

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

June 10, 1991 Hearing Room F 1:00 P.M. Tapes 98 - 99 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 1215 WS SB 816
WS

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.

TAPE 98, SIDE A

002 CHAIR SCHOON calls the meeting to order at 1:16 and announces that
a request was made to have a work session on SB 816, the 9-1-1 call
blocking bill, just to send it to the Judiciary Committee. We just
received permission and will have a brief work session at 2:15 for the
purpose of referring the bill to the Judiciary Committee.

012 CHAIR SCHOON opens the work session on SB 121S A-Eng. and announces
that he will give those who previously did not get to testify an
opportunity to present their testimony.

SB 1215 A-ENG. - ESTABLISHES LOAN AND GRANT PROGRAM TO ASSIST IN
UPGRADING OR REPLACING UNDERGROUND STORAGE TANKS. Witnesses: Jim
Gardner, Time Oil Company George DeHart, Dealers Against Cardlock Abuse
Trust David Harris, Harris Oil Co. and member of work group Joe
Bernards, station owner, Milwaukie

011 JIM GARDNER, Time Oil Company, submits a prepared statement
(EXHIBIT A). We would like to echo the testimony of Brian Boe in support
of this bill. He paraphrases his prepared statement.

058 GEORGE DeHART, Dealers Against Cardlock Abuse Trust (DACAT),
submits and Howe Committee on Business and Consumer Affairs June 10,
1991- Page 2

paraphrases a prepared statement (EXHIBIT B) asking for treatment equal
to that given the cardlocks and asked that ORS 480.310 - 480.340 be
administered equitably among cardlocks and conventional retailers.

138 CHAIR SCHOON: We understand you want self-service and it is not in
the bill. Is there anything other than inserting self-service that you
would like to see done? 142 MR. DeHART: I think a repeal of ORS
480.310 to .340 would be equitable to each party. It would allow the
cardlocks to exist as they are doing. It would allow the cooperatives to
exist without restrictions placed on them. It would allow us to compete
the same way. If this is not possible, we would like to suggest that you
delete Sections 48 through 59 which deal with the cardlocks and pass the
underground tank legislation. If that is not possible, at least separate
Sections 48 through 53 and allow us the opportunity to devise a bill
that we think is much more equitable than what has been presented so
far. 152 CHAIR SCHOON: Was your first suggestion to require that
cardlocks have attendants? 155 MR. DeHART: We feel very strongly that

is the way the law reads now and it has been circumvented. I think that is a possible alternative. 159 REP. NAITO: How important is the underground storage tank portion of the bill to you? 164MR. DEHART: The underground tank legislation is very, very important to the membership of the OGD; it is a survival for some of our members. But equally so we feel the cardlock issue is a survival issue for an equal number of our members. We need the underground tank legislation, but we also need relief from the unfair competition of the cardlocks.

174 REP. NAITO: In your letter of June 7 to Rep. Schoon you raise four points why it would be inequitable for you to compete in a market we might create here by opening up cardlocks for you. Have you considered looking at legislation dealing with your franchises and lessors. We can enact legislation to make it easier for you to install cardlocks. 184 MR. DeHART: I have not gone into detail study. I have contacted the district and regional management of my oil company and have been told rather emphatically that it is not an alternative that is available to me. In communicating with other members of the committee, they seem to have the same opinion from their oil companies. 82 REP. NAITO: If we were to, maybe not this session, enact legislation requiring them to allow their retailers that, would they back out of Oregon? 197 MR. DeHART: I can't speak for them. I don't think any major oil company is going to back out of Oregon. 205 DAVID HARRIS, President, Harris Oil Company, submits and paraphrases portions of his prepared statement (EXHIBIT C). It is appropriate that I address the 2,400 gallon purchase requirement because I am the one in the work group who made the proposal. The 2,400 gallon minimum purchasing requirement is derived from the 1969 Attorney General Opinion which required 180 gallons per month must be purchased in order to be considered non-retail. We have House Committee on Business and Consumer Affairs June 10, 1991- } .age 3

a Pacific Pride franchise and Pacific Pride has in their franchise documents a 2,400 minimum as well as the requirement that all customers be commercial. In an attempt to try to address some of the other issues related to the 2,400 dislocations which would occur, we said let's put in a Schedule F exemption and have a conditional use exemption. Under those provisions the agricultural community would not be impacted; farmers could continue to utilize cardlocks and any community that was disadvantaged and had no petroleum provider, but did have a cardlock operator, could be served by the cardlock operator. Unfortunately, our work group was not aware of the so-called "wagon rule" that there was a nine mile distance between towns because that was the distance a wagon team could go. We attempted to put in a conditional use method so that communities with sole providers would not be disadvantaged.

