

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

Hearing Room
Tapes - 142

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Mike Lehman, Vice-Chair
Rep. Bev Clarno
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Bill Markham
Rep. Lonnie Roberts
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck
Rep. Sharon Wylie

STAFF PRESENT:

Greg Moore, Committee Counsel
Anne Tweedt, Committee Counsel
Annetta Mullins, Committee Assistant

MEASURES HEARD:

HB 2125 - WORK SESSION
SB 266 A - WORK SESSION
HB 3384 - WORK SESSION
SB 382 A - WORK SESSION
HB 3222 - WORK SESSION
SB 132 A - WORK SESSION

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

008 CHAIR TIERNAN: Calls the meeting to order at 1:44 p.m., announces that SB 719 is being scheduled for Friday and opens the work session on SB 266 A.

SB 266 A - WORK SESSION

016 MR. MOORE: Review the provisions of the bill and proposed amendments (EXHIBIT A)
052 > five proposed amendments to the bill previously received by the committee

062 CHAIR TIERNAN: Is anybody in the audience opposed to the -A10 amendments?

NO RESPONSE FROM THE AUDIENCE.

MR. MOORE: Explains the -A13, May 3 conceptual amendment and the May 5 Bass PLC's amendments (EXHIBIT A).

119 CHAIR TIERNAN: Is anyone in the audience in opposition to the Bass Ale amendments? Notes two objections.

122 CHAIR TIERNAN: Assumes there is opposition to the -A13 amendments and asks if anyone is opposed to the -A14 amendments. Notes one objection.

148 MOTION: REP. JOHNSTON moves that the SB 266-A10 amendments BE ADOPTED.

150 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the motion PASSED. REP. WYLIE IS EXCUSED.

150 MR. MOORE: Reviews the -A14 amendments.

156 MOTION: CHAIR TIERNAN moves that the SB 266-A14 amendment BE ADOPTED.

157 VOTE: CHAIR TIERNAN, hearing no objection, declares the motion PASSED. REP. WYLIE IS EXCUSED.

158 MR. MOORE: Explains the May 3, 1995, amendments proposed by the Oregon Beer and Wine Distributors Association.

167 REP. JOHNSTON: Asks if Miller and Anheuser Bush would be allowed to

sell their 5.7 alcohol content products as beer under the amendment?

171 MR. MOORE: That is correct. There are some products that still would not be beer. It is an industry compromise.

REP. JOHNSTON: Comments he would like to go to 5.7 percent.

183 MARK NELSON, Anheuser Bush: Anheuser Bush's product is about 5.2 and the amendment will cover it. It allows the industry to call beer what is now called ale. It is a packaging issue and does nothing more.

189 REP. ROBERTS: Isn't ale a malt?

190 MR. NELSON: That is correct. Beer is also a malt beverage. We can call it ale now but prefer to call it beer because from our standpoint it is beer.

197 CHAIR TIERNAN: Is there any malt that has 5.7? If we moved the content to 5.7, would that include them all?

199 MR. NELSON: I believe there are.

201 PAUL ROMAIN, Oregon Beer and Wine Distributors Association: This is more of a brewery fight than anything else. It concerns the ice bears. Some are over 5.5 percent and some are under 5.5 percent; almost all are over five percent by volume. 5.5 was a compromise position by the industry. Technically speaking there are some beers that are called beer everywhere else in the county but here they are called ice. There are other products above 5.5.
5.7 would encompass most of them.

218 MOTION: REP. JOHNSTON moves that the May 3, 1995, conceptual amendment by the Oregon Beer and Wine Distributors Association be amended to increase the alcohol content to 5.7 percent.

220 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the motion PASSED. REPS. STARR AND WYLIE ARE EXCUSED.

224 MR. MOORE: Explains that the May 3, 1995 proposed amendments also doubles the alcohol content of malt beverages sold by wholesalers.

235 MR. ROMAIN: We already sell these products; we can sell all malt beverage products and they range up to 14 percent. You can go to a distributor and buy a keg of beer. We are technically restricted to selling that which is called beer and can't sell some of the ales or stouts that are available from some of the micro breweries. A person can buy it from a tavern and the association is saying they should be allowed to sell it over the dock. It is already available and is violated more than it is adhered to. The amendment doesn't change anything in the real world.

254 REP. JOHNSTON: Comments he thinks this reflects the reality of the changing beer industry.

279 MOTION: REP. JOHNSTON moves that the May 3, 1995, amendments, proposed by the Oregon Beer and Wine Distributors, as amended, BE ADOPTED.

281 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the motion PASSED. REPS. WYLIE AND STARR ARE EXCUSED.

283 MR. MOORE: Explains the May 5, 1995, amendments proposed by Bass PLC.

297 MOTION: CHAIR TIERNAN, moves that the May 5, 1995 amendments proposed by Bass PLC, BE ADOPTED.

297 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the motion PASSED. REP. WYLIE IS EXCUSED.

A statement submitted by Sarah Hackett, League of Oregon Cities, is hereby made a part of these minutes (EXHIBIT B).

