

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
8:30 am Tapes - 15

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Lisa Naito
Rep. Eileen Qutub

MEMBER EXCUSED:

Rep. Carpenter
Rep. Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

HB 2325 - Public Hearing

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

004 CHAIR PARKS: Convenes meeting at 8:33 A.M.

OPENS the PUBLIC HEARING on HB 2325

Witnesses: Betsy Bailey, Associated Oregon Industries (AOI)
Scot Sideras, Hearings Officer, Oregon Department of Revenue
Glenn Cate, Hearings Officer, Oregon Department of Revenue
Jeff Mattson, Oregon Department of Revenue
Representative Kevin Mannix, District 32
Jerry Fisher, Manager of Oregon Public Affairs, Hewlett-Packard
Dick Briggs, Consulting Services
Harry Turpack
Priscilla Schrock
Robert W. Muir, Assistant Attorney General, Department of Justice
Richard Munn, Department of Revenue

006 JONES: Gives brief overview of HB 2325. Submits [EXHIBIT B].

014 BETSY BAILEY, ASSOCIATED OREGON INDUSTRIES (AOI): Testimony in support
of

HB 2325. Submits [EXHIBIT C].

039 CHAIR PARKS: Swears in subpoenaed witnesses Sideras, Mattson and Cate

048 SCOT SIDERAS, HEARINGS OFFICER, OREGON DEPARTMENT OF REVENUE:
Testimony on HB 2325. Submits [EXHIBIT C].

069 GLENN CATE, HEARINGS OFFICER, OREGON DEPARTMENT OF REVENUE:
Testimony on HB 2325.

078 JEFF MATTSON, OREGON DEPARTMENT OF REVENUE: Testimony on HB 2325.

092 SIDERAS: Discusses appeals process with the Department of Revenue.

105 CHAIR PARKS: Does the director sit in at the hearings?

116 SIDERAS: Never in my experience.

129 CHAIR PARKS: So you are the only person who hears the testimony?

131 SIDERAS: That is correct.

133 CHAIR PARKS: When you prepare the proposed order, is there a statute
requiring the taxpayer
be told what your recommendations are?

136 SIDERAS: That is a fine legal question. It is my conclusion that
there is no such statute.
Discusses hearing procedure and documents used.

139 REP. JOHNSTON: If I understand this correctly, he only has the right
to appear if the director
is basing his opinion on something that is outside the record?

142 SIDERAS: That is correct. There is a specific independent legal
provision that calls for an
exparte communication.

144 REP. NAITO: What type of evidence is admissible on the appeal to your
department?

148 SIDERAS: We need to make it clear that as to the majority of cases
there is only one proceeding.

167 CHAIR PARKS: If it is decided solely on the evidence that is in the
record and reinterpreted by
a person who was not at the hearing, the taxpayer wouldn't know that the
hearings officer had
been directed to reconsider the evidence.

170 SIDERAS: That question is a little confusing to me. The director has
the ability to say "I have
read the proposed opinion and order, I disagree with it".

181 CHAIR PARKS: You have given us two different scenarios, the second one
is a policy issue and
the first one would be specific as to that case. Gives example.

190 SIDERAS: The taxpayer would not be aware.

195 CATES: I think it would be an exceptional circumstance where the taxpayer would be advised of any one of those contacts.

198 CHAIR PARKS: That would be the exception rather than the rule. In Oregon, which has an open government on something that effects you directly, you're not going to know about it?

201 CATES: You're not going to know about it.

202 CHAIR PARKS: I thought there was a statute that required the taxpayer to be notified.

209 CATES: That is downstream from what your talking about.

215 CHAIR PARKS: Why is it downstream?

217 CATES: The contacts that are made by the attorney general's office are outside the presence of the taxpayer.

221 MATTSON: I believe that statute talks to the final decision of the director of the Department of Revenue. It does not speak to the review process.

228 CHAIR PARKS: Are these public hearings?

229 CATES: Yes.

230 CHAIR PARKS: Is the reason for public hearings is that in Oregon we value people?

236 SIDERAS: I wouldn't argue with that.

238 CHAIR PARKS: And isn't this procedure exactly designed to circumvent people knowing about what is happening on their own appeals?

