

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE ON BUSINESS

February 25, 1997 Hearing Room 357

8:30 A.M. Tapes 11 - 12

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 2302 - Public Hearing

HB 2328 - Public Hearing

HB 2080 - Public Hearing and Work Session

SB 121 - 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 11, A		
002	Chair Beyer	Calls meeting to order at 8:35 a.m. and opens public hearing on SB 121.
<u>SB 121 - PUBLIC HEARING</u>		
008	Putman	Reviews provisions of SB 121.
016		

	Chuck Pearson	Comments that SB 121 is sponsored by the State Board of Examiners for Engineering and Land Surveying and would limit the temporary permits for engineering in Oregon, not to exceed six months. Currently, the permits can go on forever.
023	Ed Graham	Executive Secretary, State Board of Examiners for Engineering and Land Surveying, submits and summarizes a prepared statement in support of SB 121 (EXHIBIT A).
034	Rep. Montgomery	Asks if all Oregon citizens must take an exam before getting a permit.
037	Graham	Responds only those required to take the test are those offering engineering services. All persons who offer services in Oregon must qualify by examination.
040	Rep. Montgomery	Asks how the board knows someone from out of state is an engineer.
041	Graham	Responds that the board must wait for verification from the applicant's base state that the applicant has met all the requirements in Oregon prior to registration. They must take the exam and have the education and experience before they register in Oregon.
045	Rep. Montgomery	Notes SB 121 does not state the requirements.
045	Graham	Responds that the provision is in the law; this measure refers only to the temporary permit.
049	Rep. Taylor	Asks if there is a problem in the border areas of the state.
050	Graham	Responds the problem exists statewide, and that there is a law that allows individuals who are registered out of state to submit proposals for projects in Oregon prior to registration, and if awarded the contract, they will place an Oregon registrant in charge. Immediately upon receiving approval they make application for a permit so they can begin negotiations with the jurisdiction.
062	Rep. Taylor	Asks if there are projects that can be completed within six months.
064	Graham	Explains the reason for the six months permit is not to allow them to temporarily work in Oregon; they have to make application for registration. Generally, it takes no more than three months to complete the application process.
076	Chair Beyer	Asks if the people have to take the Oregon test.
078	Graham	Responds the individuals must meet the same requirements as Oregon applicants. They take a national examination consisting of 16 hours over an eight-year period.
082	Chair Beyer	Closes the public hearing and opens the work session on SB 121.
<u>SB 121 - WORK SESSION</u>		

086	Rep. Montgomery	MOTION: Moves SB 121 to the full committee with a DO PASS recommendation.
088		VOTE: 4-0
	Chair	Hearing no objection, declares the motion CARRIED. REP. MONTGOMERY will lead discussion in full committee.
091	Chair Beyer	Closes the work session on SB 121 and opens the public hearing on HB 2302.
<u>HB 2302 - PUBLIC HEARING</u>		
092	Putman	Reviews purpose of unlawful trade practices statutes and provisions of HB 2302.
125	Putman	Continues reviewing provisions of HB 2302.
158	Janet Chappell	Resident of Clackamas County and dissatisfied customer of an auto repair service, testifies in support of HB 2302.
		* approximately 40 other customers shared experience
		* tried to resolve complaints by talking to owner, writing to the Better Business Bureau, contacting the Oregon Department of Justice and contesting charges through Visa.
		* filed lawsuit in 1995; 16 of 40 dissatisfied customers remained as claimants and claimants dropped to eight when they became aware of loser-pays-all statute.
		* Attorney fees were between \$8,000 and \$10,000 as of November 6, 1996, and on January 27, 1997, the attorney fees had risen to \$27,000.
		* Case has been dismissed and if the case is not reinstated, the claimants will be liable for the attorney fees.
		* If compelled to pay fees, claimants may be forced into bankruptcy.
		* Claimants remain convinced they have strong case.
		* Urges amendment to cap the limit the defendant would have to pay.
247	John J. Beer	Automotive Mediation Services, submits and reads statement in support of HB 2302 (EXHIBIT B).
270	Beer	Continues reading statement.
300	Beer	Continues reading statement.
317	Rep. Montgomery	Asks if there are HB 2302-1 amendments.
	Putman	Responds it is his understanding amendments may be proposed.
341	Rep. Montgomery	Asks Mr. Beer who pays his fee.

