

**HOUSE REVENUE COMMITTEE**  
**APRIL 24, 2003 8:30 AM STATE CAPITOL BUILDING**

Members Present: Representative Lane Shetterly, Chair  
Representative Wayne Scott, Vice Chair  
Representative Joanne Verger, Vice Chair  
Representative Phil Barnhart  
Representative Vicki Berger  
Representative Pat Farr  
Representative Mark Hass  
Representative Elaine Hopson  
Representative Max Williams

Witness Present: John Phillips, Department of Revenue (DOR)  
Debra Buchanan, DOR  
Lynn Partin, Housing and Community Services Department  
Matt McCauley, Oregon Department of Justice  
Tobacco Compliance Task Force  
Don O'Meara, DOR  
Jim Gardner, Gardner and Gardner for Phillip Morris  
Bill Cross, Council of Independent Tobacco Manufacturers  
Bob Russell, Oregon Trucking Association  
Patti O'Sullivan, Portland Public School District  
Brian Reeder, Department of Education

Staff Present: Paul Warner, Legislative Revenue Officer  
Mazen Malik, Legislative Revenue Office  
Lizbeth Martin-Mahar, Legislative Revenue Office  
Steve Meyer, Legislative Revenue Office  
Kathy Tooley, Committee Assistant

**TAPE 144, SIDE A**

004	Chair Shetterly	Calls meeting to order at 8:40 a.m.
016	Mazen Malik	Provided background and description of SB 226 (Exhibit 1). Discussed -1 amendment (Exhibit 2). No fiscal impact.
049	Chair Shetterly	The revenue impact is indeterminate?
051	Malik	Answered affirmatively.
044	John Phillips	Worked with the treasurer on amendment, discussed time frame changes, (Exhibit 3).
063	Rep. Barnhart	Why can't this be done by rule, rather than statute?
071	Phillips	Could be, it has been there since 1979.
076	Chair Shetterly	Would agree. Department may want to ask for broader rule making authority next biennium for issues that don't need legislative oversight.
080	Chair Shetterly	Closed Public Hearing SB 226.

**OPENED WORK SESSION ON SB 226**

- 086 Rep. Hass **MOTION: MOVED SB 226 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION**
- 090 Rep. Hass **AMENDED MOTION: MOVED ADOPTION OF THE -1 AMENDMENT INTO SB 226**  
**ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT EXCEPT REP. WILLIAMS, EXCUSED)**
- 093 Rep. Hass **MOTION: MOVED SB 226, AS AMENDED, TO THE HOUSE FLOOR FOR PLACEMENT ON THE CONSENT CALENDAR WITH A DO PASS RECOMMENDATION.**
- 096 **ROLL CALL: MOTION PASSED 9-0-0**  
**REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.**

**PUBLIC HEARING ON SB 221**

- 118 Lizbeth Martin Mahar Provided description of SB 221, (Exhibit 4), act is consistent with the Federal Victims of Terrorism Tax Relief Act of 2001 allowing IRS postponement of deadlines. Does not have revenue or fiscal impact.
- 141 Debra Buchanan Reiterated Martin-Mahar's testimony. Summarized SB 221, (Exhibit 5).
- 149 Chair Shetterly Authority predicated on two events: IRS action, or state declared emergency?
- 152 Buchanan Answered affirmatively. Gave examples of other deadlines that might occur.
- 162 Chair Shetterly Is there some other process for declaring a state emergency, is a Governor's proclamation?
- 164 Buchanan I believe it is by the Governor.
- 167 Chair Shetterly Closed the Public Hearing on SB 221.

**OPENED WORK SESSION ON SB 221**

- 169 Rep. Scott **MOTION: MOVED SB 221 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION**
- 171 **ROLL CALL: MOTION PASSED 9-0-0**  
**REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.**  
**Rep. Barnhart will carry the bill.**
- 187 Chair Shetterly Closed the Work Session on SB 221.

