

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.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

March 12, 1991
P.M.

Hearing Room F 1:30
Tapes 50- 54

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 2158 PH HB 2566 PH HB 2568 PH HB
2299 PH HB 2304 PH

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TAPE 50, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:36 p.m. and opens the public hearing on HB 215 8.

HB 2158 - CHANGES REGISTRATION SYSTEM FOR GUIDES, GUIDE-OUTFITTERS AND OUTFITTERS TO LICENSING SYSTEM BY MARINE BOARD. Witnesses: Rep. Larry Sowa Paul Donheffner, Director, Marine Board Don Hinton, Rogue River Guides Association

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

006 REP. LARRY SOWA: Last session there was a bill to re-authorize the Oregon guides and outfitters license program administered by the Marine Board. We couldn't come to an agreement last session so the Legislature set up an advisory committee in the Marine Board to try to work out some of the problems. I was appointed chairman of the advisory committee. We met several times during the interim and came up with a bill and found out it wasn't what we wanted but the time allowed for the Marine Board to introduce the bill was passed. Therefore, HB 2158-1 amendments change the bill (EXHIBIT C).

We can't tell you we have everybody in the guiding community satisfied and members of the Oregon Guides and Packers will testify on further changes to the bill in a later hearing. One of their concerns was the wording for subcontractors. They are also concerned about the makeup of the continuing advisory committee. They feel because they are the largest umbrella group in the state that they need to have two members

on the advisory committee as they do now and not as the amendments propose. I don't have any objection to that. I will work with the committee if there are problems. Paul Donheffner from the Marine Board will review the bill, tell you how we got to where we are now and what the vision of the advisory committee for the industry over the next few years is.

041 PAUL DONHEFFNER, Director, Marine Board, submits and paraphrases his prepared statement (EXHIBIT D) and explains the proposed amendments (EXHIBIT C).

121 CHAIR SCHOON: There is a significant increase in the regulation. Registration is the least strict of the procedures we use for establishing who can do what. Licensing is a complete change.

128 MR. DONHEFFNER: I won't represent to the committee that the changes proposed in this bill represent an increase in the standards of care that would be used to either license or register these people. The change requested by the advisory committee is largely one of wording as opposed to changing the due care we would exercise in granting a registration or license.

The Oregon Guides and Packers were unable to be here today and have asked that a letter be introduced into the record (EXHIBIT E).

177 REP. BARNES: Has there been a problem with the current procedure? I am looking for a public need and I don't see one.

181 MR. DONHEFFNER: From an agency perspective, I don't know if there is a great problem we are trying to fix with this bill. The registration procedures seem to be working pretty smoothly. From our perspective, one of the areas that the program is in most need of is enforcement of the current registration requirements. However, within the current fee structure and funding for this program, which is supposed to be self-supporting, there are few resources available to actively pursue law enforcement. We have done some limited work with the State Police, but the overall statewide enforcement of the program is lacking and is not addressed by the bill. Changing the wording "registration" to "licensing" doesn't change very much. It may make the industry feel better about their professionalism, but it doesn't change the requirements on them nor does it affect the public by providing a greater standard of care. I don't know that there is a clamor for change in this program by the public.

208 REP. BARNES: Would it help our tourism effort to say we have licensed guides?

212 MR. DONHEFFNER: I think there could be enhancements to the image of the industry and the tourism aspects through this program. The proposed amendments on page 9, lines 2-4, would have the list we provide the Department of Economic Development be made known to the public and used in state promotional activities and be available to the public upon request. Currently, I think the list has received limited distribution through the Department of Economic Development and the tourism program.

231 REP. STEIN: Is there a need for an advisory committee? Do you staff the committee and how often do they meet?

235 MR. DONHEFFNER: I think there is a role for an advisory committee on this program to provide feedback to the agency on a more regular basis. We are always open to comments, criticism and suggestions from individuals or the industry on how we are conducting the program, but this would provide a little more formal setting for them to give us feedback and allow us to use them as a sounding board for ideas or possible changes to the program.

We do staff the committee with our existing resources. During 1990 the committee met eight or ten times. I wouldn't see the committee meeting as frequently in the future, perhaps two or three times a year at the most unless there was some specific issue or charge given to them.

260 DON HINTON, Rogue River Guides Association, submits prepared testimony in support of the proposed amendments to HB 2158 (EXHIBIT F).

268 CHAIR SCHOON: Why do you think licensing is more appropriate than registration?

274 MR. HINTON: I was not particularly in favor of changing it. To me a license would indicate some sort of permission to do something. Registration is merely a list. When I asked this question of counsel, she said as far as the state was concerned it didn't matter whether it was licensing or registration. I think the majority of the industry would take it or leave it.

297 CHAIR SCHOON: As I understand it, the difference is that you register because you are a guide and you are licensed in order to be a guide. Licensing conditions can be anything that the advisory committee, maybe subsequent legislature or the board by rule would decide.

315 MR. HINTON: In the Sunset study in 1979, licensing was felt to perhaps give the public a misleading opinion. Their recommendation was that it should go to registration as opposed to licensing or to do away with the program because they could find no consumer complaints.

324 REP. BARNES: Outfitters have to provide general liability coverage. Has anybody failed to obtain the necessary insurance?

348 MR. HINTON: They have to obtain insurance in order to be registered at the present time and under the new licensing program they will still have to be. It is a burden on the smaller, part-time operator. The state mandated insurance, but turned their back and walked away and left the industry at the mercy of the insurance company. We had a lady from the Insurance Division attend one of our meetings and she made it clear the state has no control over specialty insurance. You can pay coverage and if it is an off-shore insurance company, they may not be there when you need them. If we lose one of the good companies, the Marine Board has the right under the new bill to waive the insurance requirement if the insurance is not generally available to the public. I would like to see it be a responsible company. The majority of smaller guides in Oregon make less than \$5,000. If they make \$5,000 they buy a \$500 insurance policy. It may not seem important to larger groups, but they are not able to service the whole industry themselves.

