

SENATE COMMITTEE ON BUSINESS & CONSUMER AFFAIRS

March 8, 1999 Hearing Room C

1:00 P.M. Tapes 53 - 54

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 374 Public Hearing and Work Session

SB 380 Public Hearing and Work Session

SB 398 Public Hearing and Work Session

SB 142 and SB 143 Work Session

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 53, A		
003	Chair Nelson	Opens meeting at 1:30 p.m. Opens public hearing on SB 374.
<u>SB 374 PUBLIC HEARING</u>		

020	Pete Shepherd	Attorney, Financial Fraud Consumer Protection Section, Department of Justice (DOJ). Supports SB 374 and amendments. Explains that the bill is to authorize the use of \$35,000 (this biennium), already in a revolving account for enforcement of consumer protection, for an experimental program hiring mediators to help used car dealers and their customers resolve disputes. The ñ2 amendments state that it is a voluntary program, with no dealer or consumer compelled to participate, and that it is an experimental program. Presents (EXHIBITS A and B) .
049	Chair Nelson	Asks where the funds come from.
050	Shepherd	Answers that there is an account including consumer protection education. Explains the account has an amount of about \$3 million.
084	Sherry Sheng	Committee Administrator. Adds that there is a letter from the Oregon Auto Dealers who support SB 374. The fiscal impact statement shows no assessment.
090	Chair Nelson	Places the letter from the Oregon Auto Dealers Association in the record (EXHIBIT C) . Closes the public hearing on SB 374. Opens work session on SB 374.
<u>SB 374 WORK SESSION</u>		
082	Chair Nelson	MOTION: Moves to ADOPT SB 374-2 amendments dated 3/8/99.
083		VOTE: 4-0 EXCUSED: 1 - Sen. Miller
084	Chair Nelson	Hearing no objection, declares the motion CARRIED.
086	Chair Nelson	MOTION: Moves SB 374 to the floor with a DO PASS AS AMENDED recommendation.
087		VOTE: 4-0 EXCUSED: 1 - Sen. Miller *See Tape 53,A at 193 for Sen. Miller's later vote on this.

088	Chair Nelson	Hearing no objection, declares the motion CARRIED. SEN. METSGER will lead discussion on the floor.
090	Chair Nelson	Closes work session on SB 374. Opens public hearing on SB 380.
<u>SB 380 PUBLIC HEARING</u>		
096	Pete Shepherd	DOJ. Supports SB 380. Explains how telephone sales offering prizes or gifts in connection with sales or services must register with DOJ. SB 380 says that the DOJ has the authority to suspend, revoke, or refuse to issue or renew registration of that company. Presents (EXHIBIT D).
127	Chair Nelson	Asks if the DOJ has the ability to pursue enforcement.
131	Shepherd	Answers that sanctions for operating as an unregistered telemarketer are that the violator is subject to the Unlawful Trade Practices Act.
135	Sen. Beyer	Asks if there is a lifetime revocation.
141	Shepherd	Responds the bill does not say the effective date of revocation.
157	Chair Nelson	Asks about out-of-state telemarketers and how effective the laws are in enforcement.
160	Shepherd	Responds that most fraud cases originate from out-of-state telemarketers. Gives an example of when DOJ has obtained restraining orders from the courts.
168	Chair Nelson	Asks about internet telemarketers.
180	Shepherd	Says the internet would not come under this law; communication has to be voice to voice.
185	Chair Nelson	Closes public hearing on SB 380 and opens work session.
<u>SB 380 WORK SESSION</u>		
190	Chair Nelson	MOTION: Moves SB 380 to the floor with a DO PASS recommendation.

