

House Committee on Business and Consumer Affairs February 28, 1991 -
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statements made during this session. Only text enclosed in quotation
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 28, 1991
P.M.

Hearing Room F 1:30
Tapes 40 - 41

MEMBERS PRESENT: Rep. John Schoon, Chair Rep. Hedy L. Rijken,
Vice-Chair Rep. Jerry Barnes Rep. Lisa Naito Rep. Carolyn Oakley Rep.
Beverly Stein Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta
Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2081 WS HB 2178 WS HB 2052 PH HB
2115 PH & WS SB 160 PH

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statements made during this session. Only text enclosed in quotation
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proceedings, please refer to the tapes.

TAPE 40, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:41 p.m.

021 CHAIR SCHOON opens the work session on HB 2081.

HB - 2081 - REVISES PROCEDURE TO FILE CLAIM NOTICE AGAINST PUBLIC WORK
CONTRACTOR'S BOND. Witnesses: Steve Little, Oregon Department of Revenue
Roger Lent, Employment Division John Gervais, National Electrical
Contractors Assoc.

022 TERRY CONNOLLY, Administrator, reviews provisions of the bill and
substance of testimony from public hearing on the bill.

The Legislative Fiscal Analysis is hereby made a part of these minutes
(EXHIBIT A).

033 REP. RIJKEN: On page 1 of the bill, we need clean up language in
line 18. It reads "120 days after the day the person last provided
labor or furnished material..." In line 27, it says "after the day any
person last provided labor or furnished materials."

038 MOTION: REP. RIJKEN moves that HB 2081 be amended in line 27, delete
"any" and insert "the."

044 CHAIR SCHOON: I would like one of the departments to tell us what
the effect of this would be and whether they concur with the amendment.

044 STEVE LITTLE, Oregon Department of Revenue: I think changing the
word "any" to "the" gets more specifically to the individual we are
trying to work with which might be a subcontractor who worked early in
the process of the construction contract but had no other activity. If
we say "the" then it would be one year after that person finished their
work, even though the contract might be continuing. That is the point
of our trying to get this change.

MR. LENT concurs.

054 VOTE: In a roll call vote, all members vote AYE.

058 REP. RIJKEN: The second amendment for consideration is a possible change on line 27 of page 1, to change the "one year" to "180 days." We had testimony that one year might be a rather extended period of time and six months may be more reasonable.

068 STEVE LITTLE: That would give us more time. It gives a broader window in which to work with that individual and to try to get them into voluntary compliance. It is still a fairly tight time line, but it doesn't preclude us altogether from using that as the tool from which we can collect.

072 CHAIR SCHOON: Would the extended period of time help avoid actions by the departments of going against the bonds of the contractors?

077 JOHN GERVAIS, National Electrical Contractors Association: I think the extended period of time would give us the opportunity to negotiate and make a determination whether we are liable and give us an opportunity to reach a workable payment arrangement. If we extend the state's opportunity on this to six months, we would like our number of days to be six months also instead of the 120 days.

086 REP. WALDEN: I would be more comfortable with the shorter time frame. I think some of the industry people made a good point and especially where the department seems to be pretty aggressive and successful in their rate of recovery at 95 percent.

092 REP. BARNES: I concur. I don't feel comfortable with tying up the performance bonds for that period of time. It will tend to hamper our economic development efforts and in the long run could work to our disadvantage. I can appreciate the problem and would feel more comfortable with the six months/180 days.

102 MR. GERVAIS: Also in line 18 of page one, perhaps the 120 could also be changed to 180. We sometimes have difficulty knowing when we are in trouble in regard to the payment situation. Associated General Contractors had some problems with the bill, too.

111 REP. WALDEN: Would the amendment going to 180 days actually be reducing the time?

127 MR. LITTLE: I believe Mr. Gervais is speaking to themselves as a creditor of one of these contractors. They would be in the same situation we are. There could be circumstances where they would be on the other side of the fence from us.

137 REP. WALDEN: Is the notice requirement the same one you are suggesting they have to use to go after the contractor.

139 JOHN GERVAIS: As I understand it, we use that notice provision as it relates to our relationship with the general contractor. We may not know for five or six months that we are in a problem situation. This gives us a chance to work it out between the two.