408 REP. STEIN: What would you personally want from this bill?

409 MR. HINTON: I think the biggest advantage of this is it simplifies a lot of the words. It makes a clear definition of the guide, guide-outfitter and the outfitter. We could never define that because they were basically the same. We were never able to make a divided line. I think the part where they excluded those who guide on their own property is good. I like the idea that the state tourist agency is going to make an effort to advertise. I will take exception with the Oregon Guides and Packers who want two members instead of one member. This isn't a killing matter, but on principle it irks me. It doesn't make sense because the more diversity you have, the better. As a side line, of the six positions, all except myself were members of the Oregon Guides and Packers.

TAPE 51, SIDE A

053 CHAIR SCHOON closes the public hearing on HB 2158 and opens the public hearing on HB 256 6.

HB 2566 - ESTABLISHES PROCEDURE FOR REGISTRATION OF ATHLETIC TRAINERS.
Witnesses: Steve Curtis, Oregon Athletic Trainers Society Russ Cagle, Willamette University Peter Marker, Ph.D., Willamette University Art Keil, Health Division

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

070 STEVE CURTIS, Oregon Athletic Trainers Society: The perception tends to be that an athletic trainer is a person who tapes ankles, puts a bag of ice on somebody. One of the things we do is prevention of injuries. We help make sure the equipment fits right, do the taping, the padding and are involved in conditioning. When an athlete is injured, we are the ones who evaluate the injury first. I have yet to find a team physician who would like to stand on the sideline in the rain during a practice session. We are also the first aid person. We take care of the injury and initial assessment. Depending on what is wrong, we refer the athlete to the appropriate medical personnel, whether it is an internist, orthopedist, general practitioner, or whatever.

Once the physician has diagnosed that injury, the athlete comes back to us and we do the rehabilitation process and work on turning the athlete back to the athletic venue. Once they are through the rehabilitation process, we are working with the physician to determine when they are able to return.

Mr. Cagle, Dr. Marker and I are all involved in teaching in sports medicine programs and other educational areas plus education of our athletes and the public and we do counseling.

As you look at a lot of the areas we are involved in that are not visible to the public, you realize we are a vital link in the medical coverage for the athletes. I think that is also reinforced. As you look through the packet that was presented to you (EXHIBIT I) you will find a letter announcing the AMA endorsing athlete training as an allied health profession. There are also letters from the OMA and the OSAA.

In this bill, we want to define athletic training. Anyone can go out and perform what they think is athletic training. We have included a definition of the practice. It is basically a registration. We are looking to protect the title of a registered athletic trainer. We want to set up a definite area, especially for employers who are looking to hire a trainer, and standards of qualifications. We are not trying to say you must be registered to work in the state. We are not after a license at this point and we are not looking to legislate anyone out of a job and we are not wanting to make any group have to hire an athletic trainer to provide those services. If they are happy with a coach, a paramedic, or a physical therapist, that is their option.

We are trying to define our profession and set some guidelines in the state.

133 RUSS CAGLE, Willamette University: I fully support this registration act. We are a medical liaison and health provider. I think the important thing is the consumer must have some identification of what an athletic trainer is. Athletic training has become a very honored profession and highly rated profession due to AMA's recent stand and the amount of research our profession is doing. It is the only professional group that has ever done anything nationally on injury

rates of high schools. In self-interest we are also trying to protect our own professional integrity.

154 PETER MARKER, Ph.D, Willamette University: I left my own country to come here to take my education in this field because it is not available in Australia. I consider it a very vital link to the health care profession. If you look at the amount of money that is being infused into the athletic industry today, at the professional, collegiate and inter-scholastic recreational levels, as well as the human element, you can see that having someone who is in continuous contact with an athlete to provide for their health care is very important. There are several sections of athletic training that may be adequately covered by other health professionals, but there is not a continuity of care that is important for the athletic. The fact that the AMA has made its endorsement, athletic training is going to become more high profile and currently there isn't a protection of letting people know the minimum level of competency and skills. There has to be a minimum standard to the public so they can know who is working with their athletes.

194 REP. NAITO: In the definition of an athletic trainer, are the duties always under the direction of a physician?

194 MR. CURTIS: Yes. We basically have standing orders with our physician; the physician is not always there. We have our physician in the training room at least one day a week and we are on the phone four or five times a day some weeks. We are in close contact, but we basically function under a standing order situation.

202 MR. CAGLE: Sixty percent of injuries occur in practice and there is no physician available.

204 REP. NAITO: When is there a decision to go into physical therapy and how does that involve the athletic trainer?

207 MR. CURTIS: My understanding of the physical therapy profession is that is a person who is trained in rehabilitation. The patient is sent to them by a physician with a diagnosis. They evaluate, treat either under standard protocol or specific requirements by the physicians and once the patient has met the requirement for being healthy again, the patient is released. We do basically some of the same things physical therapists do. But rehabilitation is only one of the six areas that we do. The majority of my time is spent in trying to prevent injuries and evaluating. I do spend a fair amount of time rehabilitating those injuries. We do overlap with other professions also.

