

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 11, 1991  
P.M.

Hearing Room F 1:30  
Tapes 100 - 101

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 536 PH & WS SB 1215 WS

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TAPE 100, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:40 p.m. and opens the public hearing on SB 536 A-Eng.

SB 536 A-ENG. - AUTHORIZES INTERSTATE AND INTRASTATE EXCHANGE OF SERVICE AGREEMENTS BETWEEN PREPAID PUBLIC AND PRIVATE AMBULANCE AND EMERGENCY MEDICAL SERVICE PROVIDERS. Witnesses: Sen. John Brenneman Alan Jensen, Mercy Medical Services EMS Project Manager for Tualatin Valley Fire and Rescue in Washington County

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

005 SEN. JOHN BRENNEMAN: SB 536 A-Eng. has an amendment in it that I am particularly interested in. Tillamook Hospital sells memberships for ambulance service. The Department of Insurance and Finance told them that was deemed to be selling insurance. I had an amendment drafted that puts hospitals in the same categories as cities and counties being exempt from insurance laws. In working with Nan Heim on behalf of all ambulance services, we broadened it. We did not get any opposition on the Senate side.

047 REP. NAITO: If an ambulance service does not have the franchise, could they offer this to the people?

049 SEN. BRENNEMAN: In rural areas we are lucky to have one ambulance service in some areas.

077 CHAIR SCHOON: On page 1, in line 16, it reads, "The Insurance Code does not apply to any of the following..." and then adds "to the extent of the subject matter of the exemption." I am taking that to mean that where ambulance services are exempt, the subject matter of exemption is ambulance service.

082 ALLEN JENSEN, Mercy Medical Services EMS Project Manager: Our interest in this bill is primarily in the amendment as well. In the existing Insurance Code there is a prohibition against the offering of membership ambulance service by any public provider who had not been for the two previous years providing ambulance service.

Washington Co., in response to 1989 legislation, adopted the competitive bid process for selection of ambulance service. The fire district I represent is prepared and planning to submit a proposal in response to that competitive bid. To the extent we compete with private operators, private operators would be able to offer membership ambulance service. And because we have not offered ambulance service for several years, we would not be able to. That sets up an unfair playing field. So we are asking that the bill be adopted for that purpose.

The real body of the bill is the offering of reciprocal agreements between operators. Membership ambulance service is a good thing. The people who conceptualized this are interested in taking this concept to the next natural level. That level would be not only the reciprocal agreements between public providers of ambulance service, but goes one step further whereby we could go beyond the boundaries of Oregon. For example, there is a private ambulance service that serves about half the state of Louisiana. There is a contingency understanding that if this bill passes the FireMed providers are already prepared to offer a reciprocal agreement with the ambulance service in Louisiana.

125 SEN. LARRY HILL: This bill continues to modifies the laws that allow prepaid ambulance service. It is a voluntary program. Eugene-Springfield was the first agency in the state to offer widespread membership. For \$35 per year your family is covered regardless of any insurance you have for ambulance service. It allows exchange of service agreements. It also provides that the Insurance Code does not apply to ambulance services. It also modifies health care contractor regulation statutes and repeals the excess benefits contracts authorization for ambulance and emergency service contractors. The point of the bill is to get rid of excess regulation on ambulance providers, allow exchange of service agreements between agency and to greatly extend the ability of membership ambulance services to people served by public or private ambulance services in the state.

Issues discussed: >No loss of consumer protection. >History of use of services. >Membership program provides revenues for new equipment.

200 NAN HEIM, Oregon Ambulance Association: Our association consists of the private ambulance providers serving about 40 percent of the population. We are here in strong support of SB 536 A-Eng. We supported the basic intent of the bill as introduced to allow reciprocity and after it was introduced we worked with Sen. Brenneman and the Insurance Commissioner's office in resolving the issue with Sen. Brenneman. It applies the same standards to all kind of ambulance providers when selling subscriptions. Mr. Swenson, the former commissioner, suggested they did not wish to regulate this, that it is a two-party agreement and they felt all providers should be exempt and have the same standards.

223 RANDY GARNER, Owner of private ambulance company in Woodburn: We have been providing subscription ambulance for about five years under the Insurance Code. We did see an increase in our call volume basically

because it makes particularly the elderly population less fearful of calling an ambulance and using it when it is appropriate.

