

HOUSE COMMITTEE ON GENERAL GOVERNMENT

February 26, 1997 Hearing Room D

1:00 P.M. Tapes 32-33

MEMBERS PRESENT:

Rep. Ken Strobeck, Chair

Rep. Dan Gardner, Vice-Chair

Rep. Jim Hill

Rep. Bob Montgomery

Rep. Kurt Schrader

Rep. Liz VanLeeuwen

Rep. Tom Whelan

STAFF PRESENT:

Jeri Chenelle, Administrator

Coben Tistadt, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing on House Measure 2321

Public Hearing on House Measure 2322

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 32, A		
004	Chair Strobeck	Opens meeting at 1:04 P.M. Opens public hearing on HB 2321.
<u>PUBLIC HEARING ON HB 2321</u>		
010	Chenelle	Gives brief summary of the bill.
		Assistant Attorney General at the Department of Justice. Submits written testimony (EXHIBIT A). Cites the large number of discussions which

036	Suzanne Townsend	have occurred on large wayward state contracts, and subsequent investigations into state contracting procedures. Notes recommendations made to DOJ to be creative and pro-active, resulting in HB 2321. Reports that presently DOJ reviews smaller contracts but not the larger ones, e.g., construction contracts.
080	Chair Strobeck	Asks who's responsible for drafting contracts.
083	Townsend	Answers that a "draft person" in the agency drafts the contracts. Notes that contractors often have legal review while the state does not. Draws distinction between DOJ's role in personal service contracts and its role in construction contracts. Expresses desire for a change in the interaction between DOJ and agencies. Notes that DOJ is generally the "last stop" for a contract, and that DOJ's suggestions at that point aren't welcome. Notes that contracts not dealing with legal sufficiency are likely to bypass DOJ, e.g. hard-to-manage technology contracts.
135	Townsend	Talks about legal review requirements in the bill for personal services contracts, information technology contracts, and the purchase of goods contracts. Notes that some contracts are exempt, but that they require training. States that changing a contract is easier at the beginning of the process. Mentions the workload of DOJ. Cites a need for more staffing with the passage of the bill.
185	Townsend	Continues presentation. Suggests going to the Emergency Board once staffing needs are determined. Predicts that 2 to 6 new employees will be needed.
210	Rep. VanLeeuwen	Asks about higher education's contracts.
216	Townsend	States that there is presently no requirement for legal review but that the bill would require higher education's contracts to pass through DOJ. Reports that DOJ reviews less than half of the dollars spent on state contracts.
258	Rep. Schrader	Asks if all state agencies have legal counsel.
261	Townsend	Answers that most do not. Notes a few exceptions.
268	Rep. Schrader	Asks if most contracts are entered into with no legal review.
278	Townsend	Answers affirmatively. Mentions the number of contracts seen by her "section," noting that a lot are smaller contracts which the department would rather not see.
297	Rep. Schrader	Asks for the percentage of contracts that are small.
300	Townsend	Answers that she doesn't have the numbers.
301	Rep. Schrader	Refers to Section 2 of the bill, asks if it covers all contracts minus labor contracts.
303	Townsend	Responds that it is all-inclusive.

304	Rep. Schrader	Mentions that the Department of Motor Vehicles contract was a personal service contract over \$50,000. Asks what is to prevent it from happening again
312	Townsend	States that the DMV contract is a good example of DOJ "coming in at the tail end of the process." Cites that there was extensive planning by DMV before they signed, and that DOJ was asked to check simply for legality and not content.
339	Rep. Schrader	Expresses uncertainty over the witness' answer. Asks for the definition of legal sufficiency. Asks if gratuitous benefits like unlimited free travel fare would pass legality standard. Asks if the committee should establish policy on what should or should not be included in state contracts.
353	Townsend	Answers that in defining legal sufficiency DOJ could use direction from the legislature. Notes that "problem points are often business issues," and that DOJ develops legal policy but not business policy.
392	Rep. Schrader	Asks which issues give DOJ the most "hassle." Suggests that the committee could help with legislation.
394	Townsend	Answers that she will provide the committee that information.
399	Chair Strobeck	Points out that the attorney general reviewed the DMV contract prior to DMV entering it. Cites the proposed bill's legal review requirement and asks when that review would take place.
420	Townsend	Answers that the review would be required before the contract could become "binding" and before the request for proposal (RFP). Cites numerous difficulties in defining legal sufficiency and that DOJ's increased involvement would reduce those difficulties.
464	Chair Strobeck	Asks how an agency can "bind the state of Oregon to a contract" without having an attorney's signature.
TAPE 33, A		
028	Townsend	Responds that in some cases an agency's signature is sufficient
034	Rep. Hill	Interjects that the issue is "common sense." Asks why Jon Yunker or someone doesn't mandate that agencies seek legal counsel. Suggests legislation is neither the quickest nor the most efficient implementation of such policy, and that the requisite authority is in place today.
054	Townsend	Notes that Jon Yunker could issue such a mandate for executive agencies but not for others. Mentions that the bill will have a staffing impact, and that it will send a message to agencies that the legislature wants DOJ review. Cites a "culture" which doesn't consider legal review necessary.
076	Rep. VanLeeuwen	States that DOJ had the authority to act with the DMV contract and didn't. Wonders how the bill will change anything.
080	Townsend	Disagrees that DOJ had the authority to reject the DMV contract for legal sufficiency, noting that the standard for legal sufficiency is low. Recalls that the contract passed legal sufficiency but was extremely difficult to understand. States that management and business choices are not within the purview of the department.