214 DR. MARMER: This is a problem where I come from. I have written several articles in professional journals in Australia addressing this issue. In Australia we follow a British medical model which basically has physical therapists as the primary health care professional dealing with athletes. My argument is that is inadequate for a number of reasons. The focus of the physical therapy profession is different. There are areas of overlap, principally in the rehabilitation of muscular-skeletal injuries. Prevention, counseling, preparation, practice and game coverage are necessary. Even though there are a lot of shared competencies, there are very specialized knowledges that separate trainers from physical therapist.

252 REP. NAITO: What are the educational requirements for becoming an athletic trainer?

255 DR. MARMER: To become a certified athletic trainer, there are two routes. One is a curriculum program which is an undergraduate program or a graduate program. The undergraduate program is a four-year program in a college that has been accredited by the National Athletic Trainers Association. There are six standards of academic course work: anatomy,

physiology, basic care and prevention of athletic injuries, advanced care and prevention of athletic injuries, nutrition, psychology, and some biological sciences, etc. Then a minimum of 800 clinical hours under direct supervision of a certified athletic trainer, twenty-five percent of which must be dealing with high risk sports: football, gymnastics, soccer, rugby, etc. Once the student has satisfied those requirements and is within one semester of graduation, they may apply to sit for the national certification exam.

The graduate program is generally two years of advanced study in athletic training, medicine, modalities, rehabilitation, emergency care and procedures. There is a minimum of 800 hours and once the person has satisfied the 800 hours he you may sit for a national certification exam.

The internship route, which is what we offer at Willamette University, is 1,500 clinical hours under the direct supervision of a certified athletic trainer with the same provisions for 25 percent of those hours dealing with high risk sports. The academic load in an internship program is slightly less than a curriculum program, but still covers the six basic areas: kinesiology, anatomy, human physiology, exercise physiology, psychology and care and prevention of athletic injuries.

298 REP. WALDEN: If I were looking to hire someone who was properly trained, would I look to see if the person had the national certification?

MR. CURTIS: I would hope you would. That is basically how we function within the colleges and universities within the state. However, from my experience in working in public high schools in Oregon, that is not a requirement. They are more interested in something that is statewide. The national certification is not recognized in the state. If we can get recognition we can better inform the employers.

302 REP. WALDEN: Don't you require physician referral to access a physical therapist in Oregon?

313 MR. CURTIS: Currently, we do. I don't know of any physical therapist doing what we do but I have heard there are some. They will volunteer their time at a high school; they are not charging for their services.

Equipment malfunction, taping continues on TAPE 50, SIDE B.

TAPE 50, SIDE B

015 REP. OAKLEY: Could this bill lead to an increase in the cost of service because this will give you greater status?

DR. MARMER: No, I think it will be dictated by the market place.

026 REP. OAKLEY: How many certified trainers are in Oregon?

030 MR. CURTIS: The last roster a couple of years ago from the national office had 104 members within the state. We would probably have 120 to 125 now.

035 MR. CAGLE: There are 8,200 nationally.

039 REP. RIJKEN: On page 1, in line 10, what is the definition of "evaluation"?

040 MR. CURTIS: Our evaluation is very paramount to the physician's diagnosis at some point. We are functioning as an extension of the physician. I have team doctors making diagnosis from our assessment on

the field. We do an evaluation and refer the athlete to the appropriate physician.

067 REP. BARNES: If I had not been sitting here, this bill would mean to me that you are asking state government to be a formal registry for trainers with certification from the National Athletic Training Association. I am looking for a clear and convincing reason that public need dictates that we should have a broad public policy.

076 MR. CURTIS: Section 1 sets up some legal definitions of athletic training. I feel that is vital to protecting the consumer. Also by putting in a minimum requirement for certification the consumer is protected.

121 REP. BARNES: Do you know of anyone who might be acting as a trainer who is not certified by the national association?

125 MR. CURTIS: As an example, when I was working for Portland Public Schools, we had 10 schools and 10 people were hired as athletic trainers. In the four years I was there we had two certified trainers. At the high school level, I would guess that 20 to 30 percent of the trainers currently employed are certified. The vast majority have not gone through these requirements and they are practicing athletic training.

135 MR. CAGLE: It is also happening at the collegiate level.

139 ART KEIL, Health Division: The division does not have a position on this bill. The division has done a fiscal impact showing approximately \$23,000, which would be equal to about \$180 to \$200 per person to belong to the group. The two issues beside the cost of this and whether the state needs this separate board, the number of board members is not specified and there is no provision for compensation for the board members.

162 REP. NAITO: My concern is that we have potentially incompetent people working in our public schools. Do you know if there are any requirements by administrative rule for hiring by the schools?

167 MR. CAGLE: No, I don't. In recalling previous testimony in on this legislation, my recollection is that it would not affect the high school person because they would have to belong to the National Athletic Trainers Association in order to be certified by the board. The division would use that as the sole criteria, paying the registration fee. I don't see the relationship between that and high school athletics.

182 CHAIR SCHOON closes the public hearing on HB 2566 and opens the public hearing on HB 256 8.

(Tape 50, Side B) HB 2568 - REQUIRES IMPOUNDMENT OF UNINSURED VEHICLES.
Witnesses: Tom Bessonette, Oregon Mutual Frank Brawner, Oregon Bankers Association John Powell, State Farm Insurance Companies and North Pacific Insurance Company Tony DeLorenzo, Motor Vehicles Division

The Preliminary Staff Measure Summary (EXHIBIT J), and Legislative Fiscal Analysis (EXHIBIT K) are hereby made a part of these minutes.

180 TOM BESSONETTE, Oregon Mutual, reviews the history of mandatory insurance in Oregon. >Uninsured motorists have been a real concern to the insurance industry and the public for a number of years.

