

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 6, 1991
P.M.

Hearing Room F 1:15
Tapes 92 - 95

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 593 PH SB 551 PH SB 816 PH SB 901
PH SB 1215 PH

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TAPE 92, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:15 and opens the public hearing on SB 593.

SB 593 - EXTENDS FAMILY HEALTH INSURANCE COVERAGE TO ADOPTED CHILD FROM TIME OF PLACEMENT WITH INSURED ADOPTIVE PARENT ON SAME BASIS AS COVERAGE OF OTHER DEPENDENTS OF INSURED. Witnesses: Sen. Jane Cease Rep. Ron Cease Toni Peterson, Children's Services Division Bruce Bishop, Kaiser Permanent Gary Conkling, Holt International Children's Services and Northwest Adoptive Families Association Peggy Anet, League of Oregon Cities

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

009 SEN. JANE CEASE submits the SB 593-2 amendments and a hand-engrossed bill (EXHIBIT B). Part of the proposed amendments have been worked out with Kaiser and part is clean up language. The intent of the bill is to have a child who is adopted into a family which has a policy which covers birth children have the same coverage when the child is placed with the family and the family accepts financial responsibility. Testimony in the Senate was that adoptive children cannot be placed because a family insurance policy doesn't provide coverage. I have also submitted the impact statement required for a requirement in an insurance policy (EXHIBIT C).

050 REP. RON CEASE: I think the testimony has been sufficient.

061 TONI PETERSON, Assistant Administrator, Children's Services Division, submits and reads a prepared statement in support of SB 593 (EXHIBIT D).

Issues discussed: >Adoption procedures. >Insurance company exclusion of pre-existing conditions.

108 BRUCE BISHOP, Kaiser Permanente: We opposed the bill in the Senate and recommended amendments that would make more stringent standards to determine when an adoptive child would be covered under health insurance. Those amendments were not incorporated into the bill, but are the amendments Sen. Cease has offered. In addition to the requirement that the adoptive child be in the physical custody of the family, there would also be a requirement that the family has assumed financial responsibility for the medical care of the child. Those criteria are currently applied in our service agreements. We will not continue to oppose the bill with Sen. Cease's amendments.

151 GARY CONKLING, Holt International Children's Services and Northwest Adoptive Families Association, submits a prepared statement in support of SB 593 and asks that it be made a part of the record (EXHIBIT E). We do not view this as a mandate, but rather as a bill that eliminates an element of discrimination.

175 PEGGY ANET, League of Oregon Cities, submits and summarizes a prepared statement (EXHIBIT F).

217 CHAIR SCHOON closes the public hearing on SB 593 and opens the public hearing on SB 551 A-Eng.

(Tape 92, Side A) SB 551 A-ENG. - REQUIRES DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE TO EXCLUDE FROM APPLICATION OF MEDICAL FEE SCHEDULES AND HOSPITAL SERVICES THOSE SERVICES PERFORMED BY HOSPITAL PARTICIPATING IN CERTIFIED MANAGED CARE ORGANIZATIONS. Witness: Sen. Larry Hill

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

226 SEN. LARRY HILL submits and reads a prepared statement in support of SB 551 A-Eng. (EXHIBIT H).

250 REP. STEIN: I am very reluctant to get rid of a cost containment mechanism but I would be interested in adjusting the formula so the hospitals are not penalized. Do you consider that as an option?

282 SEN. HILL: I think they are mutually exclusive. I think if you include the uncompensated care, you are defeating the purpose of the fee schedule which is to exclude the uncompensated care costs. Sisters of Providence who operate Sacred Heart Hospital in Eugene have about 24 percent of uncompensated care costs. Sacred Heart is excluded from recovering any of that cost in their MCO rates. Therefore, they are not going to form an MCO.

314 By exempting the hospitals from the fee schedule, let them negotiate the rate with the employer. The employer doesn't have to buy the MCO care. The employer only buys the care if it is affordable and efficient.

341 I think if we provide fee schedules for hospitals for in-patient care that exclude uncompensated care, whether it is an MCO fee schedule or a fee schedule outside the MCO, you are forcing the hospital to take a hit. The MCO rates would have to recover part of their overhead costs

of uncompensated care. The fee schedule for a non-MCO doesn't cover the uncompensated care. Therefore the fee schedule for non-MCO out-patient services would be lower than the charges for the hospitals' MCO services. By excluding the hospitals from the fee schedule, if they set up an MCO, it allows the hospital to recover some of the overhead costs in the non-MCO care and to provide MCO care at fees that not only cover part of the overhead but are also favorable fees.

394 REP. WALDEN: Would the hospital be relieved of the fee schedule for all workers' compensation efforts under this bill?