113	Rep. VanLeeuwen	Asks if agencies are billed for legal review.
114	Townsend	Answers affirmatively. Cites that the rates have made agencies reluctant to seek legal review.
121	Rep. Montgomery	Asks for DOJ's hourly rate.
124	Townsend	Answers \$72/hr. Cites efforts to increase that to \$80/hr.
128	Rep. Montgomery	Notes rates are being paid with tax dollars.
135	Rep. Schrader	Announces that if additional staffing is granted he would like to see greater accountability for contract mismanagement.
144	Townsend	Agrees.
146	Rep. Strobeck	Asks for the motivating factor behind drafting the bill.
149	Townsend	Refers to large contracts which have had a lot of press, and cites the uncertainty concerning DOJ's role in those contracts.
160	Chair Strobeck	Asks if the witness is referring to DMV.
162	Townsend	Responds that there were others.
168	Chair Strobeck	Asks if the bill would create "significant savings."
176	Townsend	Opines yes. Mentions that agencies face strict budgets and are typically shortsighted.
184	Rep. Schrader	Asks about the state's obligation to pay for cost overruns.
193	Townsend	Notes that training and thorough planning reduce the risk of cost overruns. Mentions that agencies sometimes get in a hurry.
210	Rep. Hill	Asks if DOJ has laid off attorneys because agencies didn't ask for DOJ's services.
222	Townsend	Answers that she is not aware of that ever happening.
233	Rep. Hill	Discusses moving funds into the general fund, and asks if it would change agencies' reluctance to seek legal review.
243	Townsend	Agrees that that would be effective.
246	Chair Strobeck	Thanks Mrs. Townsend. Calls the next witness.
250	Carol Ann Kirby	Business Manager of the Secretary of State. Reports that the Secretary of State seeks the attorney general's advice before procurement. Agrees with Rep. Hill that the bill is common sense.
300	Kirby	Gives an example of the attorney general predicting future problems with a contract and thus facilitating its termination. Talks in general of the Secretary of State's use of legal review.

350	Kirby	Mentions that the legal bill is well worth it. Cites a need to change the culture.
376	Chair Strobeck	Thanks the witness, calls next witness.
380	Cam Birnie	Administrator of the Transportation, Purchasing, and Print Services Division of the Department of Administrative Services. Supports the bill. Mentions SB 139 relating to purchasing contracts, and that it involves DAS at the "front end" of purchasing contracts. Mentions HB 2321 and compares the different roles set up for DAS in SB 139 and for DOJ in HB 2321. Mentions that DAS currently reviews all personal service contracts over \$1000, yet the review takes place "after the fact."
TAPE 32, B		
030	Rep. Hill	Asks about conversations with Jon Yunker in this area.
033	Birnie	Mentions discussions with the governor's cabinet concluding that agencies need more training as well as greater involvement by DAS and DOJ.
040	Rep. Hill	Notes that agencies often have attorneys. Wonders why the bill is needed.
048	Birnie	States that there are many purchasing process questions faced when drafting a contract.
063	Rep. Hill	Asks why there is difficulty instituting good policy. Reiterates that it should happen without legislation
072	Birnie	Notes the reluctance among agencies.
077	Rep. Hill	Suggests that the governor find new heads of agencies.
081	Rep. Schrader	Agrees. States that drafting should be done by someone qualified inside the agency instead of increasing DOJ staffing.
095	Birnie	Mentions suggestions "surrounding" SB 139.
106	Rep. Schrader	Questions why the state must train someone. States that the state should hire qualified individuals from the private sector.
110	Rep. VanLeeuwen	Notes that SB 139 and HB 2321 don't address the same statutes. Asks for similarities.
123	Birnie	Answers that SB 139 deals with ORS 279 and ORS 291.021.
138	Rep. VanLeeuwen	Asks the witness where those statutes are found in the SB 139.
141	Birnie	Responds.
145	Rep. Hill	Points out that ORS 291 is referred to on the last line of the bill.
147	Birnie	Mentions the statutes were previously "on their own," but with passage of proposed legislation "they are coming together."
154	Chair Strobeck	Expresses concern over the agencies' failure to follow the leadership of the "people's representatives." Expresses wonder that legal review hasn't become the standard for large contracts.
		Director of Legal Services for the Department of Higher Education.

