

**SENATE COMMITTEE ON BUSINESS & CONSUMER AFFAIRS**

February 19, 1999 Hearing Room C

1:00 p.m. Tapes 42 - 45

**MEMBERS PRESENT: Sen. David Nelson, Chair**

**Sen. Lee Beyer, Vice-Chair**

**Sen. Rick Metsger**

**Sen. Randy Miller**

**Sen. Charles Starr**

**MEMBER EXCUSED:**

**STAFF PRESENT: Y. Sherry Sheng, Administrator**

**Nancy Masee, Administrative Support**

**MEASURE/ISSUES HEARD:**

**SB 195 Public Hearing and Work Session**

**SB 197 Public Hearing and Work Session**

**SB 182 Public Hearing and Work Session**

**SB 271 Public Hearing and Work Session**

**SB 272 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 42, A		

003	Chair Nelson	Opens meeting at 1:04 p.m. Opens public hearing on SB 195.
<b><u>SB 195 PUBLIC HEARING</u></b>		
010	Rollie Wisbrock	Chief of Staff, Oregon State Treasury. Introduces Darren Bond. Supports SB 195 and explains the bill and allows the responsibility of the safe-keeping rule to be moved to Department of Consumer and Business Services (DCBS).
019	Darren Bond	Director of Finance, Oregon State Treasury. SB 195 streamlines relationship between DCBS, the insurers they regulate and the bank that provides safe-keeping services relative to the assets that insurers pledge. States that SB 195 is more efficient. Says the Treasury role is no longer needed. Presents ( <b>EXHIBIT A</b> ).
055	Chair Nelson	Reiterates that assets would go straight to DCBS.
056	Bond	Responds that statutory authority goes to DCBS.
068	Chair Nelson	Asks for questions. Says the committee has received a letter from Michael Greenfield in support of the bill. Closes public hearing on SB 195. Opens work session on SB 195.
<b><u>SB 195 WORK SESSION</u></b>		
075	Sen. Starr	<b>MOTION: Moves SB 195 to the floor with a DO PASS recommendation.</b>
076		<b>VOTE: 3-0</b> <b>EXCUSED: 2 - Sen. Beyer, Sen. Miller</b>
077	Chair Nelson	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. STARR will lead discussion on the floor.</b>
078	Chair Nelson	Closes work session on SB 195. Opens public hearing on SB 197.
<b><u>SB 197 PUBLIC HEARING</u></b>		
085	Wisbrock	Explains SB 197 will clarify language in ORS 293. Introduces Sharon Peebles, who helped craft the bills.

090	Sharon Peebles	Department of Justice (DOJ). Says SB 197 revises the existing statute to define investment holding company to include limited liability companies. Clarifies the powers of the holding companies. Presents <b>(EXHIBIT B)</b> .
135	Chair Nelson	Asks for questions. Closes public hearing on SB 197. Opens work session on SB 197.
<b><u>SB 197 WORK SESSION</u></b>		
152	Sen. Nelson	<b>MOTION: Moves SB 197 to the floor with a DO PASS recommendation.</b>
153		<b>VOTE: 5-0</b>
154	Chair Nelson	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. NELSON will lead discussion on the floor.</b>
155	Chair Nelson	Closes work session on SB 197. Opens public hearing on SB 182.
<b><u>SB 182 PUBLIC HEARING</u></b>		
163	Genoa Ingram	Oregon Association of Realtors. Supports SB 182.
171	Scott Taylor	Oregon Real Estate Commissioner. Supports SB 182. Describes the escrow provisions in the bill, including the activities that constitute escrow and the impact of technology and consumer demand on closing services. Presents <b>(EXHIBIT C)</b> .
234	Taylor	Continues presentation on the reasons behind SB 182. Explains pre-licensing requirements and continuing education. Describes needs for licensed reciprocity between states. SB 182 repeals and amends sections of ORS 696, for simplification. Expands authority to add civil fines, to create single licenses, and to increase brokers requirements
237	Sen. Beyer	Asks if out-of-state realtors could come into the state and set up an office for specific purposes.
239	Taylor	Says the broker would enter into a written cooperative agreement with an Oregon broker who would have supervisory authority.