256 CHAIR SCHOON closes the public hearing and opens the work session on SB 536 A-Eng.

259 MOTION: REP. BARNES moves that SB 536 A-Eng. be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members are present and vote AYE.

270 CHAIR SCHOON declares the motion PASSED. Rep. Oakley will lead discussion on the Floor.

260 CHAIR SCHOON opens the work session on SB 1215 A-Eng.

(Tape 100, Side A) SB 1215 A-ENG. - ESTABLISHES LOAN AND GRANT PROGRAM TO ASSIST IN UPGRADING OR REPLACING UNDERGROUND STORAGE TANKS.

Witnesses: John Alto, gasoline dealer Bill Tuniga, gasoline dealer Mike Sherlock, Oregon Gasoline Dealers Association Peggy Manning, Oregon Gasoline Dealers Association Sen. Jim Hill

285 CHAIR SCHOON: I had a conversation with Sen. Hill a couple of days ago and told him that our testimony had indicated we had a problem with some small business people apparently being left out because of the gallonage requirement and asked how he thought we could address that. By the time he got through talking it seemed the only logic conclusion to the argument he was making was to provide complete self-service throughout the state. I have consistently been against self service, but the argument he posed was that we can't permit small business people to serve themselves even though they want to because we don't allow self service. It seems the only logical response is to permit self-service. I have had some amendments drawn and I would like the service station representatives to come up and explain why they think the amendments are logical.

303 JOHN ALTO, a gasoline dealer, Sherwood: There are three key parts to the amendments. The first part is on the last page to repeal statutes ORS 480.310 to .340 that have been on the books since 1951. There have been many safety changes since that time with the advent of the automatic nozzle and break away hoses. The cardlocks have proved that gasoline dispensing is not unsafe. With these amendments all people would be able to serve themselves at a cardlock and regular station and the playing field would be level. We think it is enforceable, saves the State of Oregon a lot of money, and it is honest. Also we feel it is important to address the handicap issue.

347 BILL TUNIGA, gasoline dealer: We feel that the Section 48 amendment will adequately address the handicapped in that they will be able to obtain service at the lowest possible price at any service station. We want to serve the public and handicapped and are ready, willing and able to do so.

361 MR. ALTO: I think these amendments look to the future for Oregon. It is important to have gasoline available. It is important that small businesses continue to operate. I believe these amendments allow many stations to improve their profitability and offer logical choices and it is the right thing to do.

353 MIKE SHERLOCK, President, Oregon Gasoline Dealers Association: We have discussed this type of thing as we have gone through the whole process with SB 1215 A-Eng. and it seems the best solution is something that doesn't penalize any of the service station operators regardless of the type of operation. If we do away with the prohibition on self-service we won't have to worry about rural requirements, gallonage

requirements, grand-daughtering in certain customers. The Oregon Gasoline Dealers support putting in self-service in Oregon.

391 MR. TUNIGA: This is a choice for all Oregonians. It is a choice for us to market in a fair and equitable manner and it is a choice for the consumers to trade where they want to trade. It doesn't force anyone to be dishonest about their intent or their manner of doing business. It is a very fair choice for everyone. It is not a forced situation in any way.

400 MR. ALTO: I think it would bring all the industry players together and allow the much needed tank legislation to move forward.

410 CHAIR SCHOON: We haven't had enough testimony or discussion of the bill to know what all it does. Some people have reviewed it and indicated that the bill, because of some of the limitations in it, would apparently not be of help to the small independent operators as much as it might be to some of the bigger organizations and oil companies. Do you have an opinion on that?

424 MR. SHERLOCK: I would totally disagree with that observation. I have spent quite a bit of time reviewing the bill. We had major input into the bill and were very happy with the portion on underground storage tanks. We feel there are about 1,000 of our dealers throughout the state that would no longer be able to be in business if they did not have the ability to replace their tanks. Peggy Manning can give the specifics of the bill.

CHAIR SCHOON: The question would be, for example, on the requirement that the station be the only one in town. If there was an independent dealer and a major oil company, the major oil company could go in and improve their tanks and leave the dealer to go broke.

