

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

**February 25, 2005 Hearing Room B**

**8:30 A.M. Tapes 39 - 41**

**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 2395 – Public Hearing**

**Introduction of Committee Bills – Work Session**

**HB 2098 – Work Session**

**HB 2097 – 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**

**TAPE 39, A**

002              Chair Brown                      Calls meeting to order at 9:09 a.m. Opens the public hearing on HB 2395.

**HB 2395 – PUBLIC HEARING**

David E Thurman      Chair, Deferred Compensation Committee, City of Portland. Submits written testimony in support of HB 2395 (**EXHIBIT H**).

005              Janet Adkins                      Committee Administrator. Explains HB 2395.

018              Rep. Macpherson                      House District 38. Speaks in support of HB 2395. Explains that portfolios do better when assets are held in stocks over several business cycles. Talks about the history of holding assets in trusts. Says that the change to allow Differed Compensation Plans to be invested in stocks was made for the state but not for local governments. Notes that HB 2395 would give employees a better option.

074              Rep. Macpherson                      Explains that an amendment is needed before the bill goes forward.

081              Chair Brown                      Asks if the funds are ever matched by local governments.

084              Rep. Macpherson                      Says that it is very unusual for local government to match the funds.

090              Rep. Schaufler                      Asks if the local governments are able to invest funds from Differed Compensation Plans in mutual funds if their agency is not connected to the state government.

094              Rep. Macpherson                      Says that local government's Differed Compensation Plans have to invest their funds through another vehicle, because the funds cannot be invested directly in stocks. Notes that this bill will cut out the middle man and save employees money.

112	Rep. Schaufler	Asks if the bill will be to the benefit of the people in local government.
114	Rep. Macpherson	Says that HB 2395 will improve the returns for local government employees.
119	Chair Brown	Asks if HB 2395 is for counties, cities, etc.
120	Rep. Macpherson	States that HB 2395 affects all local governments.
122	Rep. Holvey	Asks if anything prevents a local government from investing in just one company's stocks.
128	Rep. Macpherson	Says that in theory the investment could be made in one company's stock. Explains that diversification is how risk is moderated and does not know of any local government that only invests in one company's stock.
142	Rep. Kitts	Asks about the investment in mutual funds and asks what happens when the mutual funds dissipate. Asks if there are higher risk options that the employees could opt for.
153	Rep. Macpherson	States that the statute would not limit investments to just mutual funds. Says that it does not specify that you can only invest in mutual funds.
160	Rep. Kitts	Reiterates first part of question.
161	Rep. Macpherson	Says that employees are at the risk of the fluctuations in markets. Emphasizes that it does not put the local government at risk. Explains how it is tax-free for the employee until they retire and helps retirement funds grow faster.
177	Chair Brown	Asks if they are only subject to taxation when the employee takes funds out of the account.
180	Rep. Macpherson	Explains that Chair Brown is correct. Says that deferred compensation allows employees to pay tax when the money is taken out of the account.

190	Chair Brown	Asks if there are any limits on how much can be invested by employees in a Deferred Compensation Plan.
192	Rep. Macpherson	Says that only \$14,000 can be invested this year and \$15,000 next year. States that it is the same limit that applies to 401K plans. Mentions that it is a 401K plan for public employees.
202	Chair Brown	Mentions the Oregon University Systems' (OUS) plan that is similar to a 401K plan and asks if their employees can have a Deferred Compensation Plan in addition to the 401K plan.
206	Rep. Macpherson	Mentions the Optional Retirement Plan that OUS employees can have. Says that they can do this amount on top of the money they are investing in the Optional Retirement Plan.
211	Chair Brown	Asks if the Deferred Compensation Plan is portable.
215	Rep. Macpherson	Says that the Deferred Compensation Plans' funds are portable and can be moved into a new employer's plan tax-free.
221	Rep. Schaufler	Asks if all Deferred Compensation Plans are portable for the average local employees.
224	Rep. Macpherson	Believes that almost all employers allow the funds to be portable.
230	Jayson Davidson	Arnerich Massena and Associates. Speaks in support of HB 2395.
241	Gregory Settle	ICMA Retirement Corporation. Submits written testimony and speaks in support of HB 2395 ( <b>EXHIBIT A</b> ).
244	Rep. Shields	Asks if there is anything that would allow people to invest in riskier funds.
252	Davidson	States that requirements for the fiduciary entity to provide adequate information for investors is in place. Indicates that the main objective is to open up an array of mutual funds for investments.
270	Adkins	Mentions that a bill has passed in the Senate that allows the States' Treasurer to invest Public Employee Retirement System (PERS) and Industrial Accident Funds' monies in stock.