335	Sen. Beyer	Asks what will be done while they are deciding on a property.
371	Taylor	Explains how there is flexibility to allow a broker on the selling side in finding sites; or secondly, finding several sites and entering into agreements with the brokers involved.
<b>TAPE 43, A</b>		
006	Sen. Metsger	Asks to know about incidents of abuse by licensees.
007	Taylor	Explains allegations against four licensees in the Prineville area. Describes how information was supplied to the media. This information was published as commissioners' findings. Negligence was charged.
031	Sen. Metsger	Asks if there is a risk to the consumers.
040	Taylor	Says he fails to see the harm. When files are completed, the information is public. Describes fewer than five active investigations before August of 1998.
070	Chair Nelson	Asks if media has contacted them about limiting access to information.
080	Taylor	Says they have not. Discusses the issue of crimes and sanctions imposed which may result in reprimands, suspensions, or revoking of licenses. Describes other legislation dealing with sanctions as sanctions are added to SB 153 for accountants, in SB 216 for pawn brokers, in SB 286 for securities dealers, and in HB 2106 for dentists, with fines from \$1,000 to \$5,000. HB 2179 sanctions nurses with fines from \$1,000 to \$5,000. Says the fines go to the General Fund not the agency budget.
107	Sen. Metsger	Asks how the consumer would be protected by the penalty change.
119	Taylor	States the agency deals with licenses according to law. More serious behavior results in a two-week suspension. The single licensing concept portion of the bill is driven by the higher expectation by the public of real estate practices.
173	Taylor	Explains how the law and practice are based on out-dated laws. Says SB 182 redefines brokers and requirements for licensing.
224	Chair Nelson	Asks if the amendments are attached.
230	Taylor	Says the attached amendments are the ones he refers to. The ñ1 amendments are not correct.
235	Chair Nelson	Reiterates the attached amendments are the correct ones.

238	Sen. Metsger	Agrees with increased licensing and education. Asks if the senior agents consider the changes in the bill to be too large
260	Taylor	Describes the problems of reaching competent and incompetent sales persons.
301	Sen. Metsger	Speaks about the ñ2 proposed amendments which ask for 24 months, rather than 18 months, in which to finish educational requirements. Presents <b>(EXHIBIT D)</b> .
312	Sen. Beyer	Asks what new licensees would need to do.
3114	Taylor	Replies the new requirements are to successfully complete three basic real estate courses, plus additional courses in contracts, escrow closing, property management, and trust accounting. States new requirements expand courses from 90 hours to 150 hours.
357	Sen. Beyer	Says the requirements and courses have changed. Passing the test and demonstrating the knowledge is the real test.
379	Genoa Ingram	Represents Oregon Association of Realtors. Introduces John F. Scott, Past President, and Gene Bentley, Commercial Association of Realtors. Supports SB 182, except for Section 25is provision which allows the commissioner to levy civil penalties. Presents <b>(EXHIBIT E)</b> .
<b>TAPE 42, B</b>		
015	Ingram	Commends commissioner for wide breadth of cross section of licensees involved. Says the association agrees that the accounting, trust accounting, and business management courses are important. Describes the real estate agencyís purpose is to protect consumers. Agrees with the reciprocal licensing and continuing education. States that SB 182 represents the changing needs of the real estate profession.
059	Sen. Beyer	Asks if licensees think the added requirements reduce entry to the business.
063	Ingram	Says she did not get that kind of feedback as a large concern.
132	Sen. Metsger	Asks if there is a downward trend in the number of agents.
137	Ingram	Says the commissioner predicts a decline in licensees.
140	Sen. Metsger	Asks if other states go to the single license provision.
142	Ingram	Replies that Colorado has a single license provision. Oregon will be on the cutting edge if SB182 is passed.

148	John Scott	President (1998) Oregon Association of Realtors. Comments that senior licensees will decide if they are making enough money to warrant additional training. Answers that the time to react to requirements of the law will be in about 2-1/2 years.
170	Gene Bentley	Past President Commercial Association of Realtors. Supports SB 182 which deals with brokers outside of Oregon. Says SB 182 will allow brokers to physically come into the state and some people think that will erode Oregon brokers' positions. SB 182 allows Oregon brokers to supervise out-of-state brokers when they do business in Oregon.
217	Sen. Beyer	Asks if the current law precludes out-of-state brokers from coming to Oregon as consultants.
220	Bentley	Answers they can be consultants, but if they physically set foot in the state of Oregon and practice real estate, they are violating Oregon law.
222	Sen. Beyer	Asks if that remains true if they only accept a consulting fee.
223	Taylor	Says the statute addresses compensation.
225	Beyer	Comments the law says "subject to compensation."
230	Chair Nelson	Asks for questions.
238	Kurt Dalbey	Equitable Group of Realtors. Commends the commissioner's efforts. Supports SB 182. Supports amending the time to obtain educational requirements increase from 18 months to 24 months of training.
300	Sen. Beyer	Asks if new requirements might detract from attracting new licensees.
302	Dalbey	Responds that the bill has been discussed thoroughly by the interested parties and he is ready to go with it.
358	Rick Harris	Explains how SB 182 will upgrade public service. Says the bill raises the level of professionalism and that the public demand expertise.
381	Jack Munro	Oregon Land Title Association. Supports SB 182. Explains the escrow activities.
403	Chair Nelson	Asks for questions.
<b>TAPE 43, B</b>		