344 I would advocate at this time to repeal the mandatory insurance law, which is not even a toothless tiger, and go back to the financial responsibility law of the early 1970's that required if an individual

had an automobile crash and was legally responsible for it that person had to pay the damages. Today you don't have to pay the damages unless there is a court decision indicating you are legally responsible. Most insurance company, because most of the people driving uninsured are not necessarily fiscally responsible, will not proceed to get the judgement because it costs us money and clogs the courtroom. Prior to 1970 we could request the Department of Motor Vehicles have a hearing and if the person was adjudicated to be legally responsible, driving privileges were suspended until the individual satisfied the injured party. That is still working in Washington very effectively.

We in Oregon over reacted to a Supreme Court decision. I would like to see the hearings process implemented again in Oregon because it gave more teeth to the innocent party than we now have.

389 An insurance company cannot cancel a auto policy after it has been in force for 60 days unless the driver loses his driving privilege or fails to pay a premium. I wonder if you want to use "cancel" or "lapses." If the person doesn't pay the premium, the policy is technically not canceled, it just lapses. Most people don't pay the premium and the policy lapses. I wonder if you will get satisfaction from requiring the person to notify DMV. DMV has a problem getting people to comply when they inquire who their insurance company is today. I would hazard a guess that if you were to implement this type of bill the minimum amount of money necessary to enforce it, and not including impoundment, is \$1 per registered vehicle per year in Oregon. There are a little over two million vehicles registered in Oregon. My un-expert opinion is that it will cost about \$4 million a year to really pass an enforceable law.

I have a lot of empathy toward having vehicles impounded. I have to question whether the implementation would work. When you start impounding the car you will have liability for the personal property in the vehicle. On page 3 (2) the owner of the vehicle will have to pay double the amount of actual expenses incurred in moving and storing the vehicle. I don't know where the insurance companies would store the vehicles, but currently they pay \$10 to \$15 per day for storage.

TAPE 52, SIDE A

007 FRANK BRAUNER, Oregon Bankers Association, submits and reads a prepared statement suggesting HB 2568 be amended (EXHIBIT L).

045 CHAIR SCHOON: How would we protect the lienholder under the forfeiture law?

052 MR. BRAUNER: If it went to the existing forfeiture statute and you declared that a loan on such vehicle would be in default, by statute, we might be able to protect the third-party lienholder.

092 JOHN POWELL, State Farm Insurance Companies and North Pacific Insurance Company: Our testimony on HB 2568 is centered on the notification requirement. It would require us to notify the division within 72 hours from the time of notice of cancellation and we would be required to notify the former insured that we had notified the division. In the 1990 calendar year, State Farm had about 144,000 plus such cancellations or suspensions. We would have been required to send twice that many letters to DMV and the insureds. We are about 20 percent of the insurance market in Oregon. Assuming this takes place at roughly the same percentage with other carriers, you can see the enormity of the problem.

It still surprises people to learn that the insurance industry does not favor such acts (as mandated auto insurance). The reason is they don't work; people still drive uninsured and no one has found a way to get

everyone covered. As a result of it being required and people not obeying the law, the original intent of the act doesn't work.

132 I believe the requirement that the companies notify DMV was in the original bill; it was later repealed. I believe the reason for the repeal was the massive amount of paper exchanging hands. In working with Trend Business College and our own word processing people, we estimate this would generate an annual expense to State Farm of \$649,090 and we are 20 percent of the industry.

We understand the concern with the uninsured driver. We will cooperate in any way we can to assist. We don't believe this kind of notification will significantly reduce that number. DMV has to have some method of tracing these people. Many have replaced their insurance and those that haven't many times are very difficult to locate.

REP. OAKLEY: How do other states handle this?

MR. POWELL: There is a variety of ways.

197 REP. BARNES: If a policy holder were to let his policy lapse and the insurance company sends a notice to DMV, then he is reinstated, the insurance company fails to notify DMV and the person is arrested, does the insurance company have any responsibility?

MR. POWELL: I am not sure we are required to notify DMV of reinstatement under this act to cancel a notice we have sent to DMV. The liability would likely be determined by a court as to whether we had any liability in that situation.

225 REP. BARNES: I wonder if the failure of DMV to enter or not enter something into their computers would create a liability?

232 REP. OAKLEY: What is the grace period for payment?

225 MR. BESSONETTE: There is no grace period on an auto policy. The average companies will say if you pay it in 10 days the policy will be back dated. We have to notify the policyholder at least 30 days before the policy expires that the premium is due. On page 1, in lines 22 and 23 which is the current law, there is no civil liability of carrier or agent in reporting to DMV. The only notification is on page 2, the new language in lines 23-26.

(Tape 53, Side A) 401 JOHN POWELL: I would like to clear the record on the HB 2568. Mr. Bessonette said there was no grace period on a cancellation of an auto policy for non-payment of premium. The statutes require us to give 10 days written notice prior to that being effective. So in effect, you do have some time.

(Tape 52, Side A) 276 TONY DeLORENZO, Motor Vehicles Division, submits and reads a prepared statement on HB 215 8 (EXHIBIT M).

