

HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

May 11, 2001
3:15 PM

Hearing Room B
Tapes 144 - 145

MEMBERS PRESENT: Rep. Bill Witt, Chair
Rep. Tim Knopp, Vice-Chair
Rep. Betsy Johnson, Vice-Chair
Rep. Alan Bates
Rep. Alan Brown
Rep. Janet Carlson
Rep. Bill Garrard
Rep. Jerry Krummel
Rep. Laurie Krummel
Rep. Vicki Walker

MEMBERS EXCUSED: Rep. Richard Devlin

STAFF PRESENT: Dan Clem, Administrator
Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: HB 3902 Public Hearing
HB 2235-A 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 144, A		
004	Chair Witt	Calls the meeting to order at 3:35 p.m. Opens a public hearing on HB 3902.
<u>HB 3902 PUBLIC HEARING</u>		
010	Dan Clem	Committee Administrator. Gives a brief description of the bill.
020	Rep. Dan Doyle	House District 30. Testifies in support of HB 3902. Distributes informational materials (EXHIBIT A). States that the bill promotes the concept of "truth in advertising" with regard to community projects funded through the bonding process. Explains that the measure requires that local governments state explicitly what the bonds will pay for and limits the amount of contingency funds that can be included.
080	Rep. Doyle	Offers as an example a community that approved a bond for a specific set of projects but was unaware that a contingency fund was included or that funds left over could be used for other related projects that were not approved during the bond election. Says he does not dispute the validity of the projects that were paid for with the remaining money, but asserts that the city council should have considered the possibility of returning the funds. Emphasizes the need to limit contingency funds to 15 percent over the estimated budget for planned projects. Argues that once the planned projects are completed the excess funds

		should be used to begin paying down the debt. Assures that the measure is not a restriction on local control, but rather an effort to enhance voter trust.
130	Rep. Carlson	Asks for clarification whether the contingency reserve portion of the bill suggests that funds remaining after a project is completed are contingency monies.
141	Rep. Doyle	Elaborates that contingency reserves are typically built into the bond amount itself, such as a 20-percent addition tacked on to the projected cost of a particular improvement project. Remarks that some projects get a 30-percent contingency reserve out of anticipation of litigation or property value change. Indicates that in the case offered as an example the contingency was built up to pay for projects the voters would not approve otherwise.
161	Rep. Carlson	Presumes that if the contingency percentage was limited then bonds would be enlarged some other way to compensate.
170	Rep. Doyle	Explains that there is currently no definition of contingency reserve, meaning that when there is money left over after completion of the specific project the remaining funds plus any contingency funds are available to spend on unapproved projects.
180	Rep. Carlson	Asks why a limit should be set if an estimate is available for the project, adding that her supposition is that the purpose is to keep local governments honest.
190	Rep. Doyle	Indicates that the projects in the example were geared entirely toward pedestrian safety improvements, but included a catchall that allowed for the funding of other projects. Asserts that such bonds should fund only the specific projects listed in the bond measure.
204	Rep. Carlson	Says local governments could still make preparations regarding what to do with the funds left over. Requests clarification whether the measure is designed to force local governments to give back excess monies.
212	Rep. Doyle	Replies affirmatively.
219	Rep. Garrard	Mentions a situation similar to the example that occurred in Klamath Falls and asks whether bond interest proceeds would also be barred from use on ancillary projects.
233	Rep. Doyle	Responds that his intent was for the term "proceeds," to include interest paid on bond monies and to be used to pay back the bond debt.
246	Rep. Garrard	Counters that the interest earned from bond money investment is not technically part of the initial amount granted by voters and returning only the excess left over from the original amount without interest would seem to satisfy the obligation.
255	Rep. Doyle	Points out that the only reason the interest is available at all is because the bond was funded by the taxpayers in the first place. Says that if there is any way to reduce the bond debt through the use of excess funds from the bond itself it should be used to do so.
270	Rep. Garrard	Expresses a desire to prevent any loopholes.
274	Rep. Krummel	Asks whether the measure would preclude the use of bond money to pay for unplanned contingencies on the particular projects that were approved.
22	Rep. Doyle	Answers that part of the bill's intent is to ensure that there is better advance planning to prevent such occurrences. Remarks

