SENATE COMMITTEE ON JUDICIARY Hearing Room Tapes -142 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. Peter Sorenson STAFF PRESENT: M. Max Williams II, Committee Counsel Julie Clemente, Committee Assistant MEASURES HEARD: Work Session SB 462 Public Hearing & Work Session HB 2654 Public Hearing HB 2325 Public Hearing & Work Session HB 3073 Public Hearing & Work Session HJR 47 HB 1025 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 , SIDE A CHAIR BRYANT: Calls meeting to order 002 005 Announces that HB 3098 will not be heard. Sponsor has an amendment which is not ready. Rescheduled for next week. 007 OPENS WORK SESSION ON SB 462 Invited Testimony: Senator Ron D. Cease, Representing Senate District #10 SENATOR RON D. CEASE, Representing Senate District #10: Testifies in 023 support of SB 462. Concerned that homeowners insurance not be denied or canceled solely on the basis that the applicant is a day care provider. Either version of bill would be acceptable. 038 SEN. BAKER: "You're in agreement with the -4 amendments?" CEASE: We could take either one. Continues. SEN. BAKER: "What is either one?" CEASE: "The printed one that came from Consumer and Business Affairs - the bill that went to the floor (A-Engrossed) and then the amended version." Continues. 047 SEN. HAMBY takes the gavel. RECESSES WORK SESSION ON SB 462 OPENS PUBLIC HEARING ON HB 2654 057 Witnesses: Frank Brauner, President, Oregon Banker's Association Patti Moss, Executive Vice President, Bank of the Cascades, Bend Keith Burns, Oregon Financial Services Joel Augee, Attorney, Wynwood Agency, Inc.

Genoa Ingram-Read, Oregon Association of Realtors

068 KEITH BURNS, Oregon Financial Services: Testifies in support of HB 2694. Speaks to -3 amendments. [EXHIBIT E] Restores language in original bill. Also submits written testimony in support of HB 2654 of Lew McMurran, Assistant Vice President, Government Relations, Household International. [EXHIBIT F]

116 Why do we need the bill? Explains.

155 PATTI MOSS, Executive Vice President, Bank of the Cascades, Bend. Testifies in support of HB 2654. [EXHIBITS H & I] Describes the utilization of optical imaging. System enables checks to be handled only once. Technology is write once, read many times. Cannot be written over.

Continues.

200 SEN. STULL: From a law enforcement standpoint. Has it created a problem when original no longer exists? Secondly, presumes bank employees testify to the integrity of the new document.

MOSS: Yes. Technology already approved in 40 other states. Explains

226~ BRAWNER: Gives background regarding what happens when records have to be replaced under new technology and the old system.

SEN. HAMBY: Assume you are in support of the -3 amendment?

274 BRAWNER: That is correct.

CHAIR Returns 281 SEN. SPRINGER: What is the fee for a customer to get a check reproduced?

MOSS: There is no fee. Continues

299 BRAWNER: Second bank has come on line in Eugene. Continues.

JOEL AUGEE, Attorney, Winwood Agency: Offers proposed amendments to HB 2654 [EXHIBIT K] and written testimony of Gloria J. Greeley, Vice President, Legal Affairs, Winwood Agency in support of the proposed HB 2654

amendments. [EXHIBIT J]

CHAIR BRYANT: Have you shown these to Mr. Brawner and Mr. Burns and are they in agreement?

AUGEE: I believe so.

331 BRAWNER: OBA has no problem with amendments as proposed. Continues

344 CHAIR BRYANT: Did anyone address the emergency clause?

BRAWNER: I have no

353 GENOA INGRAM-READ, Oregon Association of Realtors: I drafted the conceptual amendments. Bill already had an emergency clause. Explains.

BRAWNER: We were having difficulty with the real estate agency and their administrative rules. Legislation seemed the only way to cure that. Explains.

CLOSES PUBLIC HEARING ON HB 2654 OPENS WORK SESSION ON HB 2654

VOTE:

MOTION: SEN. BAKER: Moves to ADOPT HB 2654-A3 amendments dated

05/01/95.

