SENATE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS Hearing Room Tapes 82, 83, 84 & 85 MEMBERS PRESENT: Sen. Bill Kennemer, Chair Sen. John Lim, Vice-Chair Sen. Gene Derfler Sen. Joan Dukes Sen. William McCoy MEMBER EXCUSED: STAFF PRESENT: Darrell W. Fuller, Committee Administrator Carol A. Smith, Committee Assistant MEASURES HEARD: HB 2651 Public Hearing And Work Session HB 2652 Public Hearing And Work Session HB 2653-A Engrossed Public Hearing And Work Session HB 2791 Public Hearing And Work Session HB 2845 Public Hearing SB 1034 Work Session SB 892 Work Session SB 887 Work Session SB 888 Work Session SB 994 Work Session SB 895 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 82, A 005 CHAIR: Calls the meeting to order at 3:05 p.m. as subcommittee. Announces we will hold over SB 892. SB 994 will have amendments not SB 888. States SB 903 and 904 probably will not proceed. 017 CHAIR: Announces we are now in full committee. 018 CHAIR: Opens PUBLIC HEARING on HB 2651. WITNESSES: Frank Brawner, Oregon Bankers Association 022 FRANK BRAWNER, Oregon Bankers Association: Submits written testimony in support of the bill (EXHIBIT A). Explains the bill. Refers to: --bank and trust company shares of stock; --stock certificates; --bylaws of corporations; --Oregon's banks. CHAIR: Closes PUBLIC HEARING on HB 2651. CHAIR: Opens PUBLIC HEARING on HB 2652. 030 WITNESSES: Frank Brawner, Oregon Bankers Association FRANK BRAWNER, Oregon Bankers Association: Submits written testimony in support of HB 2652 (EXHIBIT B). Explains the bill. Addresses: --Oregon bank act; --employee stock options and purchase plans; --market and option prices;

--exercising of stock option;

--par value; --bank capital.

(3:08 SEN. LIM joins the meeting.)

067 BRAWNER: In response to the CHAIR states he does not know why originally set at that value. Could not find, it may date back to the origin of the bank act in the early 1900's.

077 CHAIR: Closes PUBLIC HEARING on 2652.078 CHAIR: Opens PUBLIC HEARING on HB 2653.

079 WITNESSES:

Frank E. Brawner, Oregon Bankers Association

080 FRANK BRAWNER, Oregon Bankers Association: Submits written testimony in support of the bill (EXHIBIT C). Explains the bill. Refers to

--Oregon's real estate escrow account laws; --taxes and insurance premiums. --accounts subject to the law;

--federal preemption's;

--20 - 80 down to loan ratio;

--statutes in reference to rate;

--float;

--treasury bill; --HUD regulation change last fall.

--RESPA

145 SEN. MCCOY: What is the advantage to the customer with this?

148 BRAWNER: Reiterates his testimony.

189 CHAIR: Closes PUBLIC HEARING on HB 2653. CHAIR: Opens PUBLIC HEARING on HB 2845.

WITNESSES:

214

Frank E. Brawner, Oregon Bankers Association James Krueger, Department of Consumer and Business Services

FRANK E. BRAWNER, Oregon Bankers Association: Submits written testimony

in support of the bill (EXHIBIT F). Refers to: --Country clerks and timely recording of instruments; --Lane County for instance, not having an emergency clause; --interpretation of the law and clarification; --correspondence between them; --instances where Oregonians drive clear across the state; office is closed or the office is only receiving, not recording. JAMES KRUEGER, Department of Consumer and Business Services: In 266 response to question from the CHAIR if the Department has any concerns regarding these bills; they have none. CHAIR: Closes PUBLIC HEARING on HB 2845. CHAIR: Opens PUBLIC HEARING on HB 2791. 288 WITNESS Ray Gribling, Oregon Mortgage Bankers James Krueger, Department of Consumer and Business Services 310 RAY GRIBLING, Oregon Mortgage Bankers: Submits written testimony in support of the bill (EXHIBIT D). Explains the bill. Intended to result in a two-year license. JAMES KRUEGER, Department of Consumer and Business Services: Submits 332 written testimony in support of the bill (EXHIBIT E). Most changes can be characterized as housekeeping and explains referring to: --clarifying language in two sections; --authority of director regarding issuance of license; --reduction of number of filings; --filing costs; --paperwork reduction; --authority to refund fees by rule. 372 CHAIR: These are technical in character? 390 SEN. DERFLER: Why would you have a refund if you were extending the time? CHAIR: Closes PUBLIC HEARING on HB 2791. 392 393 CHAIR: Opens WORK SESSION on HB 2791. SEN. LIM moves HB 2791 to the Floor with a DO PASS 405 MOTION recommendation. VOTE: MOTION PASSES, unanimously, all members are present. CARRIER: LIM

