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
SUBCOMMITTEE NO. 1

April 16, 1991 — Hearing Room F
1:00 P.M. — Tapes 9 - 10

MEMBERS PRESENT: Rep. Jerry Barnes, Chair
Rep. Lisa Naito
Rep. John Schoon
Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator
Annetta Mullins, Committee Assistant

MEASURES
CONSIDERED: HB 2208 WS
SB 429-A PH

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 9, SIDE A

005 CHAIR BARNES calls the meeting to order at 1:10 p.m. and opens the work session on HB
220 8.

HB 2208 - AUTHORIZES ESTABLISHMENT OF FEES FOR AMENDMENTS OF ARTICLES OF INCORPORATION OF STATE CREDIT UNIONS AND PENALTIES FOR LATE ANNUAL REPORTS BY RULE OF DIRECTOR OF DEPARTMENT OF INSURANCE AND FINANCE.
Witnesses: Cecil Monroe, Division of Finance and Corporate Securities
Steve Rodeman, Oregon Credit Union League
Frank Brawner, Oregon Credit Union League
Gary VanHorn, Division of State Lands
Sharlyn Raymet, Division of Finance and Corporate Securities

005 CECIL MONROE, Administrator, Division of Finance and Corporate Securities,
Department of Insurance and Finance: I was asked to provide information

on two items of
concern with putting suggested caps on fees that we would set by rule. We set $100 maximum
on the rule for by-law amendments. We had already proposed a cap of $1,000 for late filings.
We collect information for the NCUA and under FIRREA they have authority to levy a fine up
to $1,000 a day for late filings. We wanted that to be consistent with their powers. We believe
we should have parity with the federal regulator. It is one of those things that we will unlikely
use, but we would like to have a bigger incentive for our 28 state-chartered credit unions to file
reports that we request on a timely basis. The current $5 penalty isn't enough to do it.

038 Issues discussed:
>Current fee for by-law amendments is $5 and has been since the inception of the act. This bill
would allow the director to set, by rule, a fee appropriate with a cap of $100. Virtually all other
fees and assessments are set by rule by the division.
>Public safety vs. members' convenience. One of the factors used to evaluate the
appropriateness of granting a credit union application is how it serves the current members'
convenience. When the division considers the application for a bank branch, consideration is
given as to how this better serve the public.
>Considerations for health of other financial institutions in the area.
>Consideration of safety and soundness of financial institutions.
>Field of membership.
>Effect of proposed changes on division's ability to regulate the system.

282 REP. SCHOON: I think we should have the banks look at the statutes to make sure we aren't
permitting something to happen that would endanger the other financial institutions for the benefit
of the public.

297 TERRY CONNOLLY, Administrator: At the public hearing on HB 2208, Mr. Rodeman
presented amendments. They have been drafted by Legislative Counsel at the request of the
committee (EXHIBIT A).

310 STEVE RODEMAN, staff attorney, Oregon Credit Union League, explains the HB 2208-1
amendments:
>Amendment in line 11 of the bill removes the requirement that we report by January 31 of each
year and requires that we report by the time set by the director by rule.
Section 3 of the HB 2208-1 amendments relates to the issue on the members' and public
convenience. It is also in Section 6 on page 2 of the amendments. We propose the amendment
because in the statute talking about branching and the federal parity statute, we felt it is more
accurate to change the word "public" to "member." We believe the director should look at the
members' convenience and advantage. We don't want to imply that the public's interest in the

existing financial institutions should not be weighed in deciding whether to grant a branch or use the federal parity powers. We have three suggestions for Sections 3 and 6. One is to adopt the amendment with the understanding that nothing would change the director's responsibility to look at the public interest. The second would be to keep "public" and insert "and members' convenience and advantage" to make it clear that the director should look at the members' convenience and advantage. The third is to leave it alone. We would support the committee's pleasure.

