

April 28, 1993 Hearing Room 357 8:30 a.m. Tapes 48 - 51

MEMBERS PRESENT: Rep. Chuck Norris, Chair Rep. Ken Baker Rep. Carl Hosticka Rep. Lonnie Roberts

MEMBERS EXCUSED: Rep. Cedric Hayden, ex-officio

STAFF PRESENT: Janet Adkins, Committee Administrator Julie Dow, Committee Researcher Priscilla Boyle, Committee Assistant

MEASURES CONSIDERED: HB 2404 HB 3313 HB 3619 HB 2104

[--- Unable To Translate Graphic ---]

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation :

TAPE 48, SIDE A

006 CHAIR NORRIS calls the hearing to order at 9:52 a.m.

PUBLIC HEARING ON HB 2404 Witnesses: Rep. Bill Markham, District 46 Joe French, Oregon Forest Products Transportation Association J.E. Mello

017 JANET ADKINS, COMMITTEE ADMINISTRATOR: Gives summary of HB 240 4. (EXHIBIT A) Submits (-1) Amendments to replace original bill.

B)

040 REP. BILL MARKHAM, DISTRICT 46: In support and introduced Joe French.

044 JOE FRENCH, OREGON FOREST PRODUCTS TRANSPORTATION ASSOCIATION: Testifies in support of HB 2404 and submits written testimony.

057 J.E. MELLOR, FJM TRUCKING: Testifies in support of HB 2404. > Refers to letter written to PUC included in Exhibit C > Suggests PUC b

102 REP. ROBERTS: Will this bill help Mr. Mellor? Are we going to go retroactive on it?

106 REP. MARKHAM: It would need to have a couple word amendment to make it retroactive so it would take care of his problem.

108 JANET ADKINS: Legislative Counsel said it would need an emergency clause and retroactive to January 1, 1993 in it.

112 CHAIR NORRIS: Is there evidence this is a state wide problem?

113 REP. MARKHAM: If the feds don't heal up the problem we've got in federal timber there is going to be many more coming in with problem. Is that a fair statement?

115 J.E. MELLOR: Yes, that is very much a fair statement.

133 SHIRLEY MELLOR, FJM TRUCKING: Testifies in support of HB 2404.

170 BOB RUSSELL, PUBLIC UTILITIES COMMISSION (PUC): Testifies in opposition of HB 2404 and submits written testimony. (EXHIBIT D)

193 REP. HOSTICKA: What happens if they sell the truck?

194 RUSSELL: If the company remains in business and sell the truck, the company that sold the truck has a credit in registration fees.

201 REP. HOSTICKA: If they go out of business and sell the truck and the bill passed, who would pay the registration fee?

202 RUSSELL: They would come to PUC for a refund of unused registration fees and the new purchaser would re-register the truck.

204 REP. HOSTICKA: So this would only benefit someone who went out of business and did not sell their trucks and left them to rot their money back?

206 RUSSELL: No, if they sell their trucks they would still get a refund on unused registration.

217 CHAIR NORRIS: Somebody going out of business selling their truck, they can not transfer the plate or the benefit of the PUC registra the new owner must register it in their own name, so the truck is double covered for a period of time. So this would allow people going out business, selling their trucks, for which they can not transfer the benefits of PUC registration can at least get back the money they prepaid.

WORK SESSION ON HB 2404

232 MOTION: REP. BAKER MOVES THAT HB 2404 BE AMENDED TO INCLUDE THE (-1) AMENDMENTS.

245 REP. ROBERTS: What do we do for people in this position who should get money back? There's an emergency clause and other things.

250 JANET ADKINS: Emergency clause and language to say bill would effect trucks out of business on or after January 1, 1993.

253 MOTION: REP. ROBERTS MOVES THAT WE AMEND THE NOW HB 2404 AS AMENDED IN (-1) AMENDMENTS WITH THE EMERGENCY CLAUSE AND THE LANGUAGE

270 MOTION: REP. ROBERTS MOVES THAT HB 2404 AS AMENDED BOTH IN WRITING AND CONCEPTUALLY BE REFERRED TO THE FULL COMMITTEE WITH A D

273 VOTE: IN A ROLL CALL VOTE WITH MOTION VOTES UNANIMOUS.

PUBLIC HEARING ON HB 3313 Witnesses: Mike McCracken, Oregon Medical Association (OMA) Sydney Brewster, Epilepsy Association of Oregon (EAO)

288 JULIE DOW, COMMITTEE RESEARCHER: Gives summary of HB 3313. (EXHIBIT A)

330 REP. HOSTICKA: Is it possible to see proposed amendments, so we can ask questions in relationship to those?

334 JULIE DOW: Since Rep. Stein resigned, The Epilepsy Association could not get those amendments through Legislative Council, so conceptual only.

