

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

June 4, 1991
P.M.

Hearing Room F 1:30
Tapes 90 - 91

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: SB 1208 PH & WS SB 1215 PH

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TAPE 90, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:34 and opens the public hearing on SB 1208 A-Eng.

SB 1208 A-ENG. - SPECIFIES THAT ECONOMIC DEVELOPMENT DEPARTMENT SHALL BE RESPONSIBLE FOR RESEARCH AND DEVELOPMENT OF RECOMMENDATIONS FOR STRATEGIC TELECOMMUNICATIONS INFRASTRUCTURE PLAN. Witnesses: Sen. Peg Jolin Sen. Scott Duff

The Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT A).

009 SEN. PEG JOLIN, submits and reviews her Senate Floor speech in explanation of SB 1208 A- Eng. (EXHIBIT B).

030 SEN. SCOTT DUFF: I am interested in this legislation because I am a user of telecommunications and I want the end result in my district. Several years ago I contacted wheat growers in Australia, Canada, England and France who are leaders of their national associations to talk about the coming negotiations on a general agreement on trade and tariff. I wanted to develop a conference of wheat growers from around the world to work on the trade issue. The trade war is still going on with agricultural products. To make this project happen, I needed interactive video. I found it was cheaper for all of us to fly to London to have a meeting than to use interactive video. I hope to

achieve with this legislation the development of a telecommunication system that operates like a highway system so everyone has access to an international network so we can communicate with our competitors and those we sell products to. We are now connected in Oregon with high fibre optics to Asia and it is time we pursue a policy statewide to make sure that everyone has the opportunity to use a system like that. The second part of the legislation is that we need to use the state telecommunications network to leverage development in the private network around the state.

Right now we are contemplating whether we are going to legalize video poker statewide. If we do, we will expand the network that is used for interactive communications. If we do this, there should be an opportunity to use the expansion of that network to drive development of telecommunications around the state. One of the goals of this legislation is to look at opportunities like that and make use of them to expand telecommunication opportunities.

Another important part of the legislation is to improve access to information statewide.

A measure that was passed in the Senate, which is a part of leading technology, to enable people to pay their bills at the state via a computer transaction. A person should also be able to check their account if they are in the system to see their worker compensation account and other accounts.

098 SEN. JOLIN: In a time when we are looking to cut state government, here is an opportunity to make the state smaller and smarter.

100 CHAIR SCHOON closes the public hearing and opens the work session on SB 120 8 A-Eng.

101 MOTION: REP. RIJKEN moves that SB 1208 A-Eng. be sent to the Floor with a DO PASS recommendation.

102 VOTE: In a roll call vote, all members present vote AYE. REP. OAKLEY is EXCUSED.

108 CHAIR SCHOON declares the motion PASSED. Rep. Stein will lead discussion on the Floor.

109 CHAIR SCHOON opens the public hearing on SB 1215 A-Eng.

(Tape 90, Side A) SB 1215 A-ENG. - SPECIFIES THAT ECONOMIC DEVELOPMENT DEPARTMENT SHALL BE RESPONSIBLE FOR RESEARCH AND DEVELOPMENT OF RECOMMENDATIONS FOR STRATEGIC TELECOMMUNICATIONS AND INFRASTRUCTURE PLAN. Witnesses: Sen. Jim Hill Richard Reiter, Department of Environmental Quality Ramey Stroud, Office of State Fire Marshall Rep. Chuck Norris Victor Klinger Eugene Organ, Oregon Disabilities Commission

The Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT C).

117 SEN. JIM HILL submits a prepared statement with attachments relating to underground storage tanks (EXHIBIT D) and a listing of the provisions of SB 1215 A-ENG. (EXHIBIT E). >This is an issue we tried to address

last session and have to face reality that half of Oregon's gasoline stations have closed. >Expensive federal environment requirements. >Bill represents consensus of work group. >Two issues in the bill: clean up of tank sites and the distribution issue.