240 SIDERAS: That is a question I am not competent to answer.

247 REP. JOHNSTON: Can you tell us what an in-line review is?

253 CATES: Explains in-line review.

267 CHAIR PARKS: In effect, you work for the party you're getting the suggestion from and how you should decide the case?

269 SIDERAS: Correct.

286 CHAIR PARKS: The party that gets this inside information is never the taxpayer, is that correct?

291 SIDERAS: In that respect, I can give an example.

292 REP. QUTUB: You were previously asked if the taxpayer is told of your recommendation,

you said "I believe there is no statute". Should the answer have been no?

296 SIDERAS: That is more the answer.

303 REP. JOHNSTON: Have any of your opinions been influenced by the in
line department
review?

311 MATTSON: Definitely, at times.

315 CHAIR PARKS: In favor of the taxpayer?

317 MATTSON: It is not the individual hearings officer that is sending the
recommendation for
review, it's the chief hearings officer, managers on down the line
somewhere.

325 CHAIR PARKS: Do you think you have been influenced?

328 SIDERAS: Yes, I have. Explains situation.

338 CATE: I feel there has been a definite management exertion of
pressure, even to the point of
participation in the hearing process.

349 CHAIR PARKS: You are the hearings officer. If someone shows up and
they are not
prepared to do the job that they are being paid to do and you
reprimand them, and because he is
an employee of the Department of Revenue, they chastise you,
the hearings officer?

356 CATE: That is correct. That is what I would consider a not so subtle
management control of
what you do.

381 REP. NAITO: Is there a time in which you must provide the
determination?

386 SIDERAS: If the agency takes more than nine months from the filing of
the appeal to make its
decision, the taxpayer may then leapfrog the Department of Revenue
decision, go on to tax court,
file the appeal, and go on without the opinion and order of the agency.

398 REP. JOHNSTON: The only way to get to the tax court is via the
Department of Revenue?

407 SIDERAS: There are few instances where the Department of Revenue is
not required to issue
a decision.

408 CHAIR PARKS: If I were a homeowner and I didn't like my assessment and
I went to
the Board of Equalization in my county, would I then come to
you as the next level of appeal?

410 SIDERAS: Fair enough.

421 REP. JOHNSTON: Are any of you members of the Oregon Association

of Administrative
Law Judges?

426 SIDERAS: No.

428 REP. NAITO: Is there a procedure to appeal as a neighborhood or a group?

432 SIDERAS: It happens very rarely.

450 REP. BROWN: You said the director may make a modification of your order based on evidence found. The statute ORS 305.115, reads that "if the director receives evidence outside of the hearings record, that department shall notify the parties and reopen the hearing". Does that happen?

460 SIDERAS: It has never happened to my knowledge.

TAPE 14,A

039 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testimony on HB 2325.

074 REP. MANNIX: The problem is the system. What HB 2325 attempts to do, is to move the system and modify the system.

123 CHAIR PARKS: I want you to talk about the fiscal consequences of creating a new system.

125 REP. MANNIX: If this is done properly and the operations are carefully analyzed, there should be only a slight negative fiscal impact.

145 CHAIR PARKS: Which subcommittee handles the Department of Revenue?

146 REP. MANNIX: I believe it may be a general government type subcommittee.

155 CHAIR PARKS: It would be my intention not to send it to Ways and Means.

160 REP. NAITO: In the practical world right now, people are not paying a fee for an appeal.

167 REP. MANNIX: There was a misunderstanding, this does not change the local process. The Board of Equalization process will stay in place.

178 REP. JOHNSTON: I was curious why you chose "magistrate" as opposed to "hearings officer"?

185 REP. MANNIX: The idea is to make them judicial type officers.

207 JERRY FISHER, MANAGER of OREGON PUBLIC AFFAIRS, HEWLETT-PACKARD COMPANY: Testimony in support of HB 2325. Submits [EXHIBIT E].

280 FISHER: Discusses hearing at Oregon Department of Revenue of Hewlett-Packard (HP).

346 REP. JOHNSTON: Is it fair to say you felt the process you underwent was unfair?

350 FISHER: It is unfair in that the hearings officer and the appraisers have the same boss.

353 REP. JOHNSTON: I want you to focus on those pieces of the process itself where you thought you were unfairly treated.