		that with better planning the taxpayers would then know what to expect before the project starts, even before the bond is voted on. Opines that a 15-percent contingency fund is appropriate and sufficient.
320	Rep. Krummel	Asks how prepayment penalties would be addressed.
338	Rep. Doyle	Replies that such penalties should be accounted for during the bond planning process. Asserts that if the law requires excess funds to be returned to taxpayers then local governments will likely not choose bonds with prepayment penalties.
376	Rep. Krummel	Wonders why the legislature should dictate to cities how to negotiate their bonds. Argues that if voters do not like the choices made by their local government they can deal with it on the local level.
390	Rep. Doyle	Identifies the primary focus of the bill to be truth in advertising. Says it makes sense for voters to be able to limit bonds to specific projects rather than unknowingly funding other projects that were not part of the original plan. Mentions that local governments are coming to the legislature for funding because local voters have begun to refuse to support bond measures.
TAPE 145, A		
003	Rep. Krummel	Expresses a desire to ensure that voters are not limited in what they can approve. Asserts that policymakers are bound to carry out the wishes of local voters even when they disagree with them. States that local governments need to put forth projects that the voters can support.
018	Rep. Doyle	Concurs. Says that so long as the bond measure accurately describes what the bond pays for there is no problem, adding that it is when the issue comes down to the "fine print" that local voters are marginalized.
028	Rep. Johnson	Remarks that she does not dispute the premise that the description of project to be paid for through bonds should be accurate, or that excess funds should go back to voters. Takes exception to the idea that contingency funds should not exceed 15 percent, as it is often exceedingly difficult to project cost overruns. Predicts that such a limitation could greatly increase the cost of estimating project costs.
044	Rep. Doyle	Envisions that the type of planning Rep. Johnson is referring to is not typically part of bonding cost. Says that if there were a 15 percent limit on contingency funds there would be better planning to prevent unpaid cost overruns.
055	Rep. Johnson	Wonders what would happen if the cost overrun were the result of a truly unpredictable event such as an earthquake. Says in such a case the 15-percent cap on contingency funds could be problematic. Says she could support the bill if the contingency limitation was not included.
065	Rep. Doyle	Responds that the planning process has been neglected because it is easier to rely on a high contingency rate. Concedes that requiring all funds go back to the people may achieve the same result. Expresses a willingness to explore the elimination of the contingency limitation once the bill moves to the Senate.
078	Rep. Johnson	Voices a desire not to require an onerous planning process.
080	Rep. Devlin	Requests an explanation of the controlling language included in the bill. Offers examples of projects for which the process would work well (the Oregon Convention Center) and for which

100	Rep. Doyle	it would not work well (the purchase of open spaces in the Portland metropolitan area). Explains how the bill would disallow the use of leftover funds from the construction of the convention center for other uses, such as the construction of an amusement park. Comments that with regard to open spaces the issue is one of specificity regarding how proceeds will be used and says that the bond could be issued for purchase of open spaces in a certain geographic region.
123	Rep. Krummel	Asks whether such an explanation meets the requirement for a clear and unambiguous statement of how bond proceeds will be used.
130	Rep. Doyle	Concedes that virtually any description could be called into question by anyone.
136	Chair Witt	Suggests using the dictionary definition.
140	Rep. Krummel	Comments that even relatively clear definitions are not necessarily clear to all and that the measure could cause more headaches than it solves from a standpoint of ensuring bond proceeds are used correctly.
150	Rep. Bates	Asks whether city or county officials have reviewed the bill, specifically in regard to the contingency fee limitation.
161	Rep. Doyle	Replies he has had no discussions with representatives of local governments regarding HB 3902. Notes that no representatives of local governments have come to testify regarding the bill.
174	Rep. Carlson	Mentions that the Salem-Keizer School District has voiced concerns and asks whether Rep. Doyle is amenable to working out a compromise.
180	Rep. Doyle	Emphasizes the need to move the bill through the process as quickly as possible and suggests that the conflict could be resolved in the Senate.
185	Rep. Carlson	Asks whether Rep. Doyle would be willing to amend out the limitation on contingency fees.
191	Chair Witt	Declares the committee will not work HB 3902 today and requests that amendments be prepared for a subsequent hearing on May 16 th .
195	Rep. Devlin	Requests that Rep. Doyle consult with the League of Oregon Cities (LOC) and Association of Oregon Counties (AOC) regarding the bill.
200	Chair Witt	Reiterates that neither AOC nor LOC representatives attended this hearing. Closes the public hearing on HB 3902 and opens a public hearing on HB 2235-A.