145 REP. NAITO: Do you have the same problem with the lag of tax filings?

MR. GERVAIS: I don't know how it works.

150 MR. LITTLE: It is a quarterly filing. If they do work at the beginning of the quarter, the return is not due until 30 days after the end of the quarter and our time has already passed. I don't know if it would apply to your situation.

153 REP. NAITO: Wouldn't your people know if they had been paid or not within the 120 days?

MR. GERVAIS: We ideally would know within 120 days, but there are extenuating circumstances. We have a traffic signal installation with the State of Oregon that is seven months past the due date of final acceptance of the project. They are not paying the general and the general is not paying us.

169 CHAIR SCHOON: Can you explain why Section 2(1), (2) and (3) have different dates. They all refer to the notice of the claim required by ORS 279.526 which is the notice in Section 1. If we are referring to "the" notice and only one notice is required, why do we have three different dates?

175 STEVE LITTLE: I believe the first statute said 120 days for everyone and in (2) for employee benefit plans there was more need and I would imagine it was added on to. We are saying our situation is different again because we have this lag time and are requesting special limited consideration for us. It would not be out of the realm of possibility that everybody should be allowed the same amount of time. There are all kinds of lag times in finances.

185 REP. NAITO: If the bond is tied up for a certain amount of time, why do we need different dates for different people to get in?

190 MR. LITTLE: I cannot say there would be any good reason not to have the same dates for everyone. I would think the bonding companies would consider if any one segment can come against the bond, then it would probably not make any difference to them how many can.

196 MR. LENT: The dates don't make that much difference as far as we are concerned. I think the fact they would establish their debt earlier and they will go against the bond earlier, which would be to their benefit. If you extend it on, it would make us more equal in the competition for what is left of the bond.

206 MR. GERVAIS: I am comfortable with everybody getting the same time.

198 REP. BARNES: I think we should leave it as it is. If we extend Section 2(1) that means the general contractors can hold the performance bond longer than it can now and I don't think we want that. It is the same if we extend (2). The departments have a different situation. They don't know until the return is filed and they have 30 days after the end of the quarter.

222 MOTION: REP. RIJKEN moves that HB 2081 be further amended on page 1, line 27, delete "one year" and insert "180 days."

225 VOTE: In a roll call vote, all members vote AYE.

222 MOTION: REP. RIJKEN moves that HB 2081, as amended, be sent to the Floor with a DO PASS recommendation.

240 REP. WALDEN: Would the amount of money projected in the Fiscal Analysis (EXHIBIT A) be coming in rather than being an expenditure?

248 ROGER LENT: Yes, that would be additional money coming in.

261 CHAIR SCHOON: We probably should have a subsequent referral to Revenue.

264 MOTION: REP. RIJKEN moves to amend her previous motion to include a subsequent referral to Revenue: that HB 2180, as amended, be sent to the Floor with a DO PASS recommendation and that the bill be referred to the Committee on Revenue.

270 VOTE: In a roll call vote, all members vote AYE.

273 CHAIR SCHOON declares the motion PASSED.

275 CHAIR SCHOON opens the work session on HB 2178.

(Tape 40, Side A) HB 2178 - ALLOWS OIL HEAT COMMISSION TO ESTIMATE

AMOUNT OF ASSESSMENT DUE FROM OIL MARKETER AND MAKE DEMAND FOR PAYMENT.

276 MR. CONNOLLY reviews the provisions of HB 2178 as amended by the committee previously and reminds the committee the bill previously was sent to the Floor with a do pass recommendation, but it needs to go to the Committee on Revenue.

294 CHAIR SCHOON: The committee, at its last meeting, reconsidered the vote by which HB 2178 was sent to the Floor with a do pass recommendation and rescinded the subsequent referral to Revenue. We have been told we should not have done that.

300 MOTION:CHAIR SCHOON moves that HB 2178, as amended, be sent to the Floor

with a DO PASS recommendation and that it be subsequently referred to the Committee on Revenue.