417 CHAIR: Closes WORK SESSION on HB 2791. 429 CHAIR: Reopens PUBLIC HEARING on HB 2651, HB 2652, HB 2653 and HB 2845 TAPE 83, SIDE A CECIL MONROE, Department of Business and Consumer Services: Testimony 002 in support of the bills. Refers to HB 2651: --single certificates; --keeping of books; --shares issued; --reduction of paperwork for banks and ourselves in administering stock accounts. 021 Refers to HB 2652; --clarification of rules to issue stock options; --setting price to buy at and fairness; --90 percent of par value. 031 Refers to HB 2653 A Engrossed: --history of rate on escrow accounts; --floating interest rate; discount rate; treasury bill rate; --making compatible with RESPA and HUD pronouncements regarding real estate escrow accounts. 052 Refers to HB 2845: --safety and soundness interest on timely recording; -- compatibility with the HUD pronouncements regarding real estate escrow accounts. 055 CHAIR: You think these are in good order? CHAIR: Sets HB 2845 aside after concerns by SEN. DUKES regarding 058 expense on counties. 060 DARRELL FULLER, Committee Administrator: HB 2845 has indeterminate impact on counties. CHAIR: Closes PUBLIC HEARING on HB 2651, HB 2652, HB 2845 and HB 2653. 066 CHAIR: Opens WORK SESSION on HB 2651, HB 2652 and HB 2653. 081 MOTION: SEN. LIM moves HB 2651 to the Floor with a DO PASS recommendation. VOTE: MOTION PASSES. AYES: DERFLER, DUKES, MCCOY, LIM and KENNEMER CARRIER: DUKES 090 SEN. LIM moves HB 2652 to the Floor with a DO PASS $% \left({{{\rm{ASS}}}} \right) = \left({{{\rm{ASS}}}} \right$ MOTION: recommendation. VOTE: MOTION PASSES. AYES: DERFLER, DUKES, MCCOY, LIM and KENNEMER CARRIER: LIM SEN. LIM moves HB 2653 to the Floor with a DO PASS $% \left({{{\rm{ASS}}}} \right) = \left({{{\rm{ASS}}}} \right$ MOTION recommendation. MOTION PASSES. AYES: DERFLER, DUKES, MCCOY, LIM and KENNEMER 104 VOTE: CARRIER: LIM CHAIR: Closes WORK SESSION on HB 2651, HB 2652 and HB 2653. 114 CHAIR: Opens WORK SESSION on SB 1034. 115 116 DARRELL FULLER, Committee Administrator: There are -1 and -2 amendments by GARY BAUER. WITNESSES: Gary Bauer, Oregon Independent Telephone Association Mike Kane, Public Utility Commission Paul Graham, Department Of Justice Paul Romain, MCI Telecommunications GARY BAUER, Oregon Independent Telephone Association: Submits written 122 testimony in support of the bill (EXHIBITS 0 and P). Explains the bill. Refers to competitors and requiring commission to go to rule making. Refers to: --publicly available information; -- regulatory proceedings; --commission's intent and process; --personal matters of employees and stockholders. BAUER: In response to question from the CHAIR amendments are in good 143 shape. ROMAIN has expressed some concerns. Explains. MIKE KANE, Public Utility Commission: Testimony in support of the bill. 154

