

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 22, 1999 Hearing Room E

8:30 a.m. Tapes 37 - 38

MEMBERS PRESENT: Rep. Roger Beyer, Chair

Rep. Dan Gardner, Vice-Chair

Rep. Tim Knopp, Vice-Chair

Rep. Jason Atkinson

Rep. Terry Thompson

Rep. Jackie Winters

MEMBER EXCUSED: Rep. Bill Morrisette

STAFF PRESENT: Keith Putman, Administrator

Frances Thomas, Administrative Support

MEASURE/ISSUES HEARD: HB 2489 Work Session

HB 2477 Public Hearing and Work Session

HB 2490 Work Session

HB 2439 Public Hearing

HB 2589 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 37, A		

003	Chair Beyer	Calls the meeting to order at 8:30 a.m.
<u>HB 2489 WORK SESSION</u>		
007	Chair Beyer	Opens a Work Session on HB 2489.
008	Keith Putman	Committee Administrator. Presents the ñ1 amendment to HB 2489. Discusses amendment language intent.
020	Rep. Gardner	MOTION: Moves to ADOPT HB 2489-1 amendments dated 2/19/99.
		VOTE: 6-0 EXCUSED: 1 ñ Rep. Morrisette
	Chair Beyer	Hearing no objection, declares the motion CARRIED.
024	Rep. Gardner	MOTION: Moves HB 2489 to the floor with a DO PASS AS AMENDED recommendation.
026	Rep. Knopp	Declares a Conflict of Interest on HB 2489.
030		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 ñ Rep. Morrisette
	Chair Beyer	The motion CARRIES. REP. KNOPP will lead discussion on the floor.
036	Chair Beyer	Close the Work Session on HB 2489.
<u>HB 2477 PUBLIC HEARING</u>		
039	Chair Beyer	Open a Public Hearing on HB 2477.
043	Putman	Explains that HB 2477 increases the maximum amount that can be credited to the Workersí Memorial Scholarship Account. States the money in this account is collected from penalties for violations of Oregon Occupational Safety and Health Division (OR-OSHA) laws and rules. The fund is currently limited to \$100,000. HB 2477 would increase the account limit to \$250,000.

059	Rep. Betsy Close	District 36. Testifies in support of HB 2477.
065	Chair Beyer	Asks when the fund began.
067	Rep. Close	Responds 1991.
068	Brad Witt	Oregon AFL-CIO. Testifies in support of HB 2477. States HB 2477 proposes an increase in the Workersí Memorial Scholarship Account. Explains the account is administered by a joint labor-management committee called the Safe Employment Education and Training Advisory Committee (SEETAC). States it is the unanimous recommendation of SEETAC that the fund principle be increased to \$250,000.
083	Witt	Explains details about the distribution of the interest earned on the fund.
094	Betsy Earls	Associated Oregon Industries (AOI). Testifies in support of HB 2477 (EXHIBIT A).
108	Chair Beyer	Asks where the money is going now that will increase the principle in the Workersí Memorial Scholarship Account.
112	Witt	States the fund current earns \$8,000 to \$10,000 in interest per year. The number of scholarship recipients per year is determined by amount of available interest.
130	Phyllis Straight-Millan	Oregon Occupational Safety and Health Division (OR-OSHA). Explains the money for penalties accrues in the Workersí Compensation Fund and cannot be used for anything else. Explains the history of the Workersí Memorial Scholarship Account.
161	Chair Beyer	Closes the Public Hearing on HB 2477.
<u>HB 2477 WORK SESSION</u>		
162	Chair Beyer	Opens Work Session on HB 2477.
164	Rep. Thompson	MOTION: Moves HB 2477 to the floor with a DO PASS recommendation.
166		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 ñ Rep. Morrisette