311 VOTE:In a roll call vote, REPS. BARNES, NAITO, OAKLEY, WALDEN, RIJKEN and CHAIR SCHOON vote AYE. REP. STEIN is EXCUSED.

NOTE: TAPE 41, SIDE A

410 BY UNANIMOUS CONSENT, AND UNDER SUSPENSION OF COMMITTEE RULES, WITH ALL MEMBERS PRESENT, REP. STEIN WAS PERMITTED TO VOTE ON THE MOTION ON HB 2178. REP. STEIN VOTES AYE.

303 CHAIR SCHOON opens the public hearing on HB 2052.

(Tape 40, Side A) HB 2052 - PROVIDES PROTECTION FOR PERSONS GIVING CERTAIN INFORMATION IN GOOD FAITH TO STATE BOARD OF ENGINEERING EXAMINERS. Witnesses:Ed Graham, Executive Secretary, Board of Engineering Examiners Dave Bassett, Board of Engineering Examiners Ralph Yenne, Professional Engineers of Oregon

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT B).

325 ED GRAHAM, Executive Secretary, Board of Engineering Examiners, introduces David Bassett and Ralph Nielsen, members of the board.

335 MR. GRAHAM: I have submitted written testimony (EXHIBIT C). This bill deals with a hold-harmless clause for individuals who might provide testimony to the board. We have had difficulty with some individuals not coming forward with information for fear of retaliation. The second portion of the bill relates to the \$1,000 civil penalty limitation. The board contends that raising that to a potential \$5,000 will give the board more latitude and clout in compliance actions.

354 DAVE BASSETT, City of Medford Building Safety Department, a registered professional engineer and a member of the Board of Engineering Examiners: We have had some instances in the quite honorable and clean profession of engineering where registrants have retaliated with slander suits and things of that nature against people, who in good faith, were coming forward to advise the board of serious problems. This is intended to address that. I hope we have a definition of good faith because it will be a judgment call. However, I think the board has the latitude through the committee and the public hearing process to determine who is at fault and who is not. These would be additional tools for us to better do our job.

360 ED GRAHAM: I am curious about the statement in Mr. Graham's prepared statement that says, "In the present-day market place, a \$1,000 penalty is often considered a small price to pay for advertising..."

380 MR. GRAHAM: We have had occasions to assess civil penalties against non-registrants who use the title or term "engineer" or offer engineering in their firm name, letterhead, stationery, or telephone ads. This gives them a marketing tool but it is not correct because they don't have engineering available to the public. They consider the \$1,000 civil penalty a small cost of doing business. It is primarily

directed to non-registrants who are not in compliance with the registration act.

398 REP. WALDEN: When contractors advertise, they have to list their contractor's number in the advertisement. Do the statutes require that for engineers?

MR. GRAHAM: No, they do not.

402 REP. WALDEN: Would that be another way to get at this problem?

405 MR. GRAHAM: The board doesn't have the latitude to regulate the advertisement as such, as long it is truthful and accurate. It may be something that could be added to the requirement for offering services. It would alleviate some of those problems.

395 REP. BARNES: Do you issue only one type of license?

415 MR. GRAHAM: The Board of Engineering Examiners administers examinations for professional engineering registration; there are 14 branches of engineering. We also regulate land surveyors under a separate examination.

TAPE 41, SIDE A

002 RALPH YENNE, Professional Engineer representing the Professional Engineers of Oregon: We are in favor of the bill. The \$5,000 requirement for civil violations is more in accord with similar professions; the architects have such a provision. The second portion of the bill on good faith is similar to other boards; the dentists and the nursing boards have the same type of provisions to keep the professions clean.

023 CHAIR SCHOON: The proposed language says the person shall not "be answerable in any proceeding." That could mean something that comes before a court of law. If a person wanted to twist this badly enough, they could claim exemption under this law. Perhaps we should say "any proceeding before the board."

037 MR. YENNE: The dentist's statute, ORS 679.310(2) says, "No person who has made a complaint as to the conduct of a licensee of the board or who has given information or testimony relative to proposed or pending proceeding for misconduct against the licensee of the board, shall be answerable for any such act in any proceeding except for perjury." That is the only statute that I find that touched on perjury. I think it is a minor detail because the finding of what is and what is not good faith is something the board will have to decide on a case-by-case basis.

