

# SENATE COMMITTEE ON COMMERCE

May 26, 2005  
3:30 P.M.

Hearing Room C  
Tapes 67 - 68

Corrected 10/19/05

**MEMBERS PRESENT:** Sen. Floyd Prozanski, Chair  
Sen. Ginny Burdick  
Sen. Charlie Ringo  
Sen. Doug Whitsett

**MEMBER EXCUSED:** Sen. Roger Beyer, Vice-Chair

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

**MEASURES/ISSUES HEARD:**

HB 2662A – Public Hearing and Work Session  
SB 446 – Public Hearing  
SB 968 – Work Session  
SB 426 – Work Session  
SB 1057 – Work Session

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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.

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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>TAPE 67, A</b>		
005	Chair Prozanski	Calls the meeting to order at 3:40 p.m. Opens a public hearing on HB 2662A. Discusses the agenda for today.
<b><u>HB 2662A – PUBLIC HEARING</u></b>		
015	Anna Braun	Committee Administrator. Provides an overview of HB 2662A.
020	Rep. Paul Holvey	House District 8. Discusses and submits written testimony in support of HB 2662A ( <b>EXHIBIT A</b> ).
065	Sen. Whitsett	Asks how many employees will be affected by HB 2662A.
069	Rep. Holvey	Estimates that there will be approximately 25 cases per year.
075	Chair Prozanski	Discusses the fiscal analysis to HB 2662A. Clarifies that Rep. Holvey had the same information when HB 2662A was presented on the House floor.
077	Rep. Holvey	Answers, yes.
<b>The following material is submitted for the record without public testimony:</b>		
	Sybil Hebb	Oregon Law Center. Submits an overview of HB 2662A ( <b>EXHIBIT B</b> ).
080	Chair Prozanski	Closes public hearing on HB 2662A and calls the meeting to a recess.
084	Chair Prozanski	Reopens the meeting and opens a public hearing on SB 446.
<b><u>SB 446 – PUBLIC HEARING</u></b>		
	Anna Braun	Committee Administrator. Submits the -8 amendments to SB 446 ( <b>EXHIBIT C</b> ).
095	Bruce Miller	Oregon Judicial Department. Discusses and submits written testimony in opposition to the -4 amendments to SB 446 ( <b>EXHIBIT D</b> ).

133	Chair Prozanski	Recesses the public hearing on SB 446 and opens a work session on HB 2662A.
<b><u>HB 2662A – WORK SESSION</u></b>		
144	Sen. Burdick	<b>MOTION: Moves HB 2662A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 4-0-1</b>
		<b>EXCUSED: 1 - Beyer</b>
	Chair Prozanski	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. PROZANSKI will lead discussion on the floor.</b>
152	Chair Prozanski	Closes work session on HB 2662A and opens work session on SB 968.
<b><u>SB 968 – WORK SESSION</u></b>		
155	Anna Braun	Committee Administrator. Provides an overview of SB 968. Introduces the -7 amendments to SB 968 ( <b>EXHIBIT E</b> ).
172	Chair Prozanski	Asks for clarification on the changes in the -7 amendments.
174	Braun	Responds that there is no private right of action, but there is attorney general enforcement in the -7 amendments to SB 968.
178	Sen. Ringo	Comments that he is concerned about the limitations on what local governments can impose. Discusses concerns with SB 968.
185	Chair Prozanski	Discusses the reason for the preemption. Asks Sen. Ringo if he will support the bill today.
194	Sen. Ringo	Comments that SB 968 needs tighter restrictions. Discusses concern with preemption laws.
204	Sen. Burdick	Asks how many local jurisdictions regulate preemption laws.
206	Braun	Comments that she does not know of any.
207	Chair Prozanski	Responds to Sen. Burdick.
217	Sen. Ringo	States the he would like to discuss SB 968 further with Chair Prozanski. States that he would like to consider SB 968 next week.
224	Chair Prozanski	States that we can carry SB 968 to Thursday, June 2 <sup>nd</sup> . Discusses SB 968.
233	Chair Prozanski	Closes work session on SB 968 and opens work session on SB 426.
<b><u>SB 426 – WORK SESSION</u></b>		
237	Anna Braun	Committee Administrator. Provides an overview of SB 426. Introduces the -1 amendments to SB 426 ( <b>EXHIBIT F</b> ).
250	Sen. Burdick	<b>MOTION: Moves to ADOPT SB 426-1 amendments dated 3/11/05.</b>
		<b>VOTE: 3-1-1</b>
		<b>AYE: 3 - Burdick, Ringo, Prozanski</b>
		<b>NAY: 1 - Whitsett</b>
		<b>EXCUSED: 1 - Beyer</b>
	Chair Prozanski	<b>The motion CARRIES.</b>
260	Sen. Burdick	<b>MOTION: Moves SB 426 to the floor with a DO PASS AS AMENDED recommendation.</b>
264	Sen. Burdick	States that she is concerned about the bill, but will support moving it out of committee.
273	Chair Prozanski	States that the proponents told him that 4 other states are using the same process in SB 426.
281	Sen. Whitsett	Comments on SB 426. Discusses opposition to SB 426.
294	Sen. Ringo	Comments on emails he received in support of SB 426. States that he will support SB 426.

