

**HOUSE COMMITTEE ON GENERAL GOVERNMENT**

**March 16, 1999 Hearing Room HR D**

**1:15 p.m. Tapes 41 - 43**

**MEMBERS PRESENT: Rep. Carl Wilson, Chair**

**Rep. Jason Atkinson, Vice-Chair**

**Rep. Chris Beck, Vice-Chair**

**Rep. Jo Ann Bowman**

**Rep. Ryan Deckert**

**Rep. Bruce Starr**

**Rep. Ron Sunseri**

**Rep. Terry Thompson**

**MEMBERS EXCUSED: Rep. Steve Harper**

**STAFF PRESENT: Cara Filsinger, Administrator**

**Faye D. Trupka, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2895 Public Hearing**

**HB 2140 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 41, A		

004	Chair Wilson	Opens meeting at 1:17 p.m. and opens public hearing on HB 2895.
<b><u>HB 2895 PUBLIC HEARING</u></b>		
010	Sen. Marylin Shannon	Senator, Senate District 15. Testifies in support of HB 2895. Reads written testimony ( <b>EXHIBIT A</b> ).
058	Paul Phillips	Explains HB 2895-1 amendments ( <b>EXHIBIT B</b> ). States that when someone receives payment for work done by someone else they should pay those people promptly. Suggests that all State agencies should comply with the prompt pay requirement.
108	Phillips	Suggests at bid opening that general contractors should identify their sub-contractors. States that HB 2895-1 amendments would require that, upon the granting of a bid, the general contractor may not change to another sub-contractor unless good cause is shown.
131	Bob Shiprack	Oregon State Building Trades Council. Testifies in support of HB 2895. States that when the employers are not paid, then fringe benefits for employees are lost. Comments that HB 2895 will prevent putting employers out of business.
147	Rep. Atkinson	States that most general and sub-contractors pay promptly. Describes third parties who do not pay on time or who reduce the payment.
184	Chair Wilson	Asks Rep. Atkinson if he is satisfied with the HB 2895-1 amendments, section 2, paragraph 2-(c).
190	Rep. Atkinson	Replies he has not had time to read them.
195	Rep. Bowman	Asks if the prompt pay and separate contracts have been combined to create the HB 2895-1 amendments.
200	Phillips	States that the original HB 2895 has been kept but the language was modified to address the objections raised in a previous hearing.
210	Rep. Bowman	States that there are two separate issues which need to be addressed. Supports the prompt pay issue. Comments that the separate contract issue raises a lot of questions.
220	Phillips	Replies that the prompt pay bill is a priority. States that several interest groups disagree with HB 2895, but have indicated they will support HB 2895 with amendments.
234	Rep. Bowman	Asks if there is a problem with getting prompt payment from public agencies.

240	Phillips	States that there are statutory requirements for public agencies to pay promptly.
248	Rep. Bowman	Asks about "short" payment from public agencies and if they will be held liable.
258	Shiprack	Explains progress payments, where the contractor receives a certain percentage of payment as portions of the contract are completed.
278	Brian Krieg	Plumbing and Mechanical Contractors Association (PMCA). Gives history of PMCA. Testifies in support of HB 2895. Reads written testimony from Ed Gormley in support of HB 2895 ( <b>EXHIBIT C</b> ).
324	Ken Koch	Koch Construction, Inc. Testifies in support of HB 2895 ( <b>EXHIBIT D</b> ). Explains progress payments. Describes recent progress payment request to general contractor and that a \$215,000 portion of the payment was not received in a timely fashion. Explains that he had to settle for approximately \$190,000 in lieu of full payment one day prior to being subject to penalties from tax collectors and suppliers.
366	Rep. Thompson	States that the general contractor does not settle payment with the sub-contractor if the general does not believe that the sub has either completed the work or questions the quality of the job. Asks if that is what happened to Koch or if it was a financial agreement with the contractor.
372	Koch	Replies that was a portion of the issue.
388	Rep. Thompson	Asks if Koch went to court over the issue.
399	Koch	Replies that he does not go to court because of the time frame involved.
402	Rep. Bowman	Asks if the procedure for the prime contractor is to hold back a percentage of the money prior to paying the sub-contractor until the project is completed.
418	Koch	Replies yes. Explains that with public contracting there is a 5% maximum retainage fee.
<b><u>TAPE 42, A</u></b>		
004	Rep. Atkinson	States that HB 2895 does not address retainage. Cites an example of sub-contractor dealings and cash flow.
026	John Gervais	National Electrical Contractors Association. Testifies in support of HB 2895-1 amendments.
038	Aaron Garwood	Friberg Electric. Testifies in support of HB 2895-1 amendments. Cites project