**OPENED PUBLIC HEARING ON SB 225**

- 192 Malik Provided description of SB 225 as Measure 50 housekeeping, (Exhibit 6). Discussed -1 amendment, (Exhibit 7). Discussed revenue impact (Exhibit 8).
- 289 Phillips Described SB 225 as a reconciliation and catch-up on issues from implementation of Measure 50, (Exhibit 9). Described -1 amendment regarding surviving spouses, addressed with Sen. Dukes and Dexter Johnson of Legislative Counsel, (Exhibit 10).

347 Chair Shetterly You worked this out with Sen. Dukes?  
348 Phillips Answered affirmatively.  
359 Chair Shetterly Closed public hearing on SB 225.

**OPENED WORK SESSION ON SB 225**

362 Rep. Verger **MOTION: MOVED ADOPTION OF THE –1 AMENDMENT INTO SB 225.**  
366 **ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT).**  
375 Rep. Verger **MOTION: MOVED SB 225, AS AMENDED, TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION.**  
381 Rep. Verger **AMENDED MOTION: MOVED SB 225, AS AMENDED, TO THE HOUSE FLOOR FOR PLACEMENT ON THE CONSENT CALENDAR WITH A DO PASS RECOMMENDATION**  
384 **ROLL CALL: MOTION PASSED 9-0-0 REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.**

**OPENED WORK SESSION ON 2166**

400 Martin-Mahar Described -4 amendments (Exhibit 11). Provided background (Exhibit 12), and revenue impact (Exhibit 13).  
479 Chair Shetterly This bill did two things, added acquisition costs to the credit; increased the amount that could be assigned from 80% to 100%. The increase from 80% to 100% had the revenue impact. The Chair requested -A4s for the purpose of keeping the bill alive; move it to the Senate as possible to accommodate revenue impact in the current biennium and have it available to the Senate to make those amendments. In the worst case delay the revenue impact of increasing the 80% to 100% until the next biennium.  
509 Rep. Verger Is there any revenue impact in 2003-05?

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040 Lynn Partin No. All other changes are taking place in 2004; the only thing moving out is the bill with the revenue impact of 80% to 100% transferability.  
047 Chair Shetterly May be able to amend and add back in, in the Senate  
048 Partin Approved bill as is.  
052 Rep. Hass Requested a real world example of selling or transferring credit to a taxpayer subject to taxation.  
055 Partin Described big community based projects are usually built by non-profits who can't take the credits. To get equity into the project, credits are sold for community investment credits and additional value received.  
070 Rep. Farr **MOTION: MOVED ADOPTION OF THE –A4 AMENDMENTS INTO HB 2166.**  
**ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL**

**MEMBERS PRESENT.)**

- 075 Rep. Farr **MOTION: MOVED HB 2166, AS AMENDED, TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION**
- 080 **ROLL CALL: MOTION PASSED 9-0-0**  
**REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.**
- Rep. Farr will carry the bill.**
- 082 Chair Shetterly Closed Work Session on HB 2166