191		VOTE: 5-0
192	Chair Nelson	Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.
193	Sen. Miller	Says he was out of the room during the vote on SB 374 and requests the committee to allow him to vote.
194	Chair Nelson	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. MILLER to BE RECORDED as voting NAY on the motion to move SB 374 to the floor with recommendation of do pass as amended.
196		VOTE: 4-0
197	Chair Nelson	Hearing no objection, declares the motion CARRIED.
198	Chair Nelson	Closes work session on SB 380. Opens public hearing on SB 398.
<u>SB 398 PUBLIC HEARING</u>		
206	MardiLyn Saathoff	Attorney, Business Transactions Section, DOJ. Supports SB 398. Gives background on SB 398 which allows services to be performed under public contracts before required review for legal sufficiency. Presents (EXHIBIT E) .
249	Chair Nelson	Asks what legal insufficiency is.
259	Saathoff	Responds legal insufficiency is when a contract is reviewed and it appears to be a violation of the law.
252	Sen. Beyer	Asks if the bill puts the state at risk.
270	Saathoff	Answers it gives greater risk to the contractor. Says this allows the state leverage in acquiring amendments. If violations of law are found, the contract can be sent back to the agency, and negotiation for amendments in the contract would be made.

286	Sen. Beyer	Asks if this has been a problem.
304	Saathoff	Says it is not a significant problem, but it does occur. Says she will get data for Sen. Beyer. States this provision is in other statutes.
315	Chair Nelson	Asks if services can be performed that the state would not need to pay.
320	Saathoff	Answers they can.
332	Sen. Beyer	Asks if the contractor could have a contract that a state agency had signed for later work and DOJ could find the contract faulty.
340	Saathoff	Says current amendments fit the current at fault situation. If legal sufficiency has not been obtained, the bill will allow services to be performed. Says the assumption is that the contract is legal.
362	Chair Nelson	Asks how many contracts are reviewed in a year.
269	Saathoff	Says General Counsel reviewed 4,000+ last year, including personal service agreements, architecture and engineering agreements not to exceed \$75,000, and all public contracts not to exceed \$100,000.
380	Chair Nelson	Closes public hearing on SB 398. Opens work session.
<u>SB 398 WORK SESSION</u>		
382	Sen. Miller	Comments that the bill sounds like a solution searching for a problem.
385	Chair Nelson	Asks for discussion. Asks why the DOJ considers this bill necessary.
390	Saathoff	Believes SB 398 alleviates harsh consequences to some agencies. SB 398 would allow contracts to be reviewed by the attorney general's (AG) office. If DOJ cannot sign for sufficiency, the contract will go back to the agency.
TAPE 54, A		
023	Saathoff	Says the contractor is liable.

024	Sen. Beyer	Inquires if the vendor needs to agree to changes that would meet the DOJ requirements for sufficiency.
030	Saathoff	There may have been instances where the parties were able to cut work out of the contract. If they had not received legal sufficiency approval, the agency could not get paid.
040	Chair Nelson	Asks if this will help contractors.
056	Saathoff	Says it will help agencies. If the contractor and agency want to get going on the project, SB 398 would expedite getting started without waiting for the AG's approval. However, the AG could come back and ask for the contract to be revised.
058	Sheng	Comments that SB 398 is a result of the huge workload of DOJ. Says the concern is payment for work. Asks for specific concerns of members.
084	Sen. Beyer	States that the necessary review can be done for an agency before a contract is signed. States, in an emergency, the contract could be authorized. Points out that the contractor is at an unfair disadvantage and could end up not getting paid for work done. Suggests language in an emergency situation that would safeguard contractors.
104	Sen. Metsger	Comments that agencies that do not know their responsibilities and the DOJ workload could cause problems.
108	Saathoff	Agrees in part that the attorney general is trying to train agencies. The large workload of legal review for sufficiency delays an agency getting started. SB 398 alleviates some of the services rendered for some agencies. Says DOJ's workload is significant in reviewing contracts.
140	Sen. Metsger	Sounds like the contractor is at loss. Asks if the contractor should be notified of being at risk.
145	Chair Nelson	Comments that there are some questions to be studied further.
147	Sen. Beyer	Asks who is signing the contract.
155	Saathoff	Says the authority is within an agency. Assumes it would be the upper management decision.
160	Sen. Beyer	Comments that anyone in upper management should have an understanding of the laws. Asks if there is personal responsibility for signing.