5-0 MOTION PASSES AYE: Baker, Hamby, Springer, Stull, Bryant NO: None SENATORS MILLER AND SORENSON ARE EXCUSED

MOTION: SEN. BAKER: Moves to ADOPT the conceptual amendments deleting lines 14 through 17 and further deleting emergency clause in Section 5 of the A-Engrossed version of HB 2654 subject to review by legislative counsel. 5-0 MOTION PASSES VOTE . AYE: Baker, Hamby, Springer, Stull, Bryant NO: None SENATORS MILLER AND SORENSON ARE EXCUSED. MOTION: SEN. BAKER: Moves HB 2654 be sent to the floor with a DO PASS AS MENDED recommendation. VOTE: 5-0 MOTION PASSES AYE: Baker, Hamby, Springer, Stull, Bryant NO: None SENATORS MILLER AND SORENSON ARE EXCUSED. CHAIR BRYANT will lead discussion on the Floor. FOR THE RECORD: Additional written testimony by Steven Patrick Rodeman, Vice President/General Counsel, Oregon Credit Union League in support of HB 2654 [EXHIBIT B] Submitted by Pamela K. Pifher, Director of Legislative Affairs, Oregon Credit Union League. CLOSES WORK SESSION ON HB 2654 OPENS PUBLIC HEARING ON HB 2325 409 Richard Munn, Director, Oregon Department of Revenue Testimony: Elizabeth S. Harchenko, Special Counsel to the Attorney General, Department Justice of John Lobdell, Consumer Larry Tapanen, Industrial Appraiser and Chief Executive Officer, Consilium, Inc. Betsy Bailey, Associated Oregon Industries David Canary, Attorney, Tax Section, Oregon State Bar W. Scott Phinney, Attorney Jerry Fisher, Oregon Public Affairs Manager, Hewlett-Packard Company David Carmichael, Attorney Jerry Hanson, Director, Assessment & Taxation, Washington County, representing Oregon State Association of County Assessors, and the Association of Oregon Counties Jim Gaffney, Certified Public Accountant, Representing Oregon Society of Certified Public Accountants 426 CHAIR BRYANT: Speaks of his intent to concentrate on the bill; the importance for the committee to understand what the bill does in its present form, and the options that should be considered regarding what functions should remain in the department and which should be transferred to the magistrate division and why. TAPE 140, SIDE A 028 RICHARD MUNN, Director, Department of Revenue ELIZABETH S. HARCHENKO, Special Counsel to the Attorney General, Department of Justice. Reviews testimony from last session. Continues -- Speaks of uniformity issues given the change of moving the hearings process out of the department and replacing it with a magistrate system in the court. 070 Magistrate process creates a change in the system, replacing the internal hearings process involves number of individuals not subject to any coordinating review 079 CHAIR BRYANT: RECESS 087 CHAIR BRYANT: RESUMES HEARING 085 HARCHENKO: Previously talking about the change in system that the bill would create. - Formal appeal to the regular division of tax court

- Speaks to 4 sets of amendments and their requirements.

CHAIR BRYANT: From your prospective, explain the different levels and 107 types of appeals.-- Necessity for uniformity in some areas HARCHENKO: Begins with classification of cases and the level of 123 involvement. - property tax -vast majority come from locally assessed accounts - very valuable property - centrally assessed 193 In 30 days, that utility role is reviewed by the director. Continues. 208 CHAIR BRYANT: Where does the Department of Justice become involved? Continues. 223 HARCHENKO: When they are appealed to the tax court. Continues. CHAIR BRYANT: How many of them in a normal tax year? 238 HARCHENKO: Probably 20 or less per year. 242 MUNN: Probably get double that appeal. Actually settle before trial. CHAIR BRYANT: Utility appeals, how many of those actually go to the tax 246 court? HARCHENKO: Can get exact numbers for you. 257 MUNN: On the utility roll, we might be asking for legal advice. Continues. 266 HARCHENKO: Moving into the locally assessed cases, two broad classes or cases. Explains. 278 CHAIR BRYANT: Of the 170 appeals a year on property tax , how many of those appeals would fall under that category? HARCHENKO: Would like to get a breakdown. Explains. 288 CHAIR BRYANT: Other classification is state exemption issues? HARCHENKO: Yes. Explains. 312 CHAIR BRYANT: Do you get involved at the hearing level? HARCHENKO: We might. Explains. CHAIR BRYANT: Most commonly wait to go to tax court? HARCHENKO: That's correct. Explains. 327 There are two major income tax programs that the department administers. Continues. - Involved in the front end of the administration of the program 376 Corporation area is the other income-based tax that the department collects. Continues. 386 CHAIR BRYANT: Would that be in the initial conference, internal review process? HARCHENKO: Ideally it is at the audit stage. Explains. Do have some policies, once into tax court, on how to manage tax load 402 and keep costs down. Explains CHAIR BRYANT: Income tax side, where does the hearing take place 420 involving the hearings officer? HARCHENKO: Explains the process/steps.

