

BUSINESS, LABOR, AND CONSUMER AFFAIRS

January 24, 2005 Hearing Room B

8:30 AM Tapes 11 - 12

Corrected 09/26/05

MEMBERS PRESENT: Rep. Alan Brown, Chair

Rep. Sal Esquivel, Vice-Chair

Rep. Mike Schaufler, Vice-Chair

Rep. Paul Holvey

Rep. George Gilman

Rep. Derrick Kitts

Rep. Chip Shields

STAFF PRESENT: Janet Adkins, Committee Administrator

Katie Howard, Committee Assistant

MEASURES HEARD AND WITNESSES:

HB 2074- Public Hearing and Work Session

Jim Fairchild

Craig P Smith

HB 2071- Public Hearing and Work Session

Craig P Smith

William J. Boyd

HB 2072- Public Hearing and Work Session

William J. Boyd

Steven Kafoury

HB 2073 – Public Hearing and Work Session

Craig P Smith

William J. Boyd

Jim Fairchild

Edward Glad

HB 2078 – Public Hearing and Work Session

Craig P Smith

William J. Boyd

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.

TAPE/#	Speaker	Comments
TAPE 11, A		
003	Chair Brown	Calls meeting to order at 8:33 a.m. Opens public hearing on HB 2074.

HB 2074-PUBLIC HEARING

012	Adkins	Explains HB 2074.
020	Jim Fairchild	Chair, Construction Contractors Board (CCB). Speaks in favor of HB 2074. Will defer to Smith.
038	Craig P Smith	Administrator, CCB. Refers to page two (EXHIBIT A). Explains the CCB and references mission statement. Explains and speaks in favor of HB 2074. Wants to create a definition for the two year period and eliminate current controversy. Does not know of any controversy surrounding the bill.
086	Rep. Schaufler	Asks if contractors are in support of the idea. States that he has no problem with this bill.

092	Smith	Answers that he does not believe that the industry lobbyist have “push back” on this concept.
095	Adkins	Asks how long a contractor can stay in inactive status.
097	Smith	Explains that they do not have a time limit.
106	Rep. Holvey	Asks if the contractors are required to be retrained when a long period of time has passed since the contractor has held a license
110	Smith	States that there are no provisions for continuing education.
112	Rep. Esquivel	Asks why there are no educational requirements.
113	Smith	Says that it is a good question. Says that they have discussion with the industry and it has not been a high priority for the current board.
129	Chair Brown	Closes public hearing on HB 2074. Opens work session on HB 2074.

HB 2074-WORK SESSION

135	Rep. Kitts	MOTION: Moves HB 2074 to the floor with a DO PASS recommendation.
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VOTE: 7-0-0

AYE: In a roll call vote, all members present vote Aye.

Chair Brown	The motion CARRIES.
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REP. GILMAN will lead discussion on the floor.

160	Chair Brown	Closes work session on HB 2074. Opens public hearing on HB 2071.
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HB 2071-PUBLIC HEARING

163	Craig P. Smith	Administrator, CCB. Speaks about dispute resolution.
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175	William J. Boyd	Dispute Resolution Manager, CCB. Explains how a claim is filed and processed by the CCB. Talks about the time limitation and how it relates to bond premiums. Indicates what happens when a settlement is made with a residential claim. Refers to page six (EXHIBIT B). Explains the commercial claim process. Speaks about the differences between arbitration rules and administrative law contested case hearings.
298	Chair Brown	Asks if a homeowner is required to be represented by an attorney.
300	Boyd	Explains that they do not have to be represented by an attorney and that most homeowners do not have an attorney. States that they have seen the monetary compensation people are seeking rise over the past several years. Explains HB 2071. Explains why CCB needs a statement of claim.
351	Rep. Holvey	Wants to know why the process should be different for commercial structures and residential structures.
356	Boyd	Explains that there is bill coming forward that would allow the commercial claims' process be handled in the same way as residential claims' process. Mentions that the details of the bill still need to be determined.
377	Smith	Explains the history of the board.
393	Rep. Gilman	Asks if they need the bill since they are going to present a bill that would treat commercial and residential structures in the same way.
395	Boyd	Explains that they have run into resistance in the commercial industry with the idea.
412	Chair Brown	Closes public hearing on HB 2071. Opens work session on HB 2071.