A statement FAXED to the committee from Gary Smith, Executive Director of The Oregon Partnership, Inc., is hereby made a part of these minutes (EXHIBIT C).

A letter received from Charles Stull for the Oregon Association of Chiefs of Police is hereby made a part of these minutes (EXHIBIT D).

A letter received from Portland Chief of Police Charles Moose is hereby made a part of these minutes (EXHIBIT E).

A letter received from Portland Mayor Vera Katz is hereby made a part of these minutes (EXHIBIT F).

A letter received from Harvey A. Hochfeld, President, The Bee Company, Inc., is hereby made a part of these minute (EXHIBIT G).

A letter received from Susan Ziglinski, Coalition Coordinator, Regional Drug Initiative, is hereby made a part of these minutes (EXHIBIT H).

332 MR. MOORE: Explains the A-13 amendments proposed by the Oregon Restaurant Association.

A statement from Mike McCallum, Oregon Restaurant Association and the SB 266-A13 amendments are hereby made a part of these minutes (EXHIBIT I).

383 REP. HAYDEN: What is the difference between SB 266, its precursor SB 126 and the -A12 amendments?

386 MR. MOORE: The main difference is the evidence that can be used. The -A13 amendments will require that the police report or more formal complaint be filed for the OLCC to take disciplinary action against the licensee. Currently the OLCC has more latitude. The differences in the -A11, -A12 and -A13 amendments are very minor. Mr. McCallum is not concerned with the -A11 or -A12 amendments, but just the -A13.

408 BILL MORRISSETTE, Mayor, City of Springfield: Testifies in opposition to the -A11 amendments.

> cities are concerned about local control in pulling a license; submits and reviews packet of letters from cities (EXHIBIT J)

450 > concern is SB 266-A is taking a step in the opposite direction of local control

> believes substantial changes are being made; on page 2 of OLCC impact statement provides information comparing current law and the SB 266-A13 amendment (EXHIBIT K)

TAPE 140, A

015 > Springfield will question several establishments when the time comes because Springfield has passed a more stringent ordinance. One establishment has 949 police calls and is currently on probation by OLCC. Many incidents happened in the parking lot. With new amendment, unless you

can trace it to someone seeing them in the establishment having a drink, it

doesn't matter what they do in the parking lot.

> cities don't want to weaken the control of the existing law and the OLCC to work with the cities to resolve the issues

024 CHAIR TIERNAN: Does this amendment only apply if the establishment owns the parking lot?

MR. MORRISSETTE: The amendment would apply to any behavior going on in the neighborhood, with the behavior being traced back to someone seeing them drinking in the bar. The existing law says if the police are called to the establishment, the connection can be made. OLCC is very thorough in examination of the incidents and so is police department.

047 CHAIR TIERNAN: This bill applies to the liquor license. Does it create any other liability for the activity that goes on out in the parking lot?

MR. MORRISSETTE: There is liability under the existing law to the establishment of what goes on in the parking lot. This would lessen the liability of the establishment for what goes on in the parking lot.

044 CHRIS LYONS, OLCC: Submits and reviews an analysis of what the law does and what the commission believes the amendments do (EXHIBIT K).

085 MS. LYONS: Continues her statement.

129 MS. LYONS: Continues her statement.

167 REP. JOHNSTON: Would you agree there is supposed to be some nexus between the objectionable behavior and the activity of the license holder.

171 MS. LYONS: The OLCC cannot take an action unless they can show that nexus factually.

175 REP. JOHNSTON: Where we currently say "resulting from the sale", would it meet your needs if we substituted "is sufficiently related to the sale, service or consumption of alcohol...?"

183 MS. LYONS: Believes the conflict would still exist. Changing of the language will not change the approach the OLCC takes and the industry will still object to being held responsible for activities of their customers.

193 REP. JOHNSTON: Believes they have to solve each case as they come up. They would have to demonstrate to the hearings officer that this nexus exists and an adequate body of law would be developed to determine that.

200 CHAIR TIERNAN: There has to be some relationship. Gives example of person going to a third bar who does something unlawful outside that third bar and suggest the third bar should have no responsibility for that person's actions.

220 MS. LYONS: Responds the OLCC would have to prove that consumption of alcohol had taken place inside the bar. We have interpreted the statute that when the bar is predominantly serving alcohol that if someone was inside that bar for a couple of hours, drank pop and ate peanuts, there was

still a liquor law violation that occurred, or a law violation that occurred; that would be an incident. That one situation would not cause a liquor license to be taken away but it would be part of the history of problems associated with that premise.

231 CHAIR TIERNAN: Your review doesn't focus on the responsibility of the bar owner because he could be doing everything possible to control his bar and customers, but if something does happen outside his establishment, it

will be used against him even if he were the best bar owner.

MS. LYONS: The commission would work with the licensee. The statute says the customer has to be both willing and able to control the premises and the impact on the community. If it is clear the licensee is trying but the

neighborhood is being impacted by the business, the OLCC would move to take

that license away. From a neighborhood standpoint, they don't think the OLCC moves quickly enough. The statute says there must be adequate control.

