

HOUSE COMMITTEE ON
BUSINESS, LABOR, AND CONSUMER AFFAIRS

February 14, 2005 Hearing Room B

8:30 A.M. Tapes 28 - 29

MEMBERS PRESENT: **Rep. Alan Brown, Chair**

Rep. Sal Esquivel, Vice-Chair

Rep. Mike Schaufler, Vice-Chair

Rep. George Gilman

Rep. Paul Holvey

Rep. Derrick Kitts

Rep. Chip Shields

STAFF PRESENT: **Janet Adkins, Committee Administrator**

Katie Howard, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2442 – Public Hearing and Work Session

HB 2439 – Public Hearing and Work Session

HB 2069 – Public Hearing

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 28, A		
006	Chair Brown	Calls the meeting to order at 8:30 a.m. Open the public hearing for HB 2442.

HB 2442 – PUBLIC HEARING

010	Janet Adkins	Committee Administrator. Explains HB 2442. Mentions that the sponsor is Rep. Butler.
027	Rep. Tom Butler	House District 60. Speaks in support of HB 2442. Brings HB 2442 at the request of his brother who is a practicing lawyer in Southern Oregon. Says that, under the Health Insurance Portability and Accountability Act (HIPAA), someone can be designated as a healthcare representative. Explains that a health care representative could be the personal representative for HIPAA if it is written into statute. Says that HB 2442 helps those that are caring for patients and the bill, also, covers privacy issues. Says that this would help those people whose personal care representative is not delineated by other legal documents.
061	Rep. Schaufler	Asks if HB 2442 restricts the ability of a spouse to care medically for their spouse.
064	Rep. Butler	Does not believe HB 2442 would restrict that ability. Explains that a person’s spouse is automatically their health care representative.
087	Chair Brown	Close the public hearing for HB 2442 and opens the work session on HB 2442.

HB 2442 – WORK SESSION

089 Rep. Esquivel MOTION: Moves HB 2442 to the floor with a DO PASS recommendation.

VOTE: 6-0-1

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

EXCUSED: 1 - Kitts

Chair Brown **The motion CARRIES.**

REP. BUTLER will lead discussion on the floor.

NOTE: See tape 28 B, page 6 of these minutes for Rep. Kitts vote.

102 Chair Brown Closes the work session on HB 2442. Opens the public hearing on HB 2439.

HB 2439 – PUBLIC HEARING

104 Janet Adkins Committee Administrator. Explains HB 2439.

115 Rep. Greg Macpherson House District 38. Testifies in support of HB 2439. Explains that staggering the terms of the Board of Directors helps companies create stability in management. Notes that HB 2439 helps protect against hostile takeovers. Says that the number of public companies in the state has declined. Talks about how HB 2439 will allow larger financial centers to exercise control over their own companies.

153 Jason M. Brauser Attorney, Portland. Submits and summarizes written testimony in support of HB 2439 (**EXHIBIT B**). States that HB 2439 will return the law to where it was before January 1, 2004. Talks about how it will provide a defense against hostile takeovers. Says it enhances corporate governance because it allows for corporate governance committees to carefully vet for fewer, better nominees. Explains that currently Oregon statutes penalize employers in the state, because it calls into questions by-laws they adopted before the current statute went into effect.

182 Rep. Esquivel Asks if the law deleted what they are asking to be reinstated.

185 Brauser Affirms that it is restoring previously held statutes.

186 Andrew J. Morrow Legislative Committee Chair, Business Law Section, Oregon State Bar. Submits written testimony in support of HB 2439 (**EXHIBIT A**). Talks about how HB 2775 (2003) affected this portion of the law. Says that HB 2775 (2003) had unintended consequences and they want the corporations that had the provisions to be able to rely on them.

206 Chair Brown Asks if Willamette Industries had a staggered board.

- 208 Morrow Believes that they did.
- 209 Chair Brown Asks why the state lost Willamette Industries.
- 211 Brauser Explains that Willamette did have anti-takeover provisions and it took more time than it would have had they not had those provisions. Emphasizes that HB 2439 is not to stop takeovers from happening, but instead to give companies' boards of directors the opportunity to negotiate. Says that this law allows the board of directors to act in the best interest of the company.
- 223 Chair Brown Closes the public hearing on HB 2439 and opens the work session on HB 2439.

HB 2439 – WORK SESSION

- 228 Rep. Esquivel **MOTION: Moves HB 2439 to the floor with a DO PASS recommendation.**
- VOTE: 7-0-0**
- AYE: In a roll call vote, all members present vote Aye.**

Chair Brown The motion CARRIES.

- 242 Rep. Kitts **MOTION: Moves HB 2439 be placed on the CONSENT CALENDAR.**

VOTE: 7-0-0

Chair Brown Hearing no objection, declares the motion CARRIED.