340 CHAIR NORRIS: Who proposed the amendments, Dr. Salinsky?

343 MIKE MCCRACKEN, OREGON MEDICAL ASSOCIATION (OMA): Defer so proponents can testify first.

348 SYDNEY BREWSTER, EPILEPSY ASSOCIATION OF OREGON (EAO): Refers to introduction letter from Rep. Stein. (EXHIBIT E) > Have not re

368 CHAIR NORRIS: Can someone talk to what the amendments are?

369 BREWSTER: Absolutely, that's what we are going to do. Oregon Medical Association (OMA) and Department of Motor Vehicles (DMV) agreement that something needs to be done with the statute.

385 DR. MARTIN SALINSKY, M.D., OREGON HEALTH SCIENCES UNIVERSITY EPILEPSY CENTER: Testifies in support of HB 3313 with amendments and written testimony. (EXHIBIT F)

411 REP. ROBERTS: Regardless of whether a person is going to apply for a driver's license or not they are reported to DMV, automaticall

415 SALINSKY: We are talking about patients who are seeking a driver's license.

416 REP. ROBERTS: If a person is not going to apply for a driver's license, they aren't reported to DMV?

SALINSKY: In general, that's true.

417 REP. HOSTICKA: Section 2 of the bill says those reports are suppose to go to the Health Division, and the Health Division sends the i

426 SALINSKY: That's probably correct.

427 REP. HOSTICKA: Does the Health Division have other uses besides motor vehicle implications?

433 SALINSKY: Can not answer that question. Continues with testimony.

TAPE 49, SIDE A

023 REP. ROBERTS: Are there other disorders of the nervous system besides epilepsy that qualify for being reported?

030 SALINSKY: Yes, this is a general law effecting any persons who might have episodic, altered consciousness or any other neur disability which would affect their driving ability. The main impact

has been on epileptic patients. Continues with testimony.

149 ROBERTS: If someone was epileptic and lied about it to DMV, had a seizure and a serious accident occurred, should they be called they did not disclose their medical problem, in your opinion?

155 SALINSKY: It's a different issue, an issue of what penalties might be. The law being proposed would put patients in a reporting situa penalties would be involved for not complying with the law.

173 REP. ROBERTS: The law states penalties to make people aware. Is there a difference in qualifying for a license between a petit-m grand-mal seizure?

178 SALINSKY: Yes. Majority of epileptic people have minor seizures. Mandatory physician reporting is in the way of progress.

197 REP. ROBERTS: Can they tell when the seizures are coming on and take a form of medicine?

203 SALINSKY: Recommendations enclosed in packet from national organizations are guidelines DMV should utilize.

213 CHAIR NORRIS: Would a typical person subject to these seizures driving down the freeway feel the onset of this and pull over or is it

219 SALINSKY: Varies from person to person.

227 REP. HOSTICKA: You're saying there's two issues. What is reported? Who does the reporting?

230 SALINSKY: We are interested in who does the reporting.

232 REP. HOSTICKA: That differs from written bill.

233 SALINSKY: The bill was not written right. Looking for method by which DMV becomes aware of patients.

238 CHAIR NORRIS: Section 2 states authorized treating personnel report to the Health Division.

242 REP. HOSTICKA: They want to change that.

SALINSKY: That's exactly what we want to change.

REP. HOSTICKA: The second part of it is, that impairs the ability of

the person exercise reasonable control. If you change both of those the physician has to tell the patient not that you have epilepsy diabetes, etc. but in my judgement you have a condition that impairs

your ability to drive a motor vehicle and you ought to report that.

249 SALINSKY: Bill is way out of proportion meant to be a more general bill.

266 MCCRACKEN: Testifies in opposition of HB 3313.

316 RAY MEUSING, OREGON MEDICAL ASSOCIATION (OMA): Testifies in opposition of HB 3313 due to liability.

343 REP. BAKER: Would a specific statute such as ORS 807.7 take precedent over a specific exemption because of a privilege?

346 MEUSING: If carefully worded, yes.

348 REP. BAKER: Do you believe the current statute takes precedent over . . .?

349 MEUSING: It's taking over specific chronic diseases. It specifies. HB 3313 is unspecific.

353 REP. BAKER: Right now, doctor would have to report? If we broaden too far, may negate that, we don't know where that is going?