States they have no problems with the bill itself as amended; rule making will iron out. Addresses protection of trade secrets versus public process; those interests will be protected. 166 PAUL GRAHAM, Department of Justice: Testimony in support of the bill. Refers to: --public records act; --contested case proceedings; rate proceedings or other regulatory proceedings; --public interest test; --regulatory proceeding; --protective order; --regulatory purposes; --rule making. PAUL ROMAIN, MCI Telecommunications: Addresses concerns regarding 180 regulatory environment. Refers to PUC and: --public interest; --access to information; --challenging assumptions in regulatory proceeding; --comfort level; assurances of PUC. 205 MOTION: SEN. DERFLER moves to ADOPT the SB 1034-2 amendments. VOTE: CHAIR: Hearing no objection, the SB 1034-2 amendments are ADOPTED 209 MOTION: SEN. DERFLER moves SB 1034, AS AMENDED, to the Floor with a DO PASS recommendation. VOTE · MOTION PASSES. AYES: DERFLER, DUKES, MCCOY, LIM and KENNEMER CARRIER: DERFLER CHAIR: Closes WORK SESSION on SB 1034. 2.2.2 223 CHAIR: Opens WORK SESSION on SB 887. 224 WITNESSES: Jim Hill, on behalf of Sen. Hamby Curt Pederson, Chief Information Officer, State of Oregon Gary Weeks, Director of Oregon State Lottery David Prather, Oregon State Lottery 225 JIM HILL, on behalf of SEN. HAMBY: Submits written testimony in support of the bill (EXHIBIT G). States the amendments are the -1 and -2's combined (EXHIBITS J and K). Explains the changes. 257 GARY WEEKS, Director of Oregon State Lottery: Explains the amendments. Addresses: --emergency backup center research; --study for other current backup facilities; --consolidation of facilities. 302 CURT PEDERSON, Chief Information Officer, State Of Oregon: Refers to --electronic backup site in rural Oregon; --model in British Columbia; Infosure; --counterpart agency; electronic backup site for personal computers, local area networks; --mid-range and main frame computers; --cost effective, more secure; --technical information and cost effectiveness. 326 CHAIR: The goal of fiber optic and cost of \$42,000 a mile is probably prohibitive at this point. Part of the goal was to use the state to help leverage further development and support for infrastructure rural-wide as well as make sure it is consistent with the state. How are we doing? 334 PEDERSON: Refers to private sector providing a service through competition; we are simply a customer and we move away from these dedicated lease lines. It moves advance technology to rural Oregon where it hasn't been available before. We are getting a very good reception to that. 353 CHAIR: This will drive benefit for all of the state along with it. 354 HILL: Refers to Private sector requirement for same services. The state could defray its costs and private industry could come out and operate its facilities there very cost effectively because they have the same concerns and needs as state government does. 376 CHAIR: The bill addresses specifically advance digital; does that give you enough flexibility?

377 WEEKS: Responds to the comments from the chair.

384 SEN. DUKES: When we started all of this, the CHAIR said Eastern Oregon was hoping to get fiber optic. I understand they are getting some jobs; what else are they getting?

400 WEEKS: Responds. The lottery should not bear the burden of laying fiber optic, so within today and the time we have to have the system they will have figured out a way to deliver voice video and data transmission to Eastern Oregon because we have to have that to run the backup system.

TAPE 82, SIDE B

004 $\,$ WEEKS: Continues responding affirmatively to SEN. DUKES, I believe this is do-able.

010 PEDERSON: We still need to develop the customer that would take advantage of the fiber optics. Refers to:

- --anchor tenant;
- --feasibility study;
- --electronic backup, warm and hot sites;
- --wide-band high-speed infrastructure;
- --PUC;
- --main and mid-frame computers;
- --the private and public.

025 SEN. DUKES: I guess I would encourage you to work with Economic Development Department as we plan for that half a million people that are supposed to show up in the next 10 years.

030 SEN. MCCOY: Have you done any initial steps to make you believe you can do this? I understand the customer aspect. What else have you done?

038 $\,$ PEDERSON: Refers to leverage lottery investment in warm site. What we are doing is scaleable.

057~ HILL: Refers to emergency backup center continues. Wants to share cost of bringing customers from Washington.

073 SEN. DERFLER: Gary, Do you have any idea of the cost per line?

DAVID PRATHER, Oregon State Lottery: In response to the question from SEN. DERFLER for WEEKS, states

he has spoken with US WEST regarding estimates of cost.