TAPE 139, SIDE B

039 MUNN: You see the vast majority there are non-filers. Continues.

042 CHAIR BRYANT: Any other branches of taxation?

 $\tt HARCHENKO:$ The department was responsible for collecting 26/28 different kinds of fees and charges. Continues.

055 HARCHENKO: In the income tax area, employer withholding is a function of the collection division. Continues.

060 CHAIR BRYANT: Do you have one/two timber tax appeals a year?

MUNN: Much more than one or two. Can get you the actual data.

067 CHAIR BRYANT: You are always there once you get to the tax court.

072 CHAIR BRYANT: I'm more interested in pre-tax court level.

078 HARCHENKO: At the magistrate level, expect that if the utility roll goes, we would be asked to appear on those appeals.

- industrial cases

- income tax cases where issue is interpretation of the law

100 HARCHENKO: Last question related back to uniformity.

112 CHAIR BRYANT/HARCHENKO: Discussion regarding timber.

CHAIR BRYANT: Currently using para-legals?

HARCHENKO: Have one assigned to the taxation section.

118 CHAIR BRYANT/HARCHENKO: Summarizes Harchenko's testimony regarding DOJ involvement.

126 CHAIR BRYANT: Would you give me a letter indicating what you think the Department of Justice's time would be under the current system versus the new system for each of these categories.

135 SEN. BAKER: Could we have counsel identify the dash amendments?

MAX WILLIAMS: Dash amendments presented last week that have not been adopted are $-7, \ -8$

SEN. BAKER: Where did the -7 come from?

MAX WILLIAMS: All came from the proponents of the bill. Dash 7, 8, 11 and

12 are still up for consideration.

SEN. BAKER: Nine and 10 have been superseded?

MAX WILLIAMS: Yes

149 MUNN: Speaks of amendments; have all tried working together on amendments to make the bill work as effectively as it can. Continues. - Speaks of previous testimony; tried to lay out a description of the appeal process including the review process. Continues

180 CHAIR BRYANT: When do you think is best to make the transition?

MUNN: Another area of concern is the degree of overlap. Continues review.

206 SEN. HAMBY: Potential fiscal impact?

MUNN: Amendments deal with shifting cost to the state. If amendments are adopted, will bring down the costs. Continues

227 BETSY BAILEY, Associated Oregon Industries. In support of HB 2325. Introduces David Canary.

230 DAVID CANARY, Attorney, Tax Section, Oregon State Bar: Testifies regarding fiscal impact of HB 2325. [EXHIBIT L] Eight points for consideration considering fiscal impact. In concept there should be no

fiscal impact. Explains

- 278 SEN. BRYANT: Wouldn't you still need a computer support person?
- CANARY: All hearings officers are computer literate and generally draft their own opinions. Continues.

318 If we have a meaningful independent review, expect half of the cases would get settled that go to the Department of Revenue. Continues.

383 JOHN H. LOBDELL: Testifies in opposition to HB 2325. [EXHIBIT M]

468 Am less confident that the tax court could speed things up. Continues.

TAPE 140, SIDE B

064 LARRY TAPANEN, Appraiser: Testifies in support of HB 2325. [EXHIBITS T & S] Speaks to fiscal benefits of bill.

094 SEN. BAKER: Why does it take 8 or 9 years to get an appeal?

TAPANEN: We could never figure out. Continues.

