

SENATE COMMITTEE ON PUBLIC AFFAIRS

June 4, 1999 Hearing Room B

3:00 p.m. Tapes 64 ñ 65

MEMBERS PRESENT: Sen. Gene Derfler, Chair

Sen. Joan Dukes, Vice-Chair

Sen. Marilyn Shannon

Sen. Charles Starr

Sen. Thomas Wilde

MEMBER EXCUSED:

STAFF PRESENT: Brian E. Smith, Administrator

Rachel E. Halupowski, Administrative Support

MEASURE/ISSUES HEARD: HB 3595A Public Hearing

SB 1180 Public Hearing and 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 55, A		
000	Chair Derfler	Opens meeting at 3:00 p.m. and opens public hearing on HB 3595A.
<u>HB 3595A PUBLIC HEARING</u>		
006	Rep. Karen Minnis	House District 20. Presents (EXHIBIT A) . Explains HB 3595A deals with taxation of attorneys who live and practice law outside the boundaries of the city of Portland. States the current tax on attorneys who must use the county courthouse in Portland is unfair and there needs to be a statutory change.

		Supports HB 3595A.
041	Marge Kafoury	City of Portland. Defers to Commissioner Jim Francesconi.
056	Commissioner Jim Francesconi	Commissioner, City of Portland. Presents (EXHIBIT B) . States HB 3595A is a threat to the economic stability of local government and the business community of Portland. States that using the courthouse is not sufficient enough contact to impose a tax, but if used on a regular basis the tax/business license is justified.
106	Francesconi	States that de minimis contact made in Portland does not cost the licensee anything. Discusses how license fees are determined and the impact of those fees for the city. States a de minimis contact level needs to be established, and tax exemption should not be based on place of practice.
140	Chair Derfler	Clarifies that if a lawyer lives in Troutdale but does no other business in Portland other than filing with the courthouse, the lawyer is charged a business license tax.
150	Francesconi	States that if the lawyer comes in on a regular basis to do business at the courthouse, the lawyer would be taxed.
154	Chair Derfler	Asks why a lawyer should be taxed if he is forced to file in Portland.
157	Francesconi	States it depends on how often he files in Portland and if his client base is in Portland.
160	Chair Derfler	States that even if the lawyer comes into Portland 100 times a year, he is driving mostly on state highways and not city roads.
162	Francesconi	Explains the legislation should state that those forced to use the county courthouse are not to be charged a business tax. States HB 3595A does not make that specification.
175	Sen. Shannon	Asks if Gresham charges a tax for lawyers who file there.
179	Francesconi	States that Gresham has a business tax, but he is unfamiliar with how they use it.
182	Sen. Shannon	Asks if the county pays for the infrastructure of the county courthouse.
185	Francesconi	States yes.
187	Sen. Shannon	Discusses gas taxes and other taxes that are already going to the infrastructure.

188	Francesconi	States the legislation does not solve the problem it sets out to do. States there needs to be incentives to keep lawyers from moving outside of Portland, while maintaining a Portland client base, to avoid paying a business tax.
204	Sen. Shannon	Believes the City of Portland is creating a problem.
210	Francesconi	States HB 3595A is not a good deal for the City of Portland.
211	Sen. Shannon	States that when business people of Portland drive to Clackamas County and get into accidents, it is the county who pays for the police, fire, ambulance, etc. States a Troutdale lawyer should not have to pay for the infrastructure of Portland when he already pays in Troutdale.
212	Francesconi	States he is more concerned with the larger issue.
214	Sen. Wilde	Gives a scenario of a lawyer who lives and practices in Troutdale. Asks, if his Portland clients were to go to Troutdale to discuss business, would the lawyer need to pay a business tax.
225	Francesconi	States no.
226	Sen. Wilde	Asks with faxes and e-mail, what is defined as physical presence.
231	Terrence Thatcher	Deputy City Attorney, City of Portland. States the definition of physical presence is changing due to faxes and e-mail. States the City of Portland is constrained by the laws mandated by the Supreme Court.
255	Chair Derfler	States that if someone needs to go into the courthouse, regardless of how often, he should not pay a business tax if his client base and his practice are not in Portland. Believes if his practice or clients are in the city, he should pay the tax.
265	Francesconi	States HB 3595A does not address this issue.
276	Sen. Wilde	Asks, if his law firm is based in Troutdale, is he taxed for hours arguing a case at the courtroom as well as for the hours spent in the law firm constructing a case.
295	Francesconi	States he would be taxed for the hours spent at the courthouse, not at his law firm.
302	Sen. Shannon	Asks if Portland is the only city that does this.
307	Kafoury	States they are the only city in Oregon who does this.