HB 2235-A PUBLIC HEARING

217	Dan Clem	Committee Administrator. Gives a brief description of the bill. Mentions that the –A8 amendments (EXHIBIT B) have been submitted for the committee’s consideration and stipulate that the director of the Department of Administrative Services (DAS) will deal with state printing dollars. Mentions that there have been concerns raised that the bill may violate Article XII of the Oregon Constitution.
238	Grover Simmons	Pacific Printing and Imaging Association. Testifies in support of HB 2235-A and the –A8 amendments (EXHIBIT C). States that print work performed by prison labor should be included as part of the base when calculating a 60 percent

		standard. Assures that the –A8 amendments will not dismantle the state printing plant.
320	Simmons	Mentions that the original bill would have eliminated the state printer throughout the ORS and from the Oregon Constitution, where it has been since the states founding. Indicates that the House Committee on Advancing E-Government edited those provisions out of the bill by.
359	Chair Witt	Requests an overview of the private printing industry in Oregon and its ability to do the work currently performed by the state printer.
365	Simmons	Replies he does not have that data with him. Concedes that private printers do not have ability to do all the work currently handled by the state printer, particularly the agendas and other daily/overnight projects, adding that most of the copy work is done in-house by the legislature. Asserts that the printing industry is large part of the Oregon economy. Mentions that the prisons are negotiating the state envelope contract, representing \$1.1 million annually. Expresses concern that the contract could adversely affect the public/private sector balance in the printing industry.
TAPE 144, B		
010	Simmons	Suggests it would be more difficult for the state to award the envelope contract to the Department of Corrections (DOC) if the state was required to meet the 60 percent standard.
012	Rep. Carlson	Comments on the difficulty in estimating the 60 percent standard in advance and says it is more likely that it would be calculated after the fact.
020	Simmons	Agrees.
026	Rep. Krummel	Says privatization is preferable, but suggests that the measure could cost taxpayers money and result in the loss of jobs. Asks whether there is any indication whether the measure could result in cost savings to taxpayers.
040	Simmons	Opines that honest accounting in the private sector virtually always provides better prices than the public sector. Acknowledges that convenience may be another matter, as in-house printing is convenient.
050	Rep. Krummel	Asks whether use of prison labor saves taxpayer money.
056	Simmons	Concedes that prison labor prices out the private sector, but asserts that prison labor should not be used to eliminate jobs from the private sector. Quotes Article X of the Oregon Constitution, which says the DOC Director shall avoid expanding prison programs that would replace or reduce existing private enterprise.
117	Rep. Krummel	Asks whether Mr. Simmons objects to the prison industry bidding on the project if the bid is based on true accounting principles.
133	Simmons	Responds that the state printing office has not yet awarded the contract but says DOC could take it if it chooses to do so.
140	Rep. Walker	Asks why the bill was referred to this committee.
143	Chair Witt	Indicates that he requested that the bill be referred to this committee.
155	Mitch Morrow	Oregon Correction Enterprises (OCE), DOC. Testifies in opposition to HB 2235-A and the –A8 amendments. States that the bill’s passage could hinder OCE.

181	Jeff Van Valkenburgh	Department of Justice (DOJ). Testifies to a position of neutrality regarding HB 2235-A and the –A8 amendments. Explains that any decision to terminate prison work programs is to be made by DOC or OCE. Says this bill violates these portions of the Oregon Constitution in that state government is not allowed to interfere with prison work programs. Indicates there is also some question as to whether the bill interferes with the constitutional purview of the printing division.
244	Chair Witt	Scans Article XII of the Oregon Constitution and asks how the measure could possibly be seen as unconstitutional according to that provision.
250	Van Valkenburgh	Says the constitutionality depends on whether the work is eliminated.
257	Chair Witt	Disputes the Article XII argument, as the constitution allows laws to be enacted related to state printing. Asks about the other constitutional issue. Wonders how the bill can be interpreted as infringing on the sole discretion of OCE and DOC.
274	Van Valkenburgh	Reiterates that there may be no infringement, explaining that the intent of the provision is to allow the public to benefit from prison labor.
287	Chair Witt	Remarks that a similar argument could be made on behalf of any goods created in Oregon.
293	Van Valkenburgh	Replies affirmatively.
303	Chair Witt	Asserts that the fact the provision could apply to any good or service produced in Oregon demonstrates the folly of the argument.
312	Rep. Knopp	Mentions that Legislative Counsel (LC) informs committees and legislators when they believe a bill may be unconstitutional. Argues that the fact that LC has not done so with HB 2235-A suggests that the constitutionality argument should be set aside.
339	Rep. Walker	Asks whether the ballot measure set a percentage and, if so, what level of employment it is at now.
347	Morrow	Replies he is unsure whether there is a constitutional provision, but that the current level is 83 percent.
352	Van Valkenburgh	Notes that there is a requirement for 40 hours of work during a 7-day work week.
368	Rep. Walker	Mentions that the ballot measure passed overwhelmingly.
382	Morrow	States that only three percent of state printing business is delegated to private industry.
388	Rep. Carlson	Asks how the director balances the two directives.
402	Morrow	Indicates the previous concern was whether the DOC director could legally consider impacts on existing businesses, whereas now the director has the authority to do so. Says the decision is ultimately left up to the director, who can decide to go forward after first considering the impact.
TAPE 145, B		
003	Rep. Carlson	Quotes the language, which says the prison director shall not act to displace private enterprise, and asks how the director determines what extent is possible.
016	Morrow	Interprets the language as providing a policy direction to the DOC director to consider the impact on private enterprise. Says that the director should also consider other issues as well and suggests that the director has sole discretion and authority under the amended measure.