TAPE 101, SIDE A

005 PEGGY MANNING: The population and demographics make it impossible for the small dealer to stay in business. We put that into tier four to provide for those remote locations that do not have the gallonage to support the debt service to spend that kind of money on tank replacements. As an incentive to keep those stations to serve those small communities we had to come up with some type of figures. That is why we have them as the only station within an incorporated town or 10 miles from the next service station. That is how we came up with the tier four which is the \$85,000 or 85 percent grant.

018 MR. SHERLOCK: I think part of the confusion is that the tier four is the grant portion of the bill. That would have very strict requirements. The concept is in a very small town far away from any other town, where you have the service station/post office/town store/feed store, probably one of the most important thing is the emergency services get their gasoline or diesel at that same location. It would probably not be feasible for that station to be able to afford the \$100,000 to replace the tanks. When this bill was written it was looked at that they would not be able to service the debt on the 80 percent loan and consequently in very limited circumstances the state would provide a good grant to keep the gasoline portion of the business in tack so the residents of that community and emergency services could continue to get fuel there.

033 REP. WALDEN: Given that criteria, how many communities are affected?

037 MS. MANNING: We are looking and budgeting for approximately 100 communities to benefit from the tier 4 status. We will not know until

we start getting in the letters of intent from the businesses that they wish to avail themselves of this program.

042 REP. WALDEN: How many communities would fit the matrix?

044 MS. MANNING: We are in a situation that people have to have the financial responsibility by October this year. Many businesses are opting to close because of that. This program is a hopeful. It is difficult to get real hard numbers to present to you. This is an educated guess from the DOE study, from the Weights and Measures information and tank permit information. Oregon is one of the few states that have any concept of how many service stations exist in the state, but it has been difficult to come up with hard numbers.

057 REP. WALDEN: I looked at the towns I am familiar with on a map and it didn't look like there would be many circumstances where the requirement that the only facility be within 10 miles of the next gas sales facility would apply. I see very few you would help. Maybe Fossil would qualify and the station owner there hates this bill.

070 MS. MANNING: I wonder if Mr. Wright totally understands. I haven't had a great deal of time to sit down with him. He did have the hand-engrossed A version that was a little difficult understand. Some of the misconceptions he had are not in the bill any more. He is concerned about the needs criteria. That is something where we would like to have as much flexibility as possible and that is why we want to do it through rules.

081 REP. WALDEN: I understand the need for that. I also have some reservations about that given the history of this agency on some of their administrative rules and the way they observe them after they write them. I think these are the people that need that help and if anything the criteria needs to be widened so they get the grants.

091 REP. WALDEN: I am concerned where the money will end up. It looks like it is not going to go to the people who really need it based on this criteria, but instead will go to bigger population centers and perhaps bigger corporate operations.

097 MS. MANNING: The Legislative Intent of this bill is to help the small business operators especially out in the rural areas. It was developed with that in mind and when we get into the jobber they have a tremendous network of small service stations servicing the outlying areas as well as inside the populated areas. Without them the distribution system of gasoline is going to break down seriously within the state. The bottom line was to keep the gasoline availability and the small business in business.

108 CHAIR SCHOON: Does the one station have to be inside a city or municipality listed in the Blue Book?

108 MS. MANNING: They have a choice, if they are the sole provider of gasoline, of being within a city listed in the blue book or in an unincorporated area they would have to be 10 miles from the next service station in order to qualify for the tier four designation.

113 CHAIR SCHOON: Was the reason for using the figure "1" to limit the expense.

114 MS. MANNING: The rationale of the task force was this is a large amount of money (up to \$85,000) and we felt it should be given in a circumstance that is helping the community to have gasoline available and if they didn't have it they would be under a hardship situation. If there were two facilities within the town, the market would dictate if

one would have to go.

127 MR. SHERLOCK: We would be more than happy to expand it, but others on the task force would object to it.

128 CHAIR SCHOON: Then you are comfortable that part of it would go to the people in the isolated, not necessarily rural, areas where they would not be subject to competition from the major oil companies.

134 MS. MANNING: I think we were looking at the isolated people where the gallonage is not there. The oil companies have not shown any interest in providing a company-operated station in Fossil, Halfway or Enterprise; they are concentrating on the major market areas and the major populations are.