356 FISHER: No, we were not unfairly treated.

374 DICK BRIGGS, CONSULTING SERVICES, EUGENE, OREGON: Testimony in support of HB 2325. Submits [EXHIBIT F].

431 BRIGGS: Makes suggestions as to awarding fees.

TAPE 13, B

036 REP. NAITO: Since you deal with unique properties, what type of testimony do you have that is reviewed upon appeal?

039 BRIGGS: I usually have comparable values. My concern is that the dispute resolution process does not exist.

045 REP. JOHNSTON: Let me assure you, we are in favor of dispute resolution.

046 REP. NAITO: Do you hire an attorney to represent you?

048 BRIGGS: Normally not.

050 REP. JOHNSTON: Hypothetically, if you bought ten distressed properties in Lane county and decided to appeal the value on each one of those properties, your appeal would be to the Lane County assessor? Of those ten, how many do you think will go to hearing?

056 BRIGGS: All ten of them. I have done it three years in a row because it's not done in the first year.

058 REP. JOHNSTON: There is a small fee for the appeal process.

060 BRIGGS: That does not bother me. Most people do not mind a small fee if they think they're going to get a reasonable hearing and a resolution.

075 HARRY TURPACK: Testimony in favor of HB 2325. Submits [EXHIBITS A & G].

132 CHAIR PARKS: Referring to [EXHIBIT A], do these documents pertain to your case?

142 TURPACK: Yes, they do.

152 CHAIR PARKS: How did you get these documents? Did they give them to you voluntarily?

154 TURPACK: They did not.

156 REP. QUTUB: Do you feel that more of the error took place in your appraisal at the point of the appraisal or at the hearings later?

160 TURPACK: The error was caused at the county level by the appraisers.

165 REP. QUTUB: Did you have an opportunity to talk to the appraiser who appraised your home?

167 TURPACK: After the board of equalization hearing. He had already written his report before he came to visit our home for the state hearing.

179 REP. JOHNSTON: Do you have any questions about the hearing itself, the way it was conducted as to fairness of the outcome of the hearing?

181 TURPACK: The state hearing went fine.

195 PRISCILLA SCHROCK: Testimony in favor of HB 2325. Submits [EXHIBIT H].

210 CHAIR PARKS: What did the assessor say your home was worth, and, what did you think it was worth?

212 SCHROCK: The assessor said at the time the total value was \$71,090. What we had requested was the purchase price of \$33,000.

221 CHAIR PARKS: You paid \$33,000 for it and when was that?

223 SCHROCK: I think it was in 1989.

231 CHAIR PARKS: So in 1989 you paid \$33,000 for it and when did they assess it for \$71,090?

234 SCHROCK: This was for the 1991-92 year. Continues testimony.

267 ROBERT W. MUIR, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE: Testimony in opposition of HB 2325. Submits [EXHIBIT I]. Gives overview of how the hearing process works with regard to the statutes.

335 MUIR: Discussion of the facts.

352 CHAIR PARKS: You have really followed closely with your written testimony. This is very weak justification for the procedure you folks are following.

356 MUIR: My remarks are not attempting to justify a procedure but just describe the current law.

358 CHAIR PARKS: I want you to summarize your testimony.

375 REP. JOHNSTON: The law as it's structured, is designed to give an appeal process that results in an order that is signed by the director.

390 MUIR: That seems to be clear in the law. In drafting this law the legislature made it clear that the determination is that of the director.

398 REP. JOHNSTON: Would you say that this hearing process is independent, when in truth it is not?

410 MUIR: I hesitate to speculate what other people are thinking or expecting.

412 CHAIR PARKS: Don't your regulations provide that the hearings process should appear to be fair to the taxpayer?

420 MUIR: I believe that is a quote out of the departments rules.

425 CHAIR PARKS: Is it good public policy that they "appear" to be fair or that they "are" fair?

428 MUIR: The procedure should always be fair in a democratic government. Continues testimony.

TAPE 14, B

033 CHAIR PARKS: Who is Jim Wallace? Is he an assistant attorney general?

035 MUIR: Yes. He is also one of the attorneys assigned to the department of justice.

036 CHAIR PARKS: Regarding the policy of the department on notification of the taxpayer when the hearings officer's initial order is changed or modified?