	Chair Beyer	<p>The motion CARRIES.</p> <p>REP. CLOSE will lead discussion on the floor.</p>
176	Chair Beyer	Closes the Work Session on HB 2477.
<u>HB 2490 WORK SESSION</u>		
182	Chair Beyer	Opens a Work Session on HB 2490.
185	Putman	Presents an overview of HB 2490. Explains the language in the ñ1 amendment modifies and clarifies what records must be kept. States there is a fiscal impact.
203	Ken Keudell	Administrator, Construction Contractors Board (CCB). Explains the fiscal impact has not yet been included in the CCB budget.
220	Chair Beyer	Asks if a fee increase is necessary to absorb these costs.
221	Keudell	Explains no fee increase is needed. States he will present it to Ways and Means as an increase in the budget.
226	Rep. Gardner	MOTION: Moves to ADOPT HB 2490-1 amendments dated 2/19/99.
229		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Rep. Morrisette</p>
	Chair Beyer	Hearing no objection, declares the motion CARRIED.
230	Rep. Gardner	MOTION: Moves HB 2490 to the floor with a DO PASS AS AMENDED recommendation.
231	Rep. Knopp	Declares a Conflict of Interest. States he is a member of the Construction Contractors Board.
232		<p>VOTE: 6-0</p> <p>AYE: In a roll call vote, all members present vote Aye.</p>

		EXCUSED: 1 - Rep. Morrisette
	Chair Beyer	The motion CARRIES. REP. KNOPP will lead discussion on the floor.
243	Chair Beyer	Closes the Work Session on HB 2490.
259	Chair Beyer	Declares the committee at ease.
261	Chair Beyer	Re-convenes the committee meeting.
<u>HB 2439 PUBLIC HEARING</u>		
262	Chair Beyer	Opens a Public Hearing on HB 2439.
264	Rep. Kevin Mannix	District 32. Testifies in support of HB 2439. Discusses changes in the current law relating to independent contractors for state contracts.
304	Rep. Mannix	States criteria to satisfy the status of an independent contractor.
347	Rep. Mannix	States the definition of "professional" person as it relates to HB 2439.
375	Chair Beyer	Asks if a person can only be an independent contractor if the person is a "professional."
367	Rep. Mannix	States that is correct. Explains the object is to protect professionals from an "overbearing, patronizing, state approach to employment status."
400	Rep. Mannix	Defines "professional" as "certified, smart people who engage in their own professional business relationships under a contract."
407	Rep. Mannix	Emphasizes it is not the intent of HB 2439 to transfer a finding from one agency to another. States every agency still must make its own determination of the facts.
419	Chair Beyer	Asks if HB 2439, Section 3 intends retroactivity.
436	Rep. Mannix	States concerns about retroactivity. Feels it is not necessary.

462	Rep. Gardner	Asks how many people in the State of Oregon HB 2439 will affect.
466	Rep. Mannix	States under the definition of "professional person" several hundred to several thousand.
471	Rep. Gardner	Asks how many cases the retroactivity will affect.
475	Rep. Mannix	States he does not know.
493	Rep Gardner	Asks if the retroactivity were not included, is there any need for the emergency clause.
496	Rep. Mannix	Responds yes.
TAPE 38, A		
012	Chair Beyer	Asks if construction contractors are qualified as "professional" since they are required to pass a test to receive a license.
018	Rep. Mannix	Responds no under the terms of this statute. Explains HB 2439 was designed more for the person who has had some specific educational background. Refers to advanced formal education. States examples: accounts, lawyers, doctors, pharmacists, and nurses.
028	Rep. Thompson	Comments that other professions require years of experience and intense training.
033	Rep. Mannix	Explains the language of HB 2439 focuses on academics. Clarifies with an example. States it is defined extensively in HB 2439, Section 1 (d).
049	Rep. Thompson	Expresses concerns for the definition of "professional."
050	Rep. Mannix	Explains a long history of case law in the United States defining "professional" in the context of independent contracting as opposed to an employee.
055	Chair Beyer	Asks if he would be opposed to redefining the description in HB 2439, Section 1 (d).
059	Rep. Mannix	States he would be supportive of any approach the committee decides appropriate.
070	Nancy Eschmeyer Kaib	Independent Registered Pharmacist and Business Owner. Introduces Lyle Smith, Independent Contractor Pharmacist, and Torey Lam, Employee Pharmacist.

