

**HOUSE COMMITTEE ON**  
**BUSINESS, LABOR, AND CONSUMER AFFAIRS**

**February 02, 2005 Hearing Room B**

**8:30 A.M. Tapes 18 - 19**

**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 2057 – Work Session**

**HB 2214 – Public Hearing and 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.**

TAPE/#	Speaker	Comments
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**TAPE 18, A**

003	Chair Brown	Calls meeting to order at 8:35 a.m. Opens the work session on HB 2057.
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**HB 2057 – WORK SESSION**

007	Janet Adkins	Committee Administrator. Explains HB 2057. Submits HB 2057-3 amendments ( <b>EXHIBIT E</b> ) and HB 2057-1 amendments ( <b>EXHIBIT F</b> ).
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029	Job Stubenvoll	Communications Director, Oregon Liquor Control Commission (OLCC). Talks about the -3 amendment ( <b>EXHIBIT E</b> ). Clarifies what the amendment means and the definition of a “beer garden”. Talks about the -1 amendment ( <b>EXHIBIT F</b> ) and discusses the appropriate fee level. Indicates that \$64 would cover the cost of issuing and enforcing the license.
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048	Rep. Kitts	Asks if the process is different for the five hour and the all day license.
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052	Stubenvoll	Says that the process is very similar. Explains that the difference occurs for the spot checks on an event-by-event basis. Gives examples. Mentions that the bill was run through the Business Partners Groups, which include retailers, wholesalers, and other industry people, and they have signed off on the concept that is before the committee.
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069	Rep. Kitts	Mentions that the people that were mentioned do not buy the particular license being discussed. Asks why the license fee does not cover the costs.
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075	Stubenvoll	Explains that the liquor license costs are subsidized by the sale of bottled distilled spirits.
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080	Rep. Kitts	Removes objection to the \$50 fee.
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088	Chair Brown	Reiterates that the bill has a referral to Ways and Means.
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095 Rep. Kitts **MOTION: Moves to ADOPT HB 2057-3 amendments dated 2/1/05.**

**VOTE: 7-0-0**

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

**Chair Brown The motion CARRIES.**

105 Rep. Kitts **MOTION: Moves HB 2057 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means by prior reference.**

**Chair Brown VOTE: 6-1-0**

**AYE: 6 - Esquivel, Gilman, Holvey, Kitts, Shields, Brown**

**NAY: 1 - Schaufler**

**Chair Brown The motion CARRIES.**

112 Chair Brown Closes the work session on HB 2057 and opens the public hearing on HB 2214.

### **HB 2214 – PUBLIC HEARING**

117 Janet Adkins Committee Administrator. Explains HB 2214.

133 Dana Anderson Assistant Attorney General, Business Transactions Section, Oregon Department of Justice. Submits and summarizes prepared testimony in support of 2214 (**EXHIBIT A**). Explains that due to the large nature of the revisions made in the statute dealing with the Public Contracting Code during the 2003 Legislative Session they expected that changes would need to be made. Summarizes the technical amendments HB 2214 makes (**EXHIBIT A, Page 1 – 3**).

205 Anderson Identifies several contractor divisions that are addressed in HB 2214. Says that HB 2214 tries to identify the glitches in the law. Indicates that the DOJ will have amendments to HB 2214. Wants the Senate to amend the bill rather than the House of Representatives so that it can be passed before March 1, 2005. Summarizes the amendments that Legislative Counsel is creating refer to bond levels, which is number 12 (**EXHIBIT A, Page 2**).