HB 2071-WORK SESSION

416	Rep. Kitts	MOTION: Moves HB 2071 to the floor with a DO PASS recommendation.
420		VOTE: 5-2-0

AYE: 5 - Rep. Esquivel, Rep. Kitts, Rep. Schaufler, Rep. Shields, Rep. Brown

NAY: 2 - Rep. Gilman, Rep. Holvey

Chair Brown

The motion Carries.

REP. KITTS will lead discussion on the floor.

TAPE 12, A

010 Chair Brown Closes work session on HB 2071. Opens public hearing on HB 2072.

HB 2072-PUBLIC HEARING

012 Adkins Explains HB 2072.

025 William J. Boyd Dispute Resolution Manager, CCB. Explains hearing process and arbitration scheduling. Believes that bill would close loophole in the law. Speaks in support of HB 2072 (**EXHIBIT C**).

062 Rep. Shields Asks if it would allow the board the leeway to set the time limitation and not put the actual time limit into statute.

064 Boyd Explains that it does allow the board to set the time limit. Says that it works better this way, because they will not have to come back to the legislature in two years if the time limit is inadequate.

069 Adkins Points out that the change is on lines 12 to 14 of the bill.

070 Steven Kafoury Oregon Remodelers Association. Speaks in support of HB 2072. Talks about importance of contractors following the laws when remodeling homes and wants all contractors to be accountable. Speaks in support of HB 2073, HB 2074, and HB 2078. Does not speak in favor of HB 2071, because it does not pertain to the Oregon Remodelers Association.

120 Chair Brown Closes public hearing on HB 2072. Opens work session on HB 2072.

HB 2072-WORK SESSION

122 Rep. Kitts MOTION: Moves HB 2072 to the floor with a DO PASS recommendation.

126 **VOTE: 7-0-0**

AYE: In a roll call vote, all members present vote Aye.

Chair Brown The motion CARRIES.

130 Rep. Kitts MOTION: Moves HB 2072 be placed on the CONSENT CALENDAR.

VOTE: 7-0-0

Chair Brown **Hearing no objection, declares the motion CARRIED.**

133	Chair Brown	Closes work session on HB 2072. Opens public hearing on HB 2073.
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HB 2073-PUBLIC HEARING

135 Adkins Explains HB 2073.

154	Craig P. Smith	Administrator, CCB. Talks about laborers not being paid by general contractors and the process these employee claims undergo. Mentions that they receive a minimal amount of claims by employees who are seeking back wages from his/her employer (EXHIBIT D).
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174	William J. Boyd	Dispute Resolution Manager, CCB. Says that two classes of employees exist, skilled and unskilled. States that there has been a drop-off in employee claims and suspects that it is due to the 50 dollar fee and the complexity of the process. Explains how bill would allow the 50 dollar fee waiver.
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198	Rep. Schaufler	Asks how the information about the waiver will be given to the laborers.
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201	Boyd	Explains that when a person wishes to file a claim they get a manual about the claims process.
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220 Chair Brown Asks if there is any concern about frivolous claims.