052 CHAIR SCHOON closes the public hearing on HB 2052 and requests that Mr. Connolly confer with Legislative Counsel to determine what "any proceeding" means and whether it applies to proceedings outside the board.

060 REP. NAITO: I have suggested to Rep. Walden that we might consider including civil proceedings as opposed to criminal proceedings.

062 CHAIR SCHOON requests that Mr. Connolly include the question on civil proceedings in his inquiry to Legislative Counsel.

064 REP. BARNES suggests that administrative proceedings also be included.

064 CHAIR SCHOON concurs with Rep. Barnes' suggestion and closes the public hearing on HB 205 2.

066 CHAIR SCHOON opens the public hearing on HB 2115.

(Tape 41, Side A) HB 2115 - ELIMINATES ENGINEER-IN-TRAINING AND LAND SURVEYOR-IN-TRAINING CERTIFICATES. Witness: Ed Graham, Executive Secretary, Board of Engineering Examiners

The Preliminary Staff Measure Summary (EXHIBIT D) and the Legislative Fiscal Analysis (EXHIBIT E) are hereby made a part of these minutes.

068 ED GRAHAM, Executive Secretary, Board of Engineering Examiners: I have provided a prepared statement (EXHIBIT F). There are some areas where it appears the board's authority may be expanded, however, the majority of the bill is administrative or editorial for clarification. The board contends that in most of its compliance issues that the latitude is there, however, this language will strengthen our position by clarifying some of the language in the law. He reviews part of his prepared statement (EXHIBIT F).

095 CHAIR SCHOON: What is an in-training certificate and why is it no longer needed?

MR. GRAHAM: This deletion was proposed in previous legislation and there was a misunderstanding that we were attempting to eliminate half of our examination, the fundamental portion which consists of 16 hours. That was frowned upon by the profession because they felt we needed all the examination. The board intended only to eliminate the paper certificate. The certificate entitles the holder to do absolutely nothing but prepare for the next part of the exam; it is superfluous. The board would like to eliminate the certificate and save dollars and time.

114 In Section 3 we have added "negligence." In compliance actions, the board has the authority to reprimand an individual, and suspend or revoke a registration. The board contends that if we find "gross negligence" as it is written in the law, we would more likely suspend or revoke. The law does not allow the board to take any action unless they find gross negligence and therefore the board can't take action against individuals who might be ordinarily negligent. We would at least like to be able to reprimand those who are ordinarily negligent and leave "gross negligence" in the statute for the extreme cases.

127 REP. STEIN: Is there an option for a written or oral exam because some people can't read?

123 MR. GRAHAM: There are times when the board finds an individual who is registered in another state and who has taken examinations that are not nationally based or on which the board has no detailed information, and they question whether or not this individual is competent to practice in Oregon. Under those circumstances the board will call the individual before a panel and ask specific questions in the areas of this individual's claimed expertise. Without the opportunity for oral examinations, in addition to a written examination provision, we don't have that latitude.

143 REP. BARNES: Line 26 says "or administrative body in another state." It sounds like we are going to transmit standards of another state into this state through an administrative body. There are many administrative bodies that do not provide personal protection and safeguards unless there is an attorney present. How would you apply that as it gets to your board?

150 MR. GRAHAM: The intent is to only take action if the act that was committed was a violation or could have been a violation had it been committed in Oregon. By "administrative body" we are talking about the Administrative Procedures Act which would directly relate to registration. An act that would not be a violation in Oregon would not be something the board could address under this statute. Presently, we can't address it at all until they become registrants and only after they are registered can we take can't action, but we can't take action after they are registered if we have already said they are competent. We would be able to look at the records prior to admitting them for practice in Oregon. At this point, we have no latitude.

168 REP. BARNES: Do most states have basically the same standards for this profession?

169 MR. GRAHAM: They do. There is a model law that has been developed

by state boards who have merged into a national council of examiners for engineers and surveyors. That model law, for all intents and purposes, is identical to Oregon law. Most states already have this provision in their act; we do not.