402 SEN. HILL: The hospital would be excluded from application of the fee schedule for services provided, but those services may be provided pursuant to an MCO agreement with the employer or just plain services. Currently, the reimbursement rate permitted under the fee schedule is so low for hospitals that provide charity care, they cannot create and offer an MCO which has multiple benefits to the employer including case management and early return to work.

TAPE 93, SIDE A

009 REP. BARNES: What about other service providers? Would it benefit them if we put them in a contractual mode rather than having a rate set for them?

015 SEN. HILL: I think the MCO can be provided by any health care provider. The fee schedule is for in-patient services.

028 CHAIR SCHOON: We have proposed amendments from Scott Gallant of the OMA and others have signed up to testify.

038 CHAIR SCHOON closes the public hearing on SB 551 A-Eng. due to lack of time and opens the public hearing on SB 816 A-Eng.

(Tape 93, Side A) SB 816 A-ENG. - PROHIBITS SPECIFIED PROVIDERS OF AUTOMATIC TELEPHONE NUMBER IDENTIFICATION TO PUBLIC SAFETY ANSWERING POINTS FROM BLOCKING NUMBER OF CALLING PARTY FROM BEING FORWARDED ON 9-1-1 CALLS. Witnesses: Scott Girard, Public Utility Commission John Gervais, Oregon Newspaper Publishers Association Beth Bridges, City of Eugene Jonn Wolf, Public Utility Commission

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

048 SCOTT GIRARD, Administrator, Telecommunications Division, Public Utility Commission, submits and summarizes a prepared statement (EXHIBIT J) in support of SB 816 A-Eng. with the SB 816-A7 amendments (EXHIBIT K).

072 JOHN GERVAIS, Oregon Newspaper Publishers Association: We are nervously supporting the amended version in the SB 816-A7 amendments. We want to establish for the record that there will not be any reduction in access to the public reports we now have access to.

105 BETH BRIDGES, City of Eugene, submits and summarizes a prepared statement (EXHIBIT L) in support of SB 816 A-Eng. with the SB 816-7 amendments. We would like to clarify for the record that it is our understanding that when the 9-1-1 operator confirms the phone number or if a police officer in the course of an investigation asks for and is given a phone number, that implies consent that the phone number is part of the public record. That is what we have been assured by the PUC.

148 CHAIR SCHOON: It is my belief the purpose of the bill was to

provide privacy to people who have unlisted phone numbers when they call in on 9-1-1. The testimony we just heard indicated it was her belief that the amendments would make that unlisted number available if the 9-1-1 operator asked what phone number was being used to call from. Is that correct?

155 SCOTT GIRARD: Yes. The concept represented in the -7 amendments was that under the current system the only way they get a person's number is that individual volunteers it. The concern we had was with an enhanced system that the individual would not volunteer their number, but the emergency service provider through the enhanced system would have the number, address and a variety of information. The -7 amendments would treat it as the current system which is not an enhanced system. Under this bill, the person will have to volunteer the number and say they don't want to disclose the number. Then the fact that it came through on the system, it would not be allowed to be disclosed.

174 JOHN WOLF, Public Utility Commission: Under the basic method, the operator must inquire all the pertinent information including name, address, telephone number and the problem and they dispatch. That information is public record. In the city of Portland and the counties of Josephine and Clackamas they have the enhanced system. The system is computer aided and means the information automatically appears on the computer screen. Protocol, as established by Oregon Emergency Management, says that the operator must ask for the information not giving leading questions. Protocol today is even if the information appears on the screen, the operator must still ask for the information. Without this legislation, all of that information is public. Should the operator not ask for verification, the information would still be public. So if you had a non-listed number and somebody made a phone call from your telephone, your name, number and address would show up on the computer. We were trying to protect the privacy of the non-listed and non-published number.

In the -7 amendments we are willing to concede that permission can be granted by the inquiry under the protocol. We also want to make it clear that the -7 amendments, as did the original bill, never intended to impact the investigatory aspects of police investigations. If a police officer, as part of the investigation, asks for your name, address and phone number, that is more than implied consent, it was actual consent. We are trying to protect the computer generated numbers from being released to the public.

234 CHAIR SCHOON: Do problems now exist?

MR. WOLF: Josephine County believed there was a problem and asked for the bill. If the bill passes we believe the problem will be resolved in the -7 amendments.