416 CHAIR SCHOON closes the public hearing on HB 2568 and declares the meeting in recess at 3:37 p.m.

TAPE 53, SIDE A

001 CHAIR SCHOON reconvenes the meeting at 3:40 p.m. and opens the public hearings on HB 229 9 and HB 2304.

HB 2299 - AUTHORIZES HEALTH DIVISION TO SET FEES BY RULE FOR FOOD SERVICE FACILITIES. Witnesses: Art Keil, Health Division Jeffrey R. Davis, Administrator, Marion County Health Department & Oregon Coalition

of Local Health Officials Art Bloom, Program Manager, Multnomah County and Chair, State Food Service Advisory Committee Mary Jo Ackerman, Washington County Food Service Advisory Committee Bob Wilson, Supervising Sanitarian, Benton County Health Department and President, Oregon Environmental Health Association Sue Cameron, Administrator, Tillamook County Health Department John Powell, Northwest Automatic Vending Association Mike McCallum, Director of Government Affairs, Oregon Restaurant Association

HB 2304 - INCREASES CERTAIN LICENSE FEES FOR RESTAURANTS. Witnesses:Rep. John Meek John Powell, Northwest Automatic Vending Association Mike McCallum, Director of Government Affairs, Oregon Restaurant Association Larry Harvey, Shilo Inns and Restaurants John Barnett, Pendleton Mark Jones, member, State Food Service Advisory Committee Jeff Davis, Oregon Coalition of Local Health Officials Sue Cameron, Washington County Art Bloom, Program Manager, Multnomah County Environmental Health Bob Wilson, Supervising Sanitarian, Benton County Health Department and The

Oregon Environmental Health Association Mary Jo Ackerman, Washington County Food Service Advisory Committee Art Keil, Health Division

The Preliminary Staff Measure Summaries on HB 2299 (EXHIBIT N) and HB 2304 (EXHIBIT O) are hereby made a part of these minutes.

011 REP. JOHN MEEK submits and paraphrases a prepared statement in opposition to HB 2304 (EXHIBIT P).

059 ART KEIL, Health Division, submits and paraphrases a prepared statement in support of HB 229 9 (EXHIBIT Q). There is a fiscal impact. If the bill were to pass it would give us the ability to change our administrative rules to raise the license fees through Emergency Board Action. The bill takes the statutory cap out of the statutes. We would hire one registered sanitarian in the Pendleton office at a cost of \$45,000 a year. In the past we have not been able to get permission to raise the fees and we have gone through many committees in an attempt to do this.

Of the 1366 facilities, 700 to 800 are full service restaurants paying the \$100 license fee; some are temporary restaurants, vending machines, commissaries, etc.

176 CHAIR SCHOON: Would you develop the information the committee would need to set the fee, rather than leaving it uncapped. We are not going to open the book.

180 MR. KEIL: If the committee were not able to see a breaking of the cap or dropping the statutory requirement, we will be happy to develop that fee. It would be in the area of \$185 to \$200 for the restaurant inspection, which is the very low end of what is being charged by counties throughout the state.

190 REP. NAITO: I would be interested in seeing what the counties are charging.

191 MR. KEIL: We will be happy to provide that.

193 JEFFREY R. DAVIS, Administrator, Marion County Health Department and representing the Oregon Coalition of Local Health Officials, submits and summarizes a prepared statement (EXHIBIT R). We see the program as a public health protection program. Our concern with the fee for the state is the difficulty in their being able to meet the standard.

224 REP. BARNES: Would you elaborate on your comment that inspections are not standard across the state?

237 MR. DAVIS: That reflects the requirement of meeting the two inspections a year. Currently, the state has difficulty meeting those two inspections--frequency is the issue.

232 ART BLOOM, Program Manager, Multnomah County and Chair, State Food Service Advisory Committee: I want to reiterate what Art Keil and Mr. Davis just said. I feel very strongly the Health Division needs the ability to set the fees to do the kind of inspections that the counties have the ability to do. That would raise the fee and we would like to see it be in rule making authority to make it available to them as costs rise.

CHAIR SCHOON temporarily leaves the meeting and gives the gavel to Rep. Rijken.

249 MARY JO ACKERMAN, Washington County Food Service Advisory Committee, submits a prepared statement in favor of HB 2299 (EXHIBIT S). We agree with the advisory committee to the state. We would like to have standardization throughout the state. We feel our industry is protected by the inspections. and believe it is in the best interest of the public to maintain good standards. Our sanitarians are partners with us in the industry to keep food borne illnesses and problems away from the public.

298 BOB WILSON, Supervising Sanitarian for the Benton County Health Department and President, Oregon Environmental Health Association, submits and summarizes a prepared statement in support of HB 2299 (EXHIBIT T).

320 SUE CAMERON, Administrator, Tillamook County Health Department: We support HB 229 9. Tillamook County used to be a county in which the State Health Division was responsible for doing the inspections. At that time the restaurant operators did not know necessarily how to get in touch with the person they needed to have do the inspection. We took the program on at that point. When the state did the inspections, the inspectors were so busy they didn't have the time to teach the operators how to actually provide safe handling of the food. Temporary restaurants were not inspected. Since Tillamook County took over the program, we have been able to provide technical assistance, food handling classes and establish a relationship with our operators. Clatsop County is a state inspected county. In 1989 they were able to have 14 percent of their inspections done compared to our 89-90 percent. These counties are paying the fee and are not receiving the service because the Health Division does not have the staff. The fees are not enough to support the services needed.

389 JOHN POWELL, Northwest Automatic Vending Association: Vending machines are also licensed under this act and are included in HB 2304 on pages 2 and 3 and in HB 2299 on pages 2 and 3.

401 I would like to clear the record on HB 2568. Mr. Bessonette said there was no grace period on a cancellation of an auto policy for non-payment of premium. The statutes require us to give 10 days written notice prior to that being effective. So in effect, you do have some time.

413 HB 2304 and HB 2299 have our attention for two reasons. We are not a party to the mega-war that is appearing. We are concerned with the deletion of the fee by statute. If I were administering a program I would have faith in myself and my administration and would not see why these should be listed in the statute and our having to come back each year and ask for an increase. The people I represent are relatively small in many cases. While fees appear small to some of us, on a business relationship, fees are important. Our first request would be that the fees continue to be in the statute. One bill provides for a

penalty of 50 percent if you are late in applying for license renewal. Perhaps there should be an exception or hardship process that the regulator could where the regulators could a waive portion of the fee if they could be convinced to do so. We will monitor this legislation. Our thrust is to see the fees remain in the statutes.

