

HOUSE COMMITTEE ON AGRICULTURE & FORESTRY

January 30, 2001
3:30 PM

Hearing Room 50
Tapes 17 - 19

MEMBERS PRESENT: Rep. Jeff Kropf, Chair
Rep. Al King, Vice-Chair
Rep. Donna Nelson, Vice-Chair
Rep. Robert Ackerman
Rep. Dan Doyle
Rep. Elaine Hopson
Rep. Wayne Krieger
Rep. Mary Nolan
Rep. Tootie Smith

STAFF PRESENT: Ray Kelly, Committee Administrator
Michael Reiley, Committee Assistant

MEASURE/ISSUES HEARD: HB 2037 – Work Session
HB 2051 – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 17, A		
004	Chair Kropf	Calls meeting to order at 3:40 p.m. Opens work session on HB 2037.
<u>HB 2037 – WORK SESSION</u>		
007	Rep. Hopson	MOTION: Moves to take HB 2037 FROM THE TABLE. VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye.
018	Chair Kropf	The motion CARRIES.
022	Ray Kelly	Committee Administrator. Reads –1 and –2 amendments to HB 2037.
032	Rep. Nolan	Points out that she will not bring forward amendment discussed in earlier meeting.
043	Rep. T. Smith	MOTION: Moves to ADOPT HB 2037-1 and HB 2037-2 amendments dated 1/30/01. VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye.
051	Chair Kropf	The motion CARRIES.
055	Rep. Nelson	MOTION: Moves HB 2037 to the floor with a DO PASS AS AMENDED recommendation.
062	Chair Kropf	Declares potential conflict of interest.
064	Rep. Doyle	Declares potential conflict of interest. VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye.
074	Chair Kropf	The motion CARRIES. REP. KROPF will lead discussion on the floor.
068	Chair Kropf	Closes work session on HB 2037. Opens public hearing on HB

2051.

HB 2051 – PUBLIC HEARING

081	John McCulley	Agriculture Cooperative Council. Discusses findings regarding cooperative exemptions from agricultural lien laws raised in previous meeting.
098	Chair Kropf	Asks Mr. McCulley to restate his findings.
101	McCulley	States that it would mirror federal law where cooperatives are exempt under the Perishable Agricultural Commodities Act.
107	Miles Fuhrman	Vice-President and Customer Relationship Manager, CoBank. Submits and gives overview of prepared testimony (EXHIBIT A).
175	Rep. Nelson	Asks for explanation of term “exemption.”
181	Fuhrman	Explains “exemption.” Continues overview.
210	Chair Kropf	Asks about possible time frame for payment to cooperatives.
217	Fuhrman	Answers how payments to cooperatives work. Continues overview.
295	Rep. King	Asks if Mr. Fuhrman represents lending institutions that lend to cooperatives.
300	Fuhrman	Answers yes.
306	Rep. King	Asks if they would be a competitive institution with banks for lending to cooperatives.
309	Fuhrman	Answers yes.
312	Rep. King	Asks how CoBank’s position relates to other financial institutions under HB 2051.
318	Fuhrman	Answers their position is identical to other institutions under HB 2051.
327	McCulley	States that this situation represents major change in what has existed over last thirty years.
332	Rep. King	Asks for clarification about impact of HB 2051 on equity of growers.
344	Fuhrman	Answers how cooperatives operate in terms of equity capital and collateral to obtain financing.
373	Rep. King	Asks about equity, if cooperatives are exempt from creditors.
414	Fuhrman	Answers what capital growers have to obtain financing.
437	Rep. King	Asks about position of growers with regard to creditors.
TAPE 18, A		
021	McCulley	Explains how HB 2051 addresses position of lender to cooperative.
035	Rep. T. Smith	Asks what happens when cooperatives go bankrupt.
041	McCulley	Answers that bankruptcy is risk taken by growers when they join cooperatives.
051	Rep. T. Smith	Asks for clarification.
056	Chair Kropf	Clarifies AgriBioTech (ABT) bankruptcy and relation to cooperatives.
067	McCulley	Answers that cooperatives are exempted from lien laws so that they do not file liens against themselves.
081	Rep. Ackerman	Asks if cooperatives should be exempted from lien created under HB 2051.
089	Fuhrman	Answers yes.
091	Rep. Ackerman	Asks if, since “food processor” has been repealed and “purchaser” has been inserted, would it put co-ops back as someone against whom lien could be filed.
101	Chair Kropf	Answers it was intention in work group to maintain exemptions for cooperatives. Explains drafting oversight that affects meaning

of HB 2051.