239 MR. GIRARD: There are two examples in my testimony that this legislation would address (EXHIBIT J).

234 CHAIR SCHOON closes the public hearing on SB 816 A-Eng. and opens the public hearing on SB 901 A-Eng.

(Tape 93, Side A) SB 901 A-ENG. - PRESCRIBES PROCEDURE FOR APPROVAL OF SPECIAL TELECOMMUNICATIONS CONTRACTS. Witnesses: Gary Wilhelms, U. S. West Communications Paul Graham, Department of Justice Earl Kamsky, Electric Lightwave Pat McCormick, Electric Lightwave

266 GARY WILHELMS, U. S. West Communications: We have made our statement previously (SEE EXHIBIT M OF COMMITTEE MINUTES DATED MAY 30, 1991) and came prepared to answer questions. There was an agreement made after the bill passed the Senate that we would adopt a new subsection (11) of Section 2 (SEE EXHIBIT N OF COMMITTEE MINUTES DATED

MAY 30, 1991).

293 PAUL GRAHAM, Department of Justice, representing the PUC: The new subsection (11) allows the commission to stop things from getting out of whack. This is a new procedure. In all cases in the past, an utility has had to submit a tariff or contract and have it approved before service is rendered under the tariff or contract. This allows the utility to enter into a special contract with a customer and the commission will approve it after the fact. The approval would be more limited than the current approval. Because it is a more limited review and because it is a situation where the utility can enter into a contract with the customer before it is approved by the commission, the new section allows the commission to say if we find a telecommunication utility is not acting in the public interest, then the commission would have the authority to prevent to telecommunication utility from using this expedited procedure the bill allows for.

A prepared statement submitted by Mike Kane, Assistant Commissioner, Public Utility Commission, is hereby made a part of these minutes (EXHIBIT M).

418 EARL KAMSKY, Electric Lightwave, Inc.(ELI): Electric Lightwave is an alternative access telecommunications company doing interstate business in Oregon and currently seeking to do intrastate business. Electric Lightwave favors open and free competition. Currently under Oregon statutes telecommunication utilities arguably have an absolute veto power over potential competitors seeking to provide what is called local exchange service in the state. ELI is seeking to provide those services and the telecommunications utilities have protested ELI's application exercising their veto power. While doing this with on hand, they use the other hand to point to competition as justifying the need for unshackling them from regulatory oversight in SB 901 A- Eng.

Allowing telecommunication utilities to enter into binding contracts for services where there is no real competition from an alternative vendor will assure the prevention of competition and delay the deployment of the state of the art telecommunications infrastructure in the state.

All ELI is seeking in its amendment is to assure that if competition is a justification for easing regulator constraint there is really competition. If the telecommunication utilities are sincere in competition justifying their need for the relief afforded by SB 901 A-Eng. I don't know why they are opposed to a clear definition of competition.

TAPE 92, SIDE B

027 PAT MCCORMICK, Electric Lightwave: We submitted the language in some information we provided separately and the language is in the SB 901-13 amendments. We will make those available to the committee.

050 MR. GRAHAM: Tracer, a group of industrial customer, submitted some amendments to us by telefax. The amendments Tracer submitted (EXHIBIT N) would shorten the commission's review time which is 90 days in the current bill to 60 days unless the commission finds that a telecommunication utility seeking approval of a contract has not submitted sufficient information to the commission to make the determination that is required under SB 901 A-Eng. Our amendments (EXHIBIT O) follow along the concept that Tracer is using, but we changed the procedure. If you are interested in the concept of the Tracer amendment, we would rather have you use the language of our amendment. We are submitting our amendment only in the event you are interested in the concept set forth in the Tracer amendment.

071 CHAIR SCHOON closes the public hearing on SB 901 A-Eng. and declares

the meeting in recess at 2:16 p.m. until 2:25 p.m.

074 CHAIR SCHOON reconvenes the meeting at 2:32 p.m. and opens the public hearing on SB 121 5 A-Eng.

(Tape 92, Side B) SB 1215 A-ENG. - ESTABLISHES LOAN AND GRANT PROGRAM TO ASSIST IN UPGRADING OR REPLACING UNDERGROUND STORAGE TANKS.

Witnesses: Richard Reiter, Department of Environmental Quality Ramey Stroud, State Fire Marshal's office Marvin Fjordbeck, Southern Pacific Transportation Company and Oregon Railroad Association Dell Isham, Automobile Club of Oregon Brian Boe, Oregon Petroleum Marketers Association and Northwest Petroleum Association Scott Bartlett, Legislative Aide to Rep. Bill Dwyer John McCulley, Agricultural Cooperative Council of Oregon Rick Jacobson, Wilco Farmers Samuel Fagone, Eagle Point Howard Misner, Central Point area cooperative Al Elkins, Oregon Gasoline Dealers Association Mike Sherlock, Oregon Gasoline Dealers Association Peggy Manning, Oregon Gasoline Dealers Association

074 RICHARD REITER, Department of Environmental Quality: There were three questions raised on Tuesday that I don't believe I gave sufficient information to the members on. He submits and reviews the questions and answers (EXHIBIT P).