**OPENED PUBLIC HEARING ON HB 2368**

- 100 Richard Yates Provided background and description of HB 2368, (Exhibit 14). Provided – A5, (Exhibit 15); and –A6 amendments, (Exhibit 16).
- 120 Matt McCauley Described history of Tobacco Compliance Task Force. Discussed non-compliance crime issue and effectiveness of current statutes.
- 126 McCauley Discussed “Cigarette Tax”, (Exhibit 17) Historical Tobacco Distribution, (Page 2, Exhibit 17), and “Current Tobacco Distribution”, (Page 3, Exhibit 17). Intent to get best enforcement structure. Tobacco world divided into two categories: Cigarettes and other tobacco. Lack of enforcement power for licensing requirement has led to non-compliance with the tax. Discussed sponsors and input on the bill. Burden on business from this bill relate to requirements in “other tobacco products sales invoice”. Compliance problems and solutions addressed by HB 2368.
- 200 Don O’Meara Impact of tax non-compliance is in “other tobacco products” area. Auditor discovered \$2 million in unpaid taxes in 15 month period. Executed search warrants on illegal operator, legitimate distributors reported business increased 30%.
- 247 Rep. Barnhart Concern regarding interstate issues, and extraterritorial jurisdiction.
- 250 McCauley Discussed federal cooperation. Amendments address threshold out of state business can establish nexus to allow criminal and/or civil enforcement.
- 262 Rep. Barnhart What is the criminal penalty for violating delivery sales permit requirements?
- 270 McCauley Provided background, Phillip Morris drafted delivery sales provisions. Attorney General’s office supports the general concept of delivery sales provisions, but needs adjustment.
- 280 McCauley Penalty is an A Misdemeanor for violation with criminal penalties; and civil penalties would include a fine.
- 286 Rep. Barnhart Questions and discussion regarding cigarette giveaway and taxation.
- 302 Rep. Verger Are Russian companies required to get a permit for delivery sale in Oregon?
- 307 McCauley Depends on how cigarettes come into the country, if for mass distribution, would need customs and Alcohol, Tobacco and Firearms licensing for distribution with duty paid on import. Russian cigarettes sent via mail/UPS, directly to the consumer would not be known; Manufacturer would not have to be licensed to do that. Described transnational tax avoidance problem. Described federal law requirements. Sent letters to 600 internet distributors,

none have responded as to who they are mailing cigarettes to.

- 349 Rep. Verger Of global businesses, are they going to add a tax, where is the liability?
- 360 McCauley Current law on cigarettes puts the ultimate tax liability is on consumer.
- 381 Rep. Verger Part of bill is aimed at underage smoking, observed now enticing movie stars to smoke; don't know how you plug that up, but it bears watching.
- 391 McCauley Tobacco industry sells a very addictive substance, every time state plugs holes, ingenious people find way around. Bill tries to provide a legal structure that allows flexibility to change with the times and make penalties enough to deter non-compliance.
- 438 Rep. Verger Where law suit against Phillip Morris is successful, are you worried the money could dwindle if they go out of business?
- 427 McCauley Discussed concerns. Discussed HB 2094 non-participating manufacturer's aspect of MSA, discussed task force active role in enforcements of that law and hundreds of tobacco companies located offshore.
- 496 Chair Shetterly Amendments? Do you need time?

**TAPE 142, SIDE B**

- 040 McCauley Difficulty with delivery sales aspect of the amendment, scheduled a task force work group and Pete Shepherd will communicate to the Committee.
- 048 O'Meara There is another issue that needs time, regarding Ways and Means funding for task force and another amendment which is not ready as yet.
- 060 Jim Gardner Discussed delivery sales amendments. -A6 adds tools for the state for police enforcement. To Rep. Barnhart's question a recent 2<sup>nd</sup> Circuit decision upheld the constitutionality regarding internet sales of cigarettes.
- 074 Gardner Discussed enforceability issue in -A6 amendment, asks manufacturers to enforce, in addition to Attorney General, against contraband sales.
- 087 Gardner Estimates untaxed sales of Gray/Black market at +30%. Discussed companion bills.
- 097 Gardner Work group will look at UPS/Fedex concerns about shipping documents and NPMs.
- 104 Bill Cross Discussed concerns about additional regulations on compliant NPMs that no other state requires. Recently retained by the coalition.
- 131 Rep. Verger Do you have reasons to oppose licensing requirements in the bill?
- 135 Cross Know it is an issue, not comfortable discussing other than no other state has the requirement.
- 145 Bob Russell Concerns with HB 2368-A, and one set of amendments relating to transport. Provided history meetings with DOR to work through concerns. DOR asked cigarette transporters inside and outside the United States to provide notification when transporting cigarettes destined for Oregon. Doesn't comport with current practices. Trucking companies pick up package, but don't know its contents; -5 amendments fixed that problem.