BAKER/TAPANEN: Discussion regarding costs.

134 JERRY FISHER, Oregon Public Affairs Manager, Hewlett-Packard Company: Testifies in support of HB 2325. [EXHIBIT A]

244 Based on testimony, it is imperative we separate those hearings officer who remain. Continues.

305 Hearing officers testimony, I found particularly troubling. Explains

410 References the case of David Zelner. Explains

TAPE 141, SIDE A

034 W. SCOTT PHINNEY, Attorney, former Chief Hearings Officer, Department of

Revenue: Testifies in support of HB 2325. [EXHIBIT O] Taxpayers need to know how the systems is going to work and to understand it. Explains.

101 Likewise with costs eluded to with county counsels. Continues.

151 With the informal settlement processes proposed in the bill at the magistrate level, very unlikely many cases will be going to hearing. Explains.

161 JERRY HANSON, Director, Assessment & Taxation, Washington County. Representing the position of the Oregon State Association of County Assessors and the Association of Oregon Counties. Testifies in support of HB 2325. [EXHIBIT P] Has two concerns:

- filing fee will not divert people from the system
- County assessors don't take the system seriously

263 Many cases are stipulated cases. Stipulated because they have been worked out through a dialogue. Explains.

278 CHAIR BRYANT: Other witnesses?

282 JIM GAFFNEY, Certified Public Accountant, representing Oregon Society of

Certified Public Accountants: Testifies in opposition to HB 2325 and offers proposed amendments. [EXHIBIT Q] Most of their concerns were alleviated by the dash 12 amendments. Broad point of confidentiality is still a concern. Explains.

CHAIR BRYANT: Have you shared your conceptual amendments with the sponsors

of the bill?

GAFFNEY: No, we have not.

328 Our first position would be to separate income/excise tax out of the umbrella of this bill. Explains.
394 In the current process there are criminal/civil sanctions for violating confidentiality. Continues.

433 Could tell you stories about the extremes people go through to protect confidentiality. Continues.

447 $\,$ CHAIR BRYANT: I would like Mr. Douglas to give me a report back if the sponsors will accept this as an amendment.

CLOSES PUBLIC HEARING ON HB 2325

TAPE 142, SIDE A

OPENS PUBLIC HEARING ON HB 3073

Witnesses: Bob Olson, Oregon State Bar

028 CHAIR BRYANT: Bill from Representative Parks which was discussed in the

subcommittee on Civil Process.

031 MAX WILLIAMS: Bill would raise the jurisdiction of small claims courts from \$200 to \$750.

SEN. HAMBY: No consideration of pushing it higher?

MAX WILLIAMS: May have been some consideration. Explains.

042 BOB A. OLSON, Oregon State Bar: Testifies in support of HB 3073. The Judicial Administration Committee is strongly in favor of increasing limits.

CLOSES PUBLIC HEARING ON HB 3073 OPENS WORK SESSION ON HB 3073

046 $$\operatorname{MOTION}$: SEN. HAMBY: Moves HB 3073 be sent to the floor with a DO PASS recommendation.

VOTE:

4-0 MOTION PASSES
 AYE: Baker, Hamby, Miller, Bryant
 NO: None
 SENATORS SORENSON, SPRINGER AND STULL ARE EXCUSED

056

CHAIR BRYANT will lead discussion on the Floor.

CLOSES WORK SESSION ON HB 3073

OPENS PUBLIC HEARING ON HJR 47

060 CHAIR BRYANT: No witnesses .

CLOSES PUBLIC HEARING ON HJR 47

OPENS WORK SESSION ON HJR 47

 $$\operatorname{MOTION}:$ SEN. HAMBY: Moves HJR $\,$ 47 be sent to the floor with a DO PASS recommendation.

VOTE:

4-0 MOTION PASSES AYE: Baker, Hamby, Miller, Bryant NO: None SENATORS SORENSON, SPRINGER AND STULL ARE EXCUSED

CHAIR BRYANT will lead discussion on the Floor.