223	Boyd	Says that they do have a process other than the fee that weeds out needless claims. Believes that the 50 dollar fee has stopped some people from filing claims, and the possibility does exist that there would be frivolous claims.
234	Rep. Kitts	Asks how someone verifies that the laborer is unable to afford it.
243	Boyd	Says that it is tied to the federal poverty guidelines. Form asks questions about the person's financial status and the information is sent to the contractor since it is public record.
252	Rep. Kitts	Asks if the CCB makes the decision about whether or not the laborer can afford the fifty dollar fee.
260	Boyd	Affirms that the CCB does make the decision.
261	Rep. Kitts	Asks why it is not the policy that the contractor pay the fee when it is determined that the contractor did not pay the employee.
273	Boyd	Says that worker gets the fifty dollar fee back if the worker's claim is approved.
278	Rep. Kitts	States that he has a problem with the board looking into the finances of the workers who have been wronged. Indicates that he would like to see the policy of the CCB change. Maintains that he is inclined to vote no because the CCB wants to look into the financial record of the worker.
306	Rep. Esquivel	Agrees with Rep. Kitts, except he believes that eliminating the fee could open the door for illegitimate claims. Asks why the claims process is not under the Oregon Bureau of Labor.
328	Smith	Explains that today as the law is written the laborer has to prove that they do not have enough money and the reason to offer the bill is that this does not seem right. Mentions the possibility of an amendment and that the bill would eliminate the fee. Says that he was a hearings officer and never received a frivolous workers' claims.
349	Rep. Esquivel	Asks again why the Bureau of Labor is not handling these claims.
352	Smith	

Explains that it is because the CCB holds the bond and the license of contractors. Adds that they have the funds and the interest to do the hearings. Board sees twenty to thirty claims a quarter.

- 373 Rep. Holvey Says that he shares the concern of Rep. Kitts about employees having the money up front but likes that they can get it back or have it waived if they prove that their funds are inadequate. Asks if a laborer, who works a labor broker, would be subject to this waiver or the same review of his/her finances.
- 399 Boyd Says if it is a subcontractor claim falls under a different set of rules.
- 411 Rep. Holvey Says that he would like to see more explicit wording in Section C. Concerns about it bringing labor contractors and brokers in the claims' process.

TAPE 11, B

- 010 Rep. Esquivel Says that if people did what was right we would never have to make a law.
- 016 Chair Brown Comments about the two claims processes, in the CCB and Bureau of Labor, that the workers have.
- 022 Rep. Shields Asks if the board will waive the fee if it is found that a majority of the workers cannot afford the fee.
- 028 Boyd Confirms that this is the intention of the bill.
- 034 Rep. Kitts Asks where the section is that says that the board will waiver the fee if it is found that the majority of the workers cannot afford the fee.
- 037 Smith Says that there would be a blanket waiver once they had seen that there is a majority of workers who cannot afford it.
- 045 Boyd Reads HB 2073 on page two starting in the middle of line 38.
- 050 Adkins Comments that it is a minimal fiscal impact.
- 059 Smith

		Explains that more contractors may be paying the bill but with the hard economic times this probably is not the reason for the drop in the number of claims being made. Believes that the notice requirement and the fee have impeded these claims.
069	Rep. Schaufler	Says that, if they do not do this, there will still be a 50 dollar fee. Asks about the political makeup of the board and if they will make rules to waive the 50 dollar fee.
075	Jim Fairchild	Chair, CCB. Says that it appears that it is probably the case that the board will waive the fee.
085	Edward Glad	Pacific Northwest Regional Council of Carpenters. Speaks in support of the HB 2073. Important that those who do not understand the language and/or the system in Oregon can file at the CCB.
115	Rep. Esquivel	Asks whether the CCB is oblivious of claims made to the Bureau of Labor that should be under the jurisdiction of the CCB.
122	Boyd	Explains that the CCB regularly works with the Bureau of Labor. Admits that the system does not work as well as he would like, but the CCB is generally aware if there is a claim in the Bureau of Labor.
133	Rep. Esquivel	Reiterates that there could be a contractor who is not paying their substitutes and have claim against them in the Bureau of Labor that the CCB would not know about. Then there would be no marks against their license.
138	Boyd	States that there is no requirement that it be reported and the CCB can sanction a contractor if they fail to pay an administrative order by the CCB or another body, or if they fail to pay a judgment if it arises from the contractor's contract.
142	Rep. Schaufler	Clarifies that 8.4.B of HB 2073 spells out the criteria for someone to receive a waiver. References section C of HB 2073 and states that the CCB would waive the fee once they found that a majority exists.
152	Boyd	Affirms that Rep. Schaufler is correct.
160	Chair Brown	Closes public hearing on HB 2073. Opens work session on HB 2073.

