In 1995 the Oregon Supreme Court ruled that the language of the statute was ineffective to include the Workers' Compensation Division. Since then Workers' Compensation has been using the common law definition of independent contractor. DOR, OED, CCB, and the LCB have been using ORS 670.600 which was amended by SB 323 during the 2005 Legislative Session. An interim task force worked in 2004 to develop a new definition of independent contractor to reflect the way business has evolved since 1989. Renee is working on an inter-agency work group that is responsible for implementing the new law and working together to ensure consistency among the agencies to which the definition in ORS 670.600 applies. They have been meeting on a regular basis to determine how to implement the new statute and what can be done to improve customer service. One of the identified issues is that the agencies need to communicate more, be more consistent, and try to provide more predictability to businesses. This led to an independent contractor website. People from all the five agencies worked together to create the information for the website. The group is working on a monthly and bimonthly basis on the statute. The group has focused on defining what constitutes manner and means of performing work in Administrative Rule. They are also working on developing specific processes among the agencies on how to work together. One possible solution is to develop

rules or an interagency agreement to ensure that there is more consistency among the agencies that apply the law.

**Lisa Trussell** – Discussed misclassification of employees as independent contractors and that it immediately reduces the misclassifying employer, but that in the long run it can effectually raise all employer rates because the more people that are excluded the more UI taxes are going to go up.

**Renee Bryant** - Explained that UI tax fund payments are socialized so there are some people who end up paying for the cost of other businesses. When people are misclassified as an independent contractor rather than employee that impacts the trust fund and tax rates can go up as a result.

**Kathy Nishimoto** – Asked if Oregon companies use contractors classified as independent contractors when they should be classified as employees?

**Renee Bryant** – Responded that happens all the time.

**Lisa Trussell** – Explained that sometimes it is knowingly and sometimes it is not knowingly.

**Renee Bryant** - Explained that the tax section has forty-four auditors in the field and their job is to audit businesses to make sure they are in compliance with the OED tax laws. In a course of a year they will find 4500 to 5000 misclassified workers.

<p style="text-align: center;"><b>TASK FORCE ON UNEMPLOYMENT INSURANCE AND WORKFORCE TRAINING UPDATE</b></p>
--

**Tamara Brickman, Legislative Coordinator** – Discussed the history of diversions from the UI Trust fund for the purposes of funding specific programs and providing the funding for the Supplemental Employment Department Administrative Fund (SEDAF). For example, in 1997 the JOBS Plus program began being funded by an unemployment insurance tax diversion. Tamara discussed the history of the JOBS Plus program and how it worked. The program was very costly to run by the Employment Department so last session with the support of the Advisory Council, the Department opposed establishing another diversion to continue the program, but committed to setting up a taskforce in the interim to study the use of employment insurance trust fund monies to fund workforce training related programs. This is the purposed of the Taskforce on Unemployment Insurance and Workforce Training. There are nine members representing varying interests. The main purpose of the Taskforce is to make recommendations to the Oregon Workforce Investment Board (OWIB) (which will then advise the Governor) on principles that should be considered and guide future decisions regarding diversions of unemployment insurance monies. As of today, the Taskforce has meet three times. The first meeting was purely organizational, rules were adopted and expectations were set-up. In the second meeting business training needs were discussed. Graham Slater, OED Research Director and the Research Division have done a lot of surveys for the Oregon Workforce Investment Board on what business training and workforce needs are. Those surveys were discussed and

with the varying amount of experience and interest on the taskforce, more business training needs information was contributed. At the last meeting, held yesterday, the discussion regarding business training needs continued.

**LEGISLATIVE CONCEPT OVERVIEW AND DISCUSSION**

**Tamara Brickman** distributed a handout related to OED legislative concept with an explanation of each. She indicated that the concepts need to have the fiscal analysis and the language ready to go to DAS by the first of April.