TAPE 52, SIDE B

037 REP. WALDEN: What kind of inspections are done on the vending machines?

040 MR. POWELL: We have a couple of fees here. In many cases we would have a warehouse fee and in HB 2304, page 3, line 23, the inspection is going from \$20 to \$175. As I understand it not every machine is inspected each time; a percentage of the machines on a random basis are inspected. The inspection would be for health-related reasons, sanitation, etc.

056 CHAIR RIJKEN: Where did the HB 2299-1 amendments (EXHIBIT U) come from.

057 TERRY CONNOLLY, Administrator: The amendments originated when the bill was in the Human Resources Committee and I will track the source of them.

063 MIKE McCALLUM, Director of Government Affairs, Oregon Restaurant Association: On HB 2299 we will echo many of Mr. Powell's comments in regards to objections to setting fees by rule. He submits and paraphrases a prepared statement in opposition to HB 2299 (EXHIBIT V).

081 CHAIR SCHOON returns to the meeting.

103 REP. BARNES: Would we get a better effect if we had one inspecting authority in the state, perhaps at the Health Division?

105 MR. McCALLUM: We would agree with a program like that. The next bill, with the amendments we will be proposing, would attain a program like that.

117 CHAIR SCHOON closes the public hearing on HB 2299 and continues the public hearing on HB 2304.

(Tape 52, Side B) HB 2304 - INCREASES CERTAIN LICENSE FEES FOR RESTAURANTS.

118 MIKE McCALLUM, Oregon Restaurant Association, introduces Larry Harvey, Legislative Chairman and Director of Public Affairs for Shilo Inns, John Barnett, a board member and restaurant owner, and Mark Jones, the industry representative on the State Food Service Advisory Committee. He submits and reads a prepared statement proposing that HB 294 1 replace HB 230 4 as amendments to the bill (EXHIBIT W).

338 LARRY HARVEY, Shilo Inns and Restaurants: We are an Oregon-based hospitality firm with 20 locations in Oregon, 7 of which include restaurants in five separate counties. We must deal with different interpretations of rules and varying fees. It is confusing and often very frustrating. We support amending the language from HB 2941 into HB 2304. It would mean the bringing of consistency and equality into the food service inspection program in Oregon. It seems to us rather inexcusable or unreasonable that the state would call on restaurant owners to know and follow different rules and regulations depending upon the location of their business. I have had personal experience with this dilemma since 1973 and I have seen little or nor progress made. I would agree with Rep. Meek that we need less government and would agree with Mr. McCallum and one way would be to bring it under one agency.

Amending HB 2941 into HB 2304 would allow for the consistent application of state-mandated regulations much like that of the operation of the Oregon Liquor Control Commission. It would reduce from 25 to one the number of agencies interpreting the regulations and better utilize the functions already being performed by the Department of Agriculture as well as the dollars and fees being collected for the services.

386 If the state and our industry ever hope to achieve an equal level of application of health regulations and certification requirements, it will only be achieved if all regulations are applied the same and a single agency oversees the programs.

375 JOHN BARNETT, Pendleton: I have been in business since 1962 in the area and have seen county inspections and state inspections. Two years ago the Legislature came out with SB 884 and the reason it got lost was John. We saw the problems inherent in the bill, not so much that it raised the cost, but it did nothing else except raise the cost. One inspector covers 20,000 square miles and tries to inspect the 540 or so full service restaurants in that area. There is no way he can do that adequately. There is no way they can all get two inspections a year. We had no assurance that our inspection process would improve. That is the reason SB 884 got hidden.

TAPE 53, SIDE B

016 I think the ideal situation is that the Department of Agriculture do this. I have been inspected by the Dept. of Agriculture inspector. He has inspected most all restaurants in the Pendleton area. He is at the convenience store and there is no reason it would not be more cost efficient to have them do the inspections.

032 MARK JONES, member, State Food Service Advisory Committee and previous owner of two restaurants in the Newport area: I am here in support of HB 2304 as amended by HB 2941. We have been frustrated and have tried to create some form of uniformity and even application. We have developed a revised, standardized form for inspectors to use and computers have come on board. There still seems to be the openness of interpretation. One of the reasons this happens is the Health Division has only one trainer for the county employees in the federal unified code. The advisory committee determined it would take in excess of three years for the one person to train all sanitarians in the code. With the normal turnover, it will never be done. I believe we would have a better chance of getting that done by the Department of Agriculture because they are dealing with their own people rather than with counties who are taking their trained person and training their personnel beyond that.

We are in a delegated county. Two years ago our fees were raised by 50 percent. Since that time our frequency of inspections has dropped by 30 percent and they have eliminated the Heimlich maneuver training and the voluntary food handler training program. We need to bring those things in line. As the former state president of the association, I was able to travel widely and saw many instances of inconsistencies, basically on interpretation. We need consistency. If you look at the OLCC program that is administered by one agency that controls all sales, if we apply the same style of management through the Department of Agriculture we can achieve some successful results.

084 REP. BARNES: Have you talked to the Dept. of Agriculture about this?

MR. McCALLUM: Yes. They are able to do the program and there is a representative from the Department of Agriculture present who can answer the question directly.