263 Discussion continues on responsibility of liquor licensees for activities on their premises and in the neighborhood.

299 REP. JOHNSTON: I disagree the establishment should be responsible for those who may be in line and are involved in an altercation.

319 REP. MARKHAM: How many licensees do you have?

320 MS. LYONS: About 5,000. The statute was not used during the first two years. It was used as an educational tool and in the last three years the commission has canceled or not renewed seven licenses and has restricted 18

licenses instructing them to change their operation.

349 REP. LEHMAN: I have seen police reports that indicated bars and taverns

had more activity in the parking lot than inside. A narcotics unit did nothing but parking lot surveillance and made a lot of arrests for narcotics transactions in cars. Under current law, do you have the ability

to have some impact on a licensee if activity is going on in the parking lot? And would it be impacted if the amendment is adopted?

365 MS. LYONS: If there is illegal activity in a parking lot and if we could not show they intended to go in or had not been in the bar, we would not use the information. There is another statute that says the licensee knew or should have known the activity was taking place. Staff spends a lot

of time sorting through police reports to see if there is a reasonable connection between the bar and illegal activity. The staff reminded me that before we take action, we have to show the history is serious and persistent. We are talking about patterns and a history of problems that are accumulating.

402 REP. ROSS: You are talking about a history of problems and you do not take action on the first fight. What kind of action do you take after the fifth fight?

411 MS. LYONS: We work with the licensees. We put them on compliance plan for approximately one year.

REP. ROSS: The question is whether the business is a magnet for illegal activity in a persistent kind of pattern over a period of time.

MS. LYONS: Responds the statute talks about a history of serious and persistent problems.

440 REP. ROSS: Safeway talked about if we don't have this amendment, OLCC will be accosting people in a Safeway parking lot. Are you going around to

Safeway Stores parking lots picking up people?

TAPE 139, B

018 MS. LYONS: We are not. Explains complaints were received from the City

of Portland Police Department and Park Bureau about illegal drinking in a park across the street from a convenience store. OLCC was not able to show

that the individual had purchased the alcohol and drank in the park and did

not use that.

032 MIKE MCCALLUM, Oregon Restaurant Association: ORA feels the SB 266-A13 is a technical amendment. We believe the committee that voted on this issue and included language that said actions had to be connected to the exercise of the license privilege. We seek to clarify the legislative intent from 1991 and that is why we have submitted the language that talks about incidents that "result from the sale, service or consumption of alcoholic product....". Make us accountable. We cannot control all behavior and that is what the A13 amendments do. In terms of controlling establishments outside the premises, this amendment makes us responsible for incidents in the parking lots.

061 MR. MORRISSETTE: We need to protect the neighborhoods. The presence of certain establishments in cities create problems. They should be held responsible. We don't go looking for people in parking lots, but 900 violations is too much. We will continue to push for local control.

078 REP. GORDLY: Supports testimony that will be given by Deputy Chief Webber and Ken Edwards.

097 KENNETH EDWARDS, Crime Prevention Specialist: Submits and summarizes a prepared statement in opposition to the SB 266-A13 amendments (EXHIBIT L).

137 ROBERTA WEBBER, ASSISTANT PORTLAND POLICE BUREAU: Submits a letter from Mayor Vera Katz (EXHIBIT F) and testifies in opposition to the -A13

amendments.

> do not send police officers to respond to people urinating in somebody's front yard, nor officers at a high rate of speed to drug deals in parking lots

> have trained people in Portland to make detailed observations about what goes on around problem liquor establishments; without their observations, documentation is not going to occur

> one establishment was sold and next owner chose not to get a liquor license; eight people within a four-month period were shot within one-half block of the place; could not prove that any of those people had consumed a

drink in the establishment

> the requirement that they have to prove that the sale occurred prior the incident or illegal act is ludicrous; will not be able to deal with having to have that standard of proof.

195 MR. MCCALLUM: Responds that OAR thinks the neighborhood input will still be adequately considered and won't be changed. The language is on line 17 of the A13 amendments and talks about items that are documented in the public records of a law enforcement agency. Actions that are held against a licensee ought to have some connection to his own actions in terms of sale or service of the product.

216 DEPUTY CHIEF WEBBER: If we can't depend on citizen logs of those things going on, we have lost the documentation.

219 MS. LYONS: We have laid out the documentation that would be needed (EXHIBIT K, page 2).

A citizen complaint would be valid but the problems that are documented by a law enforcement agency, either the OLCC or law enforcement, must show those problems resulted from the sale of alcohol. Citizen observation would

not be valid unless the citizen sees the sale.

238 Committee members and Ms. Lyons discuss reasons licensees are on probation, neighborhood involvement and OLCC's enforcement activities.