471-01	Tax case reconsideration authority.	Tax
471-02	Increases the wage threshold for employers to be considered as an employer. More equitable.	Tax
471-03	Director’s discretion to reduce tax penalties.	Tax
471-04	Repeal ORS 657.419	Tax
471-05	SUTA Dumping Fix	Tax
471-06	Confidentiality re-write- GIS/county employment	Director’s Office B&ES, Werd & UI
471-07	Disqualification wages must be earned in subject employment/ Benefits	Benefits
471-08	Program Integrity - increase penalty weeks	Benefits
471-09	Employer penalty for UI benefit fraud.	Benefits

**Tamara Brickman** – Explained even though fraud affects the individual employer experience rating, it is also harmful to the overall balance and health of the trust fund.

**FEDERAL BUDGET AND LEGISLATION UPDATE**

**Tamara Brickman** – Handed out a table of appropriations from the Department of Labor (Comparison of FY 2006 Appropriations to the Administration’s FY 2007 Budget Request) The administration is proposing significant funding cuts for workforce system. Special note was made of the following

**Employment Service** - The ES grants which are the Wagner Peyser Grants are going down. In 2006 there was a reduction of \$65 million from 2005, with another \$27 million reduction proposed for 2007. The re-employment service grants have been eliminated.\

**Workforce Investment Act (WIA) Programs** - The Adult, Dislocated Worker, Youth and Employment Service grants are in the Presidents proposal to be consolidated into one funding stream, send to the states and have one entity to run it. They are also going to propose legislation that would give the states about 3% to administer the grant and call it CAA – Career Advancement Accounts.

The Career Advancement Accounts would provide each person who is eligible \$3000 to do with as they wish for training purposes and there would be a very small percentage to administer those grants.

**UI State Operations** – The charts show an increase between the 2006 and 2007 budget, but in comparing back to the 2005 budget, it is still \$87 million down from 2005. Of the \$2,640 billion requested by the Administration for UI state operations, \$40 million would be used for newly proposed initiatives, including \$40 million to expand re-employment and eligibility assessments (REAs) and \$10 million to strengthen UI system integrity through a variety of proposals. The remaining balance would fund base and above base operations. Between the 2006 and 2007 budget there has been an increase, but comparing it back to the 2005 budget we are still 87 million dollars down for the 2005 budget.

**LMI** – Labor Market Information is other fund being redirected into the consolidated funding stream. That would be a significant reduction to the Labor Market Information budget.

## DEPARTMENT AND DEPUTY UPDATE

**Laurie Warner, Director** – Explained when she arrived in January 2006 as the new Director. the Department was working on the Agency Request Budget for the next state legislative cycle for 07-09. In looking at the numbers and where the Department has been it came pretty obvious that there was going to be a shortfall in revenue given a couple of factors. One is that the federal funding is either flat or declining at the same time cost is going up. The state in the last legislative session approved an employee package that caught people up for the prior biennium freezes. The roll-up on the 24 months for employees in 07-09 is significant in terms of a cost increase. So the federal funding decreases of about 6 or 7 million dollars combined with the increased employee costs are generating a gap in terms of the funding for 07-09. The department had carry over money in 05-07 from having high unemployment, we had additional funding during those times because Oregon was at the higher end of unemployment, but those resources are no longer available.. The executive team is now focused on how to balance the 07-09 budget within current resources and that will likely mean a decrease in FTE for the 07-09 biennium. The department hopes to get there through attrition rather than lay-offs. She explained that UI has its challenges because they are not funded at the level that it costs to run UI. Business and Employment Services will be affected and also the Labor Market Information as you saw on the handouts. It is affecting everybody in terms of how the funding is coming across those programs. The department is looking at a prorated share across all the programs.

**Lisa** – Explained that the UI Division went to call centers in 2005 and that provided a significant savings to FTE with 90 employees. They were all given an opportunity to go somewhere else but some didn't want to leave and some retired.

**Laurie** – Informed the council that Greg Hickman announced his retirement in the last week or so. His last day is May 5<sup>th</sup>, Cinco de Mayo.

**Greg Hickman** - expressed his appreciation for the Advisory Council.

CLOSING BUSINESS

The next Advisory Council meeting will be held on Thursday, June 15, from 10:00am-12:00pm. The agenda for this meeting include a Fraud Presentation, Budget Overview and review of OWIB Strategic Plan.

Other meeting dates in 2006 (all are scheduled to run from 10:00-12:00 September 21, and December 14.

Meeting adjourned at 11:50 am.