085 SEN. DERFLER: No, I mean what are you going to spend per month?

PRATHER: Right now we would estimate around \$250,000 per month; a reduction from our current \$300,000 a month. Further discussion regarding figures and estimates of cost.

090 $\,$ SEN. DERFLER: You wouldn't be going into a project without having some idea?

PRATHER: Responds.

105 WEEKS: Gives comments regarding bidding.

110 SEN. LIM: What is the open, justifiable process that this should go to Burns? I only heard the testimony that we want the lottery office moved to Burns. Today we hear, boom, it is going to Burns. What answer do I give to people when they ask?

128 WEEKS: First to develop Eastern Oregon. Refers to public policy.

145 SEN. LIM: What is the public process leading to this conclusion?

154 HILL: The reason Burns was chosen, generally speaking there is infrastructure that already exists; gives three areas. You would be touching many more communities besides Burns.

181 $\,$ SEN. LIM: Next, refers to quote for \$60,00 backup expense, cost of moving the system.

190 PEDERSON: Addresses monthly high-speed cost.

195 CHAIR: Comments on frame relay cost. Not a \$60,000 difference, much smaller. Bill has subsequent referral to Ways and Means. Can we adopt them conceptually and have Legislative Counsel formulate them and send them on to Ways and Means? These are a slight compromise to the -1 and -2.

212 SEN. MCCOY: What is the fiscal impact?

211 WEEKS: We don't have the fiscal impact developed for you. We will have that, of course, for Ways and Means.

MCCOY: You are going to plan for something bigger than what you initially started to do?

252 WEEKS: We hand always planned to locate outside the Willamette Valley an emergency backup center. We had not picked a site. The difference in the cost is only marginal whether you pick Burns or La Grande.

277 MOTION: CHAIR moves to ADOPT the SB 887 conceptual amendments. VOTE: CHAIR: Hearing no objection, the SB 887 conceptual

amendments are ADOPTED.

- 280 MOTION: CHAIR moves SB 887, AS CONCEPTUALLY AMENDED, to the Floor with a DO PASS and REFER to Ways and Means recommendation.
- 282 VOTE: MOTION PASSES, unanimously, all members are present.
- 283 CHAIR: Closes WORK SESSION on SB 887. CHAIR: Opens WORK SESSION on SB 994. WITNESSES: Jim Hill, on behalf of Sen. Hamby

Gary Weeks, Oregon State Lottery

CHAIR: We still do not have confirmation from the Governor's office on their position. States he is hopeful the committee can amend the bill with the new amendments then work further with the Governor's office. Not my anticipation we will move out today.

--law enforcement; search and rescue, corrections, fire fighting.

324 SEN. DERFLER: Why would we exempt them?

344 $\,$ SEN. DERFLER: Why exempt? Why couldn't you cooperate and use the same tower?

350 GARY WEEKS, Oregon State Lottery: I'm not prepared to do that as I have not spent a lot of time with this particular amendment. I am thinking it through as you are.

370 CHAIR wants him to work on that.

380 HILL, continues; refers to: -- Section Two; --travel dollars; --telecommunications; --facilitating and encouraging intrastate communications; --sen: YIH, statutory language; --Section Three; --mechanism; --contract providers desire to participate; time frame not long enough to recoup investment; --anchor tenant; --Section Four.

TAPE 83, SIDE B

014 Discussion continues between SEN. DUKES and JIM HILL regarding authority of the emergency board, legislative action, fiscal authority and certificates of participation.

045 HILL: Refers to Section Five and Governor; --appointment of an assistant for telecommunications policy; --statewide survey of technology; --policy; --seventeen member panel; --facilitating action within the biennium; --DAS tools necessary to facilitate in this biennium.

057 SEN. DUKES: Refers to fiscal impact and additional person for this.

058 HILL: Have talked to some telecommunications providers who said they are ready to give the dollars to the governor to pay for this person because they think it is that important.

070 SEN. DUKES: Refers to statutory allowance of private givers and governor to hire staff person with that money. Secondly, are you sure it's a great idea in terms of public perception to have the interested parties giving money to hire the staff person that's going to form the committee that's going to make the decisions?