301 REP. ROBERTS: Comments he wants to make certain the -A13 amendments are a vital part.

307 REP. WYLIE: (Mr. McCallum) why do you need to do anything with this--what are the problems with the industry?

312 MR. MCCALLUM: Records are being created on every licensee and they may not be for things the licensee has any control over. Licensees are currently forced to defend against the allegations that are included in the

record when the licensee goes before the city councils for the renewal process or when they go in front of the OLCC for license renewal.

331 REP. LEHMAN: Would you agree the license violations and cancellations numbers are the extent of the problem? And, how many of those problems would go away under the amendment?

342 MR. MCCALLUM: I don't believe that is the extent of the law? Records are being created every day. I believe for the places on the list there was more than adequate reason for revocation without SB 126.

360 REP. LEHMAN: You are saying if the -A13 amendment were it place, it would not have affected any of the cases.

361 MR. MCCALLUM: I believe all of those licenses would have been canceled even with the -A13 amendment.

394 REP. STROBECK: Mr. McCallum has used the phrase "related to the sale of alcohol". Some of the concern from people opposing the -A13 amendment has to do with the language "resulting from". Suggest the committee in line 13

of amendment make reference to the relationship to the sale. We might want to look at lines 4, 7 and 19 and replace "resulting from" language with "relating to". That would put it back in direct connection with the presence of alcohol and not necessarily having to force a tie to a person actually consuming the alcohol at the location.

419 REP. JOHNSTON: The suggestion moves in the right direction. OLCC intends there be a connection between those two things. I like "relating to". It is broader, but I would like the statutes to say that--conceptually that they establish a nexus between the two things. Not in favor of too broad an interpretation of it.

436 REP. HAYDEN: Comments SB 266 was meant to be a housekeeping bill. I support the status quo and the current law. The amendments are opposed by

the League of Oregon Cities, by the Oregon Police Chiefs Association, the City of Portland and Chief Moose. We should vote on the main bill.

448 REP. LEHMAN: We have local groups saying leave it like it is and Mr. McCallum says the establishments are responding to neighborhoods in their neighborhoods. It is not a problem and why should we mess with it.

468 REP. ROSS: I support Rep. Hayden's motion, but thinks there is a dram of truth, and comments if people are being accused of something and there is no proof that anything is wrong, we need to be vigilant. OLCC has said the licensee must have a pattern and they will take corrective action to

clear up the problems. Those things mitigate the fact that this is something that is done over time. But we must be vigilant about any state agency that is going to victimize a private individual who is carrying on their work. We will want to look at that if someone brings back information next session that private businesses are being unduly harassed.

TAPE 140, B

039 MOTION: REP. HAYDEN moves that SB 266 A, as amended, be sent to the
Floor with a DO PASS RECOMMENDATION,

042 VOTE: In a roll call vote, all members present vote AYE. REP. GRISHAM
IS EXCUSED.

048 CHAIR TIERNAN: Declares the motion PASSED. REP. ROSS will lead
discussion on the Floor.

060 CHAIR TIERNAN: Announces that SB 203 will be carried over to Friday's
agenda and opens the work session on HB 3384.

HB 3384 - WORK SESSION

A news clipping from The Oregonian, May 10, 1995, is hereby made a part of
these minutes (EXHIBIT N).

072 MS. TWEEDT: Reviews the provisions of HB 3384 and advises the members
to delete a portion of the language in 4 of the conceptual amendment
(EXHIBIT M) because the provision is included in 3 of the conceptual
amendments.

094 REP. JOHNSTON: Explains he and Rep. Strobeck met at the direction of
the chair and suggest the conceptual amendments (EXHIBIT M). He reviews
the amendments.

167 REP. STROBECK: Adds that he and Rep. Johnston also discussed including
the simulation of these kinds of behaviors. Is that covered in the
citation in 3?

163 REP. JOHNSTON: It does not; it needs to be enumerated. We don't have
the list in 3, but in the list we articulate those things that are listed
in 4 and also include "simulated sexual activity". If people are clothed
and simulate sexual activity, it would be in violation of the "public place"
definition.

173 CHAIR TIERNAN: Are there other words that should be included in the
amendment?

REP. JOHNSTON: Not that I am aware of.

176 MS. TWEEDT: Who would be required to provide the crawl line?

REP. STROBECK: The technology is currently available and the cable company
would have to add the crawl.

188 REP. ROBERTS: Comments he will support all of the conceptual amendments
except 4.

187 REP. STROBECK: Explains 4 is one of the provisions that is clearly
allowed for regulation of time.

201 REP. WYLIE: Why do we have to have 4?

204 REP. JOHNSTON: Those are behaviors we don't approve of, but cannot find
a way to get off the channel. We can control via this mechanism. The
courts have said time and place and manner can be controlled if there are
reasonable restrictions. The courts will uphold reasonable restrictions
and we think 10:30 to 5:30 is reasonable.

230 REP. STROBECK: No. 3 applies during the time periods enumerated in 4.

234 REP. WYLIE: This gets to what Mt. Hood Community College wanted to do.
They wanted to not broadcast things people would be thrown off campus for
doing in public.