	Beer	Responds the customer pays and the fee is non-refundable.
342	Rep. Taylor	Asks if the court makes the determination about unconscionable tactics.
	Beer	Reads ORS 646.607 (9)(a) covering unconscionable tactics.
364	Putman	Explains there are three definitions: unconscionable acts, deceptive acts, and unlawful acts.
370	Rep. Beyer	Asks how life insurance policies are involved.
379	Beer	Explains pressures from car dealers to sell insurance to customers.
TAPE 12, SIDE A		
010	Michael Zak	Resident of Multnomah County, submits and reads a prepared statement in support of HB 2302 (EXHIBIT C).
047	Rep. Montgomery	Asks if they attempted to return the car within three days.
	Zak	Explains they attempted to return the car, and the dealer refused to replace it and offered to fix some problems.
049	Rep. Montgomery	Comments Oregon should have usury laws.
052	Julie Brown	Chooses not to testify but submits prepared statement in support of HB 2302 (EXHIBIT D).
057	Pete Shepherd	Financial Fraud Section, Oregon Department of Justice (DOJ), submits prepared statement in support of HB 2302 and proposes amendments (EXHIBIT E).
	Shepherd	Explains amendments would eliminate all the proposed changes in the existing Unlawful Trade Practices Act except four: 1) an increase in the minimum damage award to a successful private party who prevailed in an unlawful trade practice claim from the present statutory amount of \$200 to \$750; 2) cap the attorney fees recoverable by a prevailing defendant in the sum of \$1,000 unless the defendant demonstrated to the court that the claim was frivolous, and the third and fourth changes relate to the civil investigative demand as explained by the committee administrator. The two changes relate to process involved in those civil investigative demands. The first relates to the time for the appeal of a challenge to those matters to a civil investigative demand, and the second relates to the method of serving .
098	Shepherd	Explains the Unlawful Trade Practices Act is the basic consumer protection statute which DOJ and individual citizens use to protect their rights in the market place.
103	Shepherd	Explains "civil investigative demand" is a pre-lawsuit discovery device, and the appeals process.
142	Shepherd	Explains DOJ is proposing that the rulings would not be appealable during the pendency of the investigation, but would be reviewable and appealable as part of any final judgment.

145	Shepherd	Adds the second change relating to civil investigative demands is to allow whatever form of service is reasonably calculated under all circumstances to give the person who is to receive and to give DOJ the information notice of the request, and to make sure they get the request.
176	Mark Gardner	Special Counsel to Attorney General, says the present attorney general did not draft the legislation; it was pre-session filed and the current administration has a different viewpoint.
		* The \$200 was in the original 1971 Act and was to act as a deterrent.
		* The idea of a cap on the attorney fee provision arises from the economic disadvantage of consumers to deal with businesses. Consumers should have to pay penalty for unsuccessful suit, but should not have to pay all attorney fees if they lose.
211		* Proposal is a middle position and department feels it is a better policy than the loser pays.
236	Rep. Taylor	Asks if the proposed changes would have served the consumers in the cases the committee heard today.
238	Gardner	Comments he was not in the room to hear the stories, but is aware of circumstances where people have not brought suit because they did not feel they could pay the fees if they lost.
240	Shepherd	Explains how the cap on attorney fees would apply.
257	Rep. Devlin	Asks Mr. Shepherd to distinguish the witnesses' circumstances from those described in Section 9 (4) of HB 2302.
282	Shepherd	Responds that the provision has to do with attorney fees awarded in class action lawsuits which are a specialized form of lawsuit in which a large number of individuals with claims are lumped together and decided as a group. Would guess the cases the committee heard today were not certified as a class action lawsuit. Class Action lawsuits are relatively rare under the Unlawful Trade Practices Act.
292	Chair Beyer	Asks if a customer can return an item within three days of purchase in Oregon.
299	Shepherd	Responds the three-day provision applies only to in-home sales, not the sale of automobiles.
323	Rep. Montgomery	Asks if this also applies to furniture.
	Shepherd	Responds affirmatively and adds car dealership complaints are most prevalent.
337	Rep. Montgomery	Asks what is "reasonable attorney fees."
342	Gardner	Responds "reasonable" is in the eye of the judge based upon his/her experience with the fees charged in the community, by the nature of the action, the amount of work done--when you see it,