(In further explanation of the response to Question 3 listed) I continued to think about Rep. Barnes' question and now believe he is correct. I think what we overlooked in our first analysis is that the tax credit ends up being a reimbursement, in effect, for moneys spent. It does seem appropriate that we would subtract that back out from the owner's contribution before doing a percentage analysis of who is paying what share. We have gone through and shown the tax credit as a subtraction from the owner's share because he does get reimbursed the equivalent amount over time. It does change the relative percentages from one to seven percent. We have provided new information on that.

122 RAMEY STROUD, State Fire Marshal's Office: The only part of my testimony (SEE EXHIBIT H OF COMMITTEE MINUTES DATED JUNE 4, 1991) I was not able to complete relates to a description of the three-part enforcement program.

Going back to the model (Attachment #1 of testimony), the last five boxes relate to a civil enforcement program. Currently, violations of the state's self-service law are a Class C misdemeanor. This bill decriminalizes that activity and makes it strictly a civil issue, pulling the law enforcement and justice agencies out of the picture.

The fire marshal would be directed by the bill to conduct annual safety inspections at every non-retail facility. According to the Department of Agriculture statistics that represents about 310 to 325 facilities. Also there would be a response to complaint capability so that if we did have bone fide complaints we would have personnel available to go out and check on the nature of the complaints and determine if they were bone fide.

The third part of the civil enforcement program is an audit program where the state fire marshal would audit five percent of all non-retail accounts to determine that they meet the four-part customer test described previously. There are about 60,000 to 70,000 accounts currently projected. That means we would do about 3,500 audits a year. It would mean site visits at about 70 locations. If there were problems determined, the non-retail facility operator would be given the

opportunity to provide documentation to show that those accounts did qualify under the law.

If there were violations that were not corrected, the fire marshal would have a range of options. First, there could be a civil penalty assessed up to \$500 per violation based on a matrix, prior experience, any previous violations, etc. If there were an aggravated case where there was absolute refusal to cooperate, continuing violations, the non-retail facility could be subject to civil closure with the appropriate accelerated appeals process.

Although it is not written into the bill, it would be the state fire marshal's intent to continue the work group process at the close of session as soon as the bill is passed and ask that work group to be part of the administrative rules developmental process and also to report back on a frequent basis to the interim committee and the 1993 Legislature.

166 CHAIR SCHOON: I am concerned about the audit procedure and criteria. A neighbor has fuel delivered to his farm but he also has a cardlock from another provider. He uses the cardlock extensively during the harvest at all hours of the day and night, but doesn't meet the gallonage requirement. Assuming they would have to somehow accumulate the gallonage for each customer, you would see that maybe during eight months he didn't use anything. What would you do and who would be criticized?

177 MR. STROUD: The regulatory relationship would be between the state fire marshal and the non-retail facility operator. If we had an account that appeared to not be in compliance with the law, the burden would shift to the operator to provide the appropriate documentation. This would be a matter of contract between the facility operator and his/her client. The cardlock operators in the work group agreed to shoulder this burden in exchange for not having to provide such things as one card per vehicle and one card per non-retail client or client-employee. They seemed to think that was a reasonable balance.

189 CHAIR SCHOON: There is an individual who for some years has been relying on the cardlock service for the drivers to get gas at night who is not meeting the 2,400 gallon requirement (and I will extend this further and incorporate a comment from a Legislator that the more storage you have on site and the more often you use it, the greater the chance for a spill or something going wrong, it is safer for them to use the cardlock)--- You are trying to enforce safety regulations but by preventing these people from using the service you increase the fire hazard and environmental spill hazard. What becomes your course of action?

203 MR. STROUD: The way the bill is currently written, one could have the 2,400 gallons from any source. It doesn't specify non-retail, retail or even a farm use tank. The account holder would have to provide documentation to the non-retail facility operator who would show the account in compliance with the law.

With regard to the Chair's statement about home storage, we have found that over the years there has been a reduction in home or farm storage as a result of having other fueling options such as cardlock facilities.

It certainly would not be our intent to encourage return to the past for reasons the Chair describes. At this point in time I can't see a motivation behind this bill for a return to the home storage or to increase the home storage.

223 CHAIR SCHOON: The legislator who mentioned it indicated that the case he was describing might not qualify because of the 2,400 gallon requirement.

229 MARVIN D. FJORBEC, Attorney and Legislative Counsel for Southern Pacific Transportation Company and representing the Oregon Railroad Association, submits and reads a prepared statement (EXHIBIT Q) explaining the SB 1215-A14 amendments (EXHIBIT R).

