

SENATE COMMITTEE ON BUSINESS, HOUSING AND CONSUMER AFFAIRS

March 22, 1993 Hearing Room 343 3:00 p.m. Tapes 35 - 36

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bill Kennemer, Vice-Chair
Sen. Brady Adams Sen. Ron Cease Sen. Karsten Rasmussen

MEMBER EXCUSED:

VISITING MEMBER:

STAFF PRESENT: Cherie Copeland, Committee Administrator Richard
Day-Reynolds, Committee Assistant

MEASURES CONSIDERED: Public Hearing and Possible Work Session:
SB 576 - Prohibits Real Estate Agency from publicly
reporting disciplinary action until after any appeals of such action. SB
 460 - Allows investment of public funds in
specified securities of any open-end or

closed-in management investment companies and investment trusts. SB
647 - Modifies formula for minimum interest rate to be
paid by financial institution

lenders on funds deposited in lender's

security protection provision accounts.

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

TAPE 35, SIDE A

010 CHAIR DWYER: Calls the meeting to order at 3:06 p.m.

(Tape 35, Side A) SB 576 - PROHIBITS REAL ESTATE AGENCY FROM PUBLICLY
REPORTING DISCIPLINARY ACTION UNTIL AFTER ANY APPEALS OF SUCH ACTION -
PUBLIC HEARING Witnesses: Genoa Ingram, Oregon Association of Realtors
Stan Mayfield, Real Estate Agency Tom Oxley, Real Estate Broker

013 GENOA INGRAM: (EXHIBIT A). Currently, disciplinary
proceedings are published in The Oregon Real Estate News Journal.
These findings are

being published in newspapers by the Real Estate Agency before the
appeals process has expired. This could damage the reputation of those

appealing. The bill does not address our concerns, and would like the language changed. No other professional licensing agency releases this information in the same way. The current practice could destroy livelihoods. There have been no cases of successful appeals, but I know of licensees who have declined to appeal because they felt the damage had already been done due to the publicity.

056 CHAIR DWYER: What about the Builders Construction Contractors Board?

059 INGRAM: To my knowledge they don't automatically release all disciplinary action to the press.

065 STAN MAYFIELD, REAL ESTATE AGENCY: We oppose the bill. Gag order not imposed on any other agency in Oregon. There is no request for

publication. Consumers need to know the licensee is no longer licensed. Also licensees need to know so they don't do business with an unlicensed individual. This is also an hypothetical problem. In the last twelve

years there have been 202 contested case orders, 11% of which have been appealed. All but one of those were dismissed or upheld by the courts.

Even that remaining one was only dismissed on a technicality and was unsuccessful when reappealed. Only 4 or 5 were withdrawn as in earlier testimony. We don't feel there is a problem to be solved.

101 SEN. KENNEMER: How is due process protected?

107 MAYFIELD: We follow the Administrative Procedures Act. It is always appealable.

117 SEN. KENNEMER: If there is disciplinary action there is always a full hearing?

119 MAYFIELD: Yes.

121 INGRAM: This is like saying we only killed one guy who shouldn't have been killed with the death penalty. Do you take away a person's rights

before the process has been completed? This is a matter of due process.

136 CHAIR DWYER: [QUOTE]"We could be talking about Peg Jolin here couldn't we?"

138 INGRAM: Yes, but a real estate licensee is not a public figure. Sanction them for mistakes, but don't take away their livelihood.

140 SEN. KENNEMER: Why do you go beyond sending out the Journal and issue a news release to the general public?

144 MAYFIELD: The Journal is sent out to licensees, not the general public. The public might not be aware of action. The legislature has charged us to protect the consumer. Not all papers choose to print them.

157 SEN. KENNEMER: Do you send out all disciplinary actions to the papers?

159 MAYFIELD: All suspensions and revocations.

163 SEN. KENNEMER: How frequently do those with their licenses revoked continue to practice?

MAYFIELD: I don't know of any specifics. The investigation office would have that information.

170 INGRAM: There are penalties beyond the Agency's jurisdiction to deal with those situations.

174 SEN. ADAMS: What are those?

176 INGRAM: That is a criminal activity and can be treated as such.

179 SEN. ADAMS: This bill does not affect your ability to apply sanctions. Your concern is that without public notice people may continue to do

business with this individual?