		Testifies in support of HB 2439. (EXHIBIT B) . Explains her business is a brokerage for independent pharmacists.
103	Kaib	Explains the uniqueness of professional pharmacists as independent contractors according to Oregon law.
121	Kaib	Explains how they are excluded and the differences with reference to "tools and equipment" and "hourly wages." Clarifies this language was written to address the bid process used by construction contractors.
165	Kaib	Testifies about personal experiences (EXHIBIT B, page 2) .
217	Kaib	Asks that pharmacists be afforded the privilege of working as independent business people if they so choose.
224	Chair Beyer	Asks about the removal of the retroactive clause.
228	Kaib	Explains this law is written for the "blue collar" worker, not the "white collar" worker. Expresses a desire for the law to be fair for both.
247	Lyle Smith	Pharmacist and Independent Contractor. Testifies in support of HB 2439.
260	Smith	Testifies about the advantages of being an independent contractor compared to working as an employee.
289	Torey Lam	Licensed Pharmacist. States credentials. Testifies in support of HB 2439.
315	Virlena Crosley	Director, Oregon Employment Department. Testifies in opposition to HB 2439. States that Oregon law considers services performed by an individual for remuneration to be "employment" subject to unemployment insurance tax (EXHIBIT C) .
330	Crosley	Explains two exemptions are services performed by an independent contractor, or services performed by an individual who is free from direction and control and is engaged in an independently established business.
344	Crosley	States concerns about HB 2439 as follows: <ul style="list-style-type: none"> • Create nonconformity with federal unemployment insurance law • Effects about 150,000 Oregonians eligible under current law, to become ineligible for unemployment insurance benefits.
356	Crosley	States issues of nonconformity to federal requirements: <ul style="list-style-type: none"> • Exclusion of local, state and nonprofit employees

		<ul style="list-style-type: none"> • Methods of administration • Appeal rights • Withdrawal standards
420	Chair Beyer	Asks for copies of the written response from the federal government and the statutes to substantiate their concerns.
430	Crosley	Offers to supply the information.
440	Bonnie Sullivan	Independent Contractors of Oregon. Testifies in support of HB 2439. Expresses concerns about the language. Suggests the words "trades person" be included with the word "professional."
464	Sullivan	Presents personal experiences about being an independent contractor.
491	Rep. Gardner	Asks for clarification of suggested word change.
TAPE 37, B		
006	Sullivan	Explains the suggested language change would separate the "blue collar" worker (trades person) from the "white collar" worker (professional) and include both as independent contractors.
010	Tom Holt	Executive Director, Oregon State Pharmacists Association. Testifies in support of HB 2439. Explains that businesses like Nancy Kaibis provide an important resource in finding relief assistance in a profession that provides a variety of services as independent contractors. States the key element of HB 2439 is putting the burden of proof on the Employment Division to show accuracy that a person is an employee rather than an independent contractor.
041	Greg Malkasian	Manager, Compliance Section, Workers' Compensation Division. Testifies in a neutral position on HB 2439 (EXHIBIT D).
071	Malkasian	Discusses issues of concern about HB 2439. Suggests the Management Labor Advisory Committee (M-LAC) review HB 2439 as to impact on worker's compensation.
090	Chair Beyer	Asks if the Workers' Compensation Division is required to show preponderance of evidence in a disputed claim.
096	Malkasian	Discusses where the burden of proof lies.
128	Chair Beyer	Asks to have HB 2439 reviewed by M-LAC. Closes the Public Hearing on HB 2439.

HB 2589 PUBLIC HEARING

12	Chair Beyer	Opens a Public Hearing on HB 2589.
142	Rep. Gary Hansen	District 17. Testifies in support of HB 2589. Explains that HB 2589 prohibits a person conducting a plumbing business from permitting anyone to work as a journeyman plumber who does not hold a journeyman certification. States that HB 2589 allows penalties to be imposed on both the employer and the employee.
183	Joe Brewer	Administrator, Building Codes Division, Department of Consumer and Business Services. Testifies in support of HB 2589. States an amendment has been requested (EXHIBIT E).
216	Burton Weast	Oregon Association of Plumbing Heating and Cooling Contractors. Testifies in support of HB 2589. Comments about the proposed amendment.
236	Gary Wright	Representative Local 290 Plumbers and Steamfitters. Testifies in support of HB 2589. Supplies background information for the inception of HB 2589.
268	Chair Beyer	Closes the Public Hearing on HB 2589.
269	Chair Beyer	Adjourns the meeting.

Submitted By, Reviewed By,

FRANCES THOMAS, KEITH PUTMAN,

Administrative Support Administrator

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EXHIBIT SUMMARY

A ñ HB 2477, written testimony, Betsy Earls, 2 pp

B - HB 2439, written testimony, Nancy Eschmeyer Kaib, 2 pp

C ñ HB 2439, written testimony, Virlena Crosley, 9 pp

D ñ HB 2439, written testimony, Greg Makasian, 2 pp

E ñ HB 2589, written testimony, Joe Brewer, 1 p