038 SIDERAS: When the director reaches a conclusion that the opinion and order proposed by the hearings officer is not to be the opinion and order adopted by the agency.

060 CHAIR PARKS: If I understood your previous testimony, the taxpayer does not see that.

062 SIDERAS: The taxpayer should receive, by certified mail, an envelope containing those three pieces of paper.

065 CHAIR PARKS: You're talking about "should", I'm talking about the reality. Does the taxpayer see the proposed order before it is changed?

068 SIDERAS: In every situation that I am involved with, yes, the taxpayer will see the order. I personally deposit them in the mail.

094 CHAIR PARKS: Refers to [EXHIBIT A]. Why did he have to come to Salem

and find out

that this was in the file if it is sent to him? Mr. Munn, you might comment on the fact of why you complained to the governor that subpoenas were issued.

102 RICHARD MUNN, DEPARTMENT OF REVENUE: Testimony on HB 2325. Submits [EXHIBITS J,K,L,M,N,O & X]. Responds, in reference to the subpoenas.

108 CHAIR PARKS: Mr. Sideras, did you have an opportunity to look at [EXHIBIT A]?

110 SIDERAS: Yes, I have. I do not have the expertise to answer your question.

112 CHAIR PARKS: That, in essence, is a totally rewritten order. Who rewrote the order?

115 SIDERAS: When I say I don't have the expertise to speak of it, I mean I do not have full knowledge of all the facts surrounding this case.

118 CHAIR PARKS: You don't recognize the handwriting?

120 SIDERAS: I recognize some of the handwriting. I definitely recognize the names.

123 CHAIR PARKS: The policy is the taxpayer is notified if the director contacts the hearings officer and says " I think you should modify your rationale or your end result"?

128 SIDERAS: That is the policy of the agency.

130 CHAIR PARKS: That is the policy, but is that what happens?

132 SIDERAS: It happens in every instance where I have been involved. If I may explain further.

136 CHAIR PARKS: The director never gets involved if you find in favor of the state, it's only when you find in favor of the taxpayer, or that is the proposal.

139 SIDERAS: That is an accurate statement.

140 CHAIR PARKS: But the director still does not personally get involved in all of those, it's someone in the "higharcy" that initially talks to the hearings officer.

143 SIDERAS: It is remarkably rare for the director to be personally involved in a debate.

146 CHAIR PARKS: Asks about mid level supervisors.

157 SIDERAS: Discusses the flow chart in [EXHIBIT D].

162 CHAIR PARKS: When you say "favorable", that means in favor of the government?

164 SIDERAS: I have known the line division to say "yes" the hearings officer is correct, we made a mistake".

168 CHAIR PARKS: So, it is favorable to the hearings officer?

169 SIDERAS: Yes. The hearings officer has the option of accepting or rebutting the review.

174 REP. JOHNSTON: Is it true that the policies of the agency are altered, or alerted to trends, by virtue of things that get appealed?

175 MUNN: Absolutely.

178 REP. JOHNSTON: If we were to remove appeals from you, as is contemplated by this bill. My guess is that it would be a serious setback to your ability to do your job.

180 MUNN: Absolutely. The agency does supervise the property tax system of the state.

186 REP. JOHNSTON: To some extent, part of the tax administration of the state of Oregon is driven by what we learn in the appeals process. If that is not there, who will perform that service?

190 MUNN: I think they will take longer to be identified as problems.

194 REP. JOHNSTON: How would you recommend we test to determine what percentage of cases that is?

197 MUNN: We will give you data. Refers to [EXHIBIT O,N,].

235 CHAIR PARKS: Are you familiar with Priscilla Schrock's dispute between \$33,000 and \$71,000, and after four years she got an order from your department?

242 MUNN: I would have to look at her actual case. I read almost 5,000 to 6,000 appeals per year.

255 CHAIR PARKS: Your testifying that you read 4,000 opinions, there are 221 working days for a state employee per year, and you read 20 opinions everyday?

260 MUNN: Sometimes I read 40 or 50 a day.

263 CHAIR PARKS: This gentleman says the only opinions that go beyond the hearings officer stage are the ones that the taxpayer, in some way, betters his position.