090 REP. BARNES: In HB 2941, page 4, line 38, could they still delegate this authority to the counties?

093 MR. McCALLUM: No. The delegation statute ORS 624.510 is expressly repealed in Section 24.

REP. BARNES: It seems like the most populous counties have taken over the authority. If I am a small restaurant in Jackson County and want a license, what would be the administrative mechanics of doing that if this were implemented? Will I have to deal with Salem, or a field office.

107 MR. McCALLUM: There will be field representatives around the state that would be in the different regions providing the hands-on service that restauranteurs are accustomed to at this time.

111 JEFF DAVIS, Oregon Coalition of Local Health Officials: The testimony that I have written explicitly addressed HB 2304 (EXHIBIT X), but I will modify my verbal comments to address the amended version. I think HB 2304 as would be amended presents some policy issues. The Oregon Coalition of Local Health Officials representing local health departments who are currently doing the food service inspection program would support the continued delegation of that program to local health departments. We would not be in favor of HB 230 4 as amended. We see the focus of food service program as one protecting the public health. Our goal is to ensure the health of people is protected from food borne disease.

The second issue is one of local government control. We have the situation where the program has been delegated to the local health departments. The local health departments and counties do have some differing perspectives in regard to what they might include in establishing the fees. Some counties subsidize by not charging rent. That will affect how fees are established.

The other issue was mentioned by Rep. Barnes on whether the Health Division and the Department of Agriculture have talked about what the best location of this program is. What does that mean in terms of taking delegation back from the local communities?

171 In my testimony I mentioned that epidemiology is a part of the local health department responsibility. No matter where you put the food service program, if there is a disease outbreak in a local community, it is the local health department's responsibility to investigate that disease outbreak. If a sanitarian is a part of the food service inspection program, that sanitarian is a part of the team that helps investigate the outbreak and they do everything they can to assure that the outbreak is stopped and the disease does not spread in the community. If you move delegation back to the state and have a state-operated program, it is possible you will be shifting costs to local health departments who still must do the disease investigation, but will not necessarily have access to a sanitarian on staff who could do that. The county may need to use additional staff in the local health department to conduct the investigation and do the follow up. I am not sure it is the intent to shift costs to the local counties, but it is possible with a major disease outbreak.

194 Another concern is that up to this time, my understanding is that the ODOA has had some general fund subsidy to their program, particularly their food inspection program. My understanding is there may still be some general fund subsidy. Whether there is subsidy or whether the fees pay the full costs, service is one you need to look at closely with regard to HB 230 4 if amended.

210 SUE CAMERON, Washington County: I would like for you to think some of the things in my previous testimony justifies local delivery of services. You need to look at the fact that implementation will be very interesting. The Department of Agriculture sanitarians work out of their homes. This would be back to the same delivery of services that Tillamook County had before we took on the delegation of the restaurant program. It still deals with the issue of not being able to adequately teach and educate. Those are not components which the Department of Agriculture in their current program provide to the operators of their grocery stores. We have grocery store operators coming to our food handlers classes to learn how to properly handle food. We welcome and encourage them. It is another issue that needs to be looked at.

I believe there is a philosophical difference in the Department of Agriculture program and the public health inspection program. You also have to look at the fact that the county sanitarian not only does food service, but also tourist facilities such as motels, hotels, bed and breakfast, and public swimming pools and water systems. So just because the food service program would be taken away from the county health departments as proposed in the amendments, they will still have to have a sanitarian to do the other activities.

263 REP. BARNES: Is the Department of Agriculture training the same?

283 MS. CAMERON: The inspectors for both the Department of Agriculture and the County Health Departments are registered sanitarians. There are criteria they must meet to become registered.

304 ART BLOOM, Program Manager, Multnomah County Environmental Health: Over the past 8-10 years I have worked very closely with the restaurant industry. There have been times when colleagues of mine have accused me of being closely aligned with the industry, and I am not. I have been trying to work with them to solve some of the problems. We came very close last year with SB 884.

Mr. McCallum says 22 sanitarians state wide would solve the problem. I couldn't disagree more. In Multnomah County, with about 2,000 licensed facilities, we employ 12 full time equivalent people just doing food service inspection; that includes about one clerical position. I do not understand how another 10 sanitarians statewide with clerical assistance could cover Washington, Clackamas, Marion, Lane and the other counties throughout the state.

Food borne disease outbreaks was covered, but I would like to reiterate because it is extremely important. Over the years the Department of Agriculture has expressly told the State Health Division and the local health departments that they depend on us to investigate the food borne disease outbreaks. It would be difficult to have the Department of Agriculture doing the inspections and then have to bring everyone together in a timely fashion in the time of an outbreak.

Mr. McCallum said the fees are being used to support other programs. I know of no instances where that is being done. We have over \$600,000 a year in fees to support our program.

Mr. McCallum makes the point that the health departments get their fees through without political scrutiny. That isn't true. All the counties have to go through a lot of red tape to get fees increased or changed. I have to go to the commissioners and show justification and I have never failed to call the industry to let them know what we are doing and ask them to give testimony.

They say the problem of continuity and consistency would be solved if we

went to a state program. In Multnomah County, with 11 sanitarians working full time, it is almost a full time job for my supervisor to keep my staff interpreting the rules and the law relatively close to each. That would not be automatic and easy on a state wide basis. It is a difficult task.

I do not know of any food service inspection program in the United States that is done by a state's Department of Agriculture. They are done by local health departments or state health authorities.

448 REP. BARNES: Do you know the history of the Department of Agriculture inspecting food service facilities in grocery stores?

