

SENATE COMMITTEE ON  
TRANSPORTATION

Hearing Room  
Tapes - 36

MEMBERS PRESENT:

Sen. Ken Baker, Chair  
Sen. Mae Yih, Vice-Chair  
Sen. John Lim  
Sen. Marilyn Shannon  
Sen. Dick Springer

STAFF PRESENT:

Janet Adkins, Committee Administrator  
Gina Rumbaugh, Committee Assistant

MEASURES HEARD:

SB 616 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 , SIDE A

003 CHAIR BAKER: Calls the meeting to order (1:21PM).  
-Introductory remarks

PUBLIC HEARING ON SB 616

Witnesses: Andy Aubertine, Assistant Attorney General, Oregon Department of Justice

David Puryear, Settlement Coordinator, Oregon Department of Justice  
Marshall Coba, President, Oregon Highway Users Conference  
Mike Sherlock, Executive Director, Oregon Gasoline Dealers Association  
John Burns, Western States Petroleum Association  
Ken Simila, Measurement Standards Division, Oregon Department of

Agriculture

Kate Barker, Lake Oswego, Oregon  
John Alto, Chevron Dealer, Sherwood, Oregon  
Lori Barney, Oregon City, Oregon  
James Monroe, Oregon Farm Bureau Federation

015 ANDY AUBERTINE, ASSISTANT ATTORNEY GENERAL, OREGON DEPARTMENT OF JUSTICE: Provides background on \$7 million to be used in Oregon to fund a grant program as a result of settlements in a multi-district litigation price fixing case.

-History of the case and settlement

050 -\$7 million sum represents the consumer damages portion of the lawsuit  
-Reasons why the money could not be directly distributed to consumers

095 -Money allocated must be for transportation and transportation safety

related issues

-References the Amended Oregon Distribution Plan [EXHIBIT A], pages 10-11 listing various criteria that allow for certain grant applications  
-Grant awards range from \$25,000 to \$1 million

115 CHAIR BAKER: References Exhibit A, page 11(m), to confirm fuel testing falls into the parameters of grant awards.

125 DAVID PURYEAR, SETTLEMENT COORDINATOR, OREGON DEPARTMENT OF JUSTICE: There are nearly 1,800 state and local government entities eligible to apply for this fund.

135 SEN. YIH: \$25,000 to \$1 million per year or per biennium?

AUBERTINE: There is a \$1 million ceiling in total; grant recipients can ask for additional money the following year if they received less than \$1 million the previous year.

150 PURYEAR: This a one-time settlement, not an ongoing source of funds. There will be two grant periods, one this spring and one a year later.

SEN. YIH: References Attorney General news release [EXHIBIT B] and asks if the fund totals \$7 million or \$8 million.

PURYEAR: Approximately \$1 million is being distributed already to governments for their fuel costs, and the other \$7 million will go in this grant program for the benefit of citizens.

175 SEN. LIM: How did you come up with 14% government distribution?

AUBERTINE: Expert analysis determined, through purchase data, that approximately 14.4% of all fuel purchases in Oregon was done by government entities.

200 CHAIR BAKER: If grants are awarded, would that require that the Emergency Board or legislature to then approve those grants?

AUBERTINE: The legislature has to approve the spending of the grant.

220 PURYEAR: There are limits in the court order itself, which gives grant recipients a maximum of three years after allocation to complete spending on any proposal.

245 MARSHALL COBA, PRESIDENT, OREGON HIGHWAY USERS CONFERENCE: Supports SB 616. Submits testimony and resolution [EXHIBIT C].

255 MIKE SHERLOCK, EXECUTIVE DIRECTOR, OREGON GASOLINE DEALERS ASSOCIATION:

Represents small, independent gasoline dealers throughout the state. Supports a fuel testing program, but wants language included for knowingly or willfully selling substandard gasoline. Most dealers have no control over the gasoline that is delivered to them.

305 JOHN BURNS, WESTERN STATES PETROLEUM ASSOCIATION: Represents suppliers and refiners.

-Lists levels of petroleum marketing in Oregon

-Does not oppose fuel quality testing, but have concerns regarding a stable

source of funding

355 -Corrects several statements made by AAA at the 3/9/95 hearing that he feels were inaccurate

425 -Opposes Section 8 regarding penalties; don't believe a \$15,000 civil penalty is equitable

-Suggests for Section 9 that language include ASTM and NIST testing standards

TAPE 36, SIDE A

025 BURNS: Continues testimony.

-Repeats expectation that a stable source of funding be established

040 CHAIR BAKER: After the grant award is exhausted, there is an automatic sunset and the program ends.

BURNS: Programs that get started have a tendency to continue.

CHAIR BAKER: We could probably put a sunset into the bill.

-Do you know how many states have testing standards?

BURNS: Mr. Simila's material said six states do not have testing programs or ASTM approved standards.

070 CHAIR BAKER: Do you believe there's no problem with contaminated gasoline in this state?

BURNS: I didn't say there was no need for this program, we're just not seeing as many complaints today even with increased population.

-Nationally, there's about a 5.5% factor of bad gasoline; our own analysis showed the Oregon samples to be reflective of the national average.

CHAIR BAKER: What is an acceptable standard, and how do we get to that standard?

BURNS: I believe that's 0%. Fuel quality is very important to the industry.

120 CHAIR BAKER: I'd think you would want to have a testing program in place to defend yourself against the end consumer.

BURNS: We don't oppose a fuel testing program. We're comfortable with the testing programs done by the companies.

155 CHAIR BAKER: How much gasoline is sold in the state of Oregon?

BURNS: John Alto tells me 1.4 billion gallons per year.

CHAIR BAKER: Consumers are paying over \$1 billion a year for fuel with no testing.