240 REP. LEHMAN: Comments the amendment is well drafted but notes there may
be a first amendment issue..

247 MOTION: REPS. JOHNSTON AND STROBECK move that the conceptual
amendments as hand amended and replacing the original bill, BE ADOPTED.

255 VOTE: Chair Tiernan, hearing no objection to the motion, declares the
motion PASSED. REP. CLARNO IS EXCUSED.

256 MOTION: REP. STROBECK moves that HB 3384, as amended, be sent to the
Floor with a DO PASS RECOMMENDATION.

259 REP. ROBERTS: Comments he feels the amended bill is a big step in the
right direction, but personally objects to the number 4 of the amendments.

265 CHAIR TIERNAN: Commends Reps. Johnston and Strobeck for the proposed solution in the amendments.

272 VOTE: In a roll call vote, all members present vote AYE. REP. CLARNO
IS EXCUSED.

277 CHAIR TIERNAN: Declares the motion PASSED. REPS. STROBECK AND JOHNSTON
will lead discussion on the Floor.

285 CHAIR TIERNAN: Opens the work session on HB 3222.
HB 3222 - WORK SESSION

297 MS. TWEEDT: Explains that HB 3222 was originally drafted to be the enacting language for HJR 2 which has passed the House. As drafted, it would require Oregon to pay the usual and reasonable costs incurred by local governments in carrying out programs or increased level of program services required by the state. As enacting language for HJR 2, it would take effect on the date which HJR 2 takes effect. HB 3370 failed on the Floor. HB 3222 can be used as a vehicle to send the issue back to the Floor if the committee is interested in removing school districts. The amendments for consideration by the committee would be HB 3370.

324 REP. GRISHAM: Comments HB 3370 was a good bill depending on how one viewed HJR 2. HB 3370 was defeated because it included schools and some people thought it should not. I think by bringing it back up in HB 3222 and addressing the concerns of the people who voted against it, we can make it a better bill. HJR 2 may be a good idea, but I am concerned about it.

335 MOTION: REP. HAYDEN moves that HB 3222 be amended: replace the current language in HB 3222 with the language in HB 3370 A except to remove references to school districts and Oregon School Board Association and to reduce the number of arbitrators from four to three.

378 MS. TWEEDT: Advises the timeline for an effective date is not included in the motion, and if it is an issue the committee wants to address, it should be included in the motion.

381 REP. JOHNSTON: Comments the timeline was an issue addressed on the Floor and thinks the committee needs to make a resolution on the timeline.
There was some concern that this is passing and nobody knows how it affects what has already been done this session or will do.

390 REP. HAYDEN: Comments he has spoken with someone who suggested that a time be chosen; perhaps it would be January 1, 1996.

393 REP. LEHMAN: Comments January 1, 1996, would be more palatable, and adds he would like to see an enactment because he is more comfortable than with a constitutional amendment. Would appreciate some effort to get this enacted and to hold off on the constitutional amendment to see what the results of doing this are.

430 REP. HAYDEN: Rep. Strobeck, although he is not present, felt there should be a sunset on the statutory provision in a couple of years.

438 REP. MARKHAM: Comments if it is a problem, the legislature will be faced with taking care of it.

444 REP. LEHMAN: Comments he feels the problems as a result of this will not be ones that would cause it to be repealed as much as we may need to fine tune what "unfunded mandate" means.

451 MS. TWEEDT: Does the motion include the timeline of January 1, 1996?

455 MOTION: REP. HAYDEN moves to amend his previous motion to include the timeline of January 1, 1996.

460 VOTE: ACTING CHAIR HAYDEN, hearing no objection to Rep. Hayden's motion, declares the motion PASSED. REPS. CLARNO, ROSS, STROBECK AND CHAIR TIERNAN ARE EXCUSED.

464 MOTION: REP. HAYDEN moves that HB 3222, as amended, be sent to the Floor with a DO PASS RECOMMENDATION AND THAT THE SUBSEQUENT REFERRAL TO WAYS AND MEANS BE RESCINDED.

467 VOTE: In a roll call vote, all members present vote AYE. REPS. CLARNO, ROSS AND STROBECK ARE EXCUSED.

481 CHAIR TIERNAN: Declares the motion PASSED. REPS. GRISHAM AND HAYDEN will lead discussion on the Floor.

TAPE 141, A

034 CHAIR TIERNAN: Opens the work session on SB 132.
SB 132 A - WORK SESSION

035 JOHN BEAULIEU, Deputy Director, Department of Geology and Mineral Industries and member of the Oregon Seismic Safety Policy Advisory Commission: Submits and summarizes a prepared statement (EXHIBIT O).

A statement submitted but not presented from Metro is hereby made a part of

these minutes (EXHIBIT P).

050 CHAIR TIERNAN: Do you have a problem with removing the provision the member has to be from the "State System of Higher Education" and just say "A faculty member employed in a private or public institution of higher education" (on page 1, line 27 of SB 132 A)?

057 MR. BEAULIEU: That would be no problem.

059 REP. GRISHAM: Comments he has received a letter from James Bela who asked the question of why should Oregon have a Seismic Safety Policy Advisory Commission given all the agencies are empowered to do work in that area.