025	Chair Witt	Disagrees strenuously.
040	Fariborz Pakseresht	DAS. Testifies in opposition to the –A8 amendments to HB 2235-A (EXHIBIT E). Asserts the amendments conflict with existing statute and shift policy away from those that benefit state agencies.
067	Chair Witt	Asserts that the measure would supercede other statute with which it conflicts. Requests a response to Mr. Simmons’ testimony that private enterprise could do the work cheaper.
078	Pakseresht	States that the policy of the state printer is to act in accordance with what provides the best value for its customers, the citizens of Oregon. Wonders why the printing division should be punished for doing a good job. Suggests that if the printing division is efficient it should be able to do the same job for less, as it has no motivation to make a profit.
108	Chair Witt	Asks whether Mr. Simmons’ claim that the competitive bidding process would result in jobs being done for less is accurate.
122	Pakseresht	Replies he does not believe so and welcomes data that indicates otherwise. Mentions that the state printer is required to consider all costs, even hypothetical property taxes. Concludes that in-house publishing is definitely cheaper than private enterprise alternatives.
150	Chair Witt	Asks whether the printing division still provides offset printing or whether it has converted completely to digital printing.
154	Pakseresht	Replies that they still use offset printing, as there are applications for which digital printing does not work well.
155	Rep. Garrard	Asks whether the printing division will be required to lay off people as a result of the envelope contract being given to DOC.
160	Pakseresht	Answers affirmatively, reiterating that the printing division is moving away from offset printing.
175	Rep. Walker	Notes that the printing division currently out-sources 50 percent of its offset printing, while the –A8 amendments require the division to out-source 60 percent. Asks whether the percentage can be determined during the year or whether it must instead be calculated after the fact.
183	Pakseresht	Indicates that the calculation can only be done at the end of the year or budget cycle.
191	Rep. Krummel	Wonders what the bill accomplishes if the printing division already out-sources 56 percent of its printing.
200	Chair Witt	Says the point is to send the work to the private sector, which benefits private industry and can provide the same product at a lower price.
209	Rep. Carlson	Asks whether delegating work to DOC is also considered out-sourcing.
215	Pakseresht	Replies affirmatively, adding that the key factor in determining whether to contract out is cost. Says that if 90 percent of the work could be contracted out for less it would be done whether it resulted in layoffs or not. Says DOC offers lower price than private sector, which is why they win contracts.
229	Chair Witt	Asks what sort of printing work is done by prison labor.
233	Pakseresht	Describes the type of jobs performed by prison labor.
239	Chair Witt	Remarks that it is likely that the envelope contract will go to DOC rather than to private enterprise.
248	Rich Peppers	Service Employees International Union (SEIU) Local 503, Oregon Public Employees Union (OPEU). Testifies in support

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Chair Witt

of HB 2235-A and in opposition to the –A8 amendments.
Closes the public hearing on HB 2235-A and adjourns the
meeting at 5:20 p.m.

Submitted By,

Reviewed By,

Patrick Brennan,
Committee Assistant

Dan Clem,
Committee Administrator

EXHIBIT SUMMARY

A – HB 3902, informational materials, Rep. Dan Doyle, 4 pp.

B – HB 2235-A, –A8 amendments, staff, 1 pp.

C – HB 2235-A, testimony, Grover Simmons, 2 pp.

D – HB 2235-A, testimony, Mitch Morrow, 2 pp.

E – HB 2235-A, testimony, Fariborz Pakseresht, 2 pp.