357 MEUSING: We don't know where that is going. Propose amendment on page 2, line 22 after the word that "obviously impairs the person's to drive." Until physicians are given guidelines, give them immunity.

Suggested language "persons authorized to diagnose and treat disorders pursuant to subsection (1) of this section shall not be subject to any criminal prosecution, civil liability or in violation of any professional oath, affirmation, duty, privilege, standard of care if it's based on the individual's medical judgement that they make or do not make a report."

397 DR. KATHLEEN GAFFNEY, M.D., OREGON HEALTH DIVISION (OHD): Submits written testimony. (EXHIBIT G) > Need to come back with a sing not have other uses for information reported by physicians, other than reporting to DMV.

TAPE 48, SIDE B

032 REP. BAKER: If individual physicians treating patients make judgement about driving ability of person exercising reasonable caution

036 GAFFNEY: There has been concern by physicians of not taking away the license, but submitting information to someone based on their of profession has changed.

042 REP. BAKER: If patient voluntarily reporting is implemented, how will it affect the number of reports you receive?

045 GAFFNEY: Do not have an analysis, Dr. Salinsky can share his information, I suspect DMV has ability to poll other states and

051 DR. CHARLES SPRAY, M.D., OREGON HEALTH DIVISION (OHD), DRIVER'S MEDICAL CERTIFICATION: Testifies in support of HB 3313 with proposed outcome of DMC Survey of Oregon Neurologists.

073 CHAIR NORRIS: Are they happy with the program as it stands? 074 SPRAY: They appear content and comfortable.

075 CHAIR NORRIS: Would they oppose this bill?

076 SPRAY: Not sure they would oppose as it stands. Bill still needs work.

101 REP. BAKER: Have there been any reported cases in Oregon of a physician being civilly liable for not reporting or for lack of reporti any professional qualifications been challenged by the Medical Association?

107 SPRAY: Know of one case, didn't go to trial, but charged of medical negligence for not reporting a person. Can't answer second qu

111 REP. BAKER: What period of time?

112 SPRAY: One case I've been aware of in six years.

113 REP. BAKER: In general, how many people have been reported to Oregon Health Division or DMV with seizure disorders? How many h denied licenses?

117 SPRAY: Don't have statistics.

118 GAFFNEY: Mike McCracken has statistics. Approximately of 11,000-13,000 cases reviewed a year, about 19% were seizure disorders with s

150 SCOTT FABER, EPILEPSY ASSOCIATION OF OREGON: Testifies in support of HB 3313 with amendments and submits written testimony. (EXHIBIT H

204 REP. ROBERTS: If individual reporting passed, and you thought if you reported to DMV you would not get a license, would you report?

209 FABER: If on my own and had bus service I would report it.

217 DIANE MACKIE, EPILEPSY ASSOCIATION OF OREGON: Testifies in support of HB 3313 with amendments and submits written testimony. (EXHIBI

267 SHERYL MERCER, EMPLOYMENT, EPILEPSY ASSOCIATION OF OREGON: Testifies in support of HB 3313 with amendments and submits written te (EXHIBIT J)

327 CHAIR NORRIS: There will be another public hearing on HB 3313. Appoint Dr. Gaffney to put a work group together for this bill.

Written Testimony from Roderick Richards in support of HB 3313 submitted for the record. (EXHIBIT K)

Written Testimony from Noreen Joynt in support of HB 3313 submitted for the record. (EXHIBIT L) PUBLIC HEARING ON HB 2104 Witnesses: Norm Ma Fiscal Impact Statement submitted for the record (EXHIBIT M)

372 NORM MANSELLE, DEPARTMENT OF GENERAL SERVICES: Testifies in support of HB 2104 and submits written testimony. (EXHIBIT N)

381 GEORGE FERNSTEINER, DEPARTMENT OF HIGHER EDUCATION: Testifies in support of HB 2104. Requests the rule be carried into the statute.

396 PAUL GHIM, DEPARTMENT OF GENERAL SERVICES: Testifies in support of HB 2104.

WORK SESSION ON HB 2104

405 CHAIR NORRIS: What amendment are you seeking?  
406 PERNSTEINER: To take current language of rule and put in statute, on page 2, line 16, delete "as follows:" and insert "taking into all pertinent factors including but not limited to, the following:".  
422 CHAIR NORRIS: Does that present a problem to General Services?  
424 MANSALLE: No.  
427 JANET ADKINS: That is instead of adding additional factors?  
429 CHAIR NORRIS: How would that read? schedule of reductions from the fair rental value  
430 PERNSTEINER: taking into account all pertinent factors including but not limited to, the following.  
439 CHAIR NORRIS: Are committee members willing to move? Rep. Baker?  
443 REP. BAKER: Yes.  
444 CHAIR NORRIS: Rep. Baker has moved the amendment stated. (EXHIBIT O)  
453 MOTION: REP. BAKER MOVES HB 2104 AS AMENDED TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION. VOTING AYE: Rep. Hosticka, Rep.