- 244 Chair Brown Closes the work session on HB 2439. Opens the public hearing on HB 2069.

HB 2069 – PUBLIC HEARING

- 251 Janet Adkins Committee Administrator. Explains HB 2069. Speaks about the proposed amendments to HB 2069 (Section 2) that were routed to committee members (**EXHIBIT C**).

- 280 Michael A Snyder Administrator, Landscape Contractors Board (LCB). Submits written testimony in support of HB 2069 (**EXHIBIT D**). Mentions the extensive test that landscape licensees must take and pass. Explains that consumers contract not with the individual landscaper but with the landscaping companies. These companies have a separate license with additional requirements that individual landscapers do not have. Gives overview of enforcement and mediation that the LCB does.
- 320 Snyder Discusses educational initiatives of the LCB. Talks about subcontracting of landscaping work that is viewed as construction (**EXHIBIT D, Page 1**). Says that previously landscapers could pour concrete, build retaining walls, and create proper drainage within the scope of the landscaping license.

TAPE 29, A

- 001 Snyder Continues to talk about subcontracting and how HB 2069 would allow contractors to subcontract out electrical and plumbing work, which is not covered under the landscaping license. Explains how proposed amendments would affect HB 2069 (**EXHIBIT C**).
- 016 Rep. Kitts Asks if a work group can be assigned to this bill so that a compromise can be reached. Offers to sit on the workgroup.
- 032 Chair Brown Agrees with Rep. Kitts.
- 038 Snyder Says that they would like to have continuing education requirements. Emphasizes that the most significant part of the bill is the increase in the bond. Today it is a \$3,000 bond and it has not been changed since 1977. Explains that they are asking for a step bond that would be based on the amount of money landscapers bill their clients for individual projects. Wants a hearing process for revoking the licenses of convicted criminals.
- 065 Michael Wister Contractor/Landscaper. Umatilla. Submits and summarizes written testimony in opposition to HB 2069 (**EXHIBIT E**). Says that the bond idea is a nice idea. Shares concerns that the test is only based on “book smarts”. Explains that he has a learning disorder and that it took the agency ten years to accommodate him. States that it is difficult to do continuing education, because much of it is on this side of the mountains.
- 111 Wister Expresses concern about the lack of enforcement by the LCB. Says that he would like to see decks and patios added to the type of

construction landscapers can do. Adds that the test that landscapers take to get a license needs to be focused on those who are actually doing the work. Mentions that he would like to see a bond that would cover most work to keep the process simple. Says around 90 percent of the contractors that he has talked to are against more regulations. Believes that the statutes keep the small businesses out, because the statutes are confusing.

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| 173 | Rep. Schaufler | Talks about when he got his contractor license and explains that he never was tested on the physical part of the job. Says that the laws are trying to protect the consumer and that the law is not made for people who are reliable and do the right thing. |
| 206 | Wister | Says that he understands consumer protection. Talks about how corporations hire unlicensed people. Explains that this act lowers the cost of the projects to the point that licensed people are not able to compete for them. Mentions that the Oregon Landscaper Association's test is a hands-on test. |
| 230 | Rep. Kitts | Asks if a person who started a landscape maintenance company would be more qualified to go into the landscape contracting side of the business. |
| 253 | Wister | Emphasizes if an individual passed a hands-on test he would be qualified to go into the landscape contracting side of the business. Adds that a person who did landscape maintenance would learn where mistakes were made, but does not believe that it would really make someone more qualified. |
| 263 | Rep. Kitts | Asks if maintenance people have to be registered |
| 265 | Snyder | Says that they do not. |
| 268 | Rep. Esquivel | Believes that people will always be unlicensed. Explains that the bill is aimed at the one or two percent who are not doing their job. |
| 298 | Wister | Talks about how Idaho has a \$15,000 or \$20,000 bond and that you have to have a license. Adds that in Idaho, if you have complaints and are caught without a permit, you end up losing your license for five years. Believes that this keeps the process more simple. |
| 311 | Rep. Shields | |

Asks if he is ok with landscape contractors doing some construction and if his main concern is about the license testing, continuing education, and the complexity of the bonding process.

- 325 Wister Says that he is okay with landscape contractors doing some construction. Thinks continuing education is “a lot of money out of our pockets”. Wants the bonding process to be simple.
- 327 Rep. Shields States that we do have the responsibility to enforce the standards that the LCB has put forth for landscapers.
- 330 Wister Asserts that LCB has been told about violations and nothing is ever done to the big companies.
- 334 Rep. Shields Asks Mr. Wister to tell Mr. Snyder about the violations and report back to the committee.
- 337 Rep. Holvey Asks if you need a building permit for decks and driveways.
- 349 Wister Says that you do have to have a permit. Explains that landscaping is not an inspected field and that is why they have to have permits.
- 353 Rep. Holvey Asks if the landscaping license test covers the construction portion of the landscaping work.
- 364 Snyder States that some portions of construction can be done by a landscaper. Explains that some portions of construction are tested, but small buildings and patio covers are not covered under the landscaping license and are therefore not covered. Wants landscapers to be able to license the work out to licensed contractors.
- 395 Rep. Holvey Asks whether landscapers do building work that falls under building codes like stairs, handrails, decks, and driveways or if this work is intended to be hired out to a licensed contractor.