063 MR. BEAULIEU: That is an interesting question from Mr. Bela because he has come to every meeting and participated extensively.

063 REP. MARKHAM: Recalls the earthquake in the ocean off Crescent City 20 years ago and comments that kind of activity is what the commission is trying to focus on.

084 MR. BEAULIEU: Comments that representation on the commission is widespread.

084 REP. GRISHAM: If you were to travel to Cobe or other earthquake zones to study it, who would pay for the cost of the expenses to move the entire committee?

089 MR. BEAULIEU: We have no intention of the entire commission going to Cobe. Several members have gone at their own expense and have reported back to the commission. They are now conducting talks throughout the state at their own expense.

092 MOTION: REP. MARKHAM: Moves that SB 132 A be amended on page 1, line 27, remove "State System of Higher Education" and leave the position open to either private or public institutions, and that SB 132, as amended, be sent to the Floor with a DO PASS RECOMMENDATION.

097 VOTE: In a roll call vote, REPS. HAYDEN, JOHNSTON, LEHMAN, MARKHAM, ROBERTS, STARR, WYLIE AND CHAIR TIERNAN VOTE AYE. REP. GRISHAM VOTES NO. REP. CLARNO, ROSS AND STROBECK ARE EXCUSED.

106 CHAIR TIERNAN: Declares the motion PASSED. REP. LEHMAN will lead discussion on the Floor.

111 CHAIR TIERNAN: Opens the work session on HB 2125.

121 MS. TWEEDT: In response to questions from the committee, explains HB 2125 is on the agenda because it was carried over from the previous agenda.

A statement submitted but not presented by the Board of Maritime Pilots, Oregon Department of Transportation, is hereby made a part of these minutes

(EXHIBIT Q).

126 MOTION: REP. WYLIE moves that HB 2125 BE TABLED.

127 VOTE: In a roll call vote, all members present VOTE AYE. REPS. CLARNO ROSS AND STROBECK ARE EXCUSED.

130 CHAIR TIERNAN: Declares the motion PASSED.

132 CHAIR TIERNAN: Announces that SB 769 and SB 719 will be carried over to Friday's agenda.

136 CHAIR TIERNAN: Opens the work session on SB 382A.

SB 382 A - WORK SESSION

145 MS. TWEEDT: Reviews the provisions of SB 382 A and testimony previously given, and advises the committee that no action has been taken on the bill.

158 MOTION: REP. ROBERTS moves that SB 382 A be sent to the Floor with a DO PASS RECOMMENDATION.

161 REP. JOHNSTON: Requests that Rep. Roberts withdraw his motion.

162 REP. ROBERTS: Withdraws his motion.

167 REP. JOHNSTON: Advises the committee testimony was that people can simply say it wasn't them.

173 CHAIR TIERNAN: I have heard varying explanations of SB 382 A and therefore we will get the proponents on the record and that is how the bill will be interpreted. He advises the witnesses if they are not sure of an answer to a question, they should not answer it.

182 REP. JOHNSTON: My question is the way they are going to treat the certificate of innocence. Suggest on page 2, in Section 2 (3) (a), delete

"swearing or affirming that the owner was not the driver of the vehicle and a photocopy of the owner's driver license," . Explains the language is

for the purpose of establishing a prime facia case of false swearing, if the person was the driver.

196 LINDA MENG, Portland City Attorney's Office: Responds that the language

could be used for that purpose and advises they would put in a certification based on the current statute that would allow a charge of false swearing to be brought if that were the case. Would assume jurisdictions would take different approaches. I am not sure whether Beaverton will go back and try to verify those and bring actions or not. That would be the intent of the statute.

205 REP. JOHNSTON: What would be your intention?

206 MS. MENG: At this point it is not our intention while doing this pilot program to go through and bring charges. We may go through them for purposes of finding out how accurate these are and whether people are telling the truth when they do this. It is not our intention at this point to bring an action for false swearing.

212 REP. JOHNSTON: For purpose of this experiment, would you have any objection to dropping the swearing or affirming the owner was not the driver of the vehicle? I don't want to set up the drivers in Beaverton for false swearing prosecutions.

222 LINDA ADLARD, City of Beaverton: I would have no objection to deleting the language. I think it is a better bill with it in because then people would be making firm decisions about whether or not they were in the vehicle. Our emphasis is to change people's behavior. I doubt there would be a good number of these. We have no intention in this first go-through to go back and worry about it. The administrative process is part of the evaluation. I think that helps us with that evaluation. That is our position.

234 REP. STROBECK: Comments the part that was deemed to be onerous was having to go find a photo copy machine and make a copy of the driver's license. I think if you just send in something that says you are innocent, it has no relation to the accusation. What if we strike the part that has to do with the photo copy of the driver's license which is what I think Rep. Johnston is saying. If they were to write in and say they didn't do it without a copy of the license, would that be sufficient?