TAPE 49, SIDE B

PUBLIC HEARING HB 3619 Witnesses: Pat Ehrlich, Association of Oregon Counties (AOC) Rep. John Meek, District 5 Mike Maloney, Washington Coun

041 JANET ADKINS: Gives summary of HB 3619 (SEE EXHIBIT A) and submits (-2) Amendments to HB 3619. (EXHIBIT P)  
063 PAT EHRLICH, ASSOCIATION OF OREGON COUNTIES (AOC): Testifies in support of HB 3619 and submits written testimony. (EXHIBIT Q)  
085 REP. JOHN MEEK, DISTRICT 5: Testifies in support of HB 3619.  
205 CHAIR NORRIS: Is there anything that precludes counties and cities from enforcing this themselves? Is this something that the local go can control under existing law?  
208 REP. MEEK: I was unable to find a means when I was on the city and counties to draft something like this, I would conclude on re have done it does need to be a state law because it also deals with state roads and highways to where this takes place. It puts in statute they can do it and gets rid of the legal aspect of it.  
226 MIKE MALONEY, WASHINGTON COUNTY: Testifies in support of HB 3619 and submits written testimony. (EXHIBIT R)  
282 REP. ROBERTS: Don't the utilities already repair the roads?  
284 MALONEY: Utilities own the trenches. The joining pavement is permanently damaged and its life is reduced as a result of havi cut. They may come back and re-patch where they actually dug does not have any impact on the damage done to the adjoining pavement.  
292 REP. ROBERTS: What is the reason for cutting the pavement?  
293 MALONEY: To install their utility. 294 REP. ROBERTS: To install or repair it?  
295 MALONEY: Or repair it, either way.  
301 REP. ROBERTS: So they have to do this in order to service the utility renters?  
302 MALONEY: In many cases utilities could be installed by boring under the road. In other cases we would notify utilities when road impr were going to be made under the provisions of this bill. We would have a time frame in which they could install utilities at no cost.  
REP. ROBERTS: If they bored under the road then their cost will skyrocket.  
MALONEY: Not necessarily, today given the technology in some cases they find it most cost effective to bore rather than cut depending on t individual circumstances.

311 GORDON TRACY, MANAGEMENT ANALYST, MARION COUNTY PUBLIC WORKS: Testifies in support of HB 3619 and submits written testimony. (EXHIBIT  
333 DOUG VANDYKE, TRANSPORTATION ENGINEERING MANAGER, CLACKAMAS COUNTY: Testifies in support of HB 3619. > Road failures occur where u county pays out of the normal road budget > Many utility people come back and maintain the ownership in them and others forget about it and in about six months have a subcontractor coming in who once the temporary patch is in place loses all ownership > This fee would allow us to be able to restore those damages that we  
TAPE 50, SIDE A

049 JOHN DORST, MULTNOMAH COUNTY: Testifies in support of HB 3619 and points out the legal opinion. > Multnomah was taken to court si charging for some of these fees and lost > Counties are legally prohibited > The only option is to come back through the legislative process  
064 REP. ROBERTS: Why do we put utilities on the street and not on the side where we can dig up dirt?

070 REP. NORRIS: The gas main runs down the South side and the houses are on the North side.

071 REP. ROBERTS: You could put one main across and flair out, I'm assuming. They're going to make a cut, they have to, right?

073 DORST: Yes. On some of the older existing lines where they haven't put in services, they have to make the cut. What this bill is talk

079 REP. ROBERTS: You let utilities know now?

081 DORST: Yes. If you have services or lines to put in, put them in now because we are going to repave.

087 REP. ROBERTS: What happens if your time schedules clash and utilities are not through with what they are doing, do you hold off?

091 DORST: We would try to set it over for another year, or in some cases for new roads put on a first lift and leave off the second so go in. It's more a matter of planning this bill is getting at.

092 REP. ROBERTS: Is this an attempt for the cities and counties to have a taxing thing or is this money going to be strictly dedicated t

093 DORST: As a part of the bill it has to go strictly for the repair. The intent is only to recover the cost directly associated with th

095 CHAIR NORRIS: That's not what the bill says, it says "All road surface damage fees received by a city or county under this act shall into the general road fund of the city or county to be expended as other moneys in the general road fund are expended."