Section 4 on page 2 deletes (3) that requires the director to send notice of proposed rules to every credit union. We think the requirement is duplicative.
>Section 5 deletes (3). We feel the Oregon Evidence Code should decide what is and is not admissible in court.
>Section 6 is the federal parity provision. Any of the three alternatives are acceptable to us.
>Section 7, gives the director time to establish by rule when we need to report the election of officials after our annual board meeting.
>Section 8 clarifies that indemnification of credit union officials and related insurance is not compensation; it is only meant to reimburse officials for liability they may incur in connection with their official duties. Volunteer boards are not allowed to receive compensation.

Section 9 raises the issue of conflicts of interest. At the time we were holding the first hearing, the National Credit Union Administration issued a proposed regulation dealing with corporate credit unions. This section relates only to Oregon Corporate Central Credit Union, which is a special credit union established for credit unions in Oregon. Those NCUA regulations would require an independent board of directors and would remove the conflict of interest situation which gave rise to our asking for this amendment. We need to comply with those regulations because we have federal insurance. This amendment is irrelevant and we don't need Section 9 and we propose to drop Section 9.

>Section 10 adds authority for credit unions to appoint a security officer and is in compliance with federal insurance requirements.
>Section 11 squares the state credit union responsibilities for verification of accounts with the federal requirements.

447 REP. SCHOON: Aren't we micro-managing by saying what the board of directors can and can't do?

465 MR. RODEMAN: There is no such general power in the statute.

473 REP. SCHOON: Perhaps you can bring us some language that would get away

from this and
make it general.

TAPE 10, SIDE A

020 MR. RODEMAN continues explaining the amendments:
>Section 11 incorporates the federal rule on verification of accounts in the state statutes.
>Section 12 makes it clear that accounts may be held with or without the right of survivorship.
>Section 13 removes the enumeration and gives credit unions a general lien on all deposits.
Deferred compensation and retirements funds are not included.
>Section 14 deals with our accounting for inactive accounts. This statutes allows credit unions
to make an accounting transfer within the credit union (to put in into our accounts payable). So
instead of having 100 inactive accounts, the credit union can put all the accounts into one account
payable for efficiency purposes. It in no way affects or changes our responsibility under the
dormant account statutes and working with the Division of State Lands. My original proposal
did not include (2) of Section 14, on line 24, page 5. (2) requires we comply with dormant
account law. We have that requirement already. (2) is redundant. He submits copies of the
administrative rules and statutes relating to dormant accounts (EXHIBIT B).
441.710-130(1)(b)
directs the credit unions to comply with ORS 98.308(1). I think it is redundant. It makes no
difference to us whether it is left in.
>Section 15 of the amendment stipulates that credit unions can have an application in any form
they deem correct rather than requiring it to be in writing. It allows us to do telephone
applications and those kinds of additional member services.

063 REP. NAITO: I am concerned about the language in Section 14, lines 21 and 22, ", and
thereafter no dividends or interest will accrue thereto." If someone has a $10,000 account that
is considered a dormant account and they show up the next year, will they get interest on their
money?

075 MR. RODEMAN: That is an institution-by-institution decision as to whether or not interest is
paid. There are requirements in the dormant account statutes that place conditions on the ability
to cut off interest. That is, basically, that you have an agreement with a member going in.

097 MR. RODEMAN: Section 16 of the -1 amendments removes a list of the kinds of insurance that
credit unions can enter into cooperative marketing arrangements with. It in no way expands the
authority of the credit unions to offer any product or insurance. It merely allows the flexibility
to rely on the other parts of the statutes like (1) in the Insurance Code where they decide which
kind of insurance you can have.

105 REP. NAITO: In Section 14, what would be a figure for the account balance that the credit unions could work with that would ease the paperwork burden but protect the person that might have a substantial account?

111 MR. RODEMAN: Most of the accounts are at the minimum share value. This threshold creates a problem if those accounts are larger than that. We haven't talked about a threshold. My only recommendation is somewhere around $1,000 or $2,000 would weed out the majority. We will talk about it and get the information to the full committee.

