

SENATE COMMITTEE ON
JUDICIARY

April 24, 1995 Hearing Room C
3:00 P. M. Tapes 120-121

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

STAFF PRESENT:

M. Max Williams II, Committee Counsel
Julie Clemente, Committee Assistant

MEASURES HEARD: Public Hearing HB 2325
Reconsideration of the Bill SB 462

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 120, SIDE A

003 CHAIR BRYANT: Calls the committee to order.

OPENS PUBLIC HEARING ON HB 2325

Witnesses: Representative Kevin Mannix, Representing House District #32
Betsy Bailey, Associated Oregon Industries
David Canary, Attorney, Tax Section, Oregon State Bar
Scott A Sideras, Chief Hearings Officer, Appeals Section, Oregon Department of Revenue
Glenn Cate, Chief Hearings Officer, Appeals Section, Oregon Department of Revenue
Jeffrey Mattson, Hearings Officer, Appeals Section, Oregon Department of Revenue,
Eugene
Richard Munn, Director, Oregon Department of Revenue
Elizabeth S. Harchenko, Special Counsel to the Attorney General, Department of Justice

015 REP. KEVIN MANNIX, Representing House District #32: Testifies in support of HB 2325 and presents proposed amendments [EXHIBITS B, C, D, E, F & G] Changes certain elements of the tax appeal process

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057 What we do here is change to having a Magistrate's Division within the tax court. Explains.

071 DAVID CANARY, Representing the Tax Division, Oregon State Bar: Testifies in support of

HB 2325. [EXHIBIT H]

148 "Those are just two of the true horror stories that have occurred." Continues.

184 BETSY BAILEY, Associated Oregon Industries. Testifies in support of HB 2325. [EXHIBIT

I] and offers proposed HB 2325A-7 amendments. [EXHIBIT B] Written to help keep track of timing and process within the tax court.

194 SEN. BRYANT: You mean when the tax court has to issue an opinion?

MANNIX: That's correct. Explains.

BAILEY: HB 2325-A8 amendments [EXHIBIT C] Written to make sure the counties have a right of appeal from the Board of Equalization to the tax court.

203 BAILEY: HB 2325-A9 [EXHIBIT D] and HB 2325-A12 [EXHIBIT G] HB 2325A-12 is a

recent substitute for the HB 2325-9A amendments.

- Changes the filing fee

- Addresses specifically the informality of the proceedings in the tax

court and the

magistrate's division

- Allows telephone testimony

220 MANNIX: Makes it clear you do not have to be represented by counsel. Explains.

236 MANNIX: Better to have a flat fee. Explains.

241 BAILEY: Additionally the HB 2325-A12 amendments deal with confidentiality of proceedings

and tax payers. Explains.

MANNIX: Let me mention something on the idea of confidentiality. Continues.

260 BAILEY: Last things in those amendments deal with effective date of the act and transition

between the department and the tax court. Continues.

- HB 2325-A11 [EXHIBIT F1] replaces HB 2325-A10 [EXHIBIT E]

272 MANNIX: These amendments reflect a comprehensive process of discussion immediately after

the passage of the measure in the House. Continues.

300 CHAIR BRYANT: Why rotate non-real property-type hearings officers into the real property

area?

CANARY: I can only speculate. Continues.

311 SEN. SORENSON: Would property tax payers still have the right to go
before the Board of
Equalization?

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MANNIX: Yes.

SORENSON/MANNIX/CANARY: Discussion.

356 SEN. SORENSON: Is there a way to compute dollars lost if the appeal
decision is
different?

CANARY: There was a fiscal impact done. Continues

396 MANNIX: Recommends that bill be referred to Ways & Means. Explains.

409 CANARY/SORENSON: Discussion.

426 MANNIX: My inclination would be to ask you not to do this in this bill.
Explains.

455 SEN. BRYANT: References Article 9, Section 1 regarding the requirement
that there be
uniform state laws as it affects taxation. Answer?