>Funding of bill; attorney general has said this is a fee and not a tax.

175 CHAIR SCHOON: We will have proposed amendments from the Railroad Association suggesting if we revert to the fall back provision for funding, they would be assessed part of the fee and feel they should not be. Did you consider that or have an opinion on it?

183 SEN. HILL: We did not consider that. I won't speak for the whole group, but we will be happy to look at it.

184 RICH REITER, Manager, Department of Environmental Quality Underground Storage Tank Compliance Section, submits a prepared statement including an overview and section-by-section analysis of the underground storage tank provisions of SB 1215 A-Eng. (EXHIBIT F). He reviews the materials.

305 Issues discussed: >All facilities are eligible for the program today; under the bill only those who resell motor fuel would be eligible for the benefits. >Work group said assistance should be available statewide, but the greatest need in amount of money on a business location is greatest in the rural area and those people should be eligible for more assistance than the more urban stations. >Lender liability for environmentally damaged properties. >Vapor collection is a state requirement; it is anticipated under the new Clean Air Act that many states will have to go to Stage I and Stage II to meet the clean air requirements. It applies only in the Portland Metropolitan area where they are not able to meet the summer standards due to the amount of hydrocarbon emissions in the Portland area.

TAPE 91, SIDE A

MR. REITER continues with his presentation.

Issues discussed: >The \$61 million fiscal impact would be over a 20-year period of time. >Reason for those needing more help in the rural areas is their inability to pay. They have less opportunity for market. >EPA provides for only four insurance classes. Within the group of 1178, most of them probably own three or four tanks. DEQ will provide further information on number of tanks at smaller facilities. >Ten-mile radius was a distance that the work group was comfortable with. >Statistics are not available on distances between facilities. >Limitation of eligibility to only facility in a city listed in the Oregon Blue Book may force the smaller owner out of business. >If more people are put into the group eligible for assistance, the cost of the program goes up dramatically. That is why "essential service" was considered. Where there are two or more, they get the 50 percent grant, the 3 percent interest rate, and the 75 percent insurance premium. >Method of computation of costs to tank owner on page 24 of Mr. Reiter's statement.

TAPE 90, SIDE B

MR. REITER continues with his presentation.

021 Issues discussed: >Estimates are based on 1,800 businesses benefitting with 2.7 tanks average per location.

124 MR. REITER: The technical amendments have been proposed by Jeannette Holman of Legislative Counsel (EXHIBIT G). The changes resulted in response to amending the bill to come into conformity with the AG opinion. These matters were overlooked when we changed from a

term "compliance fee" to "assessment." Also we changed the tax credit program to a direct payment for the interest rate subsidy and one citation was not picked up.

139 Issues discussed: >DEQ has adopted Federal program by reference. State program requires a permit; the federal program does not have permitting requirements. The permit approach was to facilitate the collection of a fee to pay for the regulatory oversight program. We collect a fee of \$25 per tank per year for the oversight program. >There is program difference in corrective action. EPA's approach to the clean up standards is to make a site-by-site determination on the clean up standard. Oregon has adopted numerical standards for clean up levels in soil and we are proposing to adopt some similar numeric standards for contamination in ground water. >Provisions for exemptions. Federal standards contain no variance or exception procedures. >If the current pollution control tax credit program would sunset as the Governor has proposed, additional revenue would not be necessary. The current program is a loss of General Fund.

210 RAMEY STROUD, Office of State Fire Marshall submits and reads a prepared statement explaining Sections 48 through 56 (excluding Sections 53 through 55) of SB 121 5 A-Eng. relating to cardlocks (EXHIBIT H).