HB 2073-WORK SESSION

162	Rep. Kitts	MOTION: Moves HB 2073 to the floor with a DO PASS recommendation.
169	Rep. Schaufler	Asks if currently workers cannot have the fee waived.
171	Boyd	States that they cannot waive the fee.
173	Rep. Schaufler	Asks if the CCB would enact a blanket waiver if the majority of the workers could not pay the fee. Asks if currently workers are not filing frivolous claims.
179	Boyd	Says it is a yes answer to both the question.
180	Rep. Kitts	Asks why the language says “may” waive the fee and not “will” waive the fee.
185	Boyd	Says he does not know. Believes that it would give the board some room for interpretation.
191	Rep. Kitts	Asks why HB 2073 does not specify that the decision to waive the fee has to be based on a majority and instead says that the decision is based on the opinion of the board.
205	Boyd	Says that he does not know. Believes that they wanted to keep the discretion of the board and indicates that they will most likely be working with imperfect evidence.
220	Chair Brown	Believes that they do not require any financial records so they do not know if there is a majority.
223	Rep. Kitts	Reads the financial requirements of HB 2073. Indicates misgivings about requirements.
230	Adkins	Clarifies that the information is only supplied when the applicant wants the waiver and the information may be there to prove that the majority qualifies for the waiver, because some applicants may not ask for the waiver.
236	Rep. Kitts	Clarifies that he has a deterrent, to HB 2073, because there are those who cannot afford it and they should not have to provide their

financial information. Says that the bill is very ambiguous about its financial requirements. Appreciates the intent of HB 2073.

264 Fairchild Says that this is exactly why they are trying to put the bill through so that the board has the legal room to waive the fee even if it does not have information down to the iota. States that they are reading the bill differently.

278 **VOTE: 7-0-0**

AYE: In a roll call vote, all members present vote Aye.

Chair Brown The motion CARRIES.

REP. SCHAUFLE will lead discussion on the floor.

290 Chair Brown Closes work session on HB 2073. Opens public hearing on HB 2078

HB 2078-PUBLIC HEARING

293 Craig P Smith Administrator, CCB. Explains the bill (**EXHIBIT E**).

310 William J Boyd Dispute Resolution Manager, CCB. Explains problem with the last bill. Allows them to have more freedom when giving notice. Speaks in support of HB 2078.

400 Rep. Schaufler Speaks in support of the bill.

410 Chair Brown Closes public hearing on HB 2078. Opens work session on HB 2078.

HB 2078-WORK SESSION

402 Rep. Kitts **MOTION: Moves HB 2078 to the floor with a DO PASS recommendation and be placed on the CONSENT CALENDAR.**

410 **VOTE: 7-0-0**

AYE: In a roll call vote, all members present vote Aye.

Chair Brown The motion CARRIES.

TAPE 12, B

008	Rep. Schaufler	States that he is excited that so many representatives on the committee are concerned about labor in Oregon and hopes that it continues.
011	Rep. Esquivel	Says that he would like the CCB look into a continuing education program and people's license records in other states who are seeking licenses in Oregon.
035	Chair Brown	Adjourns the meeting at 10:02 AM

EXHIBIT SUMMARY

- A. HB 2074, Prepared testimony, Craig P. Smith, 5 pp
- B. HB 2071, Prepared testimony, Craig P. Smith, 6 pp
- C. HB 2072, Prepared testimony, Craig P. Smith, 6 pp
- D. HB 2073, Prepared testimony, Craig P. Smith, 6 pp
- E. HB 2078, Prepared testimony, Craig P. Smith, 6 pp