

SENATE COMMITTEE ON COMMERCE

May 19, 2005
3:10 P.M.

Hearing Room C
Tapes 64 - 66

MEMBERS PRESENT: **Sen. Floyd Prozanski, Chair**
 Sen. Roger Beyer, Vice-Chair
 Sen. Charlie Ringo
 Sen. Doug Whitsett

MEMBER EXCUSED: **Sen. Ginny Burdick**

VISITING MEMBER: **Sen. Alan Bates**

STAFF PRESENT: **Anna Braun, Committee Administrator**
 Karen Scoffield, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2740A – Work Session
HB 2718 – Work Session
HB 2294 – Work Session
HB 2126 – Work Session
HB 2125 – Work Session
SB 446 – 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 64, A		
005	Chair Prozanski	Calls the meeting to order at 3:15 p.m. Opens a work session on HB 2740A.
<u>HB 2740A – WORK SESSION</u>		
012	Anna Braun	Committee Administrator. Provides an overview of HB 2740A.
017	Sen. Beyer	MOTION: Moves HB 2740A to the floor with a DO PASS recommendation.
		VOTE: 3-0-2
		EXCUSED: 2 - Burdick, Whitsett
	Chair Prozanski	Hearing no objection, declares the motion CARRIED.
		SEN. PROZANSKI will lead discussion on the floor.
021	Chair Prozanski	Closes work session on HB 2740A and opens work session on HB 2718.
<u>HB 2718 – WORK SESSION</u>		
023	Anna Braun	Committee Administrator. Provides an overview of HB 2718.
025	Sen. Beyer	MOTION: Moves HB 2718 to the floor with a DO PASS recommendation.
		VOTE: 4-0-1
		EXCUSED: 1 - Beyer
	Chair Prozanski	Hearing no objection, declares the motion CARRIED.
		SEN. BEYER will lead discussion on the floor.
030	Chair Prozanski	Closes work session on HB 2718 and opens work session on HB 2294.

HB 2294 – WORK SESSION

032 Anna Braun Committee Administrator. Provides an overview of HB 2294.
034 Sen. Beyer **MOTION: Moves HB 2294 to the floor with a DO PASS recommendation.**
VOTE: 4-0-1
EXCUSED: 1 - Burdick
Chair Prozanski **Hearing no objection, declares the motion CARRIED.**
SEN. RINGO will lead discussion on the floor.
039 Chair Prozanski Closes work session on HB 2294 and opens work session on HB 2126.

HB 2126 – WORK SESSION

042 Anna Braun Committee Administrator. Provides an overview of HB 2126.
045 Chair Prozanski Comments on the public hearings for HB 2126.
048 Sen. Beyer **MOTION: Moves HB 2126 to the floor with a DO PASS recommendation.**
VOTE: 4-0-1
EXCUSED: 1 - Burdick
Chair Prozanski **Hearing no objection, declares the motion CARRIED.**
SEN. WHITSETT will lead discussion on the floor.
053 Chair Prozanski Closes work session on HB 2126 and opens work session on HB 2125.

HB 2125 – WORK SESSION

055 Anna Braun Committee Administrator. Provides an overview of HB 2125.
057 Sen. Beyer **MOTION: Moves HB 2125 to the floor with a DO PASS recommendation.**
VOTE: 4-0-1
EXCUSED: 1 - Burdick
Chair Prozanski **Hearing no objection, declares the motion CARRIED.**
SEN. BURDICK will lead discussion on the floor.
060 Chair Prozanski Closes work session on HB 2125 and opens public hearing on SB 446.