		where he is currently due \$132,000. States that cash flow is a problem when attempting to pay bills and cover payroll.
066	Rep. Bowman	Asks about the \$132,000 project and how he was paid.
070	Garwood	Responds that Friberg Electric is still waiting for the 5% retainage to be paid.
092	Jerry Bruce	Business Manager and Secretary, International Brotherhood of Electrical Workers Local 48. Testifies in support of HB 2895. Reads written testimony <b>(EXHIBIT E)</b> . Describes a recent contract with Oregon Steel Mill.
138	Bruce	States that the general contractors were not fulfilling their contract requirements and were removed from the project. States that the general contractor was \$490,000 delinquent in payment to the electricians. Cites Portland School District projects where the school district held back payments to the general contractor.
162	Rep. Bowman	Asks about the interest rate calculation.
166	Chair Wilson	Responds there is a 13.5% interest rate.
173	Gervais	Explains that contractors will not go to court if the payment due is under \$50,000 because of the time frame and court costs.
201	Jim Green	Oregon School Board Association. Testifies in opposition to section 6 of HB 2895's amendments. States that over 75% of school districts do not have staff who are trained to administer contract bids.
263	Hasina Squires	Special Districts Association. Opposes section 6 of HB 2895's amendments. States that liability still remains with the district.
295	Jerry Van Scoy	Associated Floor Covering Contractors. Supports HB 2895.
303	Rep. Deckert	Asks that written testimony be submitted.
313	Gervais	Introduces Carol Duncan and Robert Blake.
320	Carol Duncan	General Sheet Metal. Gives history of company. Supports HB 2895. Explains the difficulty of building working relationships with general contractors from outside the state.
337	Robert Blake	Executive Director, Sheet Metal Air Conditioning Contractors National Association. Supports HB 2895.

340	Rep. Sunseri	Asks if Blake has an opinion about the HB 2895 amendments.
345	Blake	Replies that he supports most of the amendments. States that some mechanical contractors would be affected.
374	Chuck Crouser	Associated Builders and Contractors. Presents testimony for Shawn Miller in support of HB 2895 ( <b>EXHIBIT F</b> ). Opposes section 6 of HB 2895 amendments.
<b><u>TAPE 41, B</u></b>		
020	Rep. Bowman	Asks should HB 2895 apply to general and sub-contractors and if so, who will be the policing agent.
031	Crouser	Replies that each contractor and sub-contractor would be responsible for prompt payment.
036	Rep. Bowman	Asks if a prime contractor is disqualified because they have not paid a sub-contractor and they are working on a new job, would they be disqualified from continuing with the new project.
044	Crouser	Replies that the prime contractor would not be allowed to bid for any new public works projects.
048	Rep. Bowman	Suggests if they have 3 to 4 projects going they may not need to bid another project for a couple of years.
049	Crouser	Replies yes.
055	Dugan Petty	State Purchasing Manager, Department of Administrative Services, Transportation, Purchasing and Publication Services Division (DAS, TPPS). Supports HB 2895 amendments ( <b>EXHIBIT G</b> ).
139	Petty	States that a cap should be placed on the total amount of the interest rate. States that allowing a public agency to assign some of the work to the general contractor will alleviate some of the liability. Expresses concerns about certain portions of amendments.
149	Ken Keudell	Administrator, Construction Contractors Board (CCB). Cites proposed HB 2895-1 amendments, section 2. States concerns regarding who is going to disqualify the contractor who does not pay in a timely fashion.
193	Cindy Catto	Associated General Contractors. Testifies in opposition to HB 2895 and HB 2895 amendments ( <b>EXHIBIT H</b> ). States that the existing prompt pay statute should be working and if it is not, then it should be enforced instead of passing

		HB 2895 or HB 2895-1 amendments.
243	Catto	States it appears that the original HB 2895 and the amendments only address payments by the general contractor. Explains the different tiers of payment from general contractor to sub-contractors.
287	Chair Wilson	Asks for clarification of HB 2895-1 amendments, section 6, subsection 2, paragraph 2 and for information of any impact on various agencies.
311	Phillips	Explains the issues are prompt payment, identification of contractors at bid opening and the penalties.
332	Chair Wilson	Asks for clarification on debarment and who would enforce.
338	Phillips	States that CCB should be the administrator. States that DAS has the list, the model rules and the process to establish this procedure.
356	Chair Wilson	Asks about section 5 of HB 2895-1 amendments and if the procedure will protect the contractors' interest.
365	Phillips	Replies that the amendment could read "at the time the bids are open."
376	Rep. Atkinson	Comments that he would like to see more work on HB 2895.
385	Rep. Deckert	Asks why the current prompt pay statute is not sufficient.
394	Phillips	Replies that it is not enforced.
399	Chair Wilson	Closes public hearing on HB 2895 and opens public hearing on HB 2140.
<b><u>HB 2140 PUBLIC HEARING</u></b>		
400	Cara Filsinger	Administrator. Explains HB 2140.
409	Paul Romain	Oregon Beer and Wine Distributors Association. Explains HB 2140-1 amendments. Testifies in support of HB 2140-1 amendments. States the problem is one of defining noise standards.
<b><u>TAPE 42, B</u></b>		
002	Romain	States that the definition of excessive noise varies with individuals. Describes cell phone usage outside of licensed establishment as being objectionable to