Issues discussed: >Non-retail customer certification to cardlock operator. >Cardlock industry has accepted the burden of proof to show that they are conducting a lawful business. The Fire Marshal would have to make a very limited prima facie case and the burden of proof to show compliance would shift to the cardlock operator. >Identification documentation needs to be clarified. >Fire Marshal will recommend that periodic reports be made to the Legislature during the course of the administrative rules adoption process. We can assure the information we get about documentation in testimony is consistent with legislative intent. >Definition of "severe hardship conditions." The work group tried to determine what might be an example. We don't have an idea. There would be a need to have statewide hearings wherever this conditional license was applied for. The burden of proof to show hardship would be on the applicant. If people in the area disagreed as to the nature of the hardship conditions, they would then be able to present their evidence to show there was not a hardship. The Fire Marshal feels the bill must be clear as to what the legislative intent is in this provision. 439 >Cardlocks are not currently registered with the State Fire Marshal's office. However, they do have relationship with the Department of Agriculture, Weights and Measures Division, as it relates to the certification of pumps. We have been able to generally determine where they are, but no map pinpoints each location. 464 >If there were a retail outlet within a 10-mile radius of a non-retail outlet, then the non-retail outlet would not qualify for the sole provider provision. 468 >Within the dates that are specified, the existing cardlock facilities would have to come into compliance with the law. If they chose not to come into compliance, we would close them down.

TAPE 91, SIDE B

024 Issues discussed: >Criteria for setting the 2,400 gallon limit. The figure was originally mentioned in an Attorney General Opinion some years ago and has been used in discussions for many sessions. The work group debated this and felt it was the compromise position. There were a couple of members of the work group who still take issue with this number and concept and will present their arguments. 034 >Vehicles must be owned and operated by the business; in this context a leased vehicle would qualify as an ownership. >In small businesses the company doesn't necessarily own the vehicles even though they are used a lot in company business. There would have to be some clear documentation that the intent of this section of the bill would be met. 047 >Whether current

retail stations could put in cardlock facility if four criteria are met.

The bill grants the Fire Marshal rule-making authority which would allow the dual-operations concept. Existing administrative rules allow a retail facility to install a cardlock island with certain conditions. As a result of our rule making process over the last two years and of an attorney general opinion we received, we have been told we need to withdraw those rules and perhaps grant variances to the existing facilities but not allow dual operations to occur in the future under the existing statute. This bill would recognize that dual operations is a viable concept in that it would allow retail dealers to compete in a non-retail market as long as they meet the conditions of the Fire Marshal's rules.

068 REP. CHUCK NORRIS: For some reason permitting Oregonians to pump their own gasoline seems to rank with elk tags, salmon and sales tax. It is the only commodity that I know of in which we say there is only way you can buy it, except for prescription drugs, and the State has a monopoly on liquor. In more rural parts of the state, stations have disappeared or are operating on shorter hours. At the same time we are looking at this, we are looking at doom heading our way on the underground tank issue which will drive more of the little stations out of business. It makes it all the more important that we provide some way for the people in the rural areas to be able to fill their tank and sometimes on a 24-hour basis.

It has been traditional for many years that many farms and ranchers have had their underground storage tanks and will depend more and more on being able to rely on the safe, sanitary cardlock operation somewhere in a nearby community. I hope that you can vote the bill out to permit the cardlock operation to continue. I think the best interest of many people in Oregon would be served by permitting the cardlock operations to continue, particularly east of the mountains.

093 CHAIR SCHOON: We have heard that co-ops east of the mountains make the cardlock service available to all their customers.. There were objections to that by some of the gas station operators. Mr. Stroud said a retail station could do this also and it would put them on the same operating basis. Are you suggesting we take into consideration the retail customer, the non- commercial customer, that may need after hour service?

108 REP. NORRIS: I would not object if that is the direction the committee wanted to go. If it could be broadened to include some of the general retail trade, I would endorse that.