097 DORST: Right and road fund is restricted to road fund activity.

098 CHAIR NORRIS: But not just repair of the utility cuts.

099 DORST: How that would be is you can't necessarily repair just that utility cut, in order to get that right ability you would ove road.

121 DENISE McPHAIL, PORTLAND GENERAL ELECTRIC (PGE): Testifies in opposition of HB 3619. > Concerned fines would be imposed irres

145 REP. BAKER: Does the county occasionally order utility to change?

146 McPHAIL: Yes, they can order relocation for other purposes. Because the bill is not aimed at making money but preventing road cuts had to make that move you would make it at your customer cost. While this says utilities, the people who pay for cuts to serve a home or development is the homeowner or developer. This is not as costly to us as it would have been a few years ago because we are doing more boring and pushing and less cutting, but that's not always possible to do.

166 REP. BAKER: Does this bill make a distinction between utilities and private individuals?

JANET ADKINS: It includes persons, it doesn't just say utilities.

REP. BAKER: The statute 758.010 says any person or corporation has a right and a privilege to construct and maintain access through the road, so this bill in proposed form would effect anybody, or is it o limited to utilities?

178 McPHAIL: I believe that statute is definitions to utilities, I think it means any form of utility, but I am not certain, you would ne clarification.

182 REP. BAKER: This bill 3619 as amended (-2) would effect only utilities or anybody?

184 McPHAIL: No, as I understand amendments it would effect investor owned utilities, both public, energy and telecommunications t regulated, people's utility districts as a part of the special district inclusion that 198.010 is a special district definitions and people utility districts along with sewer and water districts of all different stripes and all other kinds of districts are included that definitio Person is not defined and we have discussed in the hall whether you need a definition of person or if the courts would look upon that including anybody who cut up a road. With the amendments, if a city cut up a county road or visa-versa they would also fall under these stat or municipal utilities because they are not referenced in any of the definitions. It does not capture the MCI, Sprint, AT&T who lay stuff in right-of-ways because they are not regulated utilities.

216 REP. BAKER: So Fibreoptic cables are not included?

217 McPHAIL: It's not clear that they are, but they could be captured under person.

218 CHAIR NORRIS: I think that is something we would have to figure out internally.

226 DAVE OVERSTREET, GTE NORTHWEST INCORPORATED: Testifies in opposition of HB 3619 and submits written testimony. (EXHIBIT T)

271 REP. BAKER: How much money is generated from privilege taxes?

272 OVERSTREET: For our company?

REP. BAKER: Yes.

OVERSTREET: I would have to get back to you with that information.

REP. BAKER: You say you're already paying because of the privilege tax, I would like to know how much that is so we can see if that is relationship to what the damage is.

279 TOM BERRY, NORTHWEST NATURAL GAS: Testifies in opposition of HB 361 9. > We see this as a transfer of costs > County roads are an in

that percentage is picked up by the individual > This bill is punitive to our company > The counties are starting to develop no cut provisio  
number of years

334 SANDY FLICKER, OREGON RURAL ELECTRIC COOPERATIVE ASSOCIATION (ORECA): Testifies in opposition of HB 3619. > Cooperatives feel they  
counties and cities, and go in when they make cuts and restore the road to at least the same or better condition > Electricity customers are  
utility rates for a fee structure such as this.

368 OREN FLOYD, UNITED TELEPHONE: Testifies in opposition of HB 3619.

387 GARY BAUER, OREGON INDEPENDENT TELEPHONE ASSOCIATION: Testifies in opposition of HB 3619 and submits written testimony. (EXHIBIT  
TAPE 51, SIDE A

008 GARY WILHELMS, U.S. WEST: Testifies in opposition of HB 3619. > We do not cut the pavement unless we have to > Our policy is to rest

048 VALERIE PAULSON, LEAGUE OF OREGON CITIES (LOC): Testifies in opposition of HB 3619. > Agrees with utility companies > Concerned about

069 CHAIR NORRIS: May return to this bill at a later date.

096 DIANE COWAN, OREGON PEOPLE'S UTILITY DISTRICT ASSOCIATION (OPUD): Testifies in opposition of HB 3619. > Do not understand rationa

Adjourns meeting at 12:20 p.m.

Submitted by

Reviewed by

Priscilla Boyle

Janet Adkins Assistant

Administrator EXHIBIT LOG:

A - Expanded agenda for all bills - staff - 2 pages B - Amendments to HB 2404 - staff - 2 pages C - Testimony on HB 2404 - Joe French - 2