186	Sheng	Suggests the committee study the bill further and reschedule it.
193	Chair Nelson	Asks for questions. Says the committee will reschedule SB 398. Closes work session on SB 398. Opens work session on SB 142 and SB 143.
<u>SB 142 AND SB 143 WORK SESSION</u>		
201	Sheng	Refers to a chart summarizing the ideas submitted to the committee on SB 142 and SB 143. Presents (EXHIBIT F) .
256	Terry Edvalson	Rural Oregon Telecommunications Consortium (ROTC). Says he has reviewed the ideas he was given. Says he understands there are new offers from Public Utility Commission (PUC) and Department of Administrative Services (DAS), Information Resources Management Division (IRMD). Comments on IRMD amendments and PUC amendments and says they negate all that has been brought forward to date. Points out , Section 12, page 15, which show US West is written out until the rate case is decided and which takes out the funding source. Refers to GTE and SPRINT comments. MCI supports all but the funding mechanism and suggests a tax. AARP also suggests a surcharge but does not indicate how much. Citizens Utility Board (CUB) questions the constitutionality of the bill. Comments he believes it is constitutional. Sees no suggestions that are strong. Says the reputation of US West is questioned. States US West has been a good partner and US West needs to come forward. Expresses the feeling that the people in Oregon want to talk, but no concrete proposals have been brought forth. Asks the committee to move the bill and correct it as it moves forward.
TAPE 53, B		
007	Chair Nelson	Questions the affect of the DAS proposal regarding the state as an anchor, saying that would conflict with the private sector.
008	Edvalson	DAS IRMD has not evidenced a plan for the community, the region, and the state. Says the state planning reverses the order, putting the state first in the plan. Indicates that government is the largest customer in rural areas.
018	Sen. Beyer	Asks, if the enterprise network were in place, if it would serve the rural area.
020	Edvalson	Responds that depends on the fee structure. Explains the enterprise network is only part of the answer.
022	Sen. Beyer	Asks, if the DAS enterprise network were in place, if it would service the needs of the rural community.

026	Edvalson	Says if the bandwidth was present between the communities and, if the system, as envisioned, is built out with the cooperation of the industry so that fees are reasonable, it possibly could. Says that the enterprise network is only part of the answer.
056	Sen. Beyer	Asks what the dollar amount is to meet rural telecommunications needs.
060	Edvalson	Explains connecting Klamath Falls with Bend would cost \$25 million. On a mileage basis, going from Ontario to Baker to Pendleton bypassing LaGrande, it would cost close to \$250 million to build the backbone. Estimates four to six years to complete the project.
080	Chair Nelson	Asks for questions.
082	Edvalson	Urges committee to pass out SB 142.
092	Phil Nygaard	Administrator, Telecommunications Division, PUC. Clarifies the DAS proposal is not a PUC proposal. PUC does propose language to Section 6 which improves the universal service part. Proposes modifying two existing alternative forms of regulation (AFOR) statutes. Says the proposal clarifies that there is no AFOR which does not consider rural service needs and high quality basic telecommunications service. Comments on the proposed language revision to ORS 759.255 which has service qualities written in them. Presents (EXHIBIT G) .
122	Chair Nelson	Asks if that would ensure service quality.
126	Nygaard	Agrees that presently PUC does not have the tools to ensure high quality service standards.
130	Sen. Beyer	Asks for an explanation of what is there.
132	Nygaard	Says in subsection 4, the language allows PUC to directly fine up to \$50,000 for a service quality violation.
140	Sen. Beyer	Asks where high quality service is defined.
150	Nygaard	Answers within PUC rules that are already in place.
160	Chair Nelson	Asks for questions. Asks how the revised AFORs would encourage carriers.