176	Russell	Delivery service requirement to verify cigarettes have stamps has been partially addressed in -6 amendments. Issue with -6 says in complying with notice seller puts on shipping document, modern shipping done electronically, with no bill of lading. Current industry practices make it difficult to comply with requests and difficult to customize for delivery to Oregon only. Discussed public and private delivery issues.
220	Rep. Barnhart	Trucking company may haul packages without knowing the contents?
222	Russell	True for package delivery services. Transporter defined in delivery sales.
238	Chair Shetterly	Hoping for consensus amendments. If the work group cannot agree, would request alternative amendments and the Committee will make choices.
248	Chair Shetterly	Closed Public Hearing HB 2368.

#### **OPENED WORK SESSION ON HB 3449**

255	Meyer	Discussed -4 amendments, (Exhibit 18), clarifies language applies only to Portland School Districts.
275	Chair Shetterly	Ozzie Rose and his interests are happy with these amendments?
275	Patti O'Sullivan	Answered affirmatively.
279	Meyer	Second change is new language in the event Portland pays off their gap bond. Change is either "A" or "B" not both at the same time. Balance of language deals with amending temporary and permanent statute changes.
304	O'Sullivan	Concur with changes, makes major technical changes; attempt to ensure it doesn't inadvertently make changes at the same time. Adding this bill to a Senate bill allowing look at entire school funding package at the same time.
332	Chair Shetterly	Discussing the amendments. This doesn't disadvantage any school district.
335	O'Sullivan	Answered affirmatively. This is not a formula bill.
340		Questions and discussion regarding desegregation dollars and combining this bill with SB 550 and SB 819.
354	Rep. Verger	One of the reasons I have been supportive of this bill is because it was Portland's decision made about Portland Schools. Will that complicate that position if folded into another bill?
364	O'Sullivan	Does not believe so, the bill has had a hearing if SB 819 is not supported, it can go on its own.
373	Chair Shetterly	These bills will still be discrete in their impact.
362	Brian Reeder	Discussed gap bond rate and permanent rate. It applies only to Portland, question is why does that make sense other than Portland needs more money, but so does every other school district in this state?
407	Chair Shetterly	Is this a discussion for the Committee?
408	O'Sullivan	Responded no.
413	Chair Shetterly	Closed Work Session HB 3449.

Tape Log Submitted by,

Kathy Tooley, Committee Assistant

Exhibit Summary:

1. Malik, "Staff Measure Summaries, Revenue Impact SB 226", 3 pages
2. Malik, "SB 226-1 Amendment", 2 pages
3. Phillips, "Testimony SB 226 and the -1 Amendment", 1 page
4. Martin-Mahar, "Staff Measure Summaries SB 221", 2 pages
5. Buchanan, "Testimony SB 221", 1 page
6. Malik, "Staff Measure Summaries, Revenue Impact SB 225", 3 pages
7. Malik, "SB 225-1 amendment", 3 pages
8. Malik, "Revenue Impact SB 225", 1 page
9. Phillips, "Testimony SB 225 Reconciliation of 2001 Legislation", 2 pages
10. Phillips, "Testimony SB 225-1 Amendment", 2 pages
11. Martin-Mahar, "HB 2166-A4 amendment", 23 pages
12. Martin-Mahar, "Staff Measure Summary HB 2166A-A4, 1 page
13. Martin-Mahar, "Revenue Impact HB 2166A-A4", 1 page
14. Yates, "Staff Measure Summary HB 2368", 1 page
15. Yates, "HB 2368-A5 Amendment", 1 page
16. Yates, "HB 2368-A6 Amendment", 6 pages
17. McCauley, "Cigarette Tax", 3 pages
18. Meyer, "HB 3449-4 Amendment", 16 pages