253	Anderson	<p>Says that they want the bond level to correspond to the competitive quote level. Continues to go through the list of technical amendments HB 2214 makes to ORS 279B (<b>EXHIBIT A</b>). Explains that contract administrators want to be able to designate sole source contracts.</p> <p>Talks about clarification that is needed for multi-step, bids and proposals. Explains that they are trying to make it so that the Oregon University System (OUS) is subject to additional public contracting requirements. Asks for questions.</p>
321	Rep. Schaufler	<p>Asks if the Eugene Water and Electric Board (EWEB) has spoken to him about the concerns with HB 2214.</p>
326	Anderson	<p>Says that they had a “hallway conversation” and he will be following up with the EWEB. Talks about Energy Savings Performance Contracts and how agencies that follow the rule that the DOJ wrote in reference to Energy Saving Performance Contracts allows the agencies to be exempt from competitive bidding. Explains that currently the public contracting legislation passed during the 2003 Legislative Session makes it so that Energy Savings Performance Contracts are exempt from the whole code rather than just competitive bidding. States that it was an erroneous change.</p>
355	Rep. Schaufler	<p>Asks how long it is going to take to get all the stuff fixed if the committee does not pass it out today and what happens if the March 1, 2005 deadline is not met.</p>
257	Anderson	<p>Says that the code will become operative on March 1, 2005, but the changes will not be made. Maintains that it will make it more difficult to interpret and administer the code.</p>
372	Rep. Holvey	<p>Asks what the difference is between exempting Energy Savings Performance Contracts from just competitive bidding and exempting them from the entire code.</p>
375	Anderson	<p>Admits that he does not know about the reasons for the policy change. Explains that if Energy Savings Performance Contracts are exempt from the entire code than someone could hire a relative to do the job in addition there would be no requirement for bonds, public notice, etc.</p>
404	Rep. Schaufler	<p>Reiterates that he wants to know how long it will take if the committee wants to wait to have the amendments before the committee votes on HB 2214.</p>

415 Anderson Does not have a definitive answer. Says it will take a week to ten days. Expresses concerns that waiting for the amendments will push the bill past the March 1, 2005 deadline.

**TAPE 19, A**

001 Anderson Continues to talk about the March 1, 2005 deadline.

005 Rep. Shields Asks about a typical example of an Energy Saving Performance Contract and any companies that may be involved with the contracts.

009 Anderson Says that he cannot give examples of Oregon companies. Explains that the Energy Savings Performance Contract would involve an energy audit of an existing building, and a recommended plan to increase energy efficiency would then be issued. Says that in some cases companies would pay for the changes whether or not the improvements save what is anticipated, and in other cases, they are only paid out of the savings.

027 Rep. Shields Asks if HB 2214 will not allow for no bid contracts, because the Attorney General Model Rules will apply.

033 Anderson Says that way HB 2341 (2003) was written would not require competitive bidding or any other requirements for Energy Savings Performance Contracts. Asserts that this is not the status of the current statute and was not the intent of the 2003 Legislature.

037 Rep. Shields Asks if HB 2214 will allow non-competitive contracts and asks if it was a part of HB 2341 (2003) as well.

041 Anderson Says that he cannot remember what House Bill it was in the prior session but there was a small bill that did specifically address Energy Savings Performance Contracts. Explains that HB 2341 (2003) tried to restate the bill that specifically addressed Energy Savings Performance Contracts, but HB 2341 (2003) erroneously exempted the Energy Savings Performance Contracts from the entire bill. Emphasizes that the intent of the bill was to take Energy Savings Performance Contracts out of competitive bidding as long as they followed the other laws.

053 Rep. Holvey Asks about bullet number ten (**EXHIBIT A, Page 2**) and asks for an explanation of a first tier contractor and why second and third tier contractors are not included.

