

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE ON BUSINESS

February 11, 1997 Hearing Room 357

8:30 A.M. Tapes 7 - 8

MEMBERS PRESENT:

Rep. Roger Beyer, Chair

Rep. Richard Devlin

Rep. Bob Montgomery

Rep. Jackie Taylor

STAFF PRESENT:

Keith Putman, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD:

HB 2039 - Public Hearing and Work Session

HB 2040 - Public Hearing and Work Session

HB 2041 - Public Hearing

HB 2042 - 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 7, A		
003	Chair Beyer	Calls meeting to order at 8:34 a.m. and opens public hearing on HB 2039. Present are Rep. Montgomery and Chair Beyer.
<u>HB 2039 - PUBLIC HEARING</u>		
006	Chair Beyer	Noting there are no witnesses, closes the public hearing on HB 2039 and opens the public hearing on HB 2040.

<u>HB 2040 - PUBLIC HEARING</u>		
007	Chair Beyer	Noting there are no witnesses, closes the public hearing on HB 2040 and opens the public hearing on HB 2041.
<u>HB 2041 - PUBLIC HEARING</u>		
010	Chair Beyer	Noting there are no witnesses, closes the public hearing on HB 2041 and opens the public hearing on HB 2042.
<u>HB 2042 - PUBLIC HEARING</u>		
013	Chair Beyer	Noting there are no witnesses, closes the public hearing on HB 2042, notes a quorum of the committee is not present, and declares the meeting in recess at 8:35 a.m.
017	Chair Beyer	Recognizing the presence of a quorum, reconvenes the meeting at 8:35 a.m. and opens the work session on HB 2039.
<u>HB 2039 - WORK SESSION</u>		
020	Putman	Explains the work group has met and the amendments are before the committee. Requests the writer of the amendments present them.
036	Wendy Robinson	Assistant Attorney General, Oregon Department of Justice, representing the Construction Contractors Board, explains amendments to HB 2039 (EXHIBIT A).
		* Most of the amendments reflect the comments made by David Jack, a representative of a surety company.
		* Amendments include two sections from HB 2042 which the Construction Contractors Board want to retain; they did not want the rest of HB 2042. One is number 4 of the amendments, the creation of a small exception for claims processes; if the claim is less than \$250, it is not cost effective. Number 13 of the amendments permits the board to do both mediation and arbitration.
057		* #14 and 15 of the amendments are the deletion of what would have been the new provisions in HB 2039, Section 6, because SB 272 is addressing claims and orders filed with the courts.
063		* #1 of the amendments is necessary because with the amendments HB 2039 would no longer create new provisions
068	Robinson	The remainder of the amendments are at the request of the bonding companies and are record-keeping kinds of things:
		* #5 gives the surety 15 additional days to object to certain kinds of orders

		* #6 provides for notice
		* #7 permits not just certified mail but facsimile as long as there is an acknowledgment--proof that someone has received some kind of notice
		* #8 makes the provision consistent in that they are allowed to object later on
079		* #9 allows them to enter the court matter by intervening
		* (d) is to make the grounds on which the surety can object to the action consistent with the previous grounds laid out in #4
		* #11 and 12 omit an entire sentence and is at the request of the surety companies because they think there is a separate judgment that can be entered against them and they prefer not to have the provision.
094	Rep. Montgomery	Ask how the sender would know the FAX was received.
102	Robinson	Responds the FAX machines generally send out an acknowledgment of the transmission; it is a common kind of way of acknowledging that notice has been received.
106	Chair Beyer	Comments that some people do not want to receive certified mail.
114	Robinson	Comments she advises the board to send the mail certified and first class.
115	Mike Scott	Power Rents and Oregon Equipment Rental Association, comments there is a provision in the lien law that if a claimant does not claim a certified mail, or it comes back unclaimed, it is deemed to be timely delivery. The issue for the surety is that the surety is going to need to prove it gave delivery in the proper fashion.
124	Rep. Montgomery	Asks if these amendments meet the approval of everyone in the audience.
	Robinson	Responds she has received no objections.
131	John Powell	Contractors Bonding and Surety Company, responds their attorney has worked with the group and finds the amendments "livable."
145	Rep. Montgomery	MOTION: Moves to ADOPT the proposed amendments to HB 2039 (EXHIBIT A).
148	Chair Beyer	Notes the amendments are not in proper LC form and asks if the committee wishes to see them in proper form before adoption.
154	Rep. Montgomery	Responds that the amendments were drafted by the AG's office and assumes they are technically correct.
154	Putman	Clarifies the intent of the motion is that the subcommittee will adopt the amendments and staff will have the LC amendments prepared for the full committee meeting..
155	Chair Beyer	Affirms clarification by staff.
		VOTE: 4-0