248 SUSAN SCHNEIDER, City of Portland: One of the things we want to find out is, while we have no intention of prosecuting people for false swearing, to what degree that is a problem. To respond to both issues, 1) if we eliminate the photo copy, we won't be able to double check and see what extent it is a problem and, 2) by eliminating the requirement that you

swear it is not quite the same and it may not have quite the same seriousness and so it is not the same test. I think you have it on the record that it is neither the City of Portland's intention nor the City of Beaverton's intention to prosecute people for false swearing in this sort of test.

263 CHAIR TIERNAN: If you don't intend to do something, then let's put it in that you are not going to do it.

264 MS. SCHNEIDER: That is fine.

265 REP. JOHNSTON: What if we just put a sentence in that says for the purposes of this experiment, neither jurisdiction will bring false swearing prosecutions.

REP. STROBECK: That is a thought.

269 REP. STROBECK: Is it important that the photo copy be there for comparison to the picture? Or are you looking to see what the driver's license number is, etc.?

273 MS. SCHNEIDER: To compare the picture.

267 CHAIR TIERNAN: When I get something in the mail, what will be in the envelope?

279 MS. SCHNEIDER: The ticket and the declaration of innocence. There will be no picture.

281 CHAIR TIERNAN: So in order for me to know whether it was me or not, I would need to remember what I was doing eight or nine days ago. I would need to go to the police department and look at the picture.

284 MS. SCHNEIDER: If it was you, you would have driven by a police car--it might not register, but..

287 CHAIR TIERNAN: I am not buying everything you are saying. The only way I will know it was not me, assuming I didn't see that, would be to go look at it myself. Is there a way you cannot include the picture in the envelope when you send the ticket?

290 MS. SCHNEIDER: The reason for that is that there are people who for reasons of privacy do not want the picture accompanying the ticket. To respect people's privacy, the picture is available at the police.

298 CHAIR TIERNAN: I want one of you describe and I want all three of you to nod. I am going down a road a mile long. At the half-mile marker the photo radar is set up. Explain what I will see as I go down the road and when I am going to see it.

304 MS. SCHNEIDER: If it is a mile long road, it will be in a mile long road in a neighborhood or near a school in Portland or Beaverton. You will see lots of houses, cross streets, probably pedestrians, sidewalks, trees, all sorts of things. If the photo radar unit is set up one-half mile into your journey, you will see a marked police car.

315 CHAIR TIERNAN: Is that before the photo radar equipment?

316 MS. SCHNEIDER: The photo radar equipment is in the marked police car. You may not see the equipment any more than you will see a radar gun in a police car now.

320 CHAIR TIERNAN: The police car will be in plain view.

321 MS. SCHNEIDER: It will be a marked police car on a city street. It will be in plain view.

322 CHAIR TIERNAN: I will be able to see the police car before I reach it.

322 MS. SCHNEIDER: If you can normally see a police car. It won't be hiding in the bushes.

329 CHAIR TIERNAN: This is important because you are making it seem like I will be able to know I was on photo radar. I want to know where the police car is going to be.

332 MS. ADLARD: In Beaverton, you will be well aware of the police car. This isn't an effort to cite people; it is to change their behavior. We are going to mark our vehicle "photo radar" vehicle. You will come up on a car parked to the parking strip, you will pass it and you will, within 150 yards, see a flashing sign that will tell you your speed.

341 CHAIR TIERNAN: After I have gone through the trap, I will know what my speed was.

343 REP. STROBECK: You will find out what your speed was. Cites language in Section 2 about when a citation can be issued.

351 CHAIR TIERNAN: But I will be able to get into the jurisdiction without passing a photo radar sign. Correct?

353 MS. SCHNEIDER: Signs that photo radar is in use will be posted around town so people coming into town have notice.

359 CHAIR TIERNAN: You will not have the signs on every single street in Beaverton.

359 MS. SCHNEIDER: That is correct.

363 CHAIR TIERNAN: I will be able to see the police car before I get to the police car.

364 MS. SCHNEIDER: Yes.

364 CHAIR TIERNAN: Then after I pass the police car, I will see a sign within 150 feet that says my speed.

366 MS. SCHNEIDER: Normally it is right there. If there is some logistical reason why it can't be right there, it will be within 150 feet.

373 REP. ROBERTS: Comments you can't get a picture off a driver's license, but will support it anyway.

384 CHAIR TIERNAN: What happens if the person who sends in the picture of their driver's license said it was not that person and the person on the driver's license looks identical to the person in the picture?

387 MS. ADLARD: In Beaverton, we will accept that they have affirmed that it was not them.

390 MS. MENG: Correct. I assume that information will be used in reporting back information in evaluating the program. We would say we had this number of people reporting falsely. As far as prosecution, there would not be any.

401 REP. LEHMAN: This isn't brain surgery. If we are going to do this, let's have a sworn document. If we encounter all kinds of people being cited for false swearing, then we have a problem and need to deal with it. If we are not going to put the sworn document in the bill, then I am not sure we should even pass the bill. I think we ought to get the bill out

and see how it works. If you want to give an interim report, I would be happy to hear about it.