185 MAYFIELD: That's correct. Real estate involves the transfer of funds and access to property. Any delay in notification of revocation or

suspension could create a real problem for individuals.

SEN. ADAMS: If an individual continues to do business after imposition of sanctions, do those sanctions become criminal or civil?

MAYFIELD: The criminal area is outside our jurisdiction. Individuals who do business with a sanctioned licensee are already harmed and they won't be helped by the licensee being jailed or revoked.

SEN. ADAMS: So you've made a policy decision that the risk to the consumer outweighs the risk to the licensee?

MAYFIELD: That is accurate with one additional statement. You have to weigh the harm to the licensee based on our past record. The only harm licensees have been subjected to is the harm inflicted by the statute. If our system didn't work it would be different.

SEN. ADAMS: What documentation or evidence do you have that would lead

you to believe that licensees would continue to practice while suspended or revoked if you got rid of the press release?

MAYFIELD: As I stated earlier, I can't give you any figures on that. I know it has occurred. I can't say there would be any increase or decrease.

SEN. ADAMS: I'm not sure I buy that argument. I want to know how you are balancing the risk of harm to both parties. I'm not hearing a very good argument that the public is going to be at greater risk.

MAYFIELD: I don't want to give you the impression those figures don't exist. There have been instances where people have continued to practice and suffered further suspensions and revocations. There have been very few appeals. When an appeal is filed, most attorneys ask for a stay of orders. The problem is short periods of suspension. The public may never know until after the fact.

302 SEN. KENNEMER: Your policy may be harming more than the guilty party. What about the company this revokee may be working for?

328 INGRAM: That's exactly right. The industry wants to weed out the bad apples, but we don't want to prematurely take away someone's livelihood if they are proven innocent on appeal.

337 CHAIR DWYER: If they can't practice during the appeal, why shouldn't the public know this is pending?

343 INGRAM: Because if the person is innocent they've already been damaged.

CHAIR DWYER: But that applies to everybody.

INGRAM: Not every regulatory agency treats their licensees that way. The focus is on the protection of the consumer and nothing else. There is no protection for the licensee. They are not there to enhance the licensee. We want balance and fairness.

(Sen. Cease arrives at the hearing)

364 SEN. CEASE: If they can't do realty business while suspended, what's the purpose of publishing their names?

368 MAYFIELD: To notify the consumer and other licensees of the action.

SEN. CEASE: Do you have a lot of cases where they continue to do

business while they're suspended?

MAYFIELD: It has occurred, but I can't give you figures.

SEN. CEASE: This is a perennial issue. We recently had a State Senator recently that is appealing a case and the public wasn't satisfied. The public needs protection, but the damage to licensees is very real. Is there any sort of middle ground here?

411 INGRAM: We'd be amenable to publishing the names in the journal, but not releasing the names to the press.

430 SEN. CEASE: This might be worth looking at. How many cases are actually appealed?

TAPE 35, SIDE A

025 MAYFIELD: Gives figures from earlier in the hearing. We're not sure there's a problem here that needs to be solved.

032 SEN. CEASE: Are you saying that when these people are suspended they disappear and do something else?

034 MAYFIELD: I don't know what they do while suspended. They have a right to come back after suspension.

SEN. CEASE: Are all suspensions time-limited?

MAYFIELD: Suspensions are. Revocations are not.

SEN. CEASE: Do you have any indication that listing of the names does damage them?

MAYFIELD: We've received no comment from attorneys of licensees that that is the case.

045 INGRAM: We have received complaints from licensees and their attorneys that appeals have been dropped because of the press.

048 SEN. KENNEMER: We need to look at a compromise. Other boards print the results of hearings and actions, but not as publicly as this. Most

professionals have errors in judgement occasionally.

070 CHAIR DWYER: Builders and Contractors Board sends notice of disciplinary action to all the contractors. It's made public.

076 INGRAM: It's published in a journal and that's the compromise we're willing to accept. We have a problem with every suspension and

revocation being sent out unsolicited to the press.

087 MAYFIELD: The journal is quarterly and doesn't have a very wide circulation. A suspension could well be over by the time a licensee

receives notice of disciplinary action of another licensee.

094 SEN. KENNEMER: With suspensions most of them are going to return to work. [QUOTE]"Why hit them with that big a hammer?"

099 SEN. CEASE: How common is it for someone to have more than one suspension?

103 MAYFIELD: Maybe 20%.

SEN. CEASE: Is there a level of severity of these suspensions?