165		
	Chair	Hearing no objection, declares the motion CARRIED.
169	Putman	Explains the hand-engrossed bill containing the amendments has scrivener's errors and the proper amendments will be prepared by Legislative Counsel.
174	Rep. Montgomery	MOTION: Moves HB 2039 to the full committee with a DO PASS AS AMENDED recommendation.
175		VOTE: 4-0
	Chair	Hearing no objection, declares the motion CARRIED. REP. MONTGOMERY will lead discussion in full committee (See Tape 8, A at 065).
180	Chair Beyer	Closes work session on HB 2039 and opens work session on HB 2040
<u>HB 2040 - WORK SESSION</u>		
	Robinson	Explains amendments to HB 2040 (EXHIBIT B). The purpose is to combine HB 2040 and HB 2041.
215	Robinson	Explains intent of the proposed amendments to HB 2040 (EXHIBIT B).
		<p>* 701.065 (1) remains substantially the same and says if a contractor was unregistered at the time of the bid or signs a contract, or was unregistered at any point during the work, he/she does not get to file a claim and go to arbitration or file a lien. The exception is at the beginning of subsection (1).</p> <p>There are now two exceptions: Subsection (2)(a) applies if the contractor was never registered at the time of the bid for the work, entered into the contract, or did the work.</p> <p>* The board, arbitrator, or the court would have to determine three things: 1) was not aware of need to register but now applies to register with the board, 2) must get registered (bond and insurance in place), and 3) to enforce this provision, would create substantial injustice to the contractor.</p> <p>* If all three standards are in place, the contractor would be permitted to go forward.</p>
264	Robinson	Subsection 2(b) covers the partial lapse if two provisions are met: 1) the contractor is not aware of the lapse, and 2) the contractor

		applies for renewal of registration within the same 90 days or lesser time determined by the board by rule.
277		If the contractor is pursuing a claim with the Construction Contractors Board, or is pursuing a claim in court, the contractor has to get registered, get the bond and insurance in place for the entire period of time; then can go forward on the claim.
283		If the contractor is trying to perfect a construction lien and foreclose upon the construction lien, the contractor must renew within 90 days of perfection of the of lien.
291	Robinson	Changes in subsection (3) on page 2 conform the language to (1).
300	Robinson	Adds that the point of view of the Construction Contractors Board is that if the contractor is going to be allowed to pursue a claim against them, the home owner must have some way of counter-claiming through the Construction Contractors Board's claim process and have access to the bond in the event there is a determination that the homeowner is the one who is owed money.
308	Robinson	Notes typographical error in the amendments on page 1 in the second to last line.
303	Putman	Notes that in HB 2040, page 2, in lines 5 and 6, the words "or deletion" and "or reinstatement" need to be deleted.
322	Robinson	Agrees and explains it would make the language consistent because the amendments refer to "renewal."
319	Mike Scott	<p>Agrees with comments by Ms. Robinson and explains "file" is being deleted because in 1987 the legislature changed it to "perfection of a lien." It is the same language as in the lien statutes. "Maintain" is removed because nothing can be maintained unless it is commenced.</p> <p>Adds that the way he has drafted the amendments is that for a totally unregistered contractor, the totally unregistered contractor would have to be registered at the time they actually commence the lawsuit, not necessarily at the time that would backdate the time they actually did the work. The concern is whether they would be able to obtain a surety bond or maintain or get insurance. For a totally unregistered contractor, the time period would be as follows:</p> <p>* when the lawsuit or lien is filed, the contractor would need to be registered from that time forward, but if the subcommittee wants it to go backward, language should be added which says if they are registered for the time period required by subsection (1). Explains that is not the issue for a partially registered contractor; a partially registered contractor does not need to be registered at the time they commence the lawsuit. They need to have their registration in place at the time the work was actually done. That is a different time period than for a totally unregistered</p>