349 DELL ISHAM, Automobile Club of Oregon: Oregon AAA supports the concepts in SB 1215 A-Eng. We think it is important to address the concerns of underground storage tanks and regulating cardlocks but we have concerns with the bill. I would assume the reason for addressing underground storage tanks and cardlock issues is to benefit the general public. However, AAA was excluded from the working group, were not asked for our opinion and were not informed of their existence. You had testimony that this was a consensus bill. It is not a consensus bill.

We have two major concerns: 1. An attempt to evade or avoid the constitutional provision passed in 1980 by a two-thirds majority of Oregonians which is embodied in Article 9, Section 3a of the Oregon Constitution which says, "Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor fuel or any other product used for the propulsion of motor vehicles shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state."

There has been some legal opinion that it has been drafted to get around the constitution. I don't think the people intended for lawyers to figure out a way to get around the constitution. I think the constitutional intent and intent of the voters of this state is very clear. If there is a question on that we would invite you to submit this to a vote of the people again.

We are concerned also if you have been successful in getting around the Constitution what that will mean in future legislative sessions. If this has been crafted in such a way to ignore the constitutional prohibitions, then you will see many other issues worded to get around the Constitution.

2. Section 56 is really self-service gas. Oregon has a long respected tradition of maintaining service at service stations and Section 56 is a method for allowing some cardlocks in the state to engage in self-service gas.

AAA's intent is not to kill the bill but we respectfully request that Sections 17 through 22, the gas tax portion, be deleted and that Section 56 be deleted. There is a back up funding for the bill and the bill would not be killed by deleting those sections. You would still have the cardlock regulations without Section 56. We think the cardlock regulations are appropriate.

If you are disinclined to eliminate Section 56, I would suggest a more modest amendment. On page 22 of the bill, at the end of line 13, change "or" to "and" in Section 48, add Section 3 from HB 2302 (EXHIBIT S) which clearly states it is Oregon's policy to be against self-service gas. Those two amendments could be used in lieu of deleting Section 56. Our preference would be to delete Section 56.

TAPE 93, SIDE B

030 CHAIR SCHOON: Does your board attach any difference to self-service in the sense that you don't have a choice and you may have to go inside to make payment, as compared to the person who by their own volition wants this service, has it now and wants to keep it.

036 MR. ISHAM: My understanding of the bill is to give some legal, legitimate basis to cardlocks. Since it is already there, we think it should continue but on a regulated basis under the Fire Marshal's office. Section 56 says if there is no service station within 10 miles or there is a hardship, then the cardlock can be used, in effect, like a self-service gasoline station and be available to the general public. We think that is inappropriate and one of the reasons there has been a decline in full service stations in Oregon is because cardlocks have not been regulated. They should be regulated and restricted to a business-to-business transaction.

059 BRIAN BOE, Oregon Petroleum Marketers Association and the Northwest Petroleum Association: We come to you today in complete and total support of SB 1215 A-Eng. I would submit from a historical perspective of this industry, this is the most important legislation that the Legislature has ever considered. This is a matter of survival of Oregon's gasoline distribution system as we know it today.

We worked in development of this bill and members of the associations have reviewed it and believe it will be difference between their survival and demise.

Sometime ago we polled the associations and asked the question if the EPA regulations were put into effect today with full enforcement, how many retail outlets would have to close. Out of about an 80 percent response to the survey, in excess of 50 percent of the retail outlets operated by the distributors I represent would have to close.

We support the funding. We initiated by gathering research in other states that have constitutional restrictions similar to Oregon's on the gas tax. A number of other states have concluded in a similar fashion to Attorney General Frohnmayer that an assessment for purposes of administering a program is constitutional. There are a number of reasons why we support this assessment over the fall back mechanism, the load fee. It is a very administratively cumbersome and discriminatory fee, particularly to the distributor segment of the industry. We urge you to keep the funding measure intact as it is in the bill.

Members of the associations I represent are active in the cardlock business but there are some separate representation that has been working on the issue who will testify on those matters.

113 SCOTT BARTLETT, Legislative Aide to Rep. Bill Dwyer: Rep. Dwyer asked me to speak briefly and to the point on his concerns on this bill. He supports this bill in general theory. The prospect of a court suit on the constitutional of the funding mechanism notwithstanding, that is one reason along with other marketing decisions and unfair cardlock competition that has resulted in the reduction of the number of service stations.

During the Tuesday hearing there were questions on the availability of data on prevalence of gas station in Oregon. He submits and reviews portions of a report "Oregon Gasoline Station Statistics, 1980-1990" by the Department of Energy, August 24, 1990 (EXHIBIT T). The relevance of the statistics is to say that this is a statewide problem and Oregon's historic opposition to self-service has a variety of public policy components. If interests want to abolish the self-service ban, the appropriate thing in light of the people's repeated affirmation of the desire to keep it would be to subject it to a ballot.