441 MOTION: REP. GRISHAM moves that SB 382 A be amended to include on
1 after line 18, (c) the City of Canby.

page

463 REP. MARKHAM: Requests that Rep. Grisham reconsider his motion and not
put it in the bill because it has to go back to the Senate, and he would
rather keep it clean.

469 REP. GRISHAM: Withdraws his motion.

TAPE 142 A

031 MOTION: REP. JOHNSTON moves to amend SB 382 A on page 2, Section 2,
(3)(a) to insert after the period, "No false swearing prosecutions will be
based upon this section."

038 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the
motion
PASSED. REPS. CLARNO AND LEHMAN ARE EXCUSED.

038 MOTION: REP. ROBERTS moves that SB 382 A, as amended, be sent to the
Floor with a DO PASS RECOMMENDATION.

041 REP. ROSS: Does this still include the provision that the person copy
his/her license and send it in?

044 MS. TWEEDT: Responds affirmatively.

045 REP. ROSS: I think we need to be watching this and be aware, and that
we watch the error rate and problems because I think the public does have a
concern about big brother watching.

064 REP. MARKHAM: Comments he does not want the committee to lose track of
the fact this is a traffic safety measure.

075 REP. HAYDEN: Comments on safety of radar equipment and adds that
because this is a local issue with strong local support, he will vote yes
on the bill.

090 CHAIR TIERNAN: Comments he thinks this will be a mistake. We have
failed to consider the jurisdictions that have previously failed, some of
which are identical to Beaverton. Believes there are reasons why it did
not go in the jurisdictions in California.

099 REP. MARKHAM: Calls for the question.

199 VOTE: In a roll call vote REPS. GRISHAM, HAYDEN, JOHNSTON,
MARKHAM, ROBERTS, ROSS, STARR, STROBECK AND WYLIE VOTE AYE. REP. TIERNAN
VOTES NO. REP. CLARNO IS EXCUSED.

LEHMAN,

104 CHAIR TIERNAN: Declares the motion PASSED. REP. STROBECK will lead
discussion on the Floor.

SB 588 A - POSSIBLE RECONSIDERATION AND WORK SESSION

115 MOTION: CHAIR TIERNAN moves that the rules be suspended for the
purpose of reconsideration of the vote by which SB 588 A was sent to the
Floor.

116 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the
motion PASSED.

117 REP. WYLIE votes No on the passage of SB 588 A and gives notice of
minority report.

118 CHAIR TIERNAN: Permits Rep. Wylie to vote No on SB 588 A, and denies
her request to serve notice of a minority report until confirmation is
received from the Chief Clerk that the rules allow for notice to be given
at this time.

135 REP. JOHNSTON: Explains Rep. Wylie would like to change her vote for
the purpose of filing a minority report that is not inconsistent with what
the majority did. The majority passed the bill. Rep. Wylie wants to vote
no and she would be joining me in voting no and we would file a minority
report that would authorized local cities, if the chose, to provide
incentives for people to come into the historic district. Otherwise it is
completely compatible with the bill the committee passed.

143 REP. WYLIE: Explains that she wants the bill to give local
jurisdictions a carrot.

147 CHAIR TIERNAN: Would the proponents of the bill object to your minority
report?

147 REP. WYLIE: I don't know.

REP. JOHNSTON: I can't imagine they would. In the minority report, a
local jurisdiction would, if it had the desire, make some incentive to
someone and that someone would have to voluntarily enter.

153 CHAIR TIERNAN: Advises Rep. Wylie that he has not signed the committee
report and there will be further opportunity on Friday.

158 CHAIR TIERNAN: Declares the meeting adjourned at 4:15 p.m.

Submitted by, Reviewed by, Reviewed by,

Annetta Mullins Anne Tweedt Gregory G. Moore
Committee Assistant Committee Counsel Committee Counsel

EXHIBIT SUMMARY:

A - SB 266, Preliminary Staff Measure Summary and summary of proposed amendments, staff, 4 pp
B - SB 266, testimony from Sarah I. Hackett, 1 p
C - SB 266, testimony from Gary Smith, 1 p
D - SB 266, testimony, Charles Stull, 1 p
E - SB 266, letter, Charles Moose, 2 pp
F - SB 266, letter, Vera Katz, 1 p
G - SB 266, Harvey A. Hochfeld, 1 p
H - SB 266, statement, Susan Ziglinski, 2 pp
I - SB 266, prepared statement and SB 266-A13 amendments, Mike McCallum, 3 pp
J - SB 266, letters from cities, Bill Morrisette, 19 pp
K - SB 266, prepared statement, Chris Lyons, 2 pp
L - SB 266, prepared statement, Kenneth Edwards, 1 p
M - HB 3384, conceptual amendments, Reps. Johnston and Strobeck
N - HB 3384, The Oregonian news clipping, staff, 3 pp
O - SB 132, prepared statement, John Beaulieu, 1 p
P - SB 132, prepared statement, Metro, 1 p
Q - HB 2125, prepared statement, Board of Maritime Pilots, 1 p