118 Rep. Nelson Asks Mr. Fuhrman and Mr. McCulley how they would remedy inconsistency.

124 McCulley Answers that they have submitted –2 amendment. Gives overview of amendment and how it would solve problem.

145 Rep. Nelson Asks if HB 2051 will impact the way business is done.

153 McCulley Answers that if HB 2051 passes in current form without amendments, it will have drastic effect on business.

158 Rep. Nelson Asks if –2 amendment will adequately protect growers.

165 McCulley Answers that amendment would maintain status quo.

172 Rep. Nelson Asks if other financial institutions will be changed or restricted.

180 Fuhrman Answers that amendment would work for commercial lenders as well as for them.

194 Rep. Krieger Asks if there is anyone in cooperatives who would testify against bill. Asks “who they are trying to save from what.”

205 McCulley Answers that members generally support what Agriculture Cooperative Council is trying to do on their behalf.

216 Rep. Doyle Restates potential conflict of interest regarding HB 2051. Asks about –2 amendment’s effect on cash crop sales.

231 McCulley Gives example of Tillamook not operating as cooperative.

245 Rep. Doyle Suggests that growers’ are unable to file lien outside of cooperative agreement.

267 McCulley Answers that statement is correct interpretation.

269 Rep. Doyle Asks if that is not current status of law.

270 McCulley Answers that it is.

275 Rep. Doyle Asks if –1 amendment is giving option for cash crop sales to put lien on crop bought by co-op.

293 McCulley Answers yes.

296 Rep. Doyle Asks if there is a way for the –1 and –2 amendments to work together.

303 Chair Kropf States that the –1 amendment will not be offered.

324 Chair Kropf Asks what the lending industry is doing to ensure that co-ops are better managed to avoid potential for problems that currently exist.

343 Fuhrman Answers that in lending to co-ops, they are looking for financial health of cooperative and offering guidance to cooperatives to ensure that they are sustainable. Describes difficult situations currently faced by agriculture.

379 Rep. Doyle Asks Mr. McCulley if he would be open to modification to statute.

387 McCulley Answers that he could envision possible administrative issues. Explains cooperative policy. States that he will get more information.

408 Chair Kropf Asks if cash sale would be considered collateral.

421 Fuhrman Explains how cash sales operate.

438 Rep. Doyle Asks how cooperatives plan for additional sales.

TAPE 17, B

004 Fuhrman Answers that they purchase crops on cash basis that their members do not produce.

029 Rep. Doyle Asks about growers who view cooperative as merely another purchaser. Asks what their rights would be regarding cooperatives.

039 Fuhrman Answers that issue merits more research. Points out that in cooperative cash deals, growers are not afforded the same

		benefits as members.
055	Rep. King	Asks if CoBank lends to non-cooperative growers who sell to co-ops.
064	Fuhrman	Answers that they do not finance growers directly.
071	Rep. King	Asks if they are somewhat different from other banks.
075	Fuhrman	Answers yes.
081	Rep. Nolan	Asks if there are “involuntary reasons” why growers might not join cooperatives.
089	Fuhrman	Answers that there are “closed cooperatives” that require membership.
103	Rep. Nolan	Asks how many closed cooperatives there are in Oregon.
107	Fuhrman	Answers “less than a handful.” States that he will obtain information.
111	Rep. Nolan	Asks how many farmers do not have ownership and therefore cannot influence cooperative management.
131	Fuhrman	Answers how non-cooperative growers relate to cooperatives.
146	Rep. Nolan	States that bill exists because of situation where cooperatives failed growers. Asserts that HB 2051 will change current law and she wants to ensure that it is done in such a manner to best benefit growers.
155	Chair Kropf	Clarifies that ABT situation was not a cooperative issue, but rather a corporate one. Asks if non-cooperative individual who sells to cooperative on cash basis have right to file lien against cooperatives.
167	McCulley	Answers no.
169	Chair Kropf	Asks if –2 amendment continues the current situation.
182	McCulley	Answers that the –2 amendment slightly narrows the current exemption in statute. States that situation would continue with –2 amendment.
202	Rep. Nolan	Asks for citation referenced by Mr. McCulley.
204	McCulley	Explains where in HB 2051 language exists.
217	Chair Kropf	Asks for total number of farmers in cooperatives in Oregon.
232	Jean Underhill-Wilkinson	Oregon Farm Bureau Federation (OFBF). Answers question. Testifies in support of HB 2051.
275	Dean Freeborn	Chairman, Governmental Affairs Committee and President, Polk County Farm Bureau. Explains how growers are working with companies. Describes ABT bankruptcy situation.
407	Rep. Nelson	Asks if it is possible for grass seed producers to have ownership of seed.
422	Freeborn	Answers no.
435	Rep. Nelson	Asks if growers can get their own seed to grow.
TAPE 18, B		
006	Dave Nelson	Oregon Seed Council. Answers question. Gives history of patent rights going to seed companies. Discusses varieties of seed available to grow, potential for public varieties.
038	Rep. Nelson	Points out potential benefits of seed ownership.
042	Freeborn	Adds that he hopes situations like ABT do not happen again. Hopes that HB 2051 will help growers in the future in Oregon and beyond.
076	Rep. Nelson	Asks about international agreements.
083	Freeborn	Answers that he is concerned about growers dealing with corporations based out of Oregon.
114	Rep. Ackerman	Clarifies law regarding out-of-state companies dealing with in-state parties.