		you know it, or if you see something that is not reasonable, you know that, too.
357	John Cosgrave	Attorney in private practice and member of Executive Board of the Consumer Law Section of the Oregon State Bar, testifies in support of HB 2302 in its original and amended form (EXHIBIT F).
391	Gardener	Comments "reasonable attorney fees" is an incentive for attorneys to proceed with meritorious claims.
TAPE 11, B		
024	Rep. Montgomery	Asks if the fees cited by Mr. Zak are reasonable.
028	Cosgrave	Responds it seems like a lot of money in a short period of time.
035	Darrell Fuller	Oregon Auto Dealers Association (OADA), submits and summarizes a prepared statement in opposition to HB 2302 (EXHIBIT G).
045	Fuller	Continues presentation and comments OADA believes the amendments are good with the exception of the statutory cap on a defendants recovery in a claim where the defendant prevails. OADA opposes capping only one side of a claim in a legal dispute.
090	Fuller	Continues presentation.
108	Ted Hughes	Oregon Manufactured Housing Association, believes their association is not ready to hug the bill, but understands the rationale and would like to iron out the differences. Page 5, line 2 says "and costs". Suggests that the bill be studied further to define the terminology.
131	Rep. Taylor	Asks if Mr. Hughes believes the problem needs to be addressed.
	Hughes	Agrees and believes it is a lawyer problem more than anything else.
150	Putman	Advises the committee he was aware of amendments but those before the committee are somewhat different than the ones he saw yesterday.
175	Chair Beyer	Closes public hearing on HB 2302 and opens the public hearing on HB 2328.
<u>HB 2328 - PUBLIC HEARING</u>		
176	Putman	Reviews provisions of the bill and notes there is a proposed substitute bill (EXHIBIT H).
218	Ross Laybourn	Oregon Department of Justice, sponsor of HB 2328, explains HB 2328 was drafted based on California law.
263	Laybourn	Submits chart on sales of hospitals from <u>The Chronicle of Philanthropy</u> (EXHIBIT I).

314	Laybourn	Explains HB 2328 brings together procedures with other Oregon Statutes. Procedures have been adapted from ORS 732.528 in the Insurance Code setting out the process where the Insurance Division reviews proposed sales of HMOs. The substitute bill (EXHIBIT H) contains other enhanced features: transfers to non profit, trade secrets, appeal process, acquiring party will pay for cost of review, if attorney general wants to recover costs, he must do so through an application fee, and attorney general would have authority to enforce.
367	Rep. Montgomery	Asks if hospitals have to pay the attorney general to do this.
	Laybourn	Responds they do not.
369	Rep. Montgomery	Asks if this says we would ask the hospitals to extend it to as much as 105 days and then pay the attorney general for giving them the permission to sell the hospital.
372	Laybourn	Responds affirmatively.
365	Karen Whitaker	Director, Office of Rural Health, Oregon Health Sciences University, and speaking for the Rural Health Coordinating Council, submits and reads a prepared statement in support of HB 2328 (EXHIBIT J).
TAPE 12, B		
036	Rep. Montgomery	Asks if Ms. Whitaker supports the proposed amendments.
	Whitaker	Responds she has only scanned them very quickly and they appear to be in the same spirit as the original bill.
045	Ed Patterson	Oregon Association of Hospitals and Health Systems, introduces Dan Field and explains their association includes the rural hospitals and other hospitals, a majority of which are not-for-profit institutions. There are three for-profit institutions in Oregon, and 31 small rural hospitals, most of which are not-for-profit. A little less than half are public hospitals which are not affected by this legislation. Submits and summarizes a prepared statement (EXHIBIT K) in support of the substitute bill to HB 2328 (EXHIBIT H).
085	Rep. Montgomery	Asks if county-owned hospitals would be covered.
	Patterson	Responds they would not be covered.
088	Dan Field	Oregon Association of Hospitals and Health Systems, comments the timeline and costs were important considerations for the association and believes under the current authority the attorney general has, he/she could simply refuse to approve a transaction by challenging it in the courts. Without a timeline the attorney general's challenge could drattorney general the sale or conversion of a hospital out indefinitely. Adds the association is agreeing to have the acquiring party, not the hospital itself, be responsible for