146 MR. SHERLOCK: One of the most important factors of this is going to be the financial criteria that they have a hardship. If a person has been a pretty good businessman and has a positive net worth and is managing to hold things together, he should not be the one who doesn't get the grant, whereas the guy who is a bad businessman is losing money and that person gets the grant. That is not the way we would like to see it at all. But that will come through the administrative process. Our feeling is we would rather see some sort of objective criteria based on the number of stations or something like that, but the whole task force has worked on this and this is what they have panned out with months and months of give and take and we feel it is a very workable system as it is now.

163 SEN. JIM HILL: When we put this bill together self-serve was not dealt with. We did not have a bill introduced on the Senate side that dealt with self-serve. We monitored the bill here and nothing happened. With that assumption we did not think self-serve was going to be something that we would deal with. If it were something that should be dealt with, I don't think it would be something that would be attached to this bill.

There is an argument as to whether the proponents of self-serve would benefit the way they feel they would from self-serve. In the recent past OGDAs were officially opposed to self-service, and they changed their position because they were concerned about what they feel was unfair competition from cardlocks. In my way of thinking the heart of the system is attended station. That is what most consumers use and tourists cannot avail themselves of cardlocks. The issue, as we saw it, became how to come up with a definition of commercial so only those who are really commercial people will use cardlocks. Whether you want to change it or not with respect to self-serve, right now self-service is illegal in Oregon.

215 On the one hand we have a situation where there are some people who would just simply like to drive all the cardlocks out of business and on the other we have everybody wanting to let them use cardlocks.

I think OGDAs have a good argument that people who are using cardlocks other than for truly commercial purposes are taking their customers away. If we have a system that provides financial aid to allow them to be driven out of business by those using cardlocks, that is throwing good money after bad. Eighty-four percent of tourists coming into Oregon come in by automobile. Tourism is as important to rural areas as it is to any other part of our state. It is a bad situation to have cardlocks that they have no access to. We are trying to keep the system in tact. I know some people are going to be inconvenienced by it. With respect to self-serve, this bill is too important to attach self-service.

253 REP. RIJKEN: Who was involved in the work group that put the bill together?

257 SEN. HILL: We had representatives from the Gasoline Dealers Association, individual representatives of the jobbers, Mr. Boe, the major oil companies - John Burns, David Harris from the cardlocks, John McCulley for the agricultural cooperatives. I think just about every provider was at the table. I think the quality of the work speaks for itself.

278 REP. RIJKEN: Was AAA or anyone else on behalf of the public there?

281 SEN. HILL: The AAA was not there but they did testify at our hearings.

270 REP. BARNES: Did you have anybody from small the business community other than those who sell gas?

291 SEN. HILL: I don't recall anyone from the general public testifying on the bill.

301 REP. BARNES: The reason I asked is because you are disenfranchising a lot of legitimate small businesses in the cardlocks.

312 SEN. HILL: We have a situation where there is no clear definition of "commercial" and therefore there has not been any enforcement. We are trying to have a situation where there is enforcement and where we are making sure the heart of the system, which is the attended retail stations, is protected from unfair competition. Some people will be inconvenienced by it, but look at the larger picture. I am saying Oregon benefits from this bill on the whole. I think we are trying to help our state cope with some very expensive regulations and keep our system of distribution in tact for our citizens and tourists.

If you want to allow a situation where anybody who says they are commercial can use cardlocks, you will drive a lot of our attended service stations out of business.

365 REP. WALDEN: What about allowing the existing service stations to offer cardlocks right along with the other services?

367 SEN. HILL: That is a provision of the bill. But it would have to be for commercial purposes.

395 REP. NAITO: I believe my constituency doesn't want self-service. The dealers say they want either self-service or are opposed to the cardlock provisions of the bill but they want the storage tank help. They want part of the bill and not the other. Overall, do you think the bail out provisions for the underground tanks in this bill are so important that we should allow some cardlocks and sole provider provisions to the consumers?

TAPE 100, SIDE B

000 SEN. HILL: We realize in some rural areas this is the only source of gasoline within 10 miles. We made allowances for those situations as best we could. The heart of our distribution system is the attended stations. It is important that we make sure that the cardlocks are for commercial purposes. If we allow, especially making this investment, the attended stations to be subject to unfair competition, we are pouring money down a rat hole. The attended stations are closing, not the cardlocks. The gasoline dealers are concerned about the proliferation of the cardlocks at the expense of the retail attended station.

