

SENATE COMMITTEE ON  
JUDICIARY

July 28, 1993      Hearing Room C  
1:00 p.m.      Tapes 233,234

MEMBERS PRESENT:    Sen. Dick Springer, Chair  
                          Sen. Bob Shoemaker  
                          Sen. Gordon Smith  
                          Sen. Catherine Webber

MEMBERS EXCUSED:    Sen. Jeannette Hamby  
                          Sen. Karsten Rasmussen

STAFF PRESENT:      Bill Taylor, Committee Counsel  
                          Karen Quigley, Committee Counsel  
                          Kirk Bailey, Committee Assistant

ISSUES DISCUSSED:    Reconsideration & Work Session on HB 2287  
                          Public Hearing & Work Session on HB 2166, HB 3068

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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.

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TAPE 233, SIDE A

003      CHAIR SPRINGER:    Calls the committee to order at 1:17 pm.

HB 2287: Consolidates various statutes relating to attachment of income to satisfy child support obligations.

WITNESSES:          JOHN ELLIS, DEPARTMENT OF JUSTICE

004      CHAIR SPRINGER:    We need to reconsider HB 2287 for conflict amendments.

MOTION: Chair Springer moves that the committee reconsider the vote by which it passed HB 2287.

VOTE:    Hearing no objections, the bill is reconsidered.

007      JOHN ELLIS, DEPARTMENT OF JUSTICE: The -B7 amendments are the conflict amendments (EXHIBIT A). Requests the committee to adopt the -B8 amendments (EXHIBIT B). The amendments eliminate the agency issued garnishments created by sections 50, 51, 52 of HB 2287.

MOTION: Chair Springer moves adoption of the -B7 and the -B8 amendments.

VOTE: Hearing no objections, the amendments are adopted.

MOTION: Chair Springer moves HB 2287 as amended to the Floor with a "do pass" recommendation.

VOTE: The motion passes, 4 - 0. Sen. Smith and Hamby excused. Sen. Rasmussen is to carry the bill.

HB 2166: Permits financial institutions to give officers and agents of office of State Treasurer access to private financial records related to state investments.

WITNESSES: FRANK BRAUNER, OREGON BANKERS ASSOCIATION  
ROLLIE WISB ROCK, DEPARTMENT OF TREASURY  
BOB MUIR, DEPARTMENT OF JUSTICE

060 KAREN QUIGLEY: The Chair requested amendments (EXHIBIT E) which have been further amended for clarity (EXHIBIT D); to make sure that it applies only to this particular loan program and not all the investments the treasurer participates in.  
- Mr. Muir from the AG's Office suggested deleting the "and" on line 9 and inserting "or" but following discussions this approach was abandoned, because there is a relationship between a customer and the state treasurer.

091 CHAIR SPRINGER: How often does treasury receive inquiries to disclose information within their possession? How does this amendment mesh with current public records law?

095 QUIGLEY: Under the bill's provisions and existing public records law, there are a series of documents considered public documents - mortgage documents, corporate financial information -non-performing loan information. This bill would make confidential tax returns, business plans, and personal financial information.

111 FRANK BRAUNER: Testifies in support of the bill. Somewhat confused about amendments. This is a critical program for small businesses in Oregon. A small business borrows from the bank, the bank puts it in a portfolio, sells those loans to the state treasurer, and the loan files

accompany that sale. Doubts there are any inquiries for this information. The program is inactive now, and may continue to be inactive if these records are not made confidential. That record is confidential when at the bank; should it be treated differently when it moves to a state agency? Current statute allows access to these records when criminal activity is suspected.

156 CHAIR SPRINGER: What percentage of the treasurer's portfolio does this represent?

160 BRAUNER: The program has about \$500 million of commercial real estate loans currently. The portfolio is performing and is based on safety and soundness.

172 CHAIR SPRINGER: The program is not operating now?

175 BRAUNER: It has not operated since the investigation. The new state treasurer is investigating how the program can be improved. There are no loans being purchased currently, nor will there be until new rules are in place. A major part of that is the customer's right to financial privacy. The public does have the right about delinquencies and wrong doing.

200 CHAIR SPRINGER: What kind of commercial activity is involved?

201 BRAUNER: It includes nursing homes and shopping centers, but mainly it is small businesses.

217 CHAIR SPRINGER: Are you aware of any deals that have been threatened by any this disclosure?

221 BRAUNER: I am not aware of any; it is news to us that these records are available to the public.

227 SEN. SMITH: Making this information public would have a serious chilling effect on working with the state treasurer.

238 CHAIR SPRINGER: It is not my understanding that we are talking about disclosing what is now confidential under the public records law.