		some. Explains unreasonable noise.
059	Romain	Cites the Salem Capitol Market issue and the connection to alcohol. Describes a recent event in the Pearl District of Portland where the neighbors were complaining about the noise level when a band was playing from 10 p.m. to 1:00 a.m. States that is not reason enough to revoke an OLCC license.
116	Chair Wilson	Asks about current relationship between police, Oregon Liquor Control Commission (OLCC) and bar owners to try to prevent fights in front of establishments.
136	Romain	States that most restaurants will work with the police in order to solve the problem.
165	Bill Perry	Director of Government Relations, Oregon Restaurant Association. States that as a licensee, restaurants should be responsible to OLCC for conduct on behalf of patrons who consume alcohol in their establishments. Testifies in support of HB 2140-1 amendments.
186	Rep. Bowman	Asks about patrons who are outside of the establishment making noise and if that is an issue for the restaurant.
196	Perry	Replies that if the customer is creating a problem outside an establishment which is not alcohol related, why OLCC needs to be brought into the issue.
201	Rep. Bowman	Asks if a breath analysis should be done on everyone who has been in an establishment.
207	Perry	Replies that it is not difficult to ascertain if a person has been drinking.
214	Rep. Bowman	Gives example of a group of people outside of the establishment who are being noisy.
223	Romain	Replies that the licensee may not find out about a complaint until two months after the offense.
244	Rep. Bowman	Asks for clarification of an offense and at which point OLCC becomes a part of the process.
256	Romain	Gives explanation of the process and the expense involved.
274	Rep. Bowman	Asks for explanation of the expenses involved.
276	Romain	States that attorney fees are a large expense.

280	Rep. Bowman	Details the expenses involved.
281	Romain	Responds yes.
282	Chair Wilson	Asks for clarification of obtrusive or obsessive noise.
293	Jim Neill	Attorney, Oregon Restaurant Association. Gives example of a Lake Oswego noise violation which received 125 complaints.
343	Neill	Describes an establishment in Portland. States that new tenants in the neighborhood are complaining about the noise level, which has not changed in 30 years.
392	Rep. Thompson	Asks if the area was zoned properly. States this could be used to run businesses out of areas rather than changing law to rectify the problem.
<b><u>TAPE 43, A</u></b>		
005	Romain	Cites trash collecting complaints in a warehouse zone.
014	Rep. Bowman	Mentions that the clientele who frequent the Portland establishment has changed in the past few years and that noise complaints are a contributing factor.
030	Barbara Hutchison	Oregon Liquor Control Commission. States that the commissioners have not had sufficient time to read HB 2140-1 amendments so they do not have an official position. States that OLCC has three noise issues that are being addressed this session.
045	Rep. Thompson	Asks at which point noise becomes a problem.
051	Hutchison	Replies that the neighborhood livability statute was created to have a way to look at a number of violations that have accumulated over time.
060	Rep. Thompson	Asks about one person or a group of people complaining with the intention of running a business out of the area.
070	Hutchison	States that she does not have an answer. Cites issues go beyond just the noise level and include drugs, public urination, minors and noise.
080	Rep. Thompson	Asks if that is not the job of the local police once it is outside the establishment. Asks how that falls back onto the establishment.
090	Hutchison	States that there needs to be proof that the alcohol was consumed in the



		establishment and the violation is connected.
100	Rep. Deckert	Asks why OLCC does not define noise.
105	Hutchison	States the standards need to be clarified.
115	Lynn McNamara	Senior Staff Associate, League of Oregon Cities (LOC). Testifies in opposition to HB 2140-1 amendments ( <b>EXHIBIT I</b> ). States LOC would be more comfortable with OLCC providing clarification of noise through rule, rather than statute.
140	Marge Kafoury	City of Portland. Testifies in opposition to HB 2140-1 amendments ( <b>EXHIBIT J</b> ). States that neighbors who are bothered by noise levels often call the establishment directly to register a complaint. States that the city council is involved in the license renewal process of an establishment which has received numerous complaints.
174	Rep. Bowman	Asks for the witnesses to come back at another different time.
190	Mike Sanderson	City of Portland Bureau of Licenses. Testifies in opposition to HB 2140-1 amendments ( <b>EXHIBIT K</b> ). States that his territory is half the City of Portland and they have only had one or two hearings for licensees in the past year.
	Chair Wilson	Closes public hearing on HB 2140 and adjourns at 3:23 p.m.

Submitted By, Reviewed By,

Faye D. Trupka, Cara Filsinger,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ HB 2895, written testimony, Sen. Marilyn Shannon, 2 pp.**

**B ñ HB 2895, written testimony, Paul Phillips, 7 pp.**

**C ñ HB 2895, written testimony, Brian Krieg, 3 pp.**

**D ñ HB 2895, written testimony, Ken Koch, 1 p.**

**E ñ HB 2895, written testimony, Jerry Bruce, 1 p.**

**F ñ HB 2895, written testimony, Chuck Crouser, 1 p.**

**G ñ HB 2895, written testimony, Dugan Petty, 1 p.**

**H ñ HB 2895, written testimony, Cindy Catto, 1 p.**

**I ñ HB 2140, written testimony, Lynn McNamara, 2 pp.**

**J ñ HB 2140, written testimony, Marge Kafoury, 2 pp.**

**K ñ HB 2140, written testimony, Mike Sanderson, 4 pp.**