166	Melinda Greer	Cites her department's extensive use of the attorney general. Mentions that there are employees within her department specifically qualified to manage contracts.
200	Rep. Hill	Asks if the department has "objective rules" for the purchasing process.
210	Greer	Answers that there are different procedures for different dollar amounts.
222	Rep. Schrader	Asks if all agencies have contract managers.
224	Greer	Responds that she isn't sure.
227	Rep. Schrader	Asks if the witness can produce that information.
228	Greer	Answers yes.
230	Gary Conkling	Representing Associated General Contractors (AGC). Cites Section 2, Line 10 and urges approval of contracts be made before contracts are entered into thereby insuring those contracts. Asks for the definitions of "public contracts" and "public improvement," noting that they are different than those found in ORS 279.011. States that the AGC is neither for nor against the bill.
258	Chair Strobeck	Asks if the witness is recommending legal review occur before entering a contract.
260	Conkling	Answers yes. Notes that his association seeks clarity on the issue.
276	Chair Strobeck	Calls the meeting to recess.
280	Chair Strobeck	Calls the meeting back to order. Opens public hearing on HB 2322.
<u>PUBLIC HEARING ON HB 2322</u>		
285	Chenelle	Gives an overview of the bill.
306	Bill Cloran	Assistant Attorney General. Submits written testimony (EXHIBIT B). Discusses the aim of HB 2322. States that the bill "separates protests over form of solicitation from protests of the award."
356	Cloran	Distinguishes between different protests. Mentions the time frames for filing different protests.
406	Cloran	Continues discussion on time frames noting the different policy of the federal government. Reports that government agencies typically win protest litigation.
456	Cloran	Continues discussion on HB 2322 citing limitations on appeals. States that litigation can indefinitely delay progress on a contract.
<u>TAPE 33, B</u>		
052	Rep. Gardner	Asks for time frames proposed by the legislation.
055	Cloran	Responds that the proposed legislation shortens the process to sixty-five

		days.
057	Rep. Gardner	Asks if such a delay has ever occurred.
059	Cloran	Answers that it has not happened yet. Discusses ORS 279.067, the current process, and the aims of the legislation.
084	Rep. Gardner	Asks if the bill disallows construction trade associations from filing suits.
093	Cloran	Answers yes. States that ORS 279.067 is suspect.
100	Rep. Gardner	Asks if that is the witness' personal opinion.
103	Cloran	Cites a lack of pertaining cases; states that the statute has been "dead letter."
111	Rep. Gardner	Asks if it is a "dead letter," then why get rid of it.
116	Cloran	Suggests amendments that would allow all trade associations to file as currently the construction association can, and that filers of suits must have a financial stake in the matter.
130	Chair Strobeck	Cites Line 28 on page 1 and Line 30 on page 2. Asks how there can be possible guarantees that the courts will hear the cases in 30 days.
135	Cloran	Answers that the courts take direction from the legislature.
147	Rep. VanLeeuwen	Asks about the "prejudice" language on Line 30.
160	Cloran	Answers that the same dispute cannot be filed twice.
152	Gary Conkling	<p>Representing Associated General Contractors. Lists association's suggestions:</p> <ul style="list-style-type: none"> * that trade associations be allowed to bring actions * that an allowance be made so that suits can be filed in the county of the protester * that attorney fees be rewarded to the winner * that the failure of court to decide within 30 days shouldn't result in dismissal of the protest * that standard of review should include errors of law by the agency * that Subsection 7 of Section 3, which allows no redress for a contractor who has already performed work, be omitted
195	Chair Strobeck	Asks for the stance of the committee.
200	Rep. Gardner	States that he likes the bill but that there are some problems.

206	Tim Green	Oregon School Board Representative. States that the bill would require school board to hire attorneys. Questions language surrounding the requirement put on school boards to issue "written decisions." Mentions Conkling's proposals and expresses great concern over them.
239	Rep. Montgomery	Concurs with the witness.
247	Chair Strobeck	Adjourns meeting at 2:54 P.M.

Submitted by, Reviewed By,

Coben Tistadt, Jeri Chenelle,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2321, written testimony, Suzanne Townsend, 2 pp.

B - HB 2322, written testimony, William Cloran, 4 pp.