MAYFIELD: There's a distinction between the types of suspensions and the events that caused that those suspensions.

SEN. CEASE: A technical violation should be very different from misusing someone else's money.

MAYFIELD: Technical orders rarely makes the papers because they are boring.

SEN. CEASE: Do the papers just publish a list or do they write a story?

MAYFIELD: The vast majority of these items never make the paper. The problem comes in the small towns where there may be a shortage of news.

135 SEN. KENNEMER: Peer pressure is one of the best ways to shape people up. Your peers reading your name in the trade journal can be very

embarrassing.

146 CHAIR DWYER: This has a subsequent referral to Judiciary.

156 TOM OXLEY, OREGON PROPERTY MANAGERS ASSOCIATION: I like the bill. I'm a real estate broker engaged in property management. There has been an

out and out assault on our industry by the Agency. Read from a prepared statement. Have had a number of problems with the Real Estate Agency,

and feels that the Real Estate Agency misuses its power and authority.

Lists circumstances where he feels he has been singled out for punitive treatment by the Agency because of his political activities.

(Tape 36, Side A) SB 576 - PROHIBITS REAL ESTATE AGENCY FROM PUBLICLY REPORTING DISCIPLINARY ACTION UNTIL AFTER ANY APPEALS OF SUCH ACTION - WORK SESSION

273 MOTION: SEN. RASMUSSEN moves SB 576 to the Judiciary Committee without recommendation.

VOTE: The measure passes 5-0, Sen. Kennemer's vote recorded at the end of the meeting (See Tape 35, Side B).

(Tape 36, Side A) SB 460 - ALLOWS INVESTMENT OF PUBLIC FUNDS IN SPECIFIED SECURITIES OF ANY OPEN-END OR CLOSED-END MANAGEMENT INVESTMENT COMPANIES AND INVESTMENT TRUSTS - PUBLIC HEARING Witnesses: Frank Brawner, Oregon Bankers Association Bob Belding, First Interstate Bank Linda Lynch Cecil Monroe, Oregon Department of Insurance and Finance

293 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Introduces BOB BELDING, FIRST INTERSTATE BANK, TRUST COMMITTEE, OREGON BANKERS ASSOCIATION.

299 BELDING: Trustees and agents for municipal bond issues are required under the terms of the bond documents to invest those funds' proceeds as the monies come into the account. Lists the various ways those funds

can be invested and deposited. The investment opportunities are usually in large amounts. SB 460 would permit the investment of smaller amounts in the higher yielding money market mutual funds. This is not a fundamentally different set of investments.

344 CHAIR DWYER: This doesn't appear to be that complicated.

346 BRAUNER: This bill allows local government to invest in a larger number of the types of investments they can invest in now.

CHAIR DWYER: I understand that.

350 SEN. ADAMS: Declares a potential conflict of interest.

355 CHAIR DWYER: Potential conflict so noted.

361 LINDA LYNCH, CITY OF EUGENE: Supports SB 460. Makes another tool available to us for short term investing.

374 CECIL MONROE, OREGON DEPARTMENT OF INSURANCE AND FINANCE: This is sound public policy. It gives additional flexibility that I feel is

appropriate.

(Tape 36, Side B) SB 460 - ALLOWS INVESTMENT OF PUBLIC FUNDS IN SPECIFIED SECURITIES OF ANY OPEN-END OR CLOSED-END MANAGEMENT INVESTMENT COMPANIES AND INVESTMENT TRUSTS - WORK SESSION

394 MOTION: SEN. CEASE moves to floor with a Do Pass recommendation.

401 SEN. ADAMS: Declares a potential conflict of interest.

VOTE: The measure passes 4-0, Sen. Kennemer excused. Sen. Cease to carry.

(Tape 36, Side B) SB 647 - MODIFIES FORMULA FOR MINIMUM INTEREST RATE

TO BE PAID BY FINANCIAL INSTITUTION LENDERS ON FUNDS DEPOSITED IN LENDER'S SECURITY PROTECTION PROVISION ACCOUNTS - PUBLIC HEARING
Witnesses: Frank Brawner, Oregon Bankers Association Steve Rodeman, Oregon Credit Union League Dave Barrows, Oregon League of Financial Institutions Frank Wallace, Department of Veterans' Affairs

422 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: SB 647 would change the interest rate. (EXHIBIT C). We support the amendments drawn up by

Veterans. We urge the passage of 647.