059	Anderson	Explains that there is a delicate balance between prime contractors and building trade subcontractors in the current statute about disclosure. Says it only applies to first tier subcontractors of prime contractors and the law is written to limit bid shopping. States that it is clarifying that the contracting agency should make the bid.
074	Rep. Holvey	Asks if a second tier subcontractor's estimate is included in the first tier subcontractor's estimate.
078	Anderson	States that when a prime contractor gets pricing from the first tier contractor, the price includes the second tier contractor but they are not disclosed in this process.
088	Christine Hammond	<p>Bureau of Labor and Industries (BOLI). Submits written testimony on behalf of Dan Gardner, Commissioner of BOLI <b>(EXHIBIT B)</b>. Talks about the concern that exists surrounding the current wage rate laws that have been written into ORS 279C. Addresses concern about ORS 279.334 relating to hours of labor and the payment of overtime to employees of contractors. Says that they support the changes in the C section of ORS 279 but are in opposition to the changes in the B section. Says that they are working with Legislative Counsel and DOJ to restore the provisions of ORS 279.334 in section B.</p> <p>Reference the testimony given by BOLI during the 2003 Legislative Session and says that they believed there was to be no substantive changes to the provisions of ORS 279.</p>
128	Chair Brown	Asks if the issues are corrected in HB 2214.
129	Hammond	Says that they are not currently corrected.
129	Rep. Schaufler	Asks if there will be an impact on employees' overtime pay.
132	Hammond	Explains that the daily overtime requirements that are currently contained in ORS 279.334 are not included in ORS 279B.020. Says that overtime would only have to be paid after 40 hours are worked in a week and that there is no daily overtime requirement.
145	Jessica Harris Adamson	<p>Associated General Contractors (AGC). Talks about and gives background on HB 2341 (2003). Speaks in support of HB 2214.</p> <p>Explains that this bill is an attempt to make technical corrections and create a fair and competitive bidding process. Talks about ORS 279B and that it was understood that there would be substantive changes in 279B. States that EWEB wants to be exempt from competitive bidding and not be exempted from the code all together. Says that</p>

AGC has no stance on that issue but that they brought it back because they believed the full exemption was an error. Wants to clarify that agencies are not allowed to do permissive contracts for public improvement construction. Reiterates commitment to resolving issues with HB 2341 (2003) and SB 279 (2003).

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| 247 | Rep. Schaufler | Says that this is not just housekeeping and expresses concern about the timeline. Asks about the impact if the bill goes over the March 1, 2005, deadline. Explains that he has difficulty with the bill and overtime pay is a sensitive issue for him.  |
| 265 | Harris Adamson | Says that with the construction industry it is not a huge issue. Observes that with the overtime pay requirements the concerns that Hammond has raised will go into effect. Shares that on the purchasing side the changes were made because it is difficult to impose the same overtime requirements and maneuver the contracting process with those companies. Says that this is because it is difficult to impose the same requirements on workers who are not in the state. States that the new overtime requirements will automatically go into effect from HB 2341 (2003) unless HB 2214 is put into effect. |
| 303 | Rep. Schaufler | Asks if the language Ms. Hammond is concerned about will go into effect. Asks if the amendments will fix it. Adds that he has not seen the amendments.   |
| 305 | Harris Adamson | Affirms that the amendments have not been drafted. Mentions that BOLI, DAS, and AGC are meeting to negotiate the amendment.  |
| 314 | Rep. Schaufler | Says that he is concerned that he has not seen the amendments.   |
| 317 | Harris Adamson | Explains that if HB 2214 does not go into effect on March 1, 2005, the changes from HB 2341 (2003) will go into effect.  |
| 329 | Chair Brown    | Asks if the issues Rep. Schaufler has concerns about will be in statute if the committee does nothing.   |
| 336 | Rep. Schaufler | Clarifies that what is in front of him does not fix the overtime issue. The amendment would fix it. Says that he would rather wait and have the workers paid less overtime for those small amount of days.   |
| 353 | Harris Adamson | Clarifies that the overtime issue would apply to contracts entered into between March 1, 2005 and when a new law goes into effect to fix the overtime issue. Explains that for contracts entered into during this  |

time period, the laborers working under the contract would not have a daily overtime limit until the contract expires. Apologizes for the confusion and wants to put contractors in line with the Fair Labor Standards Act.