122 MR. STROUD resumes his testimony on the sole provider provision in the bill (EXHIBIT H, Page 4).

135 CHAIR SCHOON: Could a retail station operator take advantage of the sole provider provision?

135 MR. STROUD: No, not the sole provider provision because if the retail station were in the service area they wouldn't qualify within the 10 mile radius. However, under this proposal the retail service station operator would have two options to get into the cardlock business. One, install a separate cardlock pump island under certain Fire Marshal conditions, and two, we would be able to adopt administrative rules which would allow a retail dealer to serve the general public with attended service during normal business hours. Then when that station was closed to the general public, those pumps could be made available to cardlock customers at night. Thus, the retail dealer under this proposal has the ability to market their product 24 hours a day to a wide range of both retail and non-retail clients.

149 CHAIR SCHOON: The cardlock customer would be a commercial account as you have defined it here. What about the provision of getting a waiver to make it available for retail? I am talking about a retail operator who installed the cardlock pump, serves commercial customers, then a hardship develops for the people in the area, could they apply to sell by cardlock to non-commercial customers also?

160 MR. STROUD: No.

160 CHAIR SCHOON: Why did you choose to permit the non-retail outlet to do that when you don't permit the retail outlet to do that?

163 MR. STROUD: The concept behind the sole provider provision was to assure that gasoline was available to the general public throughout the state. The state policy is that the primary source of the supply is through retail outlets with attended service. It is only in the rare exception where that retail outlet with attended service is not available that this sole provider exception would kick into play.

169 CHAIR SCHOON: I don't understand that because you are saying that a non-retail outlet can get the waiver and sell to non-commercial accounts, but if the retail outlet was the sole provider, why couldn't they do that also?

172 MR. STROUD: Perhaps I don't understand the question. If I am a non-retail facility operator and want to sell to a retail market, then just like the retailer I could make an operational decision to go to dual operations. I could install at my non-retail facility a separate retail island. Under those conditions I would have to provide attended service.

199 I think we are confusing the sole provider provision of the bill with the separate part of the bill that relates to dual operations. The idea behind dual operations was that we are trying to open up both retail and non-retail markets to both cardlock operators and retail stations. That being set aside for the moment, we get into the situation perhaps in a rural area of the state where there is not a facility that has chosen to take advantage of the dual operation and is simply a cardlock by itself.

211 CHAIR SCHOON: If it is a dual service station and it is the only one within 25 miles (no other kind of outlet), why couldn't a dual service operation apply as a sole provider and sell to non-commercial customers also.

216 MR. STROUD: The dual service facility having this retail component would be available to the general public and the sole provider provision says that if there is a retail operation within the 10 mile radius, then the sole provider provision does not apply. The underlying philosophy is that Oregon is one of the two states in the United States that does not want its public to dispense gasoline for safety purposes. That policy is embodied in the sole provider provision.

225 REP. WALDEN: What happens when you have granted the sole provider provision to a cardlock station so they can serve retail as well as commercial and two blocks away a general service station opens up?

232 MR. STROUD: The conditional term in the conditional use license means that this is a one-year license and if the retail station comes into play within the 10 mile radius, the license would not be renewed. The non-retail facility operator would have to make a business decision whether they want to take the risk and spend the money on capital improvements knowing that if a retail station came on line during the course of the license, the license would not be renewed.

246 REP. BARNES: Do you now charge a license fee and renewal fee for cardlocks?

247 MR. STROUD: We do not. When we have complaints at cardlocks we have to pull fire marshall deputies who are paid for through a fire insurance premium tax out of schools, institutions and other hazard occupancies and divert them to service station complaints. At this point in time there is not a routine fire safety inspection program for service stations conducted by the State Fire Marshal's office. The exception to that would be inspection of storage tank facilities that would constitute a major hazard to a community.