SB 446 – PUBLIC HEARING

062 Anna Braun Committee Administrator. Provides an overview of SB 446. Introduces the -2 amendments (**EXHIBIT A**), -3 amendments (**EXHIBIT B**), -4 amendments (**EXHIBIT C**), -5 amendments (**EXHIBIT D**), -6 amendments (**EXHIBIT E**) and -7 amendments (**EXHIBIT F**) to SB 446.
080 Chair Prozanski Comments on testimony for SB 446.
090 Peter Bernardo Oregon Medical Association (OMA). General Surgeon, Salem, Oregon. Testifies in support of SB 446. Discusses the background of medical malpractice liability insurance in Oregon.
150 Bernardo Continues testimony.
225 Bernardo Discusses personal experience regarding the cost of medical malpractice insurance.
245 Monica Wehby OMA. Pediatric Neurosurgeon, Portland, Oregon. Testifies in support of SB 446. Relates anecdote regarding a child needing medical attention by a pediatric neurosurgeon. Discusses the high costs of medical malpractice liability insurance in Oregon.
340 Wehby Continues testimony. Provides statistics on neurosurgeons in Oregon.

TAPE 65, A

005 John Moorhead Immediate Past President, OMA. Emergency Physician, Oregon Health and Sciences University (OHSU). Discusses and submits written testimony in support of SB 446 (**EXHIBIT G**).

070	Sen. Bates	Thanks the witnesses and commends them for their efforts.
078	Sen. Ringo	Comments that it is an important goal to make physician's premiums more affordable, but it cannot be the only goal as they need to respect access to the justice system and work toward patient safety. Discusses efforts of the work group for SB 446.
110	Bernardo	Responds that the Oregon Medical Association worked in 2003 to pass a patient safety act. States that Oregon is one of two states in the United States that does not have caps on damages for tort claims. Discusses concern of lawsuits.
130	Sen. Ringo	Comments that he understands the witnesses' position.
135	Chair Prozanski	Discusses knowledge of other states in a liability and health crisis. Asks Bernardo and Wehby regarding their insurance coverage.
180	Bernardo	States that most physicians do not have excess coverage. States that his policy covers up to \$1 million per occurrence, \$3 million per year.
190	Wehby	States that she originally had up to \$5 million per occurrence, \$5 million per year, but now has up to \$1 million per occurrence, \$3 million per year, and cannot get any more coverage.
215	Bernardo	Interjects that their concerns are regarding the cost of premiums and the potential of exceeding their amount of coverage.
233	Moorhead	Comments that we need to be careful when looking at other states.
253	Bernardo	Comments in response to Moorhead's comments.
256	Wehby	Discusses tort reform and pre-litigation screening.
272	Chair Prozanski	Remarks that a friend of his, who is a neurosurgeon, left Oregon and has now come back, but he does not know why.
278	Bernardo	Comments that many neurosurgeons in Oregon have taken intracranial work out of their scope of practice to limit their risk.
280	Wehby	Remarks that insurance companies will typically lower the rates by 30% if neurosurgeons drop their intracranial work.
284	Sen. Bates	Comments on the shortage of physicians in Oregon. Comments that Oregon is also low on Medicare and Medicaid reimbursements in addition to high costs of medical malpractice insurance. Discusses the shortage of neurosurgeons in Medford, Oregon.
323	Chair Prozanski	Comments on reimbursement rates for Medicare and Medicaid.
355	Bill Gallagher	Orthopedic Surgeon, Salem, Oregon. President and Chairman, Northwest Physicians Mutual Insurance Company. Testifies regarding SB 446.
TAPE 64, B		
022	Scott Gallant	Director, Government Affairs, OMA. Discusses and submits an informational packet in support of SB 446 (EXHIBIT H).
115	Gallant	Concludes testimony.
130	Mike Crew	Attorney, Oregon Medical Association. Discusses and submits an informational packet in support of SB 446 (EXHIBIT I). Discusses the -4 and -6 amendments to SB 446.
145	Chair Prozanski	Asks Crew for clarification regarding the documents he submitted.
151	Crew	Responds.
154	Crew	Continues testimony. Discusses the -4 amendments to SB 446.
265	Crew	Discusses the -6 amendments to SB 446.
335	Crew	Concludes testimony.
385	Chair Prozanski	Asks Gallagher about the procedures of insurance payouts.