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| 379 | Chair Brown    | Reiterates that there is a commitment for the amendments to be made in the Senate and that they will be able to address the amendments when HB 2214 is sent back to the house. |
| 387 | Harris Adamson | Affirms that that is correct.  |
| 398 | Rep. Schaufler | Reiterates nature of concerns about HB 2214.   |
| 401 | Harris Adamson | Says that they will address concerns.  |

**TAPE 18, B**

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| 005 | Libby Henry  | EWEB. Speaks in support of the exemption specifically for competitive bidding for Energy Savings Performance Contracts. Reads the exemption from the bill. Wonders if the rules will help lower the cost of Energy Savings Performance Contracts.  |
| 027 | Dugan Petty  | Deputy Administrator, Department of Administrative Services (DAS). Submits written testimony in support of HB 2214 ( <b>EXHIBIT C</b> ). Says that the work groups who worked on ORS 279 were committed to absolute consensus for the changes made. Says that on the ORS 279A and ORS 279B side, they were able to make substantive changes.   |
| 080 | Linda Ludwig | Staff, League of Oregon Cities (LOC). Submits and summarizes written testimony and a copy of HB 2214 in support of amendments to HB 2214 ( <b>EXHIBIT D</b> ). Says that most of the changes LOC wants are technical and not substantive. Asserts that the performance and payment bond threshold will be hard for small cities to raise. Talks about the difficulty with the Mach 1, 2005 deadline. |
| 122 | Chair Brown  | Asks if the changes that are in the informational packet ( <b>EXHIBIT D</b> ) are in addition to the ones that Mr. Anderson is requesting.   |
| 127 | Ludwig       | Affirms that they are. Wants the wording and intent of HB 2431 (2003) to be a bit more clear. Believes the amendments can be folded into the amendment that is being discussed.  |



136	Lisa Zavala	Senior Associate Director Government Relations, Oregon University System (OUS). Wants the committee to know that she will be working with Mr. Anderson. Adds that they will be trying to correspond the changes in ORS 279B and ORS 279C with the exemptions in ORS 351.
146	Sandra Bishop	Fair Competition Alliance. Concerns with the legal remedies section. Will be bringing the amendments forward.
164	Chair Brown	Asks if they will be working with Mr. Anderson.
165	Bishop	Confirms that they will be.
168	Chair Brown	Closes the public hearing on HB 2214 and opens the work session on HB 2214.

**HB 2214 – WORK SESSION**

175	Rep. Kitts	<b>MOTION: Moves HB 2214 to the floor with a DO PASS recommendation and rescind the subsequent referral.</b>
180	Rep. Schaufler	States that he will vote in support of HB 2214 due to the assurance that it will come back to everyone's satisfaction.
193	Chair Brown	Says that they are expecting HB 2214 to come back to the committee amended.
200	Rep. Shields	Explains that he will be voting nay due to the March 1, 2005 deadline.
202	Chair Brown	Says that the inability to change the March 1, 2005 deadline is why it needs to be passed out of committee.
205	Rep. Kitts	Says that it was a thorough bill last time, but it was not perfect. Explains that they do not have a lot to worry about if the work that the groups who came today is indicative of work done during the 2003 Legislative Session.
210		<b>VOTE: 6-1-0</b>  <b>AYE: 6 - Esquivel, Gilman, Holvey, Kitts, Schaufler, Brown</b>

**NAY: 1 – Shields**

**Chair Brown The motion CARRIES.**

**REP. SCHAUFLEER will lead discussion on the floor.**

Janet Adkins Committee Administrator. Submits revised memorandum on the Oregon Department of Justice-Financial Fraud/Consumer Protection Section (**EXHIBIT G**).

223 Chair Brown Closes the work session on HB 2214. Adjourns the meeting at 9:49 a.m.

#### **EXHIBIT SUMMARY**

- A. HB 2214, written testimony, Dana Anderson, 3 pp
- B. HB 2214, written testimony of Dan Gardner, Christine Hammond, 1 p
- C. HB 2214, written testimony, Dugan Petty, 1 p
- D. HB 2214, written testimony, Linda Ludwig, 31 pp
- E. HB 2057, -3 amendments, staff, 1 p
- F. HB 2057, -1 amendments, staff 1 p
- G. Financial Fraud/Consumer Protection Section, revised memorandum, staff, 5 pp