196 CHAIR SCHOON: Is the amendment in Section 5 clean-up language or are you asking us to uncap the fees?

204 MR. GRAHAM: We are not asking to have the fees uncapped. At one time the fees were listed in statute, but have been removed. The statute still provides the areas in which the board may collect fees, but the fees are established through the budget process in Ways and Means or through the Emergency Board. This is a recommendation of Legislative Counsel to simply clarify the law because it still says "within the maximum limits provided" and they are no longer provided in ORS 672.255.

220 CHAIR SCHOON closes the public hearing and opens the work session on HB 211 5.

231 MOTION:REP. WALDEN moves that HB 2115 be sent to the floor with a DO PASS recommendation.

236 VOTE:In a roll call vote, all members vote AYE.

240 CHAIR SCHOON declares the motion PASSED.

242 CHAIR SCHOON: There is a Senate bill that is equivalent to HB 2449 and we have been asked to hold off until the Senate acts on their bill.

248 CHAIR SCHOON opens the public hearing on SB 160.

(Tape 41, Side A) SB 160 - REQUIRES CONTRACEPTIVE PACKAGES TO BEAR DATE OF MANUFACTURER OR EXPIRATION DATE. Witness: Chuck Gress, Executive Director, Oregon State Pharmacists Association

The Senate Staff Measure Summary is hereby made a part of these minutes (EXHIBIT G).

254 CHUCK GRESS, Executive Director of the Oregon State Pharmacists Association: I am presenting testimony on behalf of Ruth Vandever, Executive Director of the Oregon State Board of Pharmacy. He reads Ms. Vandever's statement (EXHIBIT H).

277 REP. STEIN: Are condoms relative to "drugs or medicinal preparation?"

278 Chuck Gress: Medicinal drugs are covered under ORS 689, rather than 435 .010. I can't address Rep. Stein's question.

299 I think the term "medicinal preparations" is a broad, generic statement that relates to over-the-counter products, not prescription drugs better known as legend products.

311 CHAIR SCHOON: I think Rep. Stein raises a good point. I don't see anything here that would make this change apply to anything other than drugs or medicinal preparations. Even the phrase "or having special utility" modifies "medicinal preparations" as I read it and would not cover devices.

320 MR. GRESS: I will find the answer to the question and get back to the committee.

328 REP. NAITO: It might be that it is phrased poorly.

336 REP. STEIN: ORS 435.010 says "No appliances, drugs or medicinal

preparations..."

355 MR. GRESS: The only proposed change is on line 13. The other language is existing statute. This merely is to bring the new language into current day practice where the expiration dates are commonly listed on the containers, rather than the date of manufacture.

373 REP. BARNES: I suggest we have Legislative Counsel clarify it.

381 CHAIR SCHOON ask that Mr. Gress to go to Legislative Counsel and perhaps to the Board of Pharmacy to find out what they were after. Maybe the language does what they are seeking.

390 MR. GRESS: The board is looking for clean-up language and I think the original language in the statute is very confusing and needs correction. I will take that back to the board.

396 CHAIR SCHOON closes the public hearing on SB 160.

402 CHAIR SCHOON: I will carry HB 2115 on the Floor.

410 CHAIR SCHOON: Rep. Stein was out of the room when the committee voted on HB 2178.

417 MOTION:CHAIR SCHOON moves that the rules be suspended to allow Rep. Stein to cast her vote on HB 2178.

VOTE:There are no objections. All members are present.

421 REP. STEIN votes AYE on the motion to send HB 2178 to the Floor with a DO PASS recommendation and that the bill be referred to the Committee on Revenue.

421 CHAIR SCHOON declares the meeting adjourned at 2:37 p.m.

Respectfully submitted,Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -HB 2081, Legislative Fiscal Analysis, staff B -HB 2052, Preliminary Staff Measure Summary, staff C -HB 2052, prepared statement, Ed Graham D -HB 2115, Preliminary Staff Measure Summary, staff E -HB 2115, Legislative Fiscal Analysis, staff F -HB 2115, prepared statement, Ed Graham G -SB 160, Senate Staff Measure Summary, staff H -SB 160, prepared statement, Chuck Gress for Ruth Vandever