266 MUNN: I'm reading all of them, I sign them. Continues testimony. Refers to [EXHIBIT L].

302 REP. JOHNSTON: New Jersey and Oregon have kind of the same system. New Jersey has 90 days to get an answer to a taxpayer, and then they can go to a tax court

if they choose.

Could we give an answer in 90 days?

320 MUNN: Only if you added a substantial number of hearing officers to assist them so you could hold all the hearings.

328 REP. JOHNSTON: If we create a magistrate court, the only difference aside from independence will be that they will take longer.

334 MUNN: I'm sure they will.

332 REP. NAITO: Why can't we have an administrative independent review of a hearings officer that would be qualified to determine and make an independent decision?

340 MUNN: There are some states that have done that and set up an outside revenue department or their tax collection department.

349 CHAIR PARKS: How many FTA's would go with the hearings officer section of your department?

354 MUNN: I thought there were 8 or 9 hearings officers.

360 CHAIR PARKS: How many support staff?

362 MUNN: Maybe one per hearing officer, maybe more.

370 SIDERAS: I regret it is fewer than that. We can prepare the figures for the committee.

374 CHAIR PARKS: Could you prepare that and have it ready for next Tuesday?

376 SIDERAS: Absolutely.

376 REP. BROWN: The issue is not so much the fact of whether or not your doing the job.

388 MUNN: You can go to other state agencies and they will have, in effect, a similar administrative hearing process.

398 REP. BROWN: Gives example. You are making decisions in conjunction with other state agencies or departments that affect people.

412 MUNN: That is, fundamentally, what the courts are for in the system.

424 REP. BROWN: Would you agree with me that from the public's point of view, it lacks the perception of fairness?

425 MUNN: If it did, why don't we have more taxpayers going directly to tax court?

434 REP. QUTUB: I see some statistics here about people who have
complained about their level
of taxation. Do you have any figures that show us how these were acted on
in either the
taxpayers favor, or the state's favor?

440 MUNN: I actually do not, we just pulled a random sample.

446 CHAIR PARKS: Do you think the process is fair, open and honest and
there is no need for
change?

453 MUNN: I think you can always work to improve a system. Refers to
[EXHIBIT K].

462 CHAIR PARKS: Do you think the system we have right now, is fair, open
and honest, and
should not be changed?

470 MUNN: I think the system we have can be improved, and should change
some. I think the
proposed change is going to create more problems than the current system.

TAPE 15, A

042 CHAIR PARKS: The members of this committee have to be on the House
floor at 10:30.
For people who have not been able to testify, please leave your written
testimony with
the clerk, you would be welcome to testify at a future hearing. Meeting is
adjourned at
10:25 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth	Debra Johnson
Committee Assistant	Committee Coordinator

EXHIBIT SUMMARY:

- A - Interoffice memo - HB 2325 - Turpack - 11 pages
- B - Dept. of Revenue Brochure - HB 2325 - Staff - 7 pages
- C - Testimony - HB 2325 - Sideras - 4 pages
- D - Testimony - HB 2325 - Fisher - 3 pages
- E - Testimony - HB 2325 - Briggs - 1 page
- G - Testimony - HB 2325 - Turpack - 2 pages
- H - Testimony - HB 2325 - Schrock - 2 pages
- I - Testimony - HB 2325 - Muir - 6 pages

J - Letter - HB 2325 - Munn - 1 page

K - Testimony - HB 2325 - Munn - 2 pages

L - Appeals Data - HB 2325 - Munn - 1 page

M - Customer Survey - HB 2325 - 4 pages

N - Dept. of Revenue appeals - HB 2325 - Munn - 2 pages

O - Current appeals system - HB 2325 - Munn - 2 pages

P - Testimony - HB 2325 - MacDonald - 9 pages

Q - Testimony - HB 2325 - Canary - 4 pages

R - Hearing report - HB 2325 - Canary - 9 pages

S - Testimony - HB 2325 - Miska - 2 pages

T - Testimony - HB 2325 - Wilson - 5 pages

U - Testimony - HB 2325 - Tapanen - 3 pages

V - Testimony - HB 2325 - Kalberg - 5 pages

W - Letters and appeal to department of revenue - HB 2325 - Shepard - 39 pages

X - State Tax Appeal Systems notebook - HB 2325 - Munn - 192 pages