026 REP. OAKLEY: Will you expand on the lawsuits?

029 SEN. HILL: A lawsuit has been filed by retail stations against cardlocks saying it is against the law because it is self-service. There is a circuit court ruling that says cardlocks must have attendants. It is in the Court of Appeals. There is a great deal of litigation and contention about what is and what is not commercial. That is why you have to have some kind of definition. I think the retail stations are saying we can't solve this problem and therefore we want self-service. The point is that policy should be made by the Legislature, not by the courts.

045 CHAIR SCHOON: The thing that lead me to my conclusion that self-service is the most logical answer, whether it is the right one or politically correct or even my desire, is the statement you just made about unfair practices or competition. We have a group of people doing what they want to do (the small business people); it meets their needs and costs less.

054 SEN. HILL: I understand it costs more because the cardlocks supply a record-keeping function. Most cardlocks are more expensive.

064 CHAIR SCHOON: The people are getting the service they want and if they pay more, they are willing to pay the price to get what they want and need. We are saying the solution to that is to deprive them of that service to make everything fair. Even though I have been opposed to self-service, a logical conclusion is to make it fair for the dealers, not by taking away the service from the people who want it, but by making either full-serve or self-serve available to the gasoline dealers.

The problem is still the small business people who are depending on the cardlock for either the bookkeeping service and access to the gasoline when they need it.

086 CHAIR SCHOON: This language occurs in two places and refers to the same thing: "if the fuel purchased is less than 2,400 gallons annually....on the customer's tax return...." will qualify for the waiver. What would you think about us taking out farming so it would apply to other businesses and be a deductible expense on the customer's federal tax return?

093 SEN. HILL: We are trying to have a definition between commercial and non-commercial. The classification for IRS purposes is verifiable and you have to meet certain criteria to get it. I would like to talk about the availability of gasoline for most of our citizens and tourists as opposed to the convenience. We are able to get gas for most at attended stations. When you talk about convenience and look at the state as a whole, with the continued closures of our attended retail service station, I have to look at it as a whole, availability especially through the attended service stations has to take priority. To have them be subject to unfair competition and them going out of business has the greatest impact on the vast majority of citizens and tourists.

I am not sure self-service is the answer at all. I think the people have spoken on the issue in the last 10 years and voted it down. This bill is too important to tie self-serve to it.

147 CHAIR SCHOON: Wouldn't giving stations the ability to have cardlock service if they wanted it improve the availability of gasoline?

149 SEN. HILL: We allow for that in the bill for commercial customers. Anyone under this bill can have cardlocks if it is for commercial purposes and is within the 10 miles.



156 CHAIR SCHOON: The world is changing. A debit card is being used to purchase all kinds of things and there are pumps which anybody with a credit card could buy their gas day or night.

159 SEN. HILL: As far as I know there are no cardlocks in this state using a debit card.

162 REP. WALDEN: I would assume we have not allowed that kind of system. If VISA, MasterCard, etc. were allowed in the cardlock operations, that would take care of the tourists.

189 REP. BARNES: If we don't have the thousands of small business people outside of farming that can take care of the tourists, you are not going to have tourism. These constraints will in some cases put some small business people out of business.

199 SEN. HILL: When you talk about people being put out of business because they can't use a cardlock, I am saying those people can get gasoline. That is what I am concerned with. I think there is a real difference between convenience and not being able to get gasoline. We have tried to make every accommodation we can.

236 REP. BARNES: In my area in Jackson County we have two different types of cardlocks. They are not more expensive and are not necessarily cheaper, but one of the advantages to a business person is that they don't have the rapid fluctuation of price increase and decreases. That is an advantage to a business person who has to project their business income.

259 CHAIR SCHOON: One of the provisions in the bill is a 10 mile distance between towns. We have found out that a lot of our towns in Eastern Oregon are on the average nine miles apart which was apparently the distance a wagon train could travel. Is there anything magic about the 10 mile figure?

268 SEN. HILL: I think it was a judgement call on the experience of the work group.

293 CHAIR SCHOON declares the meeting in recess at 2:56 p.m.

293 CHAIR SCHOON reconvenes and immediately adjourns the meeting at 3:16 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -SB 536, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff