

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 84

MEMBERS PRESENT:
Sen. Neil Bryant, Chair
Sen. Randy Miller, Vice-Chair
Sen. Ken Baker
Sen. Jeannette Hamby
Sen. Peter Sorenson
Sen. Dick Springer
Sen. Shirley Stull

MEMBER EXCUSED:
Sen. Randy Miller, Vice-Chair

STAFF PRESENT:
M. Max Williams II, Committee Counsel
Julie Clemente, Committee Assistant

MEASURES HEARD: Work Session SB 362
Public Hearing & Work Session SB 373 SB 788
SB 902

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 , SIDE A

003 CHAIR BRYANT: Calls meeting to order

OPENS PUBLIC HEARING ON SB 373

Witnesses: Stephen Kafoury, Professional Land Surveyors of Oregon
Tim Fassbender, Professional Land Surveyors of Oregon
D. Gary Hutcheson, Professional Land Surveyors of Oregon
Tyler Parsons, Parsons Surveying
Richard C. Skinner, Skinner & Associates Land Surveying
Ed Graham, Board of Engineering Examiners

014 STEPHEN KAFOURY, Professional Land Surveyors of Oregon: Testifies in
support of SB 373. Speaks of bill as a housekeeping bill. Explains.

039 SEN. SORENSON: What are your premium costs for errors and omission
insurance ?

TIM FASSBENDER, Professional Land Surveyors of Oregon: Based on gross
annual sales. Explains.

048 SEN. SORENSON: Anticipate any reduction in premiums as a result of this
legislation?

FASSBENDER: His carrier couldn't promise anything. Explains.

KAFOURY: Speaks of his experience on this issue.

76 FASSBENDER: Still responsible for work done by others 50 years ago.
Explains.

086 TYLER PARSONS, Owner, Parsons Surveying: Testifies in support of SB
373. Speaks of liability if business sells. Explains

105 RICHARD C. SKINNER, Registered Land Surveyor, Skinner & Associates:
Testifies in support of SB 373. Speaks of statute of limitations and its
effects.
- Liable for work done many years in past and judged by today's standards.

- Purchaser of an existing business is held liable for past work
- No control over markers left on site.

136 ED GRAHAM, Administrator, Oregon Board of Engineering Examiners:
Testifies in support of SB 373.

CLOSES PUBLIC HEARING ON SB 373

OPENS WORK SESSION ON SB 373

MOTION: SEN. HAMBY moves that SB 373 be sent to the Floor with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES. All members are present. SENATORS BAKER AND MILLER ARE EXCUSED.

SENATOR DWYER will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 373

OPENS WORK SESSION ON SB 362

159 CHAIR BRYANT: Gives background on bill's progress. References proposed amendments from the Building Codes Division. [EXHIBIT F] Did they testify?

164 MAX WILLIAMS: Would like to have retired building code inspectors place under the bill

171 KAFOURY: Takes no position.

186 CHAIR BRYANT: Explains amendments. [EXHIBIT F] Under section 1 create a new subsection 3 that would include protection for retired certified building code division inspectors acting as volunteers at no cost for 60-day period after a disaster has been called by Governor.

MOTION: SEN. HAMBY: Moves to ADOPT the Building Code Division's amendments.

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All members are present. SENATORS BAKER AND MILLER ARE EXCUSED.

MOTION: CHAIR BRYANT: Moves that SB 362, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection the motion CARRIES. All members are present. SENATORS BAKER AND MILLER ARE EXCUSED.

SENATOR STULL will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 362

OPENS PUBLIC HEARING ON SB 788

Witnesses: Frank Morse, President, Morse Bros., Inc., representing OCAPA
Steve Frey, Controller, Morse Bros., Inc., representing OCAPA
Robert McCann, Segwick James Insurance Brokers, representing OCAPA
Steve Call, Manager, Casualty and Special Investigative Units, Claims Department, Safeco Insurance Company

212 FRANK MORRIS, Owner, Morse Bros., Inc., representing Oregon Concrete & Asphalt Paving Association: Testifies in support of SB 788. [EXHIBIT A] Offers proposed amendments. [EXHIBIT B]

252 STEVE FREY, Controller, Morse Bros., Inc., representing Oregon Concrete and Asphalt Paving Association: Testifies in support of SB 788. This type of legislation is important. Explains.

CHAIR BRYANT: Why did you sign the contract?

FREY: Believed at the time that the law did not allow such indemnifications. Explains.

289 CHAIR BRYANT: Contract provision would have been voided if it read "solely at your general contractor's negligence." But because the indemnification clause said "the negligence of the general contractor" it created enough of a legal question that you took it to a higher court.

307 FREY: Didn't even anticipate this clause would be used in this manner.

339 ROGER McCANN, Sedgwick James of Oregon, insurance brokers: Testifies in support of SB 788. With this language in the law, it is very hard to find underwriters to insure contractors.

366 CHAIR BRYANT: References words added to line 15 of bill. [EXHIBIT B]

MORSE: Amendment was received from The Port of Portland. Concur.

374 SEN. SORENSON: References "railroad" on line 20 of bill. What is the connection of this to the bill?

FREY: Believes that was in the previous law. No comment.

CHAIR BRYANT: Generally railroad legislation is pre-empted by the federal government. Explains.

390 SEN. SORENSON: Why don't you simply strike those indemnity clauses you don't agree to?

McCANN: Speaks to experience where attorney has said, "It's legal and we're not going to change it."

CHAIR BRYANT: Do you use similar indemnification language in your contract?