013	Russell Newcomer	Broker, John L. Scott Real Estate. Supports extension to 24 months of training.
018	David Denney	Real Estate licensee since 1976. Oregon Regional Director of Training for a national real estate franchise system. Says the average real estate associate is not aware of need for change in the law. States the bill does not provide for further testing for brokers. Presents <b>(EXHIBIT F)</b> .
124	Denney	Questions the lack of supervision provided in the bill for brokers with over three years experience. Believes in improving educational requirements for those with their own brokerage firms. Says not all salesmen need to be brokers.
180	Robert Butler	Oregon realtor for 25 years, Portland. Commends the commissioner. Suggests improvements to SB 182. Agrees with the reciprocity process. Suggests changes on page 3 of handout, wants to change the reciprocity agreements to unilateral, as some states are not interested. Wants to amend the statement to include all the states that have reciprocity already. Refers to page 18 of the changes, lines 24 through 40. Questions the supervision provisions in the bill as not being adequate. Presents <b>(EXHIBIT G)</b> .
280	Chair Nelson	Asks for questions. Asks the commissioner for any additional comments.
294	Taylor	Says the change to 24 months to acquire training is acceptable.
300	Chair Nelson	Closes public hearing on SB 182. Opens work session on SB 182.
<b><u>SB 182 WORK SESSION</u></b>		
<b>301</b>	<b>Sen. Nelson</b>	<b>MOTION: Moves to ADOPT SB 182-2 amendments dated 2/19/99.</b>
302 <b>VOTE: 5-0</b>		
	<b>Chair Nelson</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
303	Chair Nelson	Suggests working out an agreement among interested parties of SB 182. Asks interested parties including the Oregon Land Title Association to get together to reschedule the bill and the committee will review it. Closes work session on SB 182. Opens public hearing on SB 271.
<b><u>SB 271 PUBLIC HEARING</u></b>		
306	Dugan Petty	State Purchasing Manager, Department of Administrative Services (DAS). Supports SB 271. Makes a minor change deleting the term "substantial" from

		three sections of ORS 279 relating to procurement. Will allow competitive alternative procurement process when it would save money over a bid. Presents <b>(EXHIBIT H)</b> .
395	Chair Nelson	Asks for questions.
<b>TAPE 44, A</b>		
026	Bob Shiprack	Oregon Building Trades. Says the private sector is far ahead of the public sector in their method of contracting construction work. Continues presentation in support of SB 271. Says SB 271 and SB 272 would provide better tools to implement government.
061	David Douthwaite	Association of General Contractors (AGC). Objects to Section 1 of SB 271 which is softening the criteria for an exemption from competitive bidding for public improvements. Asks to work with the proponents of SB 271 on the question of exemption.
078	Shawn Miller	Associated Builders and Contractors (ABC). Opposes SB 271. Explains reasons for keeping the competitive bidding process. Urges committee not to take action on SB 271 in its present form. Says SB 271 lowers the threshold, giving agencies more latitude in exempting a contract from competitive bidding. Presents <b>(EXHIBIT I)</b> .
120	Sen. Metsger	Asks Shiprack if the higher standard of the competitive bidding process would be more advantageous to taxpayers.
122	Shiprack	Says, today, companies bring private money in partnership with government to accomplish their goals.
153	Shawn Miller	Says they believe in public-private partnerships. Says there would be substantial savings to the taxpayer and under current law there would be exemption. ABC suggests exemptions be allowed only in specific cases, instead of as a norm. ABC says do not change what is in the existing statute.
168	Sen. Beyer	Asks if there have been documented problems with built design.
176	Douthwaite	Comments there are several public agencies currently doing design built projects under present law. Both cases went through the exemption process described under present statutes.
190	Beyer	Asks if they found it cumbersome.
192	Douthwaite	Says no they did not. Discusses other legislation that is proposed to make these exemptions work better.