474 MANNIX: The methodology that you use for achieving uniformity is also a
question
of constitutionality. Continues.

TAPE 121, SIDE A

048 MANNIX: Judges will do what they have to do. Continues.

052 CANARY: Uniformity problem should not be given a great deal of
consideration. Continues.

058 SEN. SPRINGER: Speaks to the confidentiality provision. Any idea how
often a protective
order is granted ?

CANARY: Can only think of two or three cases. Explains.

114 SEN. BRYANT: References written testimony of David E. Carmichael.

[EXHIBIT A]

123 GLENN CATE, Chief Hearings Officer, Appeals Section, Oregon Department

of Revenue
- With department 15 years, member of Oregon State Bar, handles all types

of cases and
has unblemished record within the department.

141 SCOTT SIDERAS, Chief Hearings Officer, Appeals Section, Oregon

Department of

Revenue

- With department since 1982.

JEFFREY MATTSON, Hearings Officer, Appeals Section, Oregon Department of
Revenue, Eugene.

- Graduate of University of Oregon Law School 1977, accounting degree from
University

of Oregon, and has been with department's appeals section for 20 years.

150 CHAIR BRYANT: Would one of you address the general process that occurs
in a real property
tax appeal. Continues.

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156 SIDERAS: Once the matter has proceeded to the point that it is assigned
a hearing, it comes
before a hearings officer. Continues.

170 CHAIR BRYANT: Who determines what hearings officer is selected for a
particular case?

SIDERAS: "In former times, the decision of which hearings officer heard which case was the providence of the Chief Hearings Officer." Continues.

SEN. BRYANT/PANEL: Continue.

193 MATTSON: It was my understanding that any time I recommended relief for
a tax payer, it was always and forever reviewed by someone mid-level within the department. No
exceptions.

210 SEN. BRYANT: Did that cause you as a hearing officer to be more
reluctant to grant a petitioner. . .

MATTSON: Certainly. Continues.

234 SEN. BRYANT: Taxpayer won at each level?

SIDERAS: If the hearings officer stands firm and refuses to change,
department by statute can modify the order with notice to the parties.
Continues.

264 CATE: Very fine line in there sometimes. Pressure can be more than
subtle.

272 SIDERAS/BRYANT: Discussion.

309 MATTSON: System as it is set up now, in my personal opinion, is not
impartial. Explains.

314 CHAIR BRYANT/PANEL: Discussion.

334 CHAIR BRYANT: Do you have any personal experience or feeling about
retribution?

MATTSON: I have a couple of examples. Continues.

370 SIDERAS: Feels his personnel file was reviewed. Continues.

384 CATE: Review policy of the Department of Revenue has changed
dramatically since we
testified before the House. Continues.

403 SIDERAS: While our remarks may seem minor, I know they are the same
pattern followed by
hearings officers who have been repeatedly discharged. Continues.

410 SEN. BAKER: What is the burden of proof that comes before you on a case?

SIDERAS: The same as it is in all civil matters.

SEN. BAKER/PANEL: Discussion.

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451 SEN. SORENSON: Would you mind giving an opinion on the legislation?

CATE: I strongly support it. Explains.

TAPE 120, SIDE B

042 SIDERAS: Initially, was very neutral. Continues.

046 MATTSON: Agrees with Scott. Continues.

056 SEN. SORENSON: Speaks of transfers. Are you aware of any provisions in
this bill that allow
you to be given a preference to the appointment of tax court magistrate?
MATTSON: Have had no conversation with the sponsors. Continues.

072 SEN. SORENSON/PANEL: Discussion.
VICE-CHAIR. MILLER: If this had been proposed 10 years ago what would
your answer
have been?

CATE: Situation 10 years ago isn't what it is today. Explains.

082 SIDERAS: This is not a new or novel problem. Continues.

088 CATE: Modification process was drafted in good faith. Explains

099 SEN. MILLER: Can you put a reason on why that attitude has changed?

CATE: I don't know. The person who call answer that is the Director.

VICE-CHAIR MILLER/MATTSON: Discussion.

146 SIDERAS: Part of the problem with talking about other problems is that
we are not allowed
to relate specifics of the cases because of disclosure problems. Continues.
175 VICE-CHAIR MILLER: Is it conceivable they would advocate this change?