122	Freeborn	Asks about filing lien against either company itself or parent company.
128	Chair Kropf	Suggests that question be asked to Walt Gowell.
132	Kelly	Asks for question to be clarified.
134	Freeborn	Restates previous question.
137	Nelson	Gives example of in-state growers dealing with out-of-state companies.
152	Kelly	Clarifies question to ask Mr. Gowell.
162	Rep. Nelson	Asks about accountability for contracts with different companies.
171	Nelson	Speaks about international trade issues.
187	Freeborn	Expresses concern that lien laws protect local producers.
208	Jonathon Schlueter	Executive Vice-President, Pacific Northwest Grain & Feed Association. Gives overview of organization. Speaks about grain elevator companies. Expresses concern that delivered product may still have lien against it.
258	Chair Kropf	Clarifies whether lien applies to product itself, or proceeds derived from it.
269	Schlueter	Answers that often grain has not been priced. Asks how value of lien would be determined.
281	Underhill-Wilkinson	Gives clarification of time frame regarding grain pricing.
317	Rep. Ackerman	Asks if price attached to crop would make it difficult to place lien.
323	Underhill-Wilkinson	Answers that since no price has been established, no money is owed, and automatic lien period could run out.
328	Rep. Ackerman	Asks if problem could be solved by giving farmer lien of contract price or reasonable value of produce.
334	Underhill-Wilkinson	Asks if it is in reference to Agriculture Produce Lien or Grain Producer Lien.
336	Chair Kropf	Clarifies that it is under Agriculture Produce Lien.
339	Underhill-Wilkinson	Mentions that “trigger” was changed which may make difference on issue.
353	Ray Kelly	Explains where issue is addressed in statute.
367	Rep. Nolan	Advises that it could be reviewed to address concerns of Mr. Schlueter.
370	Chair Kropf	Asks Ms. Underhill-Wilkinson to work together with Mr. Schlueter to adequately address his concerns.
390	Sandy Flicker	Executive Director, Oregon Rural Electric Cooperative Association. Proposes amendment to add “electricity” to definition of materials (EXHIBIT B). Discusses need for amendment.
468	Rep. Hopson	Asks if method has been used for previous litigation under specific statute.
473	Flicker	Clarifies statute under which issue is considered. Further explains need for amendment.

TAPE 19, A

030	Rep. Hopson	Clarifies that statute has been used before.
031	Flicker	Answers yes.
032	Rep. Nelson	Asks about case law where this has occurred.
037	Flicker	Answers that she will obtain information.
044	Chair Kropf	Asks Ms. Flicker to work with other interested parties and if necessary to return with amendment. Closes public hearing on HB 2051. Adjourns meeting at 5:32 p.m.

Submitted By,

Reviewed By,

Michael Reiley,
Committee Assistant

Ray Kelly,
Committee Administrator

EXHIBIT SUMMARY

A – HB 2051, written testimony, Miles Fuhrman, 5pp

B – HB 2051, proposed amendment, Sandra Flicker, 1p