MORSE: We do not. Explains.

464 STEVE CALL, Manager, Casualty and Special Investigative Units, Claims Department, Safeco Insurance Co.: Testifies in support of SB 788.

TAPE 84, SIDE A

040 CALL: Safeco supports this bill because we believe it is the right thing to do. Explains.

CLOSES PUBLIC HEARING ON SB 788
OPENS WORK SESSION ON SB 788

060 MOTION: CHAIR BRYANT: Moves to ADOPT the amendment to SB 788 as follows: On page 1 of the printed bill, line 15, change period to a comma, and add: 'except to the extent the person is determined to be negligent.'

063 SEN. SORENSON: Speaks of his concern regarding amendment.

CHAIR BRYANT: I think it is fairly limited. Section only deals with indemnification clauses.

SORENSON/BRYANT: Continue.

083 MAX WILLIAMS: A potential solution would be to substitute the words "at fault" for the word "negligence." Continues.

099 SEN. SPRINGER: Is it fair to assume this applies to public contracts as well?

CHAIR BRYANT: Yes.

SEN. SPRINGER: Have we heard from any public agencies?

MAX WILLIAMS: No, have not be contacted by any public agency.

SEN. SPRINGER: Reluctant to proceed without their comments.

CHAIR BRYANT: Asks Mr. Williams to call Marla Rae in Attorney General's Office for comments.

115 CLOSES WORK SESSION ON SB 788

OPENS PUBLIC HEARING ON SB 902

Witnesses: Sample Lindholm, Executive Director, Manufactured Housing Communities of Oregon:
Don Miner, Oregon Manufactured Housing Association

128 SAMPLE LINDHOLM, Executive Director, Manufactured Housing Communities of Oregon: Presents written testimony from Sally Herrington [EXHIBIT D] and her own testimony in support of SB 902.[EXHIBIT C]

155 DON MINER, Oregon Manufactured Housing Association: Testifies in support of SB 902 with proposed amendments. [EXHIBIT E]

173 SEN. SORENSON: What is the protection for the tenant when the rent has been paid and there is a dispute regarding the timeliness of the payment. References language on page 2 lines 39 through 44. "Three notices within the prior year."

LINDHOLM: It would be on the fourth.

SEN. SORENSON: Restates question.

LINDHOLM: Would not count. Explains.

SORENSON/LINDHOLM: Discussion.

SEN. SORENSON: What is the purpose of the legislation?

LINDHOLM: Those who did not pay. Explains

238 SEN. BAKER: References language in the -2 amendments and original bill.

"Within the prior year". Can be interpreted in different ways. Suggests changing language to say "within the previous 12 months."

LINDHOLM: Acceptable. Our intent was the previous 12 months.

CHAIR BRYANT: Where would that be added.

SEN. BAKER: Page 3, line 2 of -2 amendments: after the, delete "prior year" and insert "previous 12 months".

CLOSES PUBLIC HEARING ON SB 902
OPENS WORK SESSION ON SB 902

265 MOTION: SEN. BAKER: Moves to ADOPT the SB 902-2 amendments dated 3/31/95 and that SB 902-2 be further amended on page 3, line 2, delete "prior year" and insert "previous twelve months".

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED.
All member are present. SENATOR MILLER IS EXCUSED.

MOTION: SEN. BAKER: Moves that SB 902, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, SENATORS BAKER, HAMBY, STULL and
vote AYE. SENATORS SORENSON and SPRINGER vote NAY. SENATOR MILLER IS
EXCUSED.

CHAIR BRYANT

CHAIR BRYANT: The motion CARRIES.

SENATOR BAKER will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 902

284 REOPENS WORK SESSION ON SB 788

CHAIR BRYANT: Pass out bill as amended. Will bring back if Attorney General's office has a problem.

290 SEN. SORENSON: Suggests Mr. Williams call Association of Oregon Counties and the League of Oregon Cities for their comments on the bill.

310 CHAIR BRYANT: Will have Mr. Williams request the letters. Will hold bill until letters are received. If there are objections or concerns, will bring bill back to committee.

SEN. BAKER: This is good public policy and fair. Will not change vote if there are objections.

327 SEN. SPRINGER: Speaks to the defective nature of the law presently on the books.

344 CHAIR BRYANT: Issue is not amount of damage, but who pays. Continues.

MOTION: CHAIR BRYANT: Moves that SB 788, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, SENATORS BAKER, HAMBY, SORENSON, STULL and
CHAIR BRYANT vote AYE. SENATOR SPRINGER votes NAY. SENATOR MILLER IS
EXCUSED.

CHAIR BRYANT: The motion CARRIES.

CHAIR BRYANT will lead discussion on the Floor.

380 SEN. SORENSON: Speaks of reserving right to change his vote.

CLOSES WORK SESSION ON SB 788

CHAIR BRYANT: Adjourns meeting at 4:00 p.m.

Submitted By:

Reviewed By:

Julie Clemente
Committee Assistant

M. Max Williams II
Committee Administrator/Counsel

EXHIBIT LOG:

A - Testimony on SB 788 -- Frank Morse -- 1 page
B - Proposed Amendments on SB 788 -- Frank Morse -- 1 page
C - Testimony on SB 902 -- Sample Lindholm -- 1 page
D - Testimony on SB 902 -- Sally Harrington -- 2 pages
E - Proposed Amendments on SB 902 -- Staff -- 3 pages
F - Testimony & Proposed Amendments SB 362 -- Staff -- 1 page
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