310	Sen. Shannon	Asks why this issue has not been addressed before now.
319	Francesconi	States legislation should be drafted.
320	Sen. Shannon	Asks what if the Legislature decides the City of Portland cannot mandate this business tax.
330	Chair Derfler	Asks if there was an amendment for HB 3595A that specifies who does not need to pay a business tax.
335	Francesconi	States the issue is defining de minimis contact, not determining where the attorney resides and practices.
339	Chair Derfler	Believes a lawyer should not be taxed solely on the fact that he must be at the courthouse every day.
344	Francesconi	States the lawyer would not be taxed if the visits are minimal.
350	Chair Derfler	Clarifies that HB 3595A states that if a lawyer's office is outside of Portland and the lawyer does business inside Portland, the lawyer is not subject to pay a business tax.
351	Francesconi	States yes.
354	Chair Derfler	States that as long as the lawyer is not making money in Portland, why would the lawyer pay a business tax.
359	Thatcher	States there is a philosophical difference of opinion as to whether coming into the courthouse is the same as doing business. States HB 3595A would exempt any lawyer from paying the tax if the lawyer resides outside of Portland.
386	Kafoury	Explains Janik's testimony presented by Mr. Francesconi as EXHIBIT B .
406	Sen. Shannon	Asks if there are amendments to HB 3595A.
407	Kafoury	States no.
408	Sen. Shannon	Clarifies the City of Portland is here to oppose HB 3595A.
409	Kafoury	Agrees.
420	Chair Derfler	Asks if she thought HB 3595A would exempt lawyers whose practice was

		outside of Portland but their client base is mostly from Portland.
421	Rep. Mannis	States no. States she has no objection to amending HB 3595A.
435	Chair Derfler	Clarifies that if the client base is in Portland Rep. Mannis has no objection to taxing those lawyers even if they live and practice outside of Portland.
439	Rep. Mannis	Agrees.
440	Chair Derfler	Asks if HB 3595A currently makes those distinctions.
449	Rep. Mannis	States HB 3595A is broad. States the City of Portland offered no amendments to HB 3595A, and declined to help draft this legislation.
454	Sen. Shannon	Asks if HB 3595A can be narrowed to specify the courthouse.
460	Rep. Mannis	States she has no problem doing that.
472	Lynn McNamara	League of Oregon Cities. Concerned with how cities are supposed to pay for services in an era of property tax limitations.
TAPE 65, A		
001	McNamara	States many cities have a business license tax which is applied to business conducted in the city, but it is based on the number of employees in a company.
006	Chair Derfler	States, based on that assumption, we should be taxing tourists for services.
007	McNamara	States that narrowing HB 3595A would resolve the issue.
011	Chair Derfler	Believes that if business is conducted in Portland and money is made, taxes should be paid. Closes public hearing and opens work session on SB 1180.
<u>SB 1180 WORK SESSION</u>		
029		Staff presents (EXHIBIT C) .
030	Brian E. Smith	Committee Administrator. States the ñ5 amendments are the same as the ñ4 amendments except for the change that will allow the option for arbitration on the mutual agreement of the parties. Explains the ñ5 amendments.

069	Sen. Wilde	Asks where the changes were made from the ñ4 to the ñ5 amendments.
072	Smith	States on page 18 of the ñ5 amendments.
075	Chair Derfler	States there was an error in printing the original bill.
079	Sen. Starr	Believes it is in Section B, page 18.
080	Smith	Clarifies it is Section 10 subsection 1a.
085	Vice-Chair Dukes	States that language is identical to the ñ4 amendments.
089	Smith	Clarifies lines 10 and 11 of the ñ5 amendments.
098	Chair Derfler	Asks for any other questions.
100	Smith	States the changes were due to a draft oversight, because the intent was to allow for arbitration if the parties agree.
130	Sen. Shannon	MOTION: Moves to ADOPT SB 1180-5 amendments dated 6/4/99.
		VOTE: 4-1 AYE: 4 - Shannon, Wilde, Starr, Derfler NAY: 1 - Dukes
	Chair Derfler	The motion Carries.
143	Sen. Shannon	MOTION: Moves SB 1180 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 3-2 AYE: 3 - Shannon, Starr, Derfler NAY: 2 - Dukes, Wilde
	Chair Derfler	The motion Carries.

		SEN. DERFLER will lead discussion on the floor.
168	Chair Derfler	Closes work session and adjourns meeting at 3:45 p.m.

Submitted By, Reviewed By,

Rachel E. Halupowski, Brian E. Smith,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3595A, written testimony, Rep. Mannis, 3 pp

B ñ HB 3595A, written testimony, Commissioner Francesconi, 3 pp

C ñ SB 1180, written testimony, staff, 1 p