130 FRANK BRAWNER, Oregon Bankers Association: We would suggest speaking to the "public" versus "members'" convenience and advantage. If we could, we would start over. You have to balance federal versus state regulations of all regulated entities. When a savings and loan, federal or state, applies for a branch, we get notification and have the opportunity to provide input. When a bank applies for a branch office, it must be publicized and input is available from the public or competitors. By the same token federal law says you have to abide by state law. If I had my way on this bill, I would say "serves both the public and members' convenience and advantage."

166 There are still some credit unions that deal with the intent of legislation dealing with common bond. I suggest that the words in Sections 6 and 3 say "serves both the public and the members' convenience and advantage.

On line 11, page 1, the fee that is now required is $500 for a branch office. For a bank it is $1,000. I have no idea what it is for a federal credit union, so if you make it $1,000 for a state credit union and they don't like that, they can convert and become a federal credit union. If we were talking about parity it should be $1,000 for the application to be processed by the state.

In the area of dormant accounts, you should listen to representatives of the Division of Lands. I believe it should be the same for all depository institutions, insurance companies, for all of Oregon and it should be their law that governs and not a particular law. The banking statute is silent with respect to dormant accounts. We are governed by the dormant account law. Whatever your intent is on HB 2208, I am committed to providing parity between banks and savings and loans in the state.

206 MR. BRAWNER: I believe that financial institutions should sell any kind of insurance they choose to as long as they are safe and sound because insurance companies are in the banking

business. I support Section 16.

203 GARY VANHORN, Assistant Director of Finance, Division of State Lands: The letter prepared by Marcella Easly (EXHIBIT C) outlines the details of our original concerns. The -1 amendments are not ones we had a copy of. ORS 723.457 is in the -1 amendments in Section 14. It wasn't clear from our Attorney General's review of the first draft of the amendments whether or not it was the intent to retain that section. It would appear it is and we would have no concerns. With respect to the $150 limit, that is a legislative decision and we have no concern of what level, if any, is established as long as the records are maintained. When the accounts are turned over to our agency, we need to have the records to find the owners.

258 REP. NAITO: When you hold accounts, do they accrue interest?

MR. VAN HORN: Once the accounts are turned over to us they are maintained at the dollar level; they do not accrue interests. The Common School Fund accrues the interest and the money is invested by the State Treasury.

286 CHAIR BARNES: Up to Section 3, there is no controversy. On Section 3, Reps. Naito and Schoon had concerns.

299 MOTION: REP. SCHOON moves that the subcommittee recommend to the full committee we use "public and members'" in line 16 on page 1, and on page 2 in line 30.

308 VOTE: CHAIR BARNES, hearing no objection to the motion, declares the amendments ADOPTED. All members are present.

300 REP. WALDEN: Could we have Mr. Monroe comment on why the application fee for a branch is $500 for credit unions and $1,000 for banks?

325 MR. MONROE: I don't know what the rational was when the two acts were written. The fee for the branch is in statute; that is what we charge when the accept the application for a branch from a credit union.

MR. MONROE: We should cost them on a regular basis and request adjustments that might be appropriate; we have not done that with respect to branch fees. We have not been flooded with an excessive number. We will take a look at it as well as some other fee activities.

388 MR. MONROE: We do have dedicated budgets for each of the programs we administer and have different staff who handle the applications for credit union and bank branches.

398 REP. WALDEN: Do you charge a different fee for savings and loans?

401 MR. MONROE: I would have to see what the fee is for a savings and loan branch application
is. We have one small domestic savings and loan so there hasn't been a lot of activity in the
program.

387 CHAIR BARNES: How often do you receive credit union applications?

394 SHARLYN RAYMET, Supervising Examiner, Division of Finance and Corporate Securities:
We have had two this year, on the average there is about one branch a year. I don't know how
that compares with banks. We have not had a branch application from a savings and loan. We
had a branch relocation in the last couple of years. There is very little activity in the savings and
loan section.