304		<b>VOTE: 3-1-1</b> <b>AYE: 3 - Burdick, Ringo, Prozanski</b> <b>NAY: 1 - Whitsett</b> <b>EXCUSED: 1 - Beyer</b> <b>The motion CARRIES.</b> <b>SEN. RINGO will lead discussion on the floor.</b>
	<b>Chair Prozanski</b>	
310	Chair Prozanski	Closes work session on SB 426 and opens work session on SB 1057.
<b><u>SB 1057 – WORK SESSION</u></b>		
313	Anna Braun	Committee Administrator. Provides an overview of SB 1057. Introduces the -6 amendments to SB 1057 ( <b>EXHIBIT G</b> ).
330	<b>Sen. Burdick</b>	<b>MOTION: Moves to ADOPT SB 1057-6 amendments dated 5/26/05.</b>
		<b>VOTE: 4-0-1</b> <b>EXCUSED: 1 - Beyer</b> <b>Hearing no objection, declares the motion CARRIED.</b>
336	<b>Chair Prozanski</b> <b>Sen. Burdick</b>	<b>MOTION: Moves SB 1057 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-0-1</b> <b>EXCUSED: 1 - Beyer</b> <b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. PROZANSKI will lead discussion on the floor.</b>
345	Chair Prozanski	Closes work session on SB 1057 and reopens the public hearing on SB 446.
<b><u>SB 446 – PUBLIC HEARING</u></b>		
353	Jane Myers	Oregon Dental Association. Testifies in support of SB 446 and the -4 amendments.
365	Chair Prozanski	States that they will also take Bruce Miller’s comments into consideration regarding the Judicial Department.
385	Richard Lane	Oregon Trial Lawyers Association. Discusses and submits written testimony in opposition to SB 446 ( <b>EXHIBIT H</b> ).
<b>TAPE 68, A</b>		
035	Sen. Whitsett	Asks Lane about the statistics regarding others states’ medical malpractice liability insurance.
037	Lane	Offers to return the information.
040	Lane	Continues testimony.
085	Sen. Whitsett	Asks if there have been studies regarding physicians leaving the practice of medicine and why potential students have not entered the practice.
093	Lane	Responds. States that he will provide a study from California entitled “And then there were none.”
105	Sen. Whitsett	Discusses the concerns in his district regarding potential lawsuits and the high cost of medical malpractice liability insurance.
128	Lane	Remarks that there are two different concerns that Sen. Whitsett is speaking of. The first is regarding the high cost of insurance and the second is the risk of personal assets becoming jeopardized.
145	Sen. Whitsett	Asks Lane to clarify why he feels that personal assets of doctors would not be in jeopardy.
151	Lane	Comments that he does not know of any cases where doctors’ personal assets were seized to satisfy a judgment.
157	Prozanski	States his understanding of Lane’s comments.
160	Lane	Responds. Continues testimony.