243 BRAUNER: The Housing Agency that works to create affordable housing found that records disclosure did have a chilling affect on investors.

252 SMITH: Do the entrepreneurs want privacy or are they trying to  
hide something?

254 BRAUNER: They are not trying to hide anything, they simply want  
some information kept private.

270 SEN. SHOEMAKER: Inclined to agree with Mr. Brauner's comments.  
Wants to hear why these records should not be protected?

275 CHAIR SPRINGER: The press supports disclosure.

282 BRAUNER: I am unaware if they had difficulty getting  
information regarding the Canby investigation. If banks are involved the  
information can be released if there is a criminal investigation.

290 CHAIR SPRINGER: Recalls that there was no access to records during  
the Canby investigation.

300 BRAUNER: We want no part of any coverup under an incident similar  
to the Canby situation and would agree that those records should be  
readily accessible.

308 CHAIR SPRINGER: The bill exempts from disclosure any of  
these documents, and does not appear to protect the public's right to know.  
How will we know if the program is being run properly if there is no  
access to the underlying records? The AG opinion (EXHIBIT F) states  
that personal financial information is exempt from wholesale  
disclosure under the personal privacy exemption, and there is nothing in my  
amendment that would change that.

354 BRAUNER: Delinquency records are available, and that is one way  
to judge the program. If the intention of your amendment is to state that  
business plans, financial statements and tax statements are not public  
record...

381 CHAIR SPRINGER: To some degree, the loan may be collateralized by  
a person's personal financial situation, such as what is their equity  
interest in other property, and how does the public know if that

collateral is sufficient if they don't have any way of knowing what it is that has been pledged as part of the transaction?

405 SEN. WEBBER: Isn't there an exemption for trade secrets? And should the public's money be involved in that type of program? I think not.

407 BRAUNER: These are all commercial real estate loans. If the state treasurer were to invest in commercial paper, they would not have this same information.

461 SEN. SMITH: Notes that when bank officers make bad loans they are fired; state treasurers are defeated for doing the same thing. If we want to treat this differently than the private sector, then the state can't play in that.

484 BRAUNER: This is a good program and improves the state's economy, and is a good investment for the treasurer and PERS.

TAPE 234, SIDE A

042 SEN. SHOEMAKER: It does seem that if public money is involved, then the public does have right to know to whom the loans are made, their purpose, and the security of it. Public oversight is necessary. The information behind those loans - the financial information of the business, the tax records, the business plan - does not need to be disclosed, short of criminal investigation.

063 BRAUNER: If those were the rules, and they were clear and didn't change, then the borrower could decide whether to participate.

076 CHAIR SPRINGER: I would be willing to consider that, but would want it to be consistent with existing public records law.

103 SEN. SHOEMAKER: If the loans are secured by real property, and the value of the property is available, so one need not go further than that.

110 BRAUNER: We need clear rules. Innocent people have been denied opportunities because of Mr. Canby.

115 CHAIR SPRINGER: Safeguards were assumed to be in place, that weren't

there.

135 ROLLIE WISB ROCK: Testifies in opposition to the -B2 amendments.

Assistant Attorney General Robert Muir states that when records cannot be kept confidential, customers will be unwilling to invest those loans

with the state (EXHIBITS C, G).

- It is a \$580 million program in Oregon.

- If we are incapable of acquiring the information necessary to do our due diligence, we will not be able to maintain the program.

168 QUIGLEY: What should be exempt under the Public Records Law? What

information does a customer fear will be disclosed?

180 WISB ROCK: It is my understanding that tax records, etc. will not always

be exempt from disclosure. We are concerned about any records that provides us more information about the loan. There seems to be some dispute as to what that would entail. We need to be able to access certain information in order to maintain due diligence in our investments.

219 CHAIR SPRINGER: Can you identify the kind of information from a bank's

file that would come into the treasurer's office that is not now exempt

that you fear would be disclosed? Tax records are exempt. Personal financial information is exempt. Trade secrets are exempt. Business plans are exempt. What other information is there that you are trying to protect?

229 WISB ROCK: We are concerned about any information that may relate to the

quality of the loan that the customer may not want to provide, because it could be disclosed. The business plan and personal financial records

could be disclosed on a case-by-case basis.