078 HILL: I don't know of any other mechaniSMof how to get him a person. I think they will be able to disassociate themselves with it because we all believe there will be integrity in the process.

111 HILL: This will benefit urban areas where we have vehicle mile travel problems. We've got to reduce the number of cars we have on our roads and by creating a mechaniSMand encouraging development of these advanced technologies we can have the infrastructure in place where we can tell somebody stay home and work, don't get in your car, don't drive. Hopefully we can shift some of this development out to outlying areas. We can lessen the impact of those 500,000 people who are coming; hopefully we can get some of them to move to Burns.

119 CHAIR: Refers to loaned state officers.

123 CHAIR: Closes WORK SESSION on SB 994. 125 CHAIR: Opens PUBLIC HEARING on SB 895.

DARRELL FULLER, Committee Administrator: Gives overview. The -1 amendments (EXHIBIT N) are before the committee.

WITNESSES:

350

David Baca, Davis, Wright and Tremaine Robert Stoll, Stoll, Stoll, Berne, et al Robert Banks, Stoll, Stoll, Berne, et al Cindy Ziel, Martin and Associates Kim Buckley, Esler, Stephens and Buckley Cecil Monroe, Department of Consumer and Business Services

136 DAVID BACA, Davis, Wright and Tremaine: Submits written testimony in support of the bill (EXHIBIT I). Addresses problem of raising capital. Has experienced the problem created by current Oregon law; it imposes the most stringent liability laws regarding securities offerings. Gives an example of hypothetical problem and the process they go through, including investigations, due diligence, et cetera. Expense is disproportionate.

(SEN. DUKES has left the meeting.)

226 BACCA: Refers to Governor's transition team identifying raising start-up capitol for small business.

242 $\,$ CHAIR: Discusses meeting with others interested in the bill and moving to middle ground.

292 ROBERT STOLL, Stoll, Stoll, Berne, et al: Testimony in opposition to the bill. 309 --Refers to original securities law enacted after four years of study. Addresses:

--uniform securities law; --draft law; --minor changes over the years; --Governor's task force on capitol formation; --minor changes since 1967;

--1988 Oregon Supreme Court Prince decision; --failed compromise bill.

400 STOLL, continues: The Prince decision concerns have not materialized. SB 895 in its original form was proposed by a small group of lawyers who could not get support by the Bar

Association. That group would not meet, and came back with this amendment.

It is worse. The Prince decision has not created a problem TAPE 84, SIDE A. 006 STOLL, continues: Illustrates the relationships involved in a securities capital formation using a chart. Refers to: --raising funds; --lawyer; --underwriter who is broker dealer; --process of due diligence; --creation of a prospectus; 041 SEN. DERFLER: Ouestion regarding due diligence and principals. STOLL: Gives an example of actual case, continues explaining using his 046 diagram. Underwriter investigates relationship to issuer. The lawyer is the key person in the due diligence part of this. If this bill passes, there is no incentive for the lawyer to do the due diligence. He could know that the promoter is a crook and he has no liability under the Oregon securities laws. -- Responds to question from SEN. DERFLER regarding other states. The 085 lawyer is a critical ingredient. His firm does cases all over the country and in France. It is a very serious problem there because they don't have full disclosure laws. The responsible broker dealers have an extra problem and explains. There are a lot of investors who would not have protection if SB 895 amended passes. Explains, refers to cases over \$100,000. Oregon law says can recover attorney's fees. SEN. DERFLER: Question. 115 STOLL: Until today I heard the majority don't hold the lawyer liable. Discussion regarding other states need to study each state. The concerns of 1988 didn't happen. This law has been on book for 25 years. Disputes the problem. -- In response to SEN. DERFLER, they may want to limit their own 135 liability. Refers to public safety. This takes away the incentive to do due diligence. There are a lot of promoters out there who would like to do this. SEN. MCCOY: You don't think this is in the public interest? 166 172 ROBERT BANKS, Stoll, Stoll, Berne, et al: Testimony in opposition to the bill. Different perspective, but agrees. Most of our cases don't involve teachers, but they are out and out fraud. I think it affects the liability under this amendment as I read it. If they are not the direct seller they escape liability under this example, based on a case in court right now. Gives an example concerning a 75 year-old-lady. BANKS: Continues, regarding above example. Under this proposal I don't 216 think these principals are responsible. Refers to: --a specific statute; --officer or director of the seller; --employees of the sellers; --escape liability under this language; --comparison of a section of the bill with current statute. --haven't sued a lawyer since Prince case; --under the bill it would make it much harder to get money back for clients. 254 CINDY ZIEL, Martin and Associates: Testimony in Opposition to SB 895. Refers to: --reasonable care; --securities brokers; -- liability; --recovering money -- expense passed along to consumers; --liability of those who make misstatements and omission of information. --Specific section in the bill. 308 SEN. DERFLER: Question regarding liability. 310 ZIEL: Refers to contract; --audit: --professional services; --due diligence.