The conditional use exemption is in Section 56 and allows for a sole provider in a given town to make application to the fire marshal for a conditional use permit to serve the retail trade. The Schedule F exemption allows a customer to purchase less than 2,400 a year.

274 Based on my experience as a retailer in Oregon, the 2,400 figure is about five times what the average retail account would buy. The typical retail account buys about 40 gallons a month. We thought we would have a 500 percent factor to be certain that any typical retail account is not being served by a cardlock. The 2,400 minimum is an extremely enforceable distinction. In that sense there are a couple of provisions in the bill that are extremely different from the past practice. There is a 2,400 requirement that is very enforceable and there is money for enforcement. One of the problems historically has been that the fire marshal has not had any definitive method of enforcement. They haven't had anything to enforce against and they

haven't had any money to do that. Under SB 1215 A-Eng. there would be enforcement criteria and there would be enforcement funding.

305 CHAIR SCHOON: How many accounts do you have that will not be able to utilize the service anymore?

311 MR. HARRIS: We have very few in our company and one of the reasons is we have not been able to economically serve anybody that small and it has been illegal to do that. There are a number of small business men and women that would not be served by cardlocks under this. It is unfortunate that some of the commercial class of trade would be cut out, but in order to be able come up with an effective compromise the OGDAs and other members of our work group would agree to, that is the figure we arrived at. There are dislocations any time you enact new legislation. 338 CHAIR SCHOON: Were there any small business people who were users of the service on the group that was putting this together? 341 MR. HARRIS: There were no users on the committee.

349 JOE BERNARDS, Milwaukie, Oregon: Our family has run a gasoline station for 67 years in Milwaukie. I am in favor of the bill itself, but it is unfortunate the cardlocks have been put in it because it seems to askew what the bill was originally set up for which was to clean up the messes around the state. If you have worked hard and been successful. If the criteria for the need to clean up your service station site is too stringent, then those who have made a few dollars will not be able to get help. I feel the small people in business who sell in the vicinity of 25,000 - House Committee on Business and Consumer Affairs June 10, 1991- Page 4

to 30,000 a month will have a problem if the need factor is created too stringent.

I tried to get on the committee through Senator Kennema and I was refused. I felt there were no small independent gasoline representatives on the committee.

385 CHAIR SCHOON: We are in work session on SB 1215 A-Eng. We have a bill that was put together by a group that did not take public testimony or make their meetings available to the public or press. We do not have time to deal with the subject as adequately as we should. As we work on this bill, if you have doubts or questions that should be raised, please do so.

TAPE 99, SIDE A

003 He reviews a list of issues: > Statement of findings. It reflects HB 3267 (1989) findings that would establish that the state has an interest in not going to self-service gas for a variety of reasons. I think it is important to send a clear message this bill is not an attempt to institute self-service. A cardlock is somebody serving themselves. There are some differences. People are doing it voluntarily and they are required to have a certain amount of training.

014 REP. STEIN: Are you speaking of the findings in the SB 1215-A17 amendments (EXHIBIT D)? 016 CHAIR SCHOON: The SB 1215-A17 amendments have been proposed by AAA. I think my findings will be more broad. Legislative Counsel has not had time to prepare my proposed amendments yet and I may not agree with what is written. 022 > Current cardlock customers: I received calls from my district who were quite concerned with the gallonage limitation. Most were somehow farm related. I have asked to "grand daughter" all current cardlock customers with no gallonage requirement. Cooperatives asked that there be a local option

so that towns like St. Paul could pass an ordinance authorizing cardlocks as an alternative of not having any fuel available. I think a mileage limitation would be in there. 052 REP. OAKLEY: Would there be a gallonage requirement? 058 CHAIR SCHOON: New customers would have the gallonage requirement if there was a gallonage requirement. 057 REP. OAKLEY: If they were just starting the cardlock, all customers would be new. 061 CHAIR SCHOON: > Mileage. I have requested a five mile limit for dual stations. I am not wed to the five mile, but the 10 mile limit appeared to be too long. A dual station would be a current retail station that would be permitted to have a cardlock under an exclusion by the fire marshal's office. >Proof of business. The "equivalent" of a taxpayer's identification number is really the individual's social security number. You either pay taxes with a TIN (taxpayer identification number) or with your social security number. The SB 1215-A6 amendment uses the word "other" or at least gets rid of the word "equivalent." I have asked Legislative to use the A6 Howe Committee on Business and Consumer Affairs June 10, 1991 - Page 5

amendment using the word "other" and add "including but not limited to an assumed business name, corporate filing or proof of farm ownership and other types of sole proprietorship.

