

HOUSE COMMITTEE ON
BUSINESS, LABOR, AND CONSUMER AFFAIRS

May 02, 2005 Hearing Room B

8:30 A.M. Tapes 111 - 113

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/ISSUES HEARD:

HB 3257 – Work Session

HB 3272 – Work Session

HB 3092 – Public Hearing and Work Session

HB 3093 – Public Hearing and Work Session

HB 2404 – 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 111, A

002	Chair Brown	Calls the meeting to order at 8:51 a.m. Opens the work session on HB 3257.
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HB 3257 – WORK SESSION

008	Janet Adkins	Committee Administrator. Explains HB 3257. Submits -2 amendments (EXHIBIT A).
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029	Chair Brown	Says that everyone agrees with HB 3257.
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031	Rep. Esquivel	MOTION: Moves to ADOPT HB 3257-2 amendments dated 04/28/05.
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033		VOTE: 5-0-2
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EXCUSED: 2 – Gilman, Kitts

	Chair Brown	Hearing no objection, declares the motion CARRIED.
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034	Rep. Esquivel	MOTION: Moves HB 3257 to the floor with a DO PASS AS AMENDED recommendation.
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035	Rep. Holvey	Asks if someone involved in the agricultural business can be a public member.
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038	Chair Brown	States that the -2 amendments would add a member of the port to be a part of the shipper group on the Board of Maritime Pilots (BMP).
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041	Adkins	Adds that no specific language would be in the statute requiring an agricultural member to serve on the BMP.
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046		VOTE: 6-0-1
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AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 – Kitts

(NOTE: See page 8, tape 112, B, to see Rep. Kitts' vote on HB 3257.)

Chair Brown The motion CARRIES.

053 Rep. Esquivel MOTION: Moves HB 3257 be placed on the CONSENT CALENDAR.

055 VOTE: 6-0-1

EXCUSED: 1 – Kitts

(NOTE: See page 8, tape 112, B, to see Rep. Kitts' vote on HB 3257.)

Chair Brown Hearing no objection, declares the motion CARRIED.

056 Chair Brown Closes the work session on HB 3257. Opens the work session on HB 3272.

HB 3272 – WORK SESSION

057 Janet Adkins Committee Administrator. Explains HB 3272 and the -2 amendments (EXHIBIT B).

084 Chair Brown Asks if everyone agrees with HB 3272 and the -2 amendments.

086 Marshal Coba American Council of Engineering Companies of Oregon. Speaks in support of HB 3272 and the -2 amendments.

091 John Oshel Association of Oregon Counties. Speaks in support of HB 3272 and the -2 amendments.

095 David Baronberg League of Oregon Cities. Speaks in support of HB 3272 and the -2 amendments.

107 Rep. Kitts MOTION: Moves to ADOPT HB 3272-2 amendments dated 04/29/05.

111 VOTE: 7-0-0

	Chair Brown	Hearing no objection, declares the motion CARRIED.
112	Rep. Kitts	MOTION: Moves HB 3272 to the floor with a DO PASS AS AMENDED recommendation.
113		VOTE: 7-0-0
		AYE: In a roll call vote, all members present vote Aye.
	Chair Brown	The motion CARRIES.
		REP. KITTS will lead discussion on the floor.
126	Chair Brown	Closes the work session on HB 3272 and opens the public hearing on HB 3092.

HB 3092 – PUBLIC HEARING

128	Janet Adkins	Committee Administrator. Explains HB 3092 and the -2 amendments (EXHIBIT C) .
146	JL Wilson	Plumbing, Heating and Cooling Contractors. Speaks in support of HB 3092 and the -2 amendments. Says that plan review should be optional. Talks about customers being discontented with the current process. Notes that HB 3092 creates a market-oriented approach.
184	Jerod Broadfoot	Plumbing and Mechanical Contractors Association. Speaks in support of HB 3092 and the -2 amendments. States that if plan review is not adding value to their project then they do not have to use it.
196	Rep. Schaufler	Asks if the industry is in support of HB 3092.
199	Wilson	States that the industry is in support of HB 3092.
203	Rep. Schaufler	Asks if the industry is in support of the fee.
205	Wilson	States that they are in support of the fee since it is already being charged to contractors.
207	Broadfoot	Affirms Mr. Wilson's comment.