359 CHAIR: Addresses pros and cons to balance. We will reschedule for next

we are. 400 KIM BUCKLEY, Esler, Stephens and Buckley: Testimony in opposition to the amendments. Cites current law regarding lawyer being held liable. Gives an example of people who became involved in freight truck, management contract. TAPE 85, SIDE A 010 BUCKLEY, continues: Gives reasons why Oregon capital markets work well. Refers to: --reliance on information; --due diligence; --investigations. 020 SEN. MCCOY: Who is the sponsor of the bill? 029 BACA: Originally brought by Bill Cross on behalf of Jim Bernau of Willamette Valley Vineyards. CECIL MONROE, Department of Consumer and Business Services: I am not an 036 attorney, so probably listen with all of your perspective. We don't see any problem with current statutes that are in place. We see thousands; turn down maybe 15 of those. I would say there is not a lack of people out there wanting to go into the market. Our job is to see the consumer gets a fair shake and see what they are buying. We don't see any need to change what is working or that people are being denied access to capital markets. 092 BACA: The problem is not here with the registered deals. For every deal there are exemptions. There are hundreds of deals they never see. We are testifying today we feel the system is broke and the division never sees them. Refers to STOLL's illustration and: --auditors and comfort letter; 116 --full audits, --offering; --investor protection; --cost --draft of offering document; --professional liability. 139 SEN. MCCOY: That is fine if operating under present scheme of things. BACCA: This would not give immunity, with all due respect. Refers to SEC, having his ticket pulled; liability of principals and theories other than under this statute. 163 CHAIR: Would doubt that there is enough support for passing bill out of the committee. CHAIR: Closes PUBLIC HEARING on SB 895. CHAIR: Adjourns at 5:40 p.m. Submitted by, Reviewed by, Carol A. Smith Darrell W. Fuller Committee Assistant Committee Administrator EXHIBIT SUMMARY: A - Testimony on HB 2651, Frank E. Brawner, Oregon Bankers Association - 2 pages B - Testimony on HB 2652, Frank E. Brawner, Oregon Bankers Association - 3 pages C - Testimony on HB 2653, Frank E. Brawner, Oregon Bankers Association - 6 pages D - Testimony on HB 2791, Ray Gribling, Oregon Mortgage Bankers - 2 pages E - Testimony on HB 2791, James Krueger, Consumer and Business Services - 2 pages F - Testimony on HB 2845, Frank E. Brawner, Oregon Bankers Association - 11 pages G - Proposed SB 887 conceptual amendment, Sen. Hamby - 2 pages H - Proposed SB 994-1 amendments, Sen. Hamby - 3 pages I - Testimony on SB 895, David Bacca - 17 pages
J - Proposed SB 887-1 amendments, Sen. Hamby - 2 pages
K - Proposed SB 887-2 amendments, Sen. Hamby - 2 pages

week. This is a tough issue, but that is where

L - Proposed SB 888-1 amendments, Sen. Hamby - 1 page
M -Proposed SB 888-2 amendments, John Powell - 1 page
N - Proposed SB 895-1 amendments, Bill Cross - 3 pages
0 - Proposed SB 1034-1 amendments, Gary Bauer - 1 page
P - Proposed SB 1034-2 amendments, Gary Bauer - 1 page