CLOSES WORK SESSION ON HJR 47

OPENS WORK SESSION ON SB 462

CHAIR BRYANT: Gives background on bill.

MAX WILLIAMS: Senator Cease testified that he and the sponsor of the bill

would be willing to accept either the bill as is was in its A-Engrossed version or with the amendments. Explains. CHAIR BRYANT: Problem, if we adopt amendments as they currently stand, we would have difficulty on the Floor. Explains. WILLIAMS: No. Explains. A-4 amendments satisfy concerns. 032 SEN. HAMBY: At least we would be helping. 092 CHAIR BRYANT: Better than nothing. 096 SEN. SPRINGER: Ms. Rassmussen is here. She certainly is to be commended. I have tried in every way to get the insurance industry to come and talk or express in writing what their concerns may be. I have nothing by way of a response. Continues. CHAIR BRYANT/HAMBY/SPRINGER: Discussion. 111 SEN. SPRINGER: Ms. Rasmussen is that 122 EILEEN RASMUSSEN, Providers Across Oregon: I have a copy. Provides Chair Bryant with copy of SB 493. 131 CHAIR BRYANT: What we should do also is use subparagraph 3 as it defines day care providers. MOTION: SEN. SPRINGER: Moves to AMEND SB 462 by deleting "Section 2 subsection 2, lines 8 through 12 of the A-Engrossed version of the printed bill." 5-0 MOTION PASSES VOTE: AYE: Baker, Hamby, Miller, Springer, Bryant NO: None SENATORS SORENSON AND STULL ARE EXCUSED MOTION: SEN. SPRINGER: Moves SB 462 be sent to the floor with a DO PASS AS AMENDED recommendation. VOTE: 5-0 MOTION PASSES AYE: Baker, Hamby, Miller, Springer, Bryant NO: None SENATORS SORENSON AND STULL ARE EXCUSED SEN. CEASE will lead discussion on the Floor. CLOSES WORK SESSION ON SB 462 OPENS WORK SESSION ON SB 1025 Invited Testimony: James M. Hamerick, State Historic Preservation Officer, Oregon State Parks and Recreation Department Jeff Van Pell, Confederated Tribes of Umatilla Indian Reservation Ward Armstrong, Executive Director, Oregon Forest Industries Council 159 SEN. BAKER: This is part of the work group. Continues. 169 MAX WILLIAMS: Believe what's happened here, originally Mr. Armstrong came forward with an amendment to SB 1121. Continues. SEN. BRYANT: Ward, come first and walk us through this. 171 WARD ARMSTRONG, Executive Director, Oregon Forest Industries Council: Speaks to dealing with preservation and protection of legitimate historical sites. - Troubled with legislation which included activities on private land that are appearing in numerous occasions to be able to operate clearly and still be classed as archeological objects. Did not want to include native American sites in exemption of private forest lands. Language in 1025-3 amendments [EXHIBIT C] would be to exempt forest operations conducted under a notification from the State Forester from the application of this law. Language found to be too broad. Supports additional exclusions from the 221

Trying to keep exclusions as specific as possible.
 Additionally, line 10, after the word "operations" insert "on private

lands".

- Reluctant to exclude county lands

253 CHAIR BRYANT: Sen. Walden thinks you are including county lands. Do the exclusion address your concerns?

257 JEFF VAN PELL, Confederated Tribes of Umatilla Indian Reservation: Tribe's main problem is lack of input on development. Need to be notified.

Talks of changing 50 years to 75. Very costly for private land owners. Continues.

304 SEN. BAKER: That's being removed?

VAN PELL: Yes. What they are saying is that the Hood River County doesn't

want to do the inventories. They want exemption from the law until the state provides them with funding. Continues.

323 SEN. BAKER: The language that Ward has "with the exception of" included

burial sites - - -

VAN PELL: We could work with this language on private lands, but on public

lands - - -

SEN. BAKER: Do you have any problems with Ward's amendment?

 $\ensuremath{\texttt{VAN}}$ PELL: We would accept this language except for the part about the county land.