208	Rep. Esquivel	Asks if the League of Oregon Cities (LOC) supports HB 3092.
211	Wilson	States that the LOC will be speaking before the committee.
212	Rep. Esquivel	Asks who is liable when the plans are not within code.
216	Wilson	States that the issue has been removed from HB 3092 with the -2 amendments. Says that a stamp of approval from an architect or engineer is no longer needed to bypass the plan review process in HB 3092.
222	Rep. Holvey	Asks who is liable if the plumbing structure is built out of compliance with the code.
230	Wilson	States that there is no change in who is held liable in HB 3092 under any circumstance.
242	Rep. Holvey	Asks if the contractor is liable for building the structure to code.
245	Wilson	States that the contractor is liable.
250	Charlcie R Kaylor	Mortier Engineering Lane Co. Submits and reads from written testimony in opposition to HB 3092 (EXHIBIT D). Believes that the current system works. Details the negative impacts HB 3092 will have on the construction industry in Oregon.
334	David Barenberg	League of Oregon Cities. States that the plan review process does add value to construction projects. Says that a complex project might require the plumbing to be torn out upon inspection. Notes that it puts local governments in a tough situation. Believes that the amendments are an improvement and wants people to continue to work on HB 3092.
393	Rep. Schaufler	States that if the community wants inspectors then the inspectors should follow through with their job.
409	Bill Cross	Oregon Building Officials Association. States that the proposed amendments have been circulated and some groups are uncomfortable with HB 3092. Believes that HB 3092 will make the building process more expensive because changes are not made until the end.

TAPE 112, A

- 001 Cross Talks about violations that can occur even when following the structural plans exactly. States that the jurisdictions need a plan for looking at sewer tracks. Speaks in support of the plan review process instead of doing all of the review in the field.
- 011 Chair Brown Closes the public hearing on HB 3092 and opens the work session on HB 3092.

HB 3092 – WORK SESSION

- 019 Rep. Kitts **MOTION: Moves to ADOPT HB 3092-2 amendments dated 04/29/05.**
- 020 **VOTE: 7-0-0**
- Chair Brown **Hearing no objection, declares the motion CARRIED.**
- 021 Rep. Kitts **MOTION: Moves HB 3092 to the floor with a DO PASS AS AMENDED recommendation.**
- 022 Rep. Holvey Speaks in opposition to HB 3092. Shares concern about the plumbing code.
- 031 Rep. Gilman Speaks in support of HB 3092. Believes that HB 3092 addresses part of the problem but not all of it.
- 034 Rep. Esquivel Speaks in opposition to HB 3092. States that the city and the municipality should be held liable for bad inspections.
- 043 **VOTE: 4-3-0**
- AYE: 4 - Gilman, Kitts, Schaufler, Brown**
- NAY: 3 - Esquivel, Holvey, Shields**
- Chair Brown **The motion CARRIES.**
- REP. KITTS will lead discussion on the floor.**

048 Chair Brown Closes the work session on HB 3092. Opens the public hearing on HB 3093.

HB 3093 – PUBLIC HEARING

050 Janet Adkins Committee Administrator. Explains HB 3093 and the -1 and -3 amendments (**EXHIBIT E and F**).

075 JL Wilson Plumbing, Heating, and Cooling Contractors. Speaks in support of the -3 amendments. Says that the Department of Human Resources cannot require a certificate of competency for plumbers for the engineering of backflows under the -3 amendments.

092 Ron Murray UA Local 290. Talks about how they looked at the backflow program in the Department of Human Services. Talks about the Uniform Plumbing Code and how it has an extensive section on backflow systems. States that the current fee is superfluous for the backflow program. States that the DHS has only had one successful case against a plumber under the backflow program.

141 Jerod Broadfoot Plumbing Mechanical Contractors Association. Supports the -3 amendments. States that the fiscal impact has been removed by the -3 amendments. Talks about the apprenticeship programs and their emphasis on backflow devices.

160 Grant Higginson Administrator, Office of Community Health and Health Planning, Oregon Department of Human Services (DHS). Submits and reads from written testimony taking a neutral position on the -3 amendments (**EXHIBIT G**). Talks about the fiscal impact on the program. States that backflow training is optional in the plumber certification process. Notes the possibility of fragmentation in terms of enforcement. Mentions that the enforcement activities have been much greater in the past several years.

230 Chair Brown Asks if Mr. Higginson has seen the -1 and the -3 amendments.

231 Higginson States that he has seen both amendments and clarifies that he is only speaking to the -3 amendments.

233 Rep. Holvey Asks if DHS's concerns are met through the Building Codes Division.

243 Higginson States that DHS inspects the backflow devices annually. Talks about how the program does not have to be in DHS but it needs to be

comprehensive and should continue regardless of where the program resides.