Sections 48 through 59 deal with self-service. There are legitimate rationales for availing it. The 2,400 minimum gallonage requirement is somewhat uncomfortable to Rep. Dwyer. He would prefer that it be 3,000 but there has to be some limit. This seems appropriate. It is our

assumption that the 1951 bill basically presumed that self-service or key-access was for business purposes, either fleets or farming or some other legitimate purposes, not for common access for self-service. Our fear is that if you allow self-service de facto you will unravel the whole situation. It will undermine our ban.

We would ask that the committee return to the original language under Section 56 and to link the 10 mile requirement for self-service access by the general public and other undue hardship conditions. Our fear in Section 3 (b) on page 22 is if you permit the Fire Marshal to capriciously or subjectively evaluate other undue hardship conditions as a separate category for self-service gas, what does it mean? There is no definition. The undue hardship did come from our office, but we didn't even know what that meant. So we have a fairly significant loophole allowing the Fire Marshal (and we certainly trust in their judgement and integrity) to have complete carte blanche as to self-service gas.

There has to be some mileage standard. This bill is a compromise and we ask that you consider very seriously that this is a historic juncture where you are dealing with significant issues. We ask that you not significantly undermine Oregon's traditional self-service ban. One of the ways to fortify that and balance the dilution of our self-service ban by allowing the loopholes, is to somehow insert language that expands our rationale for Oregon maintaining the self-service ban.

173 CHAIR SCHOON: Do you have any suggested language?

MR. BARTLETT: During last session there was a -3 amendment to HB 3267 (EXHIBIT U) which would be perfect for our liking. We think that would be great public policy.

204 JOHN McCULLEY, Agricultural Cooperative Council of Oregon, introduces Rick Jacobson, General Manager, Wilco Farmers submits a prepared statement and proposed amendments SB 121 5-A8, -A9, and -A13, and a draft of a proposed section 56a (EXHIBIT V). He paraphrases his statement.

The -8 amendments would expand the definition of commercial lending institution to include cooperative financial institutions. Cooperatives are unique in a number of respects. There is the National Bank for Cooperatives that provides loans specifically tailored to the unique needs of cooperatives. Another part of the cooperative lending institution is some of the large regional cooperatives; CENEX is most active in Oregon as a wholesaler of fuel. They also have a lending arm that cooperatives finance with.

The -9 amendments would recommend that the gallonage requirements in the bill be reduced to 600 from 2,400. The issue is for small businesses in small towns that may not be able to drive the necessary distances to use 2,400 gallons in a year from whatever sources they may have. We think this more fairly reflects the conditions under which those small businesses in rural communities may operate.

The -13 amendment would allow existing customers of cardlocks to continue to use the cardlocks as long as they meet the safety training requirements. This meets one of the concerns we have of preserving the customer base that exists in the communities to allow them to continue to offer fuel availability in those towns.

The fourth amendment attached to my testimony speaks to the sold source sections of the bill. It would allow, as I have drafted it, those communities to adopt by ordinance the ability for their residents to use the cardlock system. It would leave it in the hands of the local community rather than having the state determine which residents of this

state will be able to buy fuel in their own home town and which are going to have to drive up 10 miles to buy fuel.

Another issue which is not in amendment form would be the ability to establish both a retail and cardlock system on the same island. In our discussions with the Fire Marshal we understand that there has to be two separate islands if you want to be able to offer both types of service. We would suggest that flexibility be allowed in the system.

422 REP. BARNES: Can you explain the rationale for the 10 mile radius.

424 MR. McCULLEY: I was sitting in on the discussion but not actively participating in the work group. It was based on an arbitrary number. Perhaps others can respond more adequately to the question.

TAPE 94, SIDE A

012 CHAIR SCHOON: I am concerned about the unavailability of gasoline at a service station at times when people may need it at odd hours. Do you have any records of the hours that people use the cardlocks?

020 RICK JACOBSON, General Manager, Wilco Farmers: I can't supply the information now, but can do a survey. Every transaction is logged so we can tell that with some ease. I would say 30 to 40 percent of our transactions are logged between 8:00 p.m. until 8:00 the next morning.

040 Mr. Jacobson submits and paraphrases a prepared statement (EXHIBIT W).

134 REP. BARNES: I read the -A 13 amendment to say the consumer is grandfathered, not the facility (EXHIBIT V, page 4).

147 MR. McCULLEY: The intent of the -A13 amendment is to allow the existing customers to continue to access those facilities that they are currently accessing.

150 REP. BARNES: Do you think it grandfathers in the facility itself?

152 MR. McCULLEY: It access the purchaser of the fuel, but not the facility itself.

158 CHAIR SCHOON: I think what we would not like to see is something that would close down the service that is provided to the people of St. Paul or elsewhere and open a cardlock that would only serve half of the community. How would you respond to that?