200	Lane	Discusses the -8 amendments to SB 446. Suggests components for a professional liability fund for doctors in Oregon.
235	Lane	Continues testimony.
308	Chair Prozanski	Asks about the professional liability fund model.
325	Lane	Responds. Discusses the -3 amendments to SB 446.
<b>TAPE 67, B</b>		
015	Lane	Continues testimony. Discusses the -6 amendments to SB 446. Discusses prescreening.
095	Chair Prozanski	Asks if a panel would be able to have the physician who is certified as the expert come before the panel to answer questions.
100	Lane	Responds.
110	Chair Prozanski	Asks what is permissible for the panel regarding civil discovery.
114	Lane	Remarks that there should not be full discovery in civil litigation, but the language states that it would be an extraordinary circumstance.
125	Lane	Continues testimony. Discusses the -4 amendments to SB 446.
160	Lane	Discusses the -5 and -7 amendments to SB 446. Concludes testimony.
180	Thomas Sadoris	Medical Doctor. Discusses and submits written testimony regarding SB 446 ( <b>EXHIBIT I</b> ).
235	Sadoris	Reviews page two of EXHIBIT J.
297	Sen. Ringo	Thanks Dr. Sadoris for his testimony. States that he would like to explore the concept of the medical liability fund in more detail.
310	Chair Prozanski	Asks if witness has had the opportunity to do any research on the medical liability funds in other states.
315	Sadoris	Offers to return the information.
317	Chair Prozanski	Comments that the committee administrator has the information.
320	Mark Bocci	Attorney. Discusses the work group for SB 446. Testifies regarding SB 446. States that \$500,000 will not be enough to assist with the problem.
385	Bocci	Continues testimony. States that a solution to the problem is a physician's professional liability fund.
<b>TAPE 68, B</b>		
020	Bocci	Discusses lawsuits and costs involved. Discusses the -4 amendments to SB 446.
065	Chair Prozanski	Asks if Lane was present at the last hearing on SB 446.
068	Lane	Answers, no.
070	Chair Prozanski	Discusses previous hearing on SB 446. Discusses using workers' compensation system as a model. Mentions the -6 amendments. Asks for comments.
080	Lane	Discusses using the workers' compensation system as a model for a medical malpractice system. States that it is not fiscally sound and not good public policy.
120	Lane	Comments on the -6 amendments.
145	Sadoris	States that the current workers' compensation system is a disaster. States that insurance reform is needed in the area of workers compensation.
150	Chair Prozanski	Wonders about exemptions for government doctors working within government facilities.
158	Lane	Recommends that the committee decide.
172	Bruce Bishop	Oregon Association of Hospitals and Health System. Corrects a comment that was made in previous testimony.
185	Chair Prozanski	Responds.

**The following material is submitted for the record without public testimony:**

	James T. Dorigan	Chief Executive Officer, Northwest Physicians Mutual Insurance Company. Submits written testimony regarding SB 446 and the costs of a medical professional liability fund ( <b>EXHIBIT K</b> ).
	James T. Dorigan	Submits written testimony regarding SB 446 ( <b>EXHIBIT L</b> ).
193	Chair Prozanski	Closes public hearing on SB 446. States that the committee will meet next Thursday, 06/02/05. Adjourns the meeting at 5:22 p.m.

### **EXHIBIT SUMMARY**

- A. **HB 2662A, written testimony, Rep. Paul Holvey, 4 pp**
- B. **HB 2662A, overview, Sybil Hebb, 1 p**
- C. **SB 446, -8 amendments, staff, 15 pp**
- D. **SB 446, written testimony of Kingsley W. Click, Bruce Miller, 10 pp**
- E. **SB 968, -7 amendments, staff, 13 pp**
- F. **SB 426, -1 amendments, staff, 1 p**
- G. **SB 1057, -6 amendments, staff, 24 pp**
- H. **SB 446, written testimony, Richard Lane, 28 pp**
- I. **SB 446, written testimony, Thomas Sadoris, 2 pp**
- J. **SB 446, written testimony, Dave McTeague, 1 p**
- K. **SB 446, written testimony, James T. Dorigan, 9 pp**
- L. **SB 446, written testimony, James T. Dorigan, 8 pp**