GATE/MILLER Discussion.

193 SEN. SPRINGER: What has an independent review by the tax courts
produced? Any other
definite statistics in terms of reversals'?

SIDERAS: From my purposes, no. Explains.

220 MATTSON: Until the recent past, all cases were reviewed where relief was
recommended.

Continues.

RICHARD MUNN, Director, Oregon Department of Revenue. Introduces Elizabeth
Harchenko. Explains direction of testimony. ~ ,.

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264 ELIZABETH S. HARCHENKO, Special Counsel to the Attorney General: Gives
background
information on the administrative hearings process at the Department of
Revenue. [portion of
EXHIBIT 31
315 The Department has established uniform standards. Continues.
430 Department hearings there is a burden of proof. Continues.

TAPE 121, SIDE B

037 HARCHENKO: Ultimately it is the director that has the responsibility to
decide an issue and
order on all cases. Continues.

071 RICHARD MANN, Director, Oregon Department of Revenue: Explains exhibits.

[EXHIBIT

J] The next document is Robert W. Muir, Attorney-in-Charge, Tax & Finance
Section's legal
opinion regarding the current hearing process and modification process.
Continues.

106 References page 10. Continues.

155 Let me just give you a sample of the kinds of exemptions that might be
there. Continues.

202 Shows you the way the filings come in to us. Continues.

251 CHAIR BRYANT: We have several witnesses who have signed up today.
Meeting has to

adjourn at five. Continues.

Additional Testimony for Record:

2325 and
David E. Carmichael, Attorney at Law. Written testimony in support of HB
proposed amendments. [Exhibit A1

Larry Tapanen, Chief Executive Officer, Consilium, Inc. Written Testimony
in support of HB 2325, 1Exhibit K] and transcription of session of
Department of Revenue Hearing. [Exhibit L1

Edward P. Miska, Corporate Tax Manager, Portland General Electric Company.
Written testimony in support of HB 2325. [Exhibit M]

CLOSES PUBLIC HEARING ON HB 2325

276 MOTION: CHAIR BRYANT: Moves that the rules be suspended for the
purpose of reconsidering the vote on SB 462.
VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES and the
rules have been suspended. All members are present. SENATOR
SPRINGER IS EXCUSED.

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285 MOTION: CHAIR BRYANT: Moves that we reconsider the vote by which SB 462
was sent to the floor with a do pass recommendation.
VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES and the
vote has been reconsidered. SB 462 is now once again before the committee.
All members are present. SENATOR SPRINGER IS EXCUSED.
300 CHAIR BRYANT: I here is some concern as some insurance companies don't
provide that type of endorsement in their policy. Chair is still intent on resolving the
problem.

RECESS

CHAIR BRYANT: Appoints Senator Shirley Stull as a member of the subcommittee on Civil Process.

Meeting adjourned at 5:00 p.m.

Submitted by: Reviewed by:
J ulie Clemente M. Max Williams II
Committee Assistant Committee Administrator/Counsel
EXHIBIT LOG:

A -- Testimony on HB 2325 -- David E. Carmichael -- 2
pages
B -- Proposed Amendments HB 2325-A7 -- Staff-- 2 pages
C -- Proposed Amendments HB 2325-A8 -- Staff-- 1 page
D -- Proposed Amendments HB 2325-A9 -- Staff-- 11
pages
E -- Proposed Amendments HB 2325-A10 -- Staff-- 2 pages
F-- Proposed Amendments HB 2325-A11 -- Staff-- 2 pages
G -- Proposed Amendments HB 2325-A12 -- Staff-- 11
pages
H -- Testimony HB 2325 -- David L. Canary -- 29 pages
I -- Testimony HB 2325 -- Betsy Bailey -- 1 page
J-- Testimony HB 2325 -- Richard Munn --28 pages
K -- Testimony HB 2325 -- Larry Tapanen -- 3 pages
L -- Testimony HB 2325 -- Larry Tapanen -- 80 pages
M -- Testimony HB 2325 -- Edward P. Miska-- 2 pages

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