		the costs if the attorney general chooses to challenge the transaction
111	Ian Timms	Oregon Rural Health Association, submits and reads a prepared statement (EXHIBIT L) in support of the substitute bill for HB 2328.
162	Putman	Asks if staff should take the proposed substitute bill to Legislative Counsel to be drafted as amendments to HB 2328.
	Chair Beyer	Responds affirmatively.
167	Rep. Devlin	Asks if there is an identification list of hospitals in Oregon.
		From the audience, Mr. Patterson agrees to provide list of hospitals.
177	Chair Beyer	Closes public hearing on HB 2328 and opens public hearing on HB 2080.
<u>HB 2080 - PUBLIC HEARING</u>		
180	Putman	Reviews provisions of HB 2080 and calls members attention to the Fiscal Impact statement (EXHIBIT M).
207	Chair Beyer	Advises the subcommittee that because the Governor's budget does include the fees in HB 2080 and the board's budget is in Ways and Means, it doesn't mean the committee must approve HB 2080.
211	Rep. Montgomery	Notes HB 2080 does not have a subsequent referral to Ways and Means.
213	Putman	Advises it is his understanding that committees have a considerable amount of latitude on whether to send the bill to Ways and Means, but the committee may want to send it to Ways and Mans, and that he will check prior to final action by the full Commerce Committee, if the committee wishes.
222	Peggy Dooley	Chair, State Board of Tax Service Examiners, submits a prepared statement, an explanation of HB 2080, and a brochure for consumers on tax preparers (EXHIBIT N), and reads prepared statement.
285		Issues discussed:
		* About 4,000 are licensed by the board
		* Most licensees are aware of the increase.
293	.	* Board has four employees.
297		* Current budget of the board consists of revenue of \$568,154 and does not include a revenue transfer for supportive services from the Secretary of State's office. The board's expenditures were \$664,664 including the support services costs.
322	Putman	Explains the board is requesting a budget of \$700,000 in fees, an increase from the current budget. Of the \$700,000, \$100,000 would come from the fee increase in HB 2080.

333	Chair Beyer	Asks if licensees also belong to organizations.
334	Dooley	Explains there are several associations and agrees the licensees pay a fee to join the organizations, and that the associations put out newsletters and provide educational opportunities because the law requires 30 hours of education each year in order to renew the license.
352	Rep. Taylor	Advises she has checked with tax preparers and businesses in Scapposse and they have no objection to the bill. They consider it a cost of doing business and they trust the board.
360	Chair Beyer	Asks if the people have to take a test or simply pay a fee to get a license.
360	Dooley	Reviews licensing requirements.
378	Chair Beyer	Closes the public hearing on HB 2080 and asks if members wish to hold a work session on the bill.
384	Rep. Montgomery	Comments he would have no problem having a work session but another committee is waiting to act on fee bills until the overall budget is settled.
393	Putman	Notes there is no revenue impact on HB 2080.
404	Chair Beyer	Opens work session on HB 2080.
<u>HB 2080</u> <u>-WORK</u> <u>SESSION</u>		
405	Rep. Taylor	MOTION: Moves HB 2080 to the full committee with a DO PASS recommendation.
410	Rep. Montgomery	Comments he will not vote against the bill but wants to have an option of changing his vote in full committee.
413	Chair Beyer	Comments he will not vote against HB 2080 in moving it to the full committee, but will not commit to endorsing it in full committee.
418		VOTE: 4-0
	Chair	Hearing no objection, declares the motion CARRIED. REP. TAYLOR will lead discussion in full committee.
404	Putman	Asks if he should check to see if the measure should to go Ways and Means.
429	Rep. Montgomery	Suggests it would be a good idea.
416	Chair Beyer	Comments staff should check to see if HB 2080 should be sent to Ways and Means, closes public hearing on HB 2080 and adjourns meeting at 10:24 a.m.

Submitted By, Reviewed By,

Annetta Mullins, Keith Putman,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 121, prepared statement, Ed Graham, 1 p

B - HB 2302, prepared statement, Automotive Mediation Services, John Beer, 2 pp

C - HB 2302, prepared statement, Michael Zak, 1 p

D - HB 2302, prepared statement, Julie Brown, 1 p

E - HB 2302, prepared statement and proposed amendments, Pete Shepherd, 3 pp

F - HB 2302, prepared statement, John Cosgrove, 4 pp

G - HB 2302, prepared statement, Darrell Fuller, 3 pp

H - HB 2328, substitute bill, Ross Laybourn, 4 pp

I - HB 2328, list from The Chronicle of Philanthropy, Ross Laybourn, 1 p

J - HB 2328, prepared statement and brochure, Karen Whitaker, 6 pp

K - HB 2328, prepared statement, Ed Patterson, 4 pp

L - HB 2328, prepared statement, Ian Timm, 1 p

M - HB 2080, Fiscal Impact Statement, staff, 1 p

N - HB 2080, prepared statement, explanation of measure and brochure, Peggy Dooley, 8 pp