BURNS: I encourage you to hear testimony from Tim Wood from the Attorney General's office with respect to complaints they are currently receiving.

175 SEN. YIH: Is the Fiscal Analysis [EXHIBIT D] a result of your working together as I requested, and is it a cost-effective program?

ADMINISTRATOR ADKINS: The fiscal statement is between the fiscal office and the Department of Agriculture as a first proposal, not a result of the work group.

200 SEN. YIH: Do you have an amendment to Section 8 regarding the penalty?

If it's willful, then you don't oppose a penalty?

SHERLOCK: Would like the words knowingly and willfully added to Sections 3 and 8.

220 SEN. LIM: If \$15,000 is excessive, what would be a reasonable penalty amount?

BURNS: I would argue strongly that \$1,000 would be the maximum fine.

260 CHAIR BAKER: The penalty would probably be substantially less than the maximum \$15,000 for first offenses. If the bad gas is coming from some point further up the line, it'd be more realistic to fine the dealer a low amount, and fine the refinery more.

BURNS: Since the civil penalty authority has begun, people have incurred thousands of dollars in attorneys fees in trying to get imposed fees down to something reasonable.

335 CHAIR BAKER: Mr. Simila, what is the Department of Agriculture's current penalty authority and what has the history been as far as using that authority?

KEN SIMILA, MEASUREMENT STANDARDS DIVISION, OREGON DEPARTMENT OF AGRICULTURE: References ORS 616.900 [EXHIBIT E], as an example of civil penalty authority. Under this, I'm not aware of anyone being fined the maximum \$15,000.

400 CHAIR BAKER: References Exhibit E, and points out that a number of factors are to be considered in imposing a penalty, all of which are included in SB 616.

420 SEN. LIM: How often does contaminated gasoline occur in this state?

SIMILA: The frequency is difficult to assess; we typically receive 2-10 complaints a week, but people generally drop the issue when we explain they need to document costs incurred and determine where the source of the fuel came from.

TAPE 35, SIDE B

030 CHAIR BAKER: Mr. Burns testified that the national, as well as Oregon, average for contaminated fuel is 5%. Would you have testimony other than that?

SIMILA: Two recent surveys in Oregon indicate an excess of 5.5% fuel contamination. Typically, states with mature testing programs show around 5.5% on an ongoing basis.

CHAIR BAKER: Were you going to talk about proposed programs?

050 SIMILA: References Fiscal Analysis, Exhibit D; explains Option A and Option B, and highlights differences.

110 SEN. LIM: What is the basis on which people are complaining about bad gasoline?

SIMILA: The two biggest areas of complaints are water which results in very poor driveability, and overstated octane which results in poor

performance.

145 SEN. YIH: Has the industry people seen your proposal of Options A and B?

SIMILA: I don't believe they have.

-Notes industry suggested using new technology of screening, which cuts costs

-In response to Sen. Yih, further explains screening equipment and where it's noted in the Fiscal Analysis

160 Sen. Springer joins the meeting.

180 SEN. YIH: If you need to examine a sample further after screening at the site, do you take it back to your lab, and send the complicated ones out of state?

SIMILA: We wouldn't have a laboratory; if a sample fails the screening tests, we'd send a large sample to a laboratory for further testing, the closest which is located in Seattle.

SEN. YIH: What does it cost for the testing?

SIMILA: A single sample octane testing by the Seattle laboratory is \$290; we could negotiate that figure down for an ongoing program.

240 SEN. YIH: Can the testing, screening, and results gathering be contracted out?

SIMILA: I'm not aware that it's being done by any other state; roughly 1/3 of the states contract the analysis portion out, but not the actual pump testing and sample gathering.

-Lists the variety of agencies that handle fuel testing in other states

270 KATE BARKER, LAKE OSWEGO, OREGON: Family supports SB 616. Relates personal experience of receiving water with fuel and shows bottled sample.

I have been appalled at the lack of accountability through local, state, and federal government agencies.

370 SEN. LIM: How can gas and water come out at the same time when it's supposed to separate?

385 JOHN ALTO, CHEVRON DEALER, SHERWOOD, OREGON: Correct, pure water and pure gasoline will never mix. Water settles at the bottom of the fuel tank

at a gas station, and that's where it's drawn from; filters typically prevent water being drawn.

BARKER: Concludes testimony of personal experience.

TAPE 36, SIDE B

020 WALTER ELLIS, MARION COUNTY, OREGON: Supports SB 616. Through extensive job-related travel, notes he has consistently gotten better fuel mileage when fueling up in Washington rather than in Oregon.

055 LORI BARNEY, OREGON CITY, OREGON: Supports SB 616. Relates personal

experience of receiving bad gasoline and the high cost of car repair. Owners of station tested sample and confirmed it contained high levels of water; however, Texaco indicated they don't feel responsible. She could not afford to hire an attorney to recover costs.

140 JAMES MONROE, OREGON FARM BUREAU FEDERATION: Supports SB 616. Submits testimony [EXHIBIT F]; shows a paper filter with a drain valve that is a crude instrument used to remove water from fuel.

CHAIR BAKER: Adjourns the meeting (2:55PM).

Submitted by, Reviewed by,

Gina Rumbaugh Janet Adkins  
Committee Assistant Committee Administrator

EXHIBIT SUMMARY: (all of the following exhibits are on SB 616)

- A - Amended Oregon Distribution Plan -- Staff -- 15 pages
- B - Attorney General news release -- Staff -- 4 pages
- C - Testimony and Resolution -- Marshall Coba -- 2 pages
- D - Fiscal Analysis -- Staff -- 3 pages
- E - Copy of ORS 616.900 -- Staff -- 1 page
- F - Testimony -- James Monroe -- 1 page