- 283 Tony Bieda Government Representative, Lane County. Speaks in support of HB 2395. Says that they do offer Deferred Compensation Plans. Talks about the limitation of the plans. Details that employees can choose the level of risk they would like. Adds that there are additional fees and administrative fees when going through insurance carriers. Notes that over a half a percent a year is spent on the administrative costs under the current configuration. Says that employees could avail themselves to invest in programs that have a much lower cost. States that the primary virtue is that the employee with these plans will put less strain on public dollars when they retire.
- 326 Rep. Holvey Asks if Lane County employees have a choice of plans that they can invest in when they enroll in the Deferred Compensation Plans.
- 330 Bieda States that their choice is one or the other of the insurance carriers. Says that the insurance carriers have different portfolios, and once you enroll in an insurance carrier's program, the person is locked into that program.
- 339 Rep. Holvey Asks if there are different plans that employees can choose.
- 341 Bieda Says that there are two different carriers for the Deferred Compensation Plan.
- 343 Rep. Holvey Asks about the type of programs have different risks involved.
- 345 Bieda Says that he does not have that information.
- 355 Chair Brown Mentions the issue raised by the Treasure's office that will be fixed with an amendment to the bill. Closes the public hearing on HB 2395 and opens the work session for the purpose of introducing committee bills.

### **INTRODUCTION OF COMMITTEE BILLS – WORK SESSION**

- 360 Chair Brown Introduces LC 1759, LC 1912, LC 3009, LC 3138, and LC 2579 **(EXHIBITS B, C, D, E and F)**.
- 372 Rep. Kitts **MOTION: Moves LC's: 1759, 1912, 3009, 2579, 3138 BE INTRODUCED as committee bills.**
- 379 **VOTE: 6-0-1**

**EXCUSED: 1 - Esquivel**

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

382           Chair Brown                   Closes the work session for the purpose of introducing committee measures and opens the work session on HB 2098.

**HB 2098 – WORK SESSION**

386           Janet Adkins                   Committee Administrator. Explains HB 2098. States that there has been no testimony in opposition to HB 2098 and that the American Institute of Architects has given their verbal support. Submits written testimony of William Snyder from the public hearing on HB 2098.

420           Chair Brown                   Asks what kind of offense merits a fine.

425           Carol Halford                   Oregon Board of Architect Examiners (OBAE). Says that the most common offenses are practicing without a license and professional misconduct.

428           Chair Brown                   Asks if professional misconduct means designing a building that is structurally unsound.

430           Halford                         States that it does mean designing unsound buildings and emphasizes that it has not happened recently. Mentions that there is not a large amount of professional misconduct.

437           Chair Brown                   Asks if an architect can recover the cost of litigation if the ruling is in their favor.

439           Halford                         States that when the OBAE put forth the legislation they believed that recovering the cost of litigation was reciprocal. Says that the board has come to realize that in administrative law it is not reciprocal.

459           Rep. Schaufler                 Asks about the ice load that caused a Fred Meyer to collapse in February of 2003 and if it comes under the jurisdiction of the OBAE.

464           Halford                         Says that it would only cover the administrative law fee. States that it only applies if someone submits a complaint to the board and the board finds that the individual violates some part of the OBAE's law.

472	Rep. Kitts	Asks how the amount of the fine is derived and what the civil penalty will be.
481	Halford	Talks about the individual circumstances of each case and how these circumstances are used to determine what the civil penalty will be. Mentions that the civil penalty does not cover the cost of litigation.
502	Rep. Kitts	Reiterates question for purposes of clarification and asks where the additional monies go.
504	Halford	Says that if the board assessed a civil penalty of \$5,000 it could also assess the costs incurred for litigation. Indicates that the money would go to the OBAE's bank account.
513	Rep. Kitts	Says that the costs that are occurred could be infinite. Expresses concern that this legislation gives the board or the government a lot of incentive to win the case.
539	Halford	States that the civil penalty is determined long before the case goes to trial. Says that the cost recovery is after the fact. Indicates that OBAE currently has the authority to assess the civil penalty.

**TAPE 40, A**

001	Halford	Says that the board currently has the right to asses any fees it wants, but notes that the board looks at the severity of the offense when determining the amount of the civil penalty. States that a \$5,000 penalty is not automatically assessed.
008	Rep. Kitts	Wants to see the language be reciprocal so that defendants can be reimbursed as well.
011	Chair Brown	Asks if there is an appeal to the OBAE's decisions.
014	Halford	States that there is an appeal process and the state goes through all of the same guidelines for those covered by the Department of Justice. Details how the appeals process works.
022	Rep. Holvey	Asks if the civil penalties are used for the administration and the enforcement of the laws only.

028	Halford	Emphasizes that the penalties are used for the legal cases. Encourages the committee to look at the OBAE's budget. Indicates that they need to have the monetary ability to pursue and enforce regulations.
038	Rep. Schaufler	Asks whether the OBAE is just made up of experts in the field and appointed by the governor.
041	Halford	States that there are five architects and two public members whom the governor appoints.
043	Rep. Schaufler	Asks if they have a charter that governs the architecture industry and how many cases there been in the last year.
049	Halford	States that they do have a charter to protect the industry. Shares that there have been 20 to 30 complaint cases in the past year.
051	Rep. Schaufler	Asks how many architects and projects were involved and how many were assessed a civil penalty.
054	Halford	Responds that they had six to ten cases last year that were assessed a civil penalty.
057	Rep. Schaufler	Asks how many architects there are in Oregon.
058	Halford	Says that are 2500 architects and about 400 architectural firms. States that half of the firms are outside of Oregon but are doing business in Oregon.
064	Chair Brown	Mentions that Rep. Esquivel's suggestions will be drafted as amendments to HB 2098. Close the work session on HB 2098 and opens the work session on HB 2097.