MR. JACOBSON: I believe that is a legitimate concern, but it is a matter of economics. I don't have an answer. We cannot legislate profitability.

176 CHAIR SCHOON: If you shut down your service, nobody has service. What about the majority of the people who need gas?

178 MR. JACOBSON: I think the sole provider clause addresses that. If it is implemented by the local community, anybody would be able to access the cardlock based on the fact that they were credit worthy. But I don't think you can limit the community to a 10 mile radius. They ought to be able to have some say over their own destiny.

189 CHAIR SCHOON: Why should we think you are going to let everybody in town join the co- op?

190 MR. JACOBSON: They don't have to be members of the cooperative because the by-laws of the cooperative restrict who can be a member. The amendment we are suggesting is that those people be allowed to

access the cardlock that just happens to be provided by the cooperative.

194 CHAIR SCHOON: Do you now let other people buy gasoline on credit?

MR. JACOBSON: That is correct. We are owned by 3,200 producer members and we have accounts of approximately 5,000. The earnings on non-member business is taxable to the cooperative and not to the producer member. It is basically an open business.

216 SAMUEL FAGONE, Owner, Circuit Rider Auto Repair, Eagle Point: I have a regular full time job, but this is my part time play money and perhaps will at some time work into a full time thing. The part of the bill I don't like is the gallonage portion. It is not right. In the good times of any given year a small business with one or two members and maybe one or two trucks might use the required amount of fuel. But things aren't good this time of the year or most of the year in Oregon. Larger companies with more vehicles and more needs can meet the minimum requirement. Small businesses may choose not to grow for whatever reason. Because of that the small business person is being discriminated against. The advantage of it is the record keeping. You can get the fuel any time. I get calls during the middle of the night and I have to have the fuel available to do it. The gallonage should not be a factor in the consideration of this bill.

281 HOWARD C. MISNER, Petroleum Manager for a cooperative in the Central Point area: I am here today on behalf of our card user. The first two part of the bill dealing with underground tanks and insurance was well done, they are workable and will benefit most of the remaining stations in the state. The third part of the bill which deals with the cardlock issue is not quite as workable. There are some recommended revisions that John McCulley and Rick Jacobson have already gone over. Advances are made throughout communities on the way we do business throughout, yet we are trying to hold back in the advances in the way we market petroleum. The option should be available to the public to use or chose to use the cardlock facility or go into an attended facility.

Ramey Stroud pointed out there are about 60,000 users of card systems in Oregon. That is good testimony that people want to use a card system and need to use the card system. The card systems provide a tremendous amount of benefits for the users. There are several reasons why people would use a cardlock system. The least reason is the price because the price may be as much or higher at a cardlock facility than at an attended facility, yet customers chose to use the cardlock facility. There is a 24 hour, seven days a week ready availability of fuel. You can depend on a ready supply of fuel waiting for you any time you go in.

Cardlocks are accessed 24 hours a day. We review those daily. There are transactions throughout the night. People are depending on readily available fuel. I will send a copy of some of the print outs of our daily runs. Cardlocks are operated on a charge basis so businesses do not have to give their employees cash or reimburse them for money spent to fuel a company vehicle. Cardlocks are safe. Each user must first be instructed in the operation, safety and emergency procedures as per State Fire Marshal regulations and sign a document saying they have been instructed. Every vehicle in a cardlock has its own attendant. That is a safety feature.

TAPE 95, SIDE A

004 AL ELKINS, Oregon Gasoline Dealers' Association, introduces Mike Sherlock, President of the association, and Peggy Manning, Environmental Specialist and member of Sen. Hill's task force. We want to be on the record supporting all provisions of SB 1215 A-Eng. and appreciate the opportunity to participate in the task force.

011 CHAIR SCHOON: A concern has been expressed for the handicapped and those who can't have access to the pumps. There is a provision in the bill where a retail station under certain conditions could provide both cardlock service and full service. A question arose if they get that, what would prevent the dealer from shutting down the service portion and running a cardlock.

028 MIKE SHERLOCK: I don't think there is anything to keep that from happening as far as technical law or whatever, but as far as the man was pointing out for St. Paul, 50 percent of the people in that town don't belong to the cardlock portion and the guy would be a very poor business man to chase away the remainder of his customers. I think it would basically be a business decision. The people I have talked to who are in favor of inter mixing the cardlock pumps with the regular pumps would like to do that not to exclude the existing service customers, but so we could have a chance to pick up some of the bigger commercial accounts which right now we are excluded from. For instance, I received a request for a bid from the City of Eugene for about 20,000 gallons of gasoline a month which is a very big account. The problem is one of the provisions in order to be able to bid was you had to have the cardlock type dispensers. That is what they wanted. I was unable to meet the criteria to even bid for the business. I would like to go after that additional customer base of the really large commercial accounts.