TAPE 35, SIDE B

059 CHAIR DWYER: How can paying lower interest rates help the person?

064 BRAUNER: Banks are not opening these accounts and taxes are not being paid. It's not fair for us to have to pay these high rates.

069 CHAIR DWYER: If it is fair for the interest rate to float for the banks, it should float for consumers as well.

092 SEN. ADAMS: What are the current fixed rate real estate loans?

094 BRAUNER: So far as I know, it's 6 1/2% to 7 1/2%.

100 SEN. ADAMS: Is the rate on these accounts higher than today's pasSB ook?

BRAUNER: Yes. It's higher than any pasSB ook that I'm aware of.

SEN. ADAMS: How often can this rate be changed?

111 BRAUNER: It's up to the institution.

SEN. ADAMS: But they don't have to change it more frequently than annually?

BRAUNER: That's correct.

132 STEVE RODEMAN, OREGON CREDIT UNION LEAGUE: Introduces DAVE BARROWS, OREGON LEAGUE OF FINANCIAL INSTITUTIONS. Continuing, RODEMAN states

that he supports the legislation. This would make it more fair. The rate you're having to pay does not fairly reflect the amount of money in those accounts.

173 BARROWS: Supports the bill. It's reasonable, it's fair and rates should be pegged at something that has some bearing to the marketplace.

190 CHERIE COPELAND: This bill only deals with mandatory escrow savings accounts, correct?

193 BARROWS: Yes, that's correct.

217 FRANK WALLACE, OREGON DEPARTMENT OF VETERANS' AFFAIRS:
Supports the measure subject to the proposed amendments. (EXHIBIT E) We
would like

to tie it to some recognized market rate.

236 SEN. CEASE: You're asking for the amendments so we don't
have the floating rate adjustment?

239 WALLACE: Yes, it would float.

SEN. CEASE: How about adjusting the rate once a quarter?

BRAWNER: We wouldn't have a problem with adjusting the rate once a
quarter.

255 SEN. CEASE: Asks about the rate fluctuations in the future.

BRAWNER: Gives answer. Gives an explanation of mandatory and voluntary
escrow accounts as they are affected by the bill.

303 CHAIR DWYER: How many people are we affecting, and how much
money are we costing them? 320 BRAWNER: The number of escrow accounts
are declining. I don't know how much money we're talking about here.

328 SEN. CEASE: Asks question about floating rate escrow accounts.

340 BRAWNER: Responds to Sen. Cease's question.

347 CHAIR DWYER: How many people, and how much money? I'm not
going to move the bill until my questions are answered.

356 SEN. CEASE: That's reasonable, and there should be other
language as well.

370 CHAIR DWYER: Adjourns the meeting at 4:25 p.m.

(Tape 36, Side A) SB 576 - PROHIBITS REAL ESTATE AGENCY FROM PUBLICLY
REPORTING DISCIPLINARY ACTION UNTIL AFTER ANY APPEALS OF SUCH ACTION -
WORK SESSION

372 CHAIR DWYER: Reopens the Work Session on SB 576 to allow Sen.
Kennemer to record his vote. SEN. KENNEMER votes AYE on SB 576.

(Tape 36, Side B) SB 460 - ALLOWS INVESTMENT OF PUBLIC FUNDS IN
SPECIFIED SECURITIES OF ANY OPEN-END OR CLOSED-END MANAGEMENT
INVESTMENT COMPANIES AND INVESTMENT TRUSTS - WORK SESSION

375 CHAIR DWYER: Reopens the Work Session on SB 460 to allow Sen.
Kennemer to record his vote. SEN. KENNEMER votes AYE on SB 460.

380 CHAIR DWYER: Adjourns the meeting at 4:27 p.m.

Submitted by:

Reviewed by:

Willie Tiffany
Administrator

Richard Day-Reynolds Assistant

EXHIBIT LOG:

A - Testimony on SB 576 - Genoa Ingram - 1 page B - Testimony on SB
460 - Bob Belding - 3 pages C - Testimony on SB 647 - Frank Brawner - 4
pages D - Testimony on SB 647 - Steve Rodeman - 1 page E - Amendments
to SB 647 - Staff - 2 pages F - Witness Registration - Staff - 3 pages