332 ARMSTRONG: My concern here is with Senator Walden. Mr. Chair, do you know the answer to that question?

CHAIR BRYANT: No, I don't. Gave me permission to go ahead and "gut and stuff" this bill and that he wanted to resolve the problem.

340 SEN. BAKER: In our working group, we agreed we would not move forward with SB 1025. If you want to add elements of 1025 into this bill I have some major problems with it.

CHAIR BRYANT: As I understand the issue, the language is fine as it relates to private land. Suggests amendment of the bill. Will check with Senator Walden if that causes a problem for him. 353 JAMES M. HAMERICK, State Historic Preservation Officer, Oregon State Parks and Recreation Department: Permit requirement for public land has been in effect since 1985. State office has never had a single problem with any sort of public agency with this provision.

367 CHAIR BRYANT: Makes me feel better. Any other comments?

371 ARMSTRONG: Neglected a very minor amendment, page 1, line 8 changing the 50 to 75 years. Additionally, on line 9 "is part of". This was suggested by Legislative Counsel.

CHAIR BRYANT: Ward, could you give us the language?

MOTION: SEN. BRYANT: Moves to ADOPT SB 1025-3 amendments dated $\,$ 04/28/95 and that SB 1025-3 be further amended on page 5, line 9, by $\,$ inserting "With $\,$

the exception of sites containing human remains, funerary objects, sacred objects, objects of cultural patrimony, or objects which are associated with a prehistoric native American culture," and that SB 1025-3 be further amended on line 10, by inserting "on private lands" after the word "operations".

6-0 MOTION PASSES

VOTE:

AYE: Baker, Hamby, Miller, Stull, Springer, Bryant NO: None

SEN. SORENSON IS EXCUSED

385 MOTION: SEN. BAKER: Moves SB 1025 be sent to the floor with a DO PASS AS AMENDED recommendation. VOTE: 6-0 MOTION PASSES AYE: Baker, Hamby, Miller, Stull, Springer, Bryant NO: None SEN. SORENSON IS EXCUSED SEN. BAKER will lead discussion on the Floor. CLOSES WORK SESSION ON SB 1025 CHAIR BRYANT: Adjourns meeting at 6.00 P.M. Submitted by: Reviewed by: Julie A. Clemente M. Max Williams II Committee Assistant Committee Administrator/Counsel EXHIBIT LOG: Testimony HB 2325 -- Jerry Fisher -- 3 pages Testimony HB 2654 -- Steven Patrick Rodeman presented by Pamela Peifher A -в ---- 1 page С --Proposed Amendments SB 1025 -- Staff -- 5 pages D --Proposed Amendments SB 2654 -- Staff -- 1 page Testimony HB 2654-A -- Keith Burns -- 2 pages E --Testimony HB 2654 -- Lew McMurran presented by Keith Burns -- 2 pages F --Testimony HB 2654 -- Frank E. Brawner -- 6 pages G --Exhibits for HB 2654 -- Patti Moss -- 1 page Exhibits for HB 2654 -- Patti Moss -- 4 pages Н -т --J --Testimony HB 2654 -- Gloria J. Greeley presented by Joel Augee -- 1 page К --Proposed Amendments HB 2654 A-Engrossed -- Joel Augee -- 1 page L --Analysis of Fiscal Impact HB 2325 -- David Canary -- 10 pages М --Testimony HB 2325 -- John H. Lobdell -- 4 pages Supplement to 4/20/95 Testimony HB 2325 -- David Carmichael -- 23 pages N --0 ---Testimony HB 2325 -- W. Scott Phinney -- 8 pages Testimony HB 2325 -- Jerry Hanson -- 3 pages P --Q ---Proposed Amendments HB 2325 -- Jim Gaffney -- 1 page R --Testimony HB 2325 -- Mike Kalberg -- 3 pages s --Supplement to Testimony HB 2325 -- Mike Kalberg -- 2 pages т --Testimony HB 2325 -- Larry Tapanen -- 3 pages

Supplement to Testimony HB 2325 -- Larry Tapanen -- 79 pages

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