102 REP. WALDEN: Are government operations in the bill?

102 CHAIR SCHOON: Yes, they are and non-profits are also in the bill.

103 CHAIR SCHOON: I also asked Legislative Counsel to include a taxpayer identification number or social security number used to report taxes be provided. I have some reservations about that and perhaps we should require their tax reporting number. I also thought it would be advisable that they certify that their use is primarily for business purposes.

> Dual operations. After hearing testimony that an individual had lost a contract in Eugene because he could not provide cardlock services for the city, I felt it would be a good idea to permit them to do that if they wanted to. I have included that any retail fuel station may establish cardlock services for commercial customers. They have a problem because existing stations don't have the 50 foot setoff required by the fire marshal. I asked for language that the setoff be waived.

124 REP. NAITO: We haven't had testimony on the reasons they have the 50 foot setoff.

124 > Dual service stations. Dual service stations were given the exemption. I think we should have some concern over the possibility the station may shut down the service part and operate the cardlock as a self-service station. I asked that in cases of dual service stations that there be language to indicate they have to provide service at the pump when the station is open and that they shall be open no less than 8 hours during five days of the week, and that the charge for service at the pump would be no more than at the cardlock price for the elderly, handicapped and person with small children. When I first wrote this I said no more than 10 cents per gallon price differential and I am not wed to any price differential, but we don't want to happen here what has happened in other states where the price is 50 to 70 cents a gallon more for people who want service. 151> Penalty. I thought we should have some penalty and suggested that violations 1, 2 and 3 would be subject to civil penalties as determined by the Department of Justice of no more than \$100 for the first offense, \$500 for the second and \$1,000 for

subsequent offenses within a 12-month period. 161 REP. NALTO: Would this apply only to dual service stations that were sole providers?

162 CHAIR SCHOON: Yes. That would be the only application. I am trying to look down the road in case the law is changed in the future. We would have some language that would help protect the elderly, handicapped and people with children. 166 REP. STEIN: In looking at items three and seven, if you have this local option, wouldn't it make sense if the local option would have to be a dual service. Otherwise you have a series of small towns that decide to allow cardlocks. There would be cardlocks only and travelers and disabled people would never be able to find a gas station open. House Committee on Business and Consumer Affairs June 10, 1991- P - e 6

171 CHAIR SCHOON: The local option as suggested by the cooperatives is not a dual operation.

172 REP. STEIN: Maybe it needs to be because if the only gas station in town is going to be a cardlock in a series of towns nine miles apart, there will be a rolling cardlock effect. . 176 CHAIR SCHOON: That is why we need committee discussion.

177 CHAIR SCHOON: >Financial institutions. The cooperatives, in their SB 1215-A8 amendments (SEE EXHIBIT V, PAGE 3, OF COMMITTEE MINUTES DATED JUNE 6, 1991) asked that other financial institutions include a bank of cooperatives or whoever is financing the cooperative right now. I think it would be important to do that because we will need every source of financing we can get. 197 >Alternatives. I think it would be a good idea for DEQ and the Department of Economic Development to investigate to find out what kind of low cost alternatives are available for fueling stations. This averages out to be over \$70,000 per station that we assist. It seems there are possibly some low-cost alternatives that we should be looking at, but I have nothing specific in mind. I am having these drafted as an amendment and will consider whatever ideas you have, discussions on the bill, these points or anything else the committee would like to bring up. 203 REP. WALDEN: What about the Railroad Association amendment (SEE EXHIBIT R OF COMMITTEE MINUTES DATED JUNE 6, 1991)? CHAIR SCHOON: We do have those to consider. The SB 1215-A14 amendments would exempt the railroads from the dumping fee if we go to the alternative financing method if the assessment is determined to be a tax and not a fee and is determined to be unconstitutional.