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| 262 | Chair Brown | Asks if plumbers go through a backflow training as part of their licensing process. |
| 264 | Mark Long | Building Codes Division (BCD). Says that there is an amount of training that an individual receives during their apprenticeship. Notes that from BCD the -3 amendment says that a plumber who has gone through two to three years of training is competitive enough to inspect and test backflow devices. |
| 287 | Rep. Holvey | Asks about the annual inspections of the backflow devices and if it is in statute. |
| 296 | Long | Responds that the backflow device inspection requirement is put forth by DHS. |
| 313 | Chair Brown | Asks for clarification on the training apprentices receive in regards to backflow devices. |
| 315 | Murray | Says that licensed plumbers are required to have a working knowledge of backflow devices. States that there is a reciprocity between DHS and BCD regarding the regulation of backflow devices. States that when plumbers graduate from their program they be a licensed tester. |
| 338 | Rep. Holvey | Asks whose responsibility it is to have the devices tested. |
| 345 | Murray | Says that the backflow device must be tested upon its installation in the Uniform Plumbing Code. States that the responsibility is on the property owner. |
| 356 | Higginson | States that the water purveyors are responsible for determining who needs the backflow device and then testing the devices annually. |
| 390 | Grover Simmons | Independent Employee Association. Submits and reads written testimony in support of HB 3093 (EXHIBIT H). Asks the committee to hold HB 3093 and adopt the -1 amendments. Urges the committee to reject the -3 amendment. Believes that HB 3093 is a public health issue. |

TAPE 111, B

001	Simmons	Continues reading written testimony (EXHIBIT H). States that someone does not need to be a licensed plumber to work on backflow devices. Discusses history of water in Oregon.
047	Rep. Schaufler	Asks if nonlicensed plumbers are in violation of statute because they are working on backflow devices without plumbing licenses.
055	Simmons	Defers to other people who are working on backflow devices.
061	Tom Hampel	Tom Hampel Testing and Manufacturing. States that not all plumbers know how to repair and test backflows. Notes that he sees 2,000 backflows a year and the average plumber sees ten to 20 backflows. Believes that if he is certified to install a backflow then he should be able to repair and install a backflow. Mentions that in Illinois you have to be a licensed plumber to install backflows.
107	Hampel	Says that plumbers do not want to test the backflows and that they replace the backflows because they do not know how to fix them. Asserts that protecting drinking water is very important.
131	Chair Brown	Asks where backflow devices are installed.
133	Hampel	States that the backflow devices can be installed anywhere and gives examples.
135	Chair Brown	Asks how a person knows if the backflow device fails.
137	Hampel	States that you do not know, which is why the devices are tested annually. Says that it is not a complicated device and says that there are over 100 different types of backflows.
163	Rep. Schaufler	Thanks Mr. Hampel for testifying. Wants clear lines between a landscaper and a licensed plumber.
169	Hampel	Says that he did go through a limited plumbers license certification process to work on backflow devices.
175	Roland Beebe	Northwest Backflow Inspecting and Testing. Speaks in opposition to HB 3093. Talks about the certification process for backflow testing

and its continuing education component. Believes that DHS is doing a good job of maintaining certification. Notes the extensive re-evaluation of the backflow inspection process that DHS underwent in 2001.

215	Jim Olbrich	Columbia Cross Connection. Speaks in opposition to the -2 amendments and the -3 amendments. Adds his support for the -1 amendments. Talks about his background working with backflows in Oregon.
243	David McDonnell	Speaking for self, employee of a public water utility. Speaks in opposition to HB 3093 (EXHIBIT I). Says that they have just finished rewriting the administrative rules for DHS's backflow program. Says that the EPA will be mandating cross control regulations and this program will go through DHS.
288	Rep. Schaufler	Asks if backflow devices are put in water piping for homes that do not have an irrigation system.
292	Olbrich	States that there is no backflow assembly.
295	McDonnell	Says that a backflow device may be there depending on the utility a person's water system falls under.
303	Rep. Schaufler	Asks if it is rare.
305	McDonnell	States that it is rare.
307	Rep. Schaufler	Asks if backflow devices are required in new construction. Asks about Happy Valley requiring them.
310	Olbrich	States that usually they are not required but a local utility could require them. Says that the backflow devices may be required in Happy Valley.
318	McDonnell	Says that if Happy Valley is, it would be an exemption.
320	Rep. Holvey	Asks if utilities' waterlines fall under Department of Consumer and Business Services (DCBS).
330	McDonnell	

States that the plumbing code deals with private plumbing installations.