TAPE 28, B

- 002 Snyder Explains what the current law allows landscapers to construct driveways, decks, fences, water features, and retaining walls. Says that landscapers are trying to subcontract work that they are not allowed to do under their license to a contractor that is licensed to do the construction work.

- 015 Wister Says that he would like to be able to build smaller buildings if the bond is increased. Explains that it would be inspected and the customer would only have to deal with one person.
- 026 Scott Barrie Oregon Home Builders Association. Speaks in opposition to HB 2069. Says that they are concerned about the construction that landscapers can do, because they do not have liability insurance. Believes that landscapers need liability insurance if they are subcontracting out construction. Says that he will be involved with the workgroup.
- 047 Bill Cross Oregon Landscape Contractors Association (OLCA). Submits written testimony in support of HB 2069 (**EXHIBIT F**). Says that the board did a membership survey of the issues being addressed in HB 2069. The results show that most members are in support of HB 2069. Talks about the construction projects that landscapers can do and says that they are in support of proposed amendments to HB 2069 (**EXHIBIT C**). Says that they are in support of the step bond increase, because it helps those landscapers that are doing small projects. Supportive of the professional enhancement of the industry. Offers to answer any questions.
- 107 Rep. Esquivel Asks if we are only relying on the contractor to get the appropriate bonding and how the bond is monitored.
- 109 Cross Says that it would be the role of the LCB, which he is not involved with. States that the level of the bonds is not an issue for many of the contractors.
- 124 Snyder Says that the industry governance is how most of the enforcement of the rules occurs. Explains how LCB educates landscaping businesses and that people in the industry report on each other. Says that there will be a site check and if there is a consumer complaint then the bond will be checked.
- 139 Rep. Esquivel Shares concerns that the consumer does not know the bond requirements of the landscaper. Asks if the LCB gives the public that information.
- 144 Snyder Explains that they try to have consumers contact the LCB before they contract their business out to a landscaper. Says that the LCB has recently been trying to educate the public about the license processes.

- 160 Rep. Schaufler Asks if there are other parts of the bill that can be passed even if there is no agreement about the jurisdiction of construction contractors and landscaping contractors. Asks if landscaper's liability has gone up in relation to other contractors.
- 167 Snyder States that there are other parts of HB 2069 that can be passed. Says that they have not seen the same issues in the landscaping industry as in the construction industry. This has caused the insurance for construction contractors to rise more rapidly than for landscape contractors.
- 178 Adkins Asks what the threshold is for someone to get a landscaper's license versus just being considered a maintenance landscaper.
- 183 Snyder Explains that if a landscaping business is planting a new landscape on someone's property than they need a landscaper's license. States that if they are mowing lawns, trimming shrubs, and pruning tree less than 15 feet tall than they do not need a license.
- 202 Rep. Kitts Asks about a tree that is 25 feet that a maintenance landscaper prunes down to 15 feet.
- 204 Snyder Says that if they are above 15 feet tall they need a construction contractor's license to do that work.
- 212 Stephen Kafoury Oregon Remodelers' Association. Wants to be in the workgroup.
- 219 Chair Brown Closes the public hearing on HB 2069.
- 222 Rep. Kitts Affirms that he will be a part of the workgroup. Says that anyone that is interested in being in the workgroup should be told.
- Chair Brown Opens the work session on HB 2442 for the purpose of allowing Rep. Kitts to vote.

HB 2442 – WORK SESSION

- 234 Chair Brown **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. KITTS to BE RECORDED as voting AYE on the motion that moves HB 2442 to the floor with a DO PASS recommendation.**

VOTE: 7-0-0

Chair Brown Hearing no objection, declares the motion CARRIED.

242 Rep. Holvey Announces work group on HB 2180 and 2181.

246 Chair Brown Closes the work session on HB 2442. Adjourns the meeting at 9:45 a.m.

EXHIBIT SUMMARY

- A. **HB 2439, written testimony, Andrew J. Morrow, 2 pp**
- B. **HB 2439, written testimony, Jason M. Brauser, 2 pp**
- C. **HB 2069, proposed amendments to section 2, staff, 1 p**
- D. **HB 2069, written testimony, Michael A Snyder, 9 pp**
- E. **HB 2069, written testimony, Michael Wister, 2 pp**
- F. **HB 2069, written testimony, Bill Cross, 2 pp**