TAPE 9, SIDE B

011 MR. MONROE: We had about 75 bank branch applications in the last 12 months, but it was
an unusual 12 months. We would probably have an average of 18 in a year.

022 MOTION: CHAIR BARNES moves that the HB 2208-1 amendments be amended on page 1, line 11, to delete "$500" and insert "$1,000" subject to further information on
how much it costs the division.

030 REP. NAITO: I will speak against the motion because I am not convinced that I have seen a
need to increase the fee.

034 REP. WALDEN: I am trying to find some sort of equity. If one group is paying a higher fee
for what would appear to be a similar service than another group. Maybe we should cut the fee
for banks to $500.

048 CHAIR BARNES: I would like to put it on a comparative basis.

051 REP. SCHOON: Perhaps the director could come back before the full committee meets with
a recommendation on what it should be for banks, savings and loans and credit unions and others
that might have the same situation.

054 MR. MONROE: We will be happy to do that.

055 CHAIR BARNES withdraws his motion.

058 CHAIR BARNES: Sections 4 and 5 have had no suggested changes. Section 6 has been
amended to say "public and members'". Sections 7 and 8 have no proposed changes. Section
9 is not necessary.

070 MOTION: REP. NAITO moves to further amend the HB 2208-1 amendments to delete
Section 9.

072 VOTE: CHAIR BARNES, hearing no objection to the motion, declares the motion
PASSED. All members are present.

075 REP. SCHOON: I raised the question of whether we should be micro-managing the credit
unions. I don't believe we should, but we don't have language and I have no objection to the
language that was submitted.

086 CHAIR BARNES: Rep. Naito had concerns on Section 14, lines 22 and 23.

085 REP. NAITO: I have an interest in reducing the amount of paperwork required for the smaller
accounts, but I have a concern that on a larger account it may be worthwhile.

095 REP. NAITO moves to further amend the HB 2208-1 amendments to reinsert the
language on page 5, lines 22, ", providing the balance of" and in line 23, "said account
is below" and insert "$1,000."

102 REP. WALDEN: Didn't we hear from the banking community that the statute is silent in this
regard? This would be upping the threshold for the payment of interest or dividends. Maybe
we need to look at this.

113 REP. SCHOON: I would support the motion. We are helping consumers and helping the credit
unions on sending out statements on small accounts.

138 MR. RODEMAN: We have no objection as long as the same requirement applies across the
board. The $1,000 threshold is fine, too. The $1,000 will probably take out all the inactive
accounts we have.

152 FRANK BRAWNER: It is not across the board. We have no threshold. The reason our statute
is silent is we are governed by ORS 98.302 to .436. It clearly says that interest will continue
to accrue, that you cannot charge the accounts out of existence, but you cannot raise the fees over
what you have been charging and the reporting requirements, etc. are spoken to. If we are going
to allow accounts under $1,000 not to have dividends or interest accrue for the credit unions, then
I submit we are not all treated the same.

201 CHAIR BARNES: The threshold in the law is $150.

195 MR. RODEMAN: The dormant account statute says you must pay interest and cannot charge
fees unless you have your account agreement, etc. It gives you the ability to stop paying interest.
This statute tells us to pay interest and dividends anyway, even if the dormant account statute says
we don't have to. There is a $150 threshold as to when we have to pay interest and dividends.
If that is raised to $1,000, then the threshold would eliminate most of the

dormant and inactive
accounts credit unions have. We still would have to pay interest and dividends on amounts over
$1,000. Any other financial institution could get out of it by complying with the provisions in
the dormant account statute.

229 CHAIR BARNES: I think the public should know what the status of their account is in terms
of earning interest or not. I think that is where the public interest comes in and I think we owe
it to the public.

253 REP. SCHOON: I spoke in favor of the motion without the information we have now. I think
there is some rationale in institutions wanting to keep the accounts and trying to locate the
owners. Once it is transferred it is gone and is of no benefit to the institution. The point that
if someone does