274 CHAIR SPRINGER: Is it the treasury's position that they will not start

the commercial mortgage program unless this bill is passed?

278 WISB ROCK: Current investments would be maintained, but future

investments will not be made.

293 CHAIR SPRINGER: If they want state retirement funds, investors should

be willing to disclose the information.

320 SEN. SHOEMAKER: It seems we need to know what information might  
be disclosed.

334 WISB ROCK: For example, in the Abernathy letter, page 3, paragraph  
2 (EXHIBIT F): "State law prohibits only the Dept. of Revenue or an  
agency receiving tax information from the Dept. of Revenue from  
disclosing state tax return information." If a bank holds that  
information and that information is disclosed to the treasury, with  
the Freedom of Information Act we are not prohibited from disclosing that  
information.

353 SEN. SHOEMAKER: We could perhaps specify in statute that tax  
returns are not to be released by your office.

355 WISB ROCK: We could add a laundry list.  
- One issue raised is how do we know that OPERS members are well  
served by the investments in the state. We know because we are audited and  
that process is not under question.  
- An additional concern, in cleaning up the Canby situation, is that  
we need information in order to maintain due diligence, and that  
information may not come forward without confidentiality.

400 SPRINGER: There are probably more people who want public dollars  
than public dollars available, and if they are not willing to disclose they  
can go to the private market.

406 WISB ROCK: This will have such a chilling effect that the program  
will not operate. The program may only attract those who cannot access  
private funds. It is not a public service program - it needs to make  
money for the fund. If the program consists only of those investments  
who will accept the money under any circumstances, not necessarily the  
best deal for the fund, then it is not a prudent investment.

433 SEN SMITH: It is not in the state's interest to just have  
desperate investors in the fund.

452 BRAWNER: The bank has to make the loan. Under no circumstances does  
it go directly to the treasury. Of the \$22 billion or so being invested  
in

Oregon, this \$500 million program is the only investment occurring in Oregon. It is an important piece of economic development.

TAPE 233, SIDE B

037 SEN. SHOEMAKER: What if these records were available for inspection by the auditor?

041 WISB ROCK: They are already disclosed during audits, and we are very supportive of yearly audits.

HB 3068: Authorizes Department of Transportation to enter agreement with Indian tribe to provide refunds of motor vehicle fuel tax for fuel bought and used by tribal members on tribal reservation lands.

WITNESSES: MAUR HORTON, DEPARTMENT OF TRANSPORTATION  
DOUGLAS HUTCHINSON, COMMISSION ON INDIAN SERVICES

087 MAUR HORTON: Testifies in support of HB 3068 (EXHIBIT H).

119 DOUGLAS HUTCHINSON: The Commission has no official position, but there is no objection. The only possible concern is the language that states that there will be no rebates for motor vehicle fuel used on state highways and other streets supported by the state highway fund. Under federal law (18 U.S.C. 1152) there is a specific definition about what constitutes Indian county. Any road that passes on or through Indian country is property of the Indian tribe. The portion of Highway 26 that passes through Warm Springs is Indian country. There is an agreement between the state and the tribe that the state maintains the highway. By making this exception, it removes it from the negotiation process, but I don't think that would be fatal to any Indian tribe.

168 CHAIR SPRINGER: This bill came from Senate Transportation, which is now closed. Sen. Dukes has stated that she would be willing to carry it on the Floor.

MOTION: Sen. Shoemaker moves HB 3068 to the Floor with a "do pass" recommendation.

VOTE: The motion passes, 4 - 0. Sen. Hamby, Rasmussen are excused. Sen. Dukes will carry the bill.



177 CHAIR SPRINGER: Adjourns the committee at 2:25 p.m.

Submitted by

Reviewed by,

Kirk Bailey  
Assistant

Bill Taylor  
Counsel

EXHIBIT SUMMARY

- A - proposed amendments, HB 2287, staff, 2 pgs.
- B - proposed amendments, HB 2287, staff, 1 pg.
- C - testimony, HB 2166, Randall Edwards, 1 pg.
- D - proposed amendments, HB 2166, staff, 1 pg.
- E - proposed amendments, HB 2166, staff, 1 pg.
- F - testimony, HB 2166, Michael Ryan, 11 pgs.
- G - letter, HB 2166, WiSB rock, 2 pgs.
- H - testimony, HB 3068, Horton, 2 pgs.