TAPE 54, SIDE A

015 MR. BLOOM: In the early 1970's the local health departments did those inspections. A change was made in 1972 to have the Department of Agriculture take over the program. The rub came when you had grocery stores that had more than grocery stores in them. About 15 years ago they started adding delis and some prepared food and there was the question of who should be going into grocery stores to do the inspection. After about six or eight years of haggling between the Department of Agriculture and the State Health Division, a statute was passed that stated the two agencies had to come up with an agreement so there was not two sanitarians going into the same facility. They came up with a plan that had the Department of agriculture going into grocery stores if the grocery store was the majority of the business. If the facility was more restaurant than grocery store, the Health Division would go in. They split the statutes and rules at that time. They enforce our rules and we enforce their rules.

MR. BLOOM: (continuing his statement) In Multnomah County we license approximately 900 temporary restaurants a year. We pride ourselves on being able to work very closely with the people who want to put on the events. We work with the groups and check the restaurants ahead of time. We have staff at each of the events. Those kind of events, because they are such a high risk for potential food contamination and food borne disease, have to be inspected very closely. That local control and the ability to be there all the time is extremely important.

057 REP. OAKLEY: What is the cost of a temporary permit for an event like the Saturday market?

058 MR. BLOOM: It is \$70 this year. We had been at \$35 for many years. State statute requires that we can charge them \$70 until they reach the full service restaurant fee. At that point they don't pay any more. An exception is the benevolent temporary restaurants; they don't pay any fee because they are exempted from state statute.

086 BOB WILSON, Supervising Sanitarian for the Benton County Health Department, and representing the Oregon Environmental Health Association: We have prepared testimony which did not anticipate the proposed amendments (EXHIBIT Y). We opposed HB 2304 in its original form because we feel the agencies performing the inspections need to be able to establish fees based on the cost of providing the service. The Oregon Environmental Health Association would also be opposed to transferring the authority of the program to the Department of Agriculture simply because they are not a health agency. The program should stay with the Health Division and the local county health departments.

100 Mr. McCallum made it sound like the county sanitarians are bumping into the Department of Agriculture sanitarians and that is not the case.

The Department of Agriculture sanitarian in Benton County works out of his home and has a very heavy work load. We can contact him on his answering machine, but he is not available for consultation. I am wondering how the Department of Agriculture would respond to our temporary restaurants which are weekend work. Local county boards of health are responsible for public health in their communities and by providing the service through the county health departments there is emphasis on disease prevention, they are accountable to the community and they are much closer to the facilities they serve. They are related to other facilities which we inspect such as drinking water, sewage disposal, etc. We have the program set up and it would be difficult for the Department of Agriculture to continue to provide their existing services and take on the new services working out of their homes.

127 MARY JO ACKERMAN, Washington Co. Food Service Advisory Committee, submits a prepared statement opposing HB 2304 (EXHIBIT Z). Washington County has a very good program. We had 100 percent inspections last year. We have done a survey. Seventy-seven percent of the respondents said they preferred the county board of commissioners in conjunction with the local Food Service Advisory Committee to set licensing fees and perform inspections. Nineteen percent said they would like to see the Health Division administer the program.

Local control to a small operator means someone like myself can be on a food service advisory committee and find out what is going on, what we can do to help them and what they can do to help us. The inspectors are there to teach us. We have to be partners. I believe the restaurants in Washington County are coming closer to this in that we feel we are there when they need us.

151 ART KEIL, Health Division: It sounds as though we have not come up with something that is all that possible at this time. The Health Division believes the best government is the government closest to the people. We believe, as a state agency, that county government is the arm of the public health program in Oregon and we believe that is where "the rubber meets the road." The purpose of the program is to reduce the risk of food borne disease to the general public.

Another issue is uniform fees. I am unsure how that fits in. They are not the same between counties. Nor are they the same for property taxes, utilities, business tax, gasoline and the myriad of services that we deliver governmentally or in private business. Uniform fees are not necessarily a panacea. I am not sure the system is not broken. There are state standard rules that all counties go by and those are negotiated in meetings between our staff and county staff on a continual basis. There are differences in how those rules are applied as there is a difference in any type of service applied by a different individual. Lastly, we believe public health is best delivered at the local level.

193 CHAIR RIJKEN closes the public hearing on HB 2304 and declares the meeting adjourned at 5:18 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -HB 2158, Preliminary Staff Measure Summary, staff B -HB 2158, Legislative Fiscal Analysis, staff C -HB 2158, HB 2158-1 proposed amendments, Paul Donheffner or Rep. Sowa D -HB 2158, prepared statement, Paul Donheffner E -HB 2158, prepared statement, Rep. Larry Sowa F -HB

2158, prepared statement, Don Hinton G -HB 2566, Preliminary Staff Measure Summary, staff H -HB 2566, Legislative Fiscal Analysis, staff I -HB 2566, handbook and letters of recommendation, Steve Curtis J -HB 2568, Preliminary Staff Measure Summary, staff K -HB 2568, Legislative Fiscal Analysis, staff L -HB 2568, prepared statement, Frank Brawner M -HB 2568, prepared statement, Anthony De Lorenzo N -HB 2299, Preliminary Staff Measure Summary, staff O -HB 2304, Preliminary Staff Measure Summary, staff P -HB 2304, prepared statement, Rep. John Meek Q -HB 2299, prepared statement, Art Keil R -HB 2299, prepared statement, Jeff Davis S -HB 2299, prepared statement, Mary Jo Ackerman T -HB 2299, prepared statement, Bob Wilson U -HB 2299, HB 2299-1 proposed amendments, unknown V -HB 2299, prepared statement, Mike McCallum W -HB 2304, prepared statement, Mike McCallum X -HB 2304, prepared statement, Jeff Davis Y -HB 2304, prepared statement, Bob Wilson Z -HB 2304, prepared statement, Mary Jo Ackerman