**HB 2097 – WORK SESSION**

067	Janet Adkins	Committee Administrator. Explains HB 2097 and mentions the -2 amendment ( <b>EXHIBIT G</b> ). States that at the public hearing there was no testimony in opposition to HB 2097. Submits written testimony on the behalf of Mike Wister in opposition to HB 2097 ( <b>EXHIBIT I</b> ).
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121	Michael Snyder	Administrator, Landscape Contractors Board (LCB). Explains HB 2097. Talks about how arborists will now be under the LCB if HB 2097 should pass. Explains the -2 amendments ( <b>EXHIBIT G</b> ). Mentions how the Construction Contractor Board (CCB) and the LCB worked together on the amendments in an effort to make HB 2097 consistent with current regulations.
165	Rep. Schaufler	Asks if under the CCB arborists currently have to meet the requirements under section two to get the arborist license.
171	Snyder	States that currently they do not have to meet the same requirements, because HB 2097 adds a competency test requirement to get the license. Mentions the International Society of Arboriculture (ISA) certification, which many arborists have.
183	Rep. Schaufler	Asks if the arborists who have the ISA license will be forced to take the competency test.
191	Snyder	Says that the people that have the CCB's license today and the ISA certification will automatically become a landscape arborist with the LCB. States that those that do not have the ISA certification will have to take the ISA certification test or pass the test that the LCB has created.
200	Rep. Schaufler	Asks if the ISA certificate is at least as rigorous as the LCB's arborist license test will be.
204	Snyder	Says that it will be at least as rigorous.
209	Rep. Kitts	Expresses concerns that HB 2097 is exclusionary, because of the requirements to sit for the test. Talks about the process to take the CCB test and how he can sit for the test right now. Asks if he can sit for the arborist test right now.
232	Snyder	Asserts that there is no testing on how to build a house for the CCB test and states that much of the work that construction contractors do while building a home involves a wide variety of permits and inspection processes. Explains that with landscape contracting there is no permit process in place and says that the test therefore has to have a minimal level of competency. Says that landscapers are tested in areas, such as soil preparation, plant types, the drainage of the plants, and the construction process.

- 275 Snyder States that the test helps them make sure that landscapers have a minimal level of competency. Explains that there is a thirty three percentage passage rate. Talks about the prior experience necessary to take the test. Speaks about the criteria that are required to sit for the test.
- 311 Rep. Kitts Expresses concern about the prior experience requirement after passing the test, because it can create an adverse economic situation for the individual. Adds that he is also concerned about the educational requirements.
- 358 Snyder Says that the ISA requires a certain amount of experience in order to sit for their test and states that the language was drawn from the ISA certification requirements.
- 375 Rep. Kitts Says that he is not surprised that the industry supports this language, because it keeps people out and makes it difficult for people to come into the business.
- 394 Rep. Schaufler Says that a lot of people spend a large sum of money on their trees and shrubs. Explains that the regulations help protect consumers and says that a landscaper should be qualified.

#### **TAPE 41, A**

- 001 Rep. Schaufler Believes that the hardest part is getting home owners to trust someone when contractors are working on the owners' property
- 008 Snyder Says that the landscape industry has struggled to gain the trust of the public. Wants a minimal level of competency to ensure that when a customer hires an arborists, the consumer is protected.
- 016 Rep. Schaufler Says that the CCB does not test competency and that it could go up a little bit.
- 024 Rep. Kitts Says that he shares the concern with Rep. Schaufler has for the consumer. Believes that his concerns are two different issues.
- 031 Chair Brown Forms workgroup with Rep. Kitts and Mr. Snyder.
- 037 Rep. Holvey

Asks whether a person who is engaged in commercial forest products is required to have a license if the person is cutting down trees on a landowner's home property.

- 048 Snyder States that when people are doing harvesting trees in the woods or trees on a Christmas tree farm they do not need an arborist license. Adds that when the person goes onto people's property to fall or prune trees you need an arborist's license.
- 055 Chair Brown Closes the work session on HB 2097 and adjourns the meeting at 10:24 a.m.

### **EXHIBIT SUMMARY**

- A. **HB 2395, written testimony, Gregory Settle, 1 p**
- B. **Introductions, LC 1759, staff, 3 pp**
- C. **Introductions, LC 1912, staff, 5 pp**
- D. **Introductions, LC 3009, staff, 5 pp**
- E. **Introductions, LC 3138, staff, 5 pp**
- F. **Introductions, LC 2579, staff, 2 pp**
- G. **HB 2097, -2 amendments, staff, 1 p**
- H. **HB 2395, written testimony, David E. Thurman, 1 p**
- I. **HB 2097, written testimony of Mike Wister, staff, 1 p**