405	Gallagher	Discusses procedures. Comments that all claims are looked at by the claims committee. Comments that they also look at claim history.
TAPE 65, B		
018	Chair Prozanski	Asks for Gallant to comment on his knowledge of claims.
023	Gallagher	Discusses claims against doctors.
030	Gallant	Responds to Chair Prozanski. Discusses the lawsuits and claims against doctors.
085	Crew	Interjects that the -6 amendments exclude cases involving gross negligence or intentional conduct by a physician.
090	Chair Prozanski	Asks Crew about Maine's system.
095	Crew	Responds.
099	Chair Prozanski	Asks for clarification on Moorhead's comments regarding trials in Maine.
103	Crew	Defers to Gallant.
105	Gallant	Comments that Moorhead was speaking of two cases where the jury overturned the recommendation of the panel.
110	Gallagher	Provides statistics regarding Maine.
117	Crew	States that in 21 cases of unanimous panel verdicts in Maine, 2 were won by the plaintiff and 19 by the defense. Comments that only unanimous decisions are admissible in Maine.
122	Sen. Bates	Comments on Maine's procedures.
137	Crew	Remarks that the -6 amendments state specifically what the court can tell the jury.
150	Mic Alexander	Oregon Trial Lawyers Association. States that he participated in the work group on SB 446. States desire for further amendments to SB 446. Remarks that he does not see the high medical malpractice liability insurance rates as a problem of the tort system, but rather the insurance system.
250	Alexander	Continues testimony. Discusses potential effects of a statewide professional liability fund in Oregon.
300	Whitsett	Asks Alexander's opinion of insurance rates.
303	Alexander	Responds.
317	Whitsett	Comments on the individuals affected by the high medical malpractice liability insurance rates.
340	Alexander	Responds.
365	Sen. Beyer	States that Alexander misspoke when he said that the social insurance program is funded by the taxpayers. States that the program is funded by employers.
373	Alexander	States that he considers employers as taxpayers. Comments that he did not know the details of how the program works.
380	Alexander	Continues testimony.
TAPE 66, A		
025	Alexander	Concludes testimony.
035	Sen. Whitsett	Comments that he thinks that the liability cap is the problem, not the insurance rates.
040	Sen. Bates	Thanks Alexander for his testimony and his efforts in the work group for SB 446.
047	Alexander	Comments on the work group for SB 446.
050	Sen. Bates	Asks Chair Prozanski to look at the rates of medical malpractice liability insurance and ask the insurance industry for their comments.
056	Chair Prozanski	Discusses plans with SB 446. Comments on the history of caps in Oregon.

080	Sen. Beyer	Comments that the state was in crisis until 1988, and fell back into crisis after the caps were removed.
084	Chair Prozanski	States that there are other economic cycles involved in what Sen. Beyer is speaking of.
095	Bruce Miller	Assistant Staff Counsel, Office of the State Court Administrator. Testifies regarding SB 446. Discusses Maine's system.
135	Chair Prozanski	Asks if Miller has looked at the fiscal impact of SB 446.
138	Miller	States he does not have a complete idea of the fiscal impact because he has not reviewed the amendments.
145	Sen. Beyer	Comments on Oregon's Hearing Officer Panel.
150	Chair Prozanski	Closes the public hearing on SB 446. Adjourns the meeting at 5:15 p.m.

EXHIBIT SUMMARY

- A. **SB 446, -2 amendments, staff, 12 pp**
- B. **SB 446, -3 amendments, staff, 15 pp**
- C. **SB 446, -4 amendments, staff, 19 pp**
- D. **SB 446, -5 amendments, staff, 2 pp**
- E. **SB 446, -6 amendments, staff, 10 pp**
- F. **SB 446, -7, amendments, staff, 2 pp**
- G. **SB 446, written testimony, John Moorhead, 3 pp**
- H. **SB 446, informational packet, Scott Gallant, 37 pp**
- I. **SB 446, informational packet, Mike Crew, 16 pp**