- 337 Chair Brown Asks if they support the -1 amendments.
- 340 Olbrich States that he testified in support of the -1 amendments and in opposition to the -2 and the -3 amendments.
- 345 McDonnell Says that he is unsure.
- 355 Steve West Eugene Water and Electric Board. Submits written testimony in opposition to HB 3093 (**EXHIBIT J**). Says that the backflow inspection is important. Gives examples of contamination that can occur when backflow devices do not operate properly. References SB 343 (2003) and states that they had hoped that HB 3093 would be similar to that bill.
- 409 Rep. Holvey States that DHS is responsible for testing water and the plumbing code dictates installation.

TAPE 112, A

- 001 Rep. Holvey Believes that from a jurisdictional point of view the backflow device process is being duplicated by two agencies. States that the specifications about building the backflow devices to code belongs in DCBS. Asks for comments.
- 015 West States that the BCD is responsible for installation and says that after the system has been approved and installed the backflow program in DHS comes into place. Notes that the program was started in the 1981.
- 039 Mike Briesemeister Backflow Device Inspector. Submits written testimony in opposition to HB 3093 (**EXHIBIT K**). Speaks in opposition to the -3 amendment. Notes that the cross-connection program in Oregon is viewed as one of the best in the nation.
- 066 Rep. Holvey States that it is not deviating from the standards as much as it is a consolidation of the licensing and inspection process into one agency instead of two agencies. Believes that the backflow program is important.

077	Briesemeister	Believes that it is important that BCD issues the permit and inspects the building at the time it is built. States that, after this point, the water purveyors duty becomes inspecting the backflow device.
087	West	States that BCD does not provide backflow device certification. Says that nothing in the -3 amendments provides for a certification process.
099	Rep. Schaufler	Says that it makes sense that BCD would inspect the plumbing and DHS would inspect water quality.
106	Long	Says the program will not move under the -2 and the -3 amendments. Believes that DHS is doing a good job. States that the -3 amendments says that plumbers do not need a certificate from DHS.
147	Higginson	States that it is a scope of practice issue for plumbers. Says that 20 percent of certified testers are plumbers.
173	Chair Brown	Asks how large the budget is for administering the backflow program.
176	Higginson	States that it is \$100,000 per biennium.
180	Rep. Schaufler	Asks if there are any new fees are being established.
182	Long	States that no new fees are being established.
190	Adkins	Asks if the testers were allowed to repair until a few years ago and if they were legally qualified before that time to repair backflow devices.
197	Long	Says that until a few years ago the law was not clear and now the law is clear so someone currently has to have a license to repair a backflow.
209	Higginson	States that the issue has been clarified.
219	Chair Brown	Closes the public hearing on HB 3093 and opens a work session on HB 3093.

HB 3093 – WORK SESSION

221	Rep. Kitts	MOTION: Moves to ADOPT HB 3093-3 amendments dated 04/29/05.
224		VOTE: 7-0-0
	Chair Brown	Hearing no objection, declares the motion CARRIED.
226	Rep. Kitts	MOTION: Moves HB 3093 have the SUBSEQUENT REFERRAL to the committee on Ways and Means RESCINDED.
228	Chair Brown	Asks if the committee has the Speaker's approval to rescind the referral.
229	Janet Adkins	Committee Administrator. Explains that the fiscal affect is \$9,000 annually on a \$100,000 budget. States that the Speaker's office did indicate that if it was the desire of the Chair the referral could be rescinded.
239	Rep. Kitts	Asks if the desire of the Chair is to rescind the referral.
241	Chair Brown	Affirms that it is the desire of the Chair.
227		VOTE: 7-0-0
	Chair Brown	Hearing no objection, declares the motion CARRIED.
245	Rep. Kitts	MOTION: Moves HB 3093 to the floor with a DO PASS AS AMENDED recommendation.
247		VOTE: 6-1-0
		AYE: 6 - Esquivel, Holvey, Kitts, Schaufler, Shields, Brown
		NAY: 1 - Gilman
	Chair Brown	The motion CARRIES.
		REP. SCHAUFLEER will lead discussion on the floor.
255	Chair Brown	

Closes the work session on HB 3093 and opens the work session on HB 3257 for the purpose of allowing Rep. Schaufler to vote.