The other side of it would be for somebody who had both types of pumps...about the time they roll up the sidewalks as in my part of Eugene. We are still are open 24 hours a day but we don't do much business. I would imagine in a small town there is no way they can justify having an attendant, but if they had the cardlock pump available, then the people, the commercial customers, could continue to get gas in the middle of the night.

053 CHAIR SCHOON: You are from an urban area. As an individual dealer you would find it advantageous, apparently, to have cardlock service in addition to full service. Has the organization discussed that and taken a position on it, or is it your particular circumstance?

058 MR. SHERLOCK: We have not discussed that as an association that I am aware of because it is a fairly new idea that came up since our last convention. At the board of directors meeting we did discuss it. Our feeling is that we would like to have the opportunity to put those in. We can to some extent now, but there are some distance requirements that make it almost impossible on a normal size service station lot to put in a whole separate island for the cardlock pumps. I think there is a 50 foot requirement for separation of the two islands.

070 REP. NAITO: What is the rationale behind the distance requirements?

071 MR. SHERLOCK: I guess it is the same sort of rationale as why self-service is unsafe in Oregon and not in other states. I think it is something that evolved through the process and am not sure anybody understands that any more.

070 AL ELKINS: I think the question would be best answered by Ramey Stroud.

080 CHAIR SCHOON: You mentioned the commercial accounts being available. What about the small business person and the consumer?

085 MR. SHERLOCK: My solution to that is let's have self-service and then we don't have to argue about this anymore. I think our association's view is if the state doesn't want to have self-service, no one should be allowed to have self-service. If the state wants to have self-service, we should all be allowed to have self-service. What we are apparently trying to achieve in this bill is some kind of a

compromise position. Our association thinks if we are going to allow self- service for a certain segment of the population, mainly the large commercial accounts, let's make sure they really are truly large commercial accounts. But if you are interested in providing self- service for people in the middle of the night, we should have the same opportunity that the cardlock operators do.

099 CHAIR SCHOON: We have a problem with math where 80 percent of the public doesn't want self-service and we have an unknown factor here in the Legislature where it would take 51 percent to even do it on a limited basis called cardlock. The more knowledge we have, the better we can deal with it. Knowing that you have a problem in Eugene, I think, is a new element that we haven't been aware of in which you can't bid on a public contract.

108 PEGGY MANNING: During our deliberations which went on for hours and hours in the task force, I would like to inform the committee that it was not simply the interest of each individual group that was the sole criteria. We were all extremely concerned about the impact on the consumer, the difference between the buying practices of Western and Eastern Oregon and this was an attempt to get all forces that we could to go in the same direction to provide distribution of gasoline on a statewide basis. The consumer was constantly and every single time we met very much considered in the rationale of putting this bill together.

121 CHAIR SCHOON: For those in the audience who didn't get to testify, we still have your name on the list. We don't have a further hearing scheduled and we will have to request that from the Speaker.

125 CHAIR SCHOON declares the meeting adjourned at 4:00 p.m.

VICTOR KLINGER, Lexington, Oregon, submits a prepared statement in support of his testimony at the hearing on June 4 (EXHIBIT X).

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly Assistant Administrator

EXHIBIT SUMMARY

A -SB 593, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff B - SB 593, SB 593-2 amendments and hand-engrossed bill, Sen. Jane Cease C -SB 593, impact statement, Sen. Jane Cease D -SB 593, prepared statement, Toni Peterson E -SB 593, prepared statement, Gary Conkling F -SB 593, prepared statement, Peggy Anet G -SB 551, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff H -SB 551, prepared statement, Sen. Larry Hill I -SB 816, Senate Staff Measure Summary, Legislative Revenue Impact Analysis and Fiscal Impact Assessment J -SB 816, prepared statement, Scott Girard K -SB 816, SB 816-7 amendment, Scott Girard L -SB 816, prepared statement, Beth Bridges M -SB 901, prepared statement, Mike Kane N -SB 901, proposed amendment, Tracer O -SB 901, proposed amendment, Paul Graham P -SB 1215, prepared statement, Richard Reiter Q -SB 1215, prepared statement, Marvin Fjordbeck R -SB 1215, SB 1215-A14 amendment, Marvin Fjordbeck S -SB 1215, proposed amendment, Dell Isham T -SB 1215, statistical report on gasoline stations, Scott Bartlett U -SB 1215, proposed amendment, Scott Bartlett V -SB 1215, prepared statement and SB 1215-A8, -A9 and -A13 amendments, John McCulley W -SB 1215, prepared statement, Rick Jacobson X -SB 1215, prepared statement, Victor Klinger