		contractor. The issue was "lapse" for the partially unregistered contractor and there is no injustice standard.
390	Scott	The board has not been given the authority to back date a totally new registration that comes in because there is nothing to renew. It is an issue that would have to be looked at.
395	Chair Beyer	Comments he believes it is quite a different policy change to allow a previously unregistered contractor to become registered and then file a lien.
410	Scott	Explains an unregistered contractor can now file a lien. The only standard is that of injustice. This legislation would say we want to make sure the registration is in effect the date the lawsuit is commenced. It adds two new standards for the totally unregistered contractor.
TAPE 8, A		
007	John Powell	Contractors Bonding and Insurance, comments their attorney, Mr. Jack, participated in developing the amendments and has pronounced them "livable."
009	Chair Beyer	Asks if a contractor would be able to get a bond on work that is already performed because it would seem unbondable.
011	Powell	Responds he would agree and it would also seem uninsurable. It would be like buying fire insurance on a building that just burned. Comments if he understands the explanations correctly, if the standards are met the person has a right to go to court and prove there is an injustice, in order to get the right they would have to duly register as they should have been in the first place.
019	Robinson	Adds that obviously to the extent the reason they are unregistered is because they have unpaid claims or could not become registered with the Construction Contractors Board, they would still be unregistered because the board would refuse to register them for the reasons they can refuse to register contractors.
025	Rep. Taylor	Asks if Mr. Scott is suggesting the same verbiage be added to the first standard.
031	Scott	Replies he is not because it is unworkable and doesn't think it can occur. "I brought it up because Ms. Robinson had indicated back dating and I didn't want legislative history, potentially, about when they needed to be registered. I wanted there to be some clearness about when that was going to occur."
037	Beyer	Clarifies that the remainder of the new language in the amendments is inserting the language from HB 2041 allowing the board to renew registrations for two or four years and saving approximately \$42,000 a year.
044	Putman	Calls the members attention to the fiscal impact statement on HB 2041 (EXHIBIT C) (registration provisions of HB 2041 included in HB 2040).
051		

	Rep. Montgomery	MOTION: Moves to ADOPT the amendments presented by Ms. Robinson to HB 2040 (EXHIBIT B).
052		VOTE: 4-0
	Chair	Hearing no objection, declares the motion CARRIED.
054	Rep. Devlin	MOTION: Moves HB 2040 to the full committee with a DO PASS AS AMENDED recommendation.
055		VOTE: 4-0
	Chair	Hearing no objection, declares the motion CARRIED. DEVLIN will lead discussion in full committee.
065	Chair Beyer	Announces that Rep. Montgomery will lead discussion in full committee on HB 2039.
075	Putman	Announces upcoming full committee meeting on February 13, and notes that HB 2042 has a fiscal impact (EXHIBIT D),and the issues in HB 2042 which caused the fiscal impact are in the amendments to HB 2040.
090 .	Chair Beyer	Adjourns meeting at 9:06 a.m.

Submitted By, Reviewed By,

Annetta Mullins, Keith Putman,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2039, proposed amendments, Wendy Robinson, 1 p

B - HB 2040, proposed amendments, Wendy Robinson, 2 pp

C - HB 2040, Fiscal Impact Statement on HB 2041, staff, 1 p

D - HB 2040, Fiscal Impact Statement on HB 2042, staff, 1 p