

**CONFERENCE COMMITTEE ON SB 50**

**June 29, 1999 Hearing Room C**

**1:00 p.m. Tape 1**

**MEMBERS PRESENT: Sen. Bryant, Chair**

**Sen. Courtney**

**Sen. Nelson**

**Rep. Shetterly**

**Rep. Uherbelau**

**Rep. Williams**

**STAFF PRESENT: Anne Tweedt, Counsel**

**Judith Minnich, Administrative Support**

**MEASURE/ISSUES HEARD: SB 50B ñ Work Session**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 1, A</b>		
003	Chair Bryant	Opens conference committee on SB 50B at 1:08 p.m.
<b><u>SB 50B WORK SESSION</u></b>		
013	Chair Bryant	Indicates that this conference committee is necessary because of concerns regarding the attorney fees portion of the bill. Notes there is a revised fiscal statement that has just been received. It appears the Department of Transportation is anticipating losing 504 cases in the next biennium at \$600 per case for a potential liability of \$280,000 because they have no reasonable basis in fact or in law for issuing an order ( <b>EXHIBIT A</b> ).
025	Rep. Uherbelau	Why are they issuing so many questionable orders?

031	Rep Williams	Asks if the Governor's Counsel might come forward and discuss this issue.
051	<b>Henry H. Lazenby</b>	<b>Legal Counsel, Governor's Office</b>  Testifies in support of removing the House amendments from SB 50B ( <b>EXHIBIT B</b> ). The confusion regarding the fiscal statement is why the House amendments should be removed from the bill. The agencies are not only looking at potential awards for attorney's fees under a standard which they have no experience with, but they also anticipate more litigation given that fees may be awarded to the prevailing party. There are a number of reasons that an agency might pursue an action against someone, including that the law is unclear and a test case needed. Some of the smaller agencies may have to choose between protecting their budget and enforcing the law, particularly in a complex case. Discusses the fiscal impact SB 50B could have on the pilot program created by HB 2525.
099	Rep. Williams	What is it about the standard of "reasonable basis in fact or in law" which the agencies find so difficult to define?
122	Lazenby	I think that if you move to the standard in ORS 20.105 you might be able to quantify the costs. Determining the costs based on this new standard, across the various agencies and subject matter, is difficult.
142	Rep. Williams	If using the definition in ORS 20.105 would have solved the problem, I would have been happy to consider changing it. What I hear you saying is that from a fiscal standpoint you would still object.
160	Lazenby	As you go along through state government and look at the vast amount of subject matter, it would be very difficult to assess the fiscal impact.
169	Rep. Williams	Then how would it ever be possible to assess the fiscal impact without trying it? I am disappointed that the Department of Transportation is pursuing so many bad cases. They apparently had no "reasonable basis in fact or in law" for issuing 504 orders. They should perhaps reexamine the cases they are pursuing. How will we ever find that out?
182	Lazenby	Striking that balance is extremely difficult. How many taxpayer dollars do we want to use paying lawyers to sue the state?
200	Rep. Williams	My recollection of the bill is that once the government had sued an individual in an enforcement action, the individual might recover his fees if the state were to lose the suit. There is a difference between recovering costs when the state goes after a citizen with no "reasonable basis in fact or in law" and suing the state.
208	Lazenby	But the principle still applies. It is easy to imagine a small agency having to choose between protecting their budget or enforcing the law.
223	Rep. Uherbelau	I understand the concern that this could be quite expensive. I have problems with the way this fiscal impact was estimated. The standard is not the same under the bill as it is now. I am also concerned that the agencies are making poor choices targeting which cases to pursue.

263	Lazenby	Lawyers can and will pursue the possibility of fee awards and what we can't quantify is how much the cost will increase for the state. We don't know what the impact will be.
282	Rep. Shetterly	After looking at this fiscal, it appears that Ways and Means should be looking at this bill if attorney fees are left in. Rather than use this legislation as the vehicle to argue the issue of attorney fees in agency actions, I would rather pass the bill without the fees.
314	Chair Bryant	ORS 183.497 provides that a petitioner can recover attorney fees from the state if "an agency acted without a reasonable basis in fact or in law." But the court may withhold the fees if an agency proves its action was substantially justified or that special circumstances exist.
342	Lazenby	Based on the response of the agencies we think this is an unnecessary provision. If the legislature believes differently, then care should be taken to understand the larger impact.
354	Rep. Uherbelau	This is a gray area. I like the language in ORS 183.497 and don't think an interim study will assist much. You could also add a sunset clause.
370	Chair Bryant	Perhaps SB 961 could be used to address this issue.
380	Rep. Williams	I don't believe so.
383	Chair Bryant	I want to explore this a little more. The fiscal statement from June 4 had no fiscal impact. Now we have a revised fiscal statement that has an impact of over \$600,000. We are all concerned about that many actions being taken without a reasonable basis. I'd like Transportation, OSHA and DEQ to explain how the figures were arrived at in the fiscal statement.
410	Chair Bryant	Adjourns hearing at 1:40 p.m.

**Submitted By, Reviewed By,**

**Judith Minnich, Anne Tweedt,  
Administrative Support Counsel**

**EXHIBIT SUMMARY**

**A ñ SB 50B ñ Fiscal analysis dated June 29, 1999, Legislative Fiscal Office, 1 pp**

**B ñ SB 50B ñ written testimony submitted by Henry H. Lazenby, 2 pp**