168	Ron Eachus	Chairman of PUC. Explains price cap and performance on Rate of Returns (ROR) are two methods of AFOR.
197	Sheng	Asks, if the current AFOR has not been used by carriers, why a more restrictive AFOR, as PUC has proposed, would be accepted, if the goal is to encourage companies to go off of ROR and thereby benefit the state.
206	Eachus	Says it was his understanding that the goal was to encourage rural infrastructure development. Says it was not his understanding to encourage utilities to leave ROR regulation.
233	Chair Nelson	Asks what is in the AFOR to encourage companies to build infrastructure.
257	Eachus	Answers the incentive is to offer an AFOR that does not have an ROR component.
235	Sen. Beyer	Asks how to get more investment in rural areas. Asks why people would go for more restrictive methods.
243	Eachus	Asks what the less restrictive method is.
259	Sen. Beyer	Comments that the existing AFOR is less restrictive than the proposed amendments.
261	Eachus	Responds they do not have service quality in the statute and they do not have a rural infrastructure requirement.
268	Sen. Beyer	States if companies were not willing to make the option before, they would hardly be interested in investing in the more restrictive AFOR.
272	Eachus	Comments on incentives to invest in an infrastructure. Says there is a need to distinguish among investments in advanced services and maintenance of basic services. Says PUC is concerned with service quality and needs higher penalties to encourage incentives.
307	Sen. Beyer	Asks what will happen in rural areas without legislative action.
317	Eachus	Suggests the question is whether it is basic service or advanced telecommunications services. Gives the example of LaGrande which relies on US West connection between Pendleton and Baker City. The additional capacity is needed. Describes the Oakridge problems of connecting.

345	Chair Nelson	Asks Eachus to respond to the question.
349	Eachus	Comments that maintaining the quality of service in Springfield, Lowell, and Baker City will improve infrastructure in rural areas. The improvements will be made in time.
376	Sen. Beyer	Says the improvements have not been made. Asks what incentives would implement investments. Presents (EXHIBIT H) .
374	Eachus	Says PUC needs greater authority to fine carriers and more oversight authority. Indicates that utilities are more interested in AFORs. States that increased authority by PUC would be an incentive.
393	Chair Nelson	Thanks testifiers.
TAPE 54, B		
011	Bruce Shaul	Sprint. Says in terms of service quality there are internal measurements. Says he has seen the DAS proposal.
015	Chair Nelson	Asks what service quality would be.
017	Shaul	Objects to Sections 4C and D of the DAS proposal, regarding price listing and the AFOR. Asks if there is a quality standard or if standards vary among companies.
035	Shelley Jensen	GTE. Comments that service quality standards would not be objectionable. Says there is a problem giving authority to PUC in assessing fines. Presently PUC needs to go to court to impose fines.
053	Sen. Beyer	Asks what changes would be attractive to GTE.
060	Jensen	Explains the existing statute problems and why GTE has not taken advantage. Says GTE does not want sharing over a certain amount.
070	Shaul	Agrees with Jensen.
	Staff	Presents (EXHIBITS I, J, K, and L) .

Submitted By, Reviewed By,

Nancy Masee, Y. Sherry Sheng,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 374, Written testimony, Pete Shepherd, 1 p

B ñ SB 374, -2 Amendments, Pete Shepherd, 1 p

C ñ SB 374, Letter, David Nelson, 1 p

D ñ SB 380, Written testimony, Pete Shepherd, 1 p

E ñ SB 398, Written testimony, MardiLyn Saathoff, 2 pp

F ñ SB 142, Chart, Staff, 2 pp

G ñ SB 142, Written testimony, Phil Nygaard, 12 pp

H ñ SB 142, Newspaper article, Lee Beyer, 1 p

I - SB 142, Letter, John Glascock, 3 pp

J ñ SB 142, Written testimony, Staff, 19 p

K ñ SB 142, Written testimony, Staff, 3 pp

L ñ SB 142, Written testimony, Staff, 1 p