HB 3257 – WORK SESSION

256 **Rep. Schaufler** **MOTION: Requests unanimous consent that the rules be
SUSPENDED to allow REP. KITTS to BE RECORDED as voting
AYE on the motion to move HB 3257 to the floor with a DO PASS
AS AMENDED recommendation and be placed on the
CONSENT CALENDAR.**

260 **VOTE: 7-0-0**

(NOTE: Please see page 2, tape 111, A, for the original vote on HB 3257.)

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

263	Chair Brown	Closes the work session on HB 3257 for the purpose of allowing Rep. Schaufler to vote. Opens the public hearing on HB 2404.
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HB 2404 – PUBLIC HEARING

269 Janet Adkins Committee Administrator. Explains HB 2404 and the -1 amendments
(EXHIBIT L).

301	Shawn Miller	Liberty Northwest. Speaks in support of HB 2404 with the -1 amendments. Says that lines four and five on page five represents the Management-Labor Advisory Committee (MLAC) conceptual approval.
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320	Vicki Graves	Manager, Claims Closure Division, Liberty Northwest. Speaks in approval of HB 2404 and the -1 amendments. Explains the penalty provision and how HB 2404 changes it. Gives examples.
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374 Chair Brown Asks if HB 2404 with the -1 amendments deals with the insurer being penalized for a medical decision that the insurer had little or no control over.

376 Miller States that it correct.

383	Rep. Schaufler	Asks MLAC confer their support and asks for a lay man's example of what HB 2404 with the -1 amendments means.
398	Graves	Says that when a worker is released for regular work the insurance company issues a closure. Notes that at that time certain benefits are not allowed to the worker because they have been released to regular work. After the closure, the doctor could add work restrictions.

TAPE 113, A

001	Rep. Schaufler	Clarifies situation.
006	Graves	Affirms Rep. Schaufler's scenario.
007	Rep. Kitts	Asks if the Oregon Trial Lawyers Association (OTLA) is still expressing concerns about HB 2404 and the -1 amendments.
008	Miller	States that the OTLA is no longer expressing concerns. Says that the -1 amendments address the original concerns.
016	JL Wilson	Co-Chair, MLAC. States that MLAC unanimously approved HB 2404 and the -1 amendments.
025	Chair Brown	Closes the public hearing on HB 2404. Opens work session on HB 2404.

HB 2404 – WORK SESSION

033	Rep. Kitts	MOTION: Moves to ADOPT HB 2404-1 amendments dated 04/29/05.
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034		VOTE: 6-0-1
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EXCUSED: 1 - Shields

Chair Brown	Hearing no objection, declares the motion CARRIED.
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035	Rep. Kitts	MOTION: Moves HB 2404 to the floor with a DO PASS AS AMENDED recommendation.
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037

VOTE: 6-0-1

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

EXCUSED: 1 - Shields

Chair Brown

The motion CARRIES.

040

Rep. Kitts

MOTION: Moves HB 2404 be placed on the CONSENT CALENDAR.

043

VOTE: 6-0-1

EXCUSED: 1 - Shields

Chair Brown

Hearing no objection, declares the motion CARRIED.

045

Chair Brown

Adjourns the meeting at 10:47 a.m.

EXHIBIT SUMMARY

- A. HB 3257, -2 amendments, staff, 2 pp
- B. HB 3272, -2 amendments, staff, 2 pp
- C. HB 3092, -2 amendments, staff, 1 p
- D. HB 3092, written testimony, Charlcie R. Kaylor, 1 p
- E. HB 3093, -1 amendments, staff, 2 pp
- F. HB 3093, -3 amendments, staff, 2 pp
- G. HB 3093, written testimony, Grant Higginson, 2 pp
- H. HB 3093, written testimony, Grover Simmons, 3 pp
- I. HB 3093, written testimony, David McDonnell, 1 p
- J. HB 3093, written testimony, Steve West, 4 pp
- K. HB 3093, written testimony, Mike Briesemeister, 1 p
- L. HB 2404, -1 amendments, staff, 20 pp
- M. HB 3093, written testimony, John T Priest, 1 p
- N. HB 3093, written testimony, Steve Swinney, 1 p
- O. HB 3093, written testimony, Shawn McClanahan, 1 p
- P. HB 3093, written testimony, Jeremy Gordon, 1 p