188	Chair Nelson	Closes public hearing on SB 271. Opens work session on SB 271.
<b><u>SB 271 WORK SESSION</u></b>		
190	Chair Nelson	Asks parties to get together on SB 271 and work out their differences. Closes work session on SB 271. Opens public hearing on SB 272.
<b><u>SB 272 PUBLIC HEARING</u></b>		
203	Petty	Supports SB 272. Explains the concept of responsibility in determination of bid award. Says public jurisdictions award a low bid under law to the lowest responsive, responsible bidder. Explains debarment is described as when a bidder has been convicted of a crime, has acted improperly, or has breaches of contract that are egregious. SB 272 proposes to separate these two concepts from Oregon statute. Oregon statute co-mingles the standards.
245	Petty	Discusses Section 2 of SB 272 removes the current standards for disqualifying a bidder and replaces the standards with the ABA model procurement code, and other requirements regarding debarment. Section 3 removes current standards of disqualification. DAS proposes two amendments added to the last sentence, page 3, line 20, which permits a local land review board to describe pre-qualification forms. Page 3, lines 24 through 29 are deleted. Public agencies need this bill because they have been unable to reject poor performing bidders from awards. SB 272 would separate bid responsibility from debarment action by setting appropriate criteria.
335	Terry Meehan	DOJ and DAS attorney. Supports SB 272 as a step toward good public contracting. Says the bill clarifies between pre-qualification and disqualification concepts. Supports separating the two concepts. Secondly, the bill permits disqualification of contractors for reasons not currently permitted.
401	Chair Nelson	Asks for questions.
408	Bob Shiprack	Building Trades Council. States that public agencies are forced to hire people who cannot perform. SB 272 would alleviate this.
<b>TAPE 45, A</b>		
008	Sen. Beyer	Asks about the lack of specificity of terms like capability, reliability, and integrity. Suggests more details are needed and asks if DAS and AGC could work on that.
011	Meehan	Says he believes a more specific description could be added.
019	Douthwaite	States two objections to SB 272. Objects to removing criteria that public agencies must apply to determine if the bidder is responsible. Discusses the language that says it has the capacity to perform a public contract and use of

		vague terms such as "existing criteria" or the "bidder's financial capacity, personnel, and equipment." SB 272 eliminates those criteria and replaces them with capability, integrity, and reliability to perform the contract in good faith. Says proposed terms are ambiguous. A second objection is to establishing a new system which allows public agencies to disbar companies.
058	Sen. Beyer	Asks if there is no major concern with the structure of the bill, but with the lack of specificity.
066	Douthwaite	Says there is not a statutory procedure, presently, to allow debarment. Says debarment is a serious fundamental issue.
073	Sen. Beyer	Asks if there are major problems in a contract, what the solutions are.
080	Douthwaite	Responds that there is sufficient law to deal with that now.
085	Sen. Beyer	Describes conflicts in construction projects in his area that amounted to hundreds of thousands of dollars.
088	Douthwaite	Says the owners are not enforcing the provisions that are present and they avoid the problems by not working with the persons who cause them.
097	Sen. Beyer	Asks if he suggests more litigious action.
099	Chair Nelson	Asks for Miller to summarize.
102	Shawn Miller	Says SB 272 has broad language that is not measurable. Says ABC does not agree with DAS proposal. On page 2, line 44 and page 3, lines 1 and 2, allow more latitude. Page 3, lines 3 through 5 give more rule-making authority. Says there is a current system of breaching contract. Says the issues need further work in the interim. States that DAS promised to work on this in the work group, but there has not been any word until today.
		Staff submits written testimony on behalf of Linda Ludwig <b>(EXHIBIT J)</b> .
145	Chair Nelson	Comments that word was received from the Oregon Public Employees Union with an amendment. Suggests parties get together and decide on solutions. Closes public hearing on SB 272. Adjourns meeting at 3:28 p.m.

Submitted By, Reviewed By,

Nancy Masee, Y. Sherry Sheng,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ SB 195, Written testimony, Darren Bond, 3 pp**

**B ñ SB 197, Written testimony, Sharon Peebles, 2 pp**

**C ñ SB 182, Written testimony, Scott Taylor, 8 pp**

**D ñ SB 182, -2 Amendments, Rick Metsger, 1 p**

**E ñ SB 182, Written testimony, Genoa Ingram, 8 pp**

**F ñ SB 182, Written testimony, David Denney, 3 pp**

**G ñ SB 182, Written testimony, Robert Butler, 5 pp**

**H ñ SB 271, Written testimony, Dugan Petty, 3 pp**

**I ñ SB 272, Written testimony, Shawn Miller, 3 pp**

**J ñ SB 271 & 272, Written testimony, Linda Ludwig, 6 pp**