234 MOTION: REP. BARNES moves that the SB 1215-A14 amendments BE ADOPTED. 267 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the motion PASSED. REP. NAITO is EXCUSED. 276 REP. BARNES: I think something has to be done to help our service station owners with replacement, etc. of the underground tanks, but I don't feel comfortable helping one group of small business people and hurting another. I get a feeling that is what Sections 48 through the end of the bill on cardlocks is going to do. Businesses depend upon small business and that is why I don't care much for the gallonage restriction. A lot of people have their way of life based on the fact they can go in and get fuel at any time of the day or night. For our society and economy I think we have to look at the competitive factor and if I had my way I would say let's legalize cardlocks, but I am not sure we are at the stage where we can do that. I would like to see us, some way, give that choice to more people in Oregon and yet maintain the viability of our attended service stations. I would hope we would keep pursuing somewhere we could extend that choice and provide attended service for those who need it, the elderly, disabled, and small children as the Chair indicated. But just arbitrarily putting the clamps on so many of our small House Committee on Business and Consumer Affairs June 10, 1991- Page 7

business people who couldn't possibly use that gallonage per year just smacks of unfair competition in itself. I could not go along with that part of it.

313 CHAIR SCHOON: I think we are saying the people who use the service for whatever reason would not be permitted to use that service and would be forced to use another service to achieve a secondary purpose.

320 REP. BARNES: We didn't put restraints on the quicky food markets and I don't see Safeway or other established supermarkets complaining about it. I am reluctant to have government interfere with this free market system. But I can see we need to help our regular service station owners because they have a tremendous financial burden.

328 CHAIR SCHOON: I would agree with that and it is something they have no control over.

333 CHAIR SCHOON: We have received the SB 1215-A15 amendments proposed by Rep. Dwyer's (EXHIBIT E). 359 CHAIR SCHOON declares the meeting in recess at 2:09 p.m. 367 CHAIR SCHOON reconvenes the meeting at 2:52 p.m. and opens the work session on SB 816 A-Eng. for the purpose of referring to the bill to the Judiciary Committee.

Tape 99, 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.

370 MOTION: REP. OAKLEY moves that SB 816 A-Eng. be sent to the Judiciary Committee. 375VOTE: In a roll call vote, all members present vote AYE. REP. NAITO is EXCUSED. 378 CHAIR SCHOON declares the motion PASSED and reopens the work session on SB 1215 A Eng.

Tape 99, Side A) SB 1215 A-ENG. - ESTABLISHES LOAN AND GRANT PROGRAM TO ASSIST IN UPGRADING OR REPLACING UNDERGROUND STORAGE TANKS.

384 CHAIR SCHOON: The A-16 amendments (EXHIBIT P) are the ones I asked to be drafted. I have not read them and therefore we will need to recess to review them.

396 REP. OAKLEY: Could Scott explain the SB 1215-A15 amendments (EXHIBIT E).

412 SCOTT BARTLETT, Legislative Aid to Rep. Bill Dwyer: The -15 amendments are derived from an effort of this committee two years ago to try to address the various reasons why Oregonians have maintained a ban on self-service. It was our request in the bill that came from :: ~) i

June 10, 1991- Page 8

the Senate with the hard line on 2,400 gallons and the 10 miles which we said were too liberal, that there be some accompanying language to be inserted into the statute. The amendments are self-explanatory. We ask that this amendment be incorporated into whatever bill the committee passes out and would caution the committee to be very careful in the rush to examine all exclusions to our self-service standard because there could many unforeseen implications which could have defacto self-service and unravel the whole fabric. That is our basic concern.

TAPE 98, SIDE B

021 CHAIR SCHOON declares the meeting in recess at 2:59 p.m.

022 CHAIR SCHOON reconvenes and immediately adjourns the meeting at 5:10 p.m.

Respectfully submitted, Reviewed by, Annetta Mullins Terry
Connolly Assistant Administrator

EXHIBIT SUMMARY

A - SB 1215, prepared statement, Jim Gardner B - SB 1215, prepared statement, George DeHart C - SB 1215, prepared statement, David Harris D - SB 1215, SB 1215-A17 amendments, Dell Isham E - SB 1215, SB 1215-A15 amendments, Rep. Bill Dwyer F - SB 1215, SB 1215-A16 amendments, Rep. John Schoon

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