251 VICTOR KLINGER: I have been going all over Oregon especially in my area trying to find somebody who likes the non-retail provision and I can't find anybody. I had a few of the owners of stations fill out questionnaires on what they want. Basically the retail service station dealer wants equality--to compete equally. The non-retail term is incorrect. Not retail is wholesale. Why not call this what it is--it is a commercial retail sale. There are retail sales to the general public and we have commercial sales at retail, small quantity sales. When I ran my station, I served commercial accounts and there was no provisions in the law to allow me to let them self serve gas at my station. Why should the cardlock one block from my service station be able to allow all their customers to come and use it without an attendant on site.

To promote public gasoline supplies, wouldn't it be appropriate to fund this money out of this bill to make it something for the cardlock facilities that supposedly aren't serving the general public, to guarantee public supplies, don't allow any of this money to go to a cardlock facility unless it is going to serve the public. Then we can have an equal competition. Since most of the cardlocks are owned by wholesalers if they didn't have a cardlock facility that they could be advantaged in the market place with, they would probably upgrade to a service station and they would try to compete with other wholesalers in supplying fuel to local service stations keeping the price of fuel to the consumer down. The best possible price to the consumer would be when the wholesaler has to compete for his retail dealer.

320 Nothing in this bill says anything about vaulting underground storage tanks. I know two that have been installed. As far as future guarantees against EPA cleanup, etc. as long as you can have a trap door to crawl down and visualize under the tanks, you don't have to pay the insurance premiums or carry the million dollar insurance policy and it is not an explosion factor as with the above-ground tank.

357 You can fund all the money you want and all the service stations in the state and if you allow this competition to go on with the cardlock the way it is now, you are going to end up destroying everything; there won't be any retail service stations. I think all the retail dealers in Eastern Oregon know it. For a competitive price to the consumers and for the dealers' benefit, you wouldn't have to be worried about funding money for underground storage tanks if the cardlock had not affected the competitive market in Eastern Oregon the way it has.

Whether the Legislature can amend the no self-serve law in Oregon, pass this bill and find out because I am sure it will be challenged.

381 CHAIR SCHOON: What do you think about the provision that you as a retail operator could install a cardlock?

382 MR. KLINGER: If I were the only one in a 10 mile radius, why couldn't I close my retail portion down and apply to the State Fire Marshal's office for a special permit? If you are going to put in a

cardlock, you need \$100,000 for accounts receivable. I don't think they could do it.

407 CHAIR SCHOON: Does Chevron run any kind of a service so you could use Chevron cards and perhaps bank cards?

409 MR. KLINGER: There are franchises. Also, what are we going to do about pricing on the pumps so we can know what they are selling the fuel for so we can compete with them. The law states that if you retail gasoline in small quantities, you have to have the pump price posted. That is the way competition between stations exists.

429 EUGENE ORGAN, Executive Director, Oregon Disabilities Commission: I appear on behalf of the commission. We support the majority of SB 1215 A-Eng. However, we do oppose those portions of the bill which deal with retail sales. We have been told this is not a self service bill. Perhaps, technically, not. It is a self service bill in many respects. Section 56 of this bill allows for retail sales to individuals who dispense their own gasoline. That is difficult and in many cases impossible for the constituency I represent to do. There is no provision in this bill for accommodations for people with disabilities. The Americans With Disabilities Act was passed by Congress last year. Title III requires that a wide range of businesses must make their services available and gas stations are listed. There is nothing in this bill that allows that to happen. The result could be litigation. For that reason we proposed on the Senate side and now propose deletion of Section 56 of this bill. That is the only part of the bill that we object to.

495 CHAIR SCHOON declares the meeting adjourned at 3:29 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -SB 1208, Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis, staff B -SB 1208, Senate floor speech, Sen. Peg Jolin C -SB 1215, Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis D -SB 1215, prepared statement, Sen. Jim Hill E -SB 1215, list of provisions of SB 1215, Sen. Jim Hill F -SB 1215, prepared statement, Richard Reiter G -SB 1215, SB 1215-A5 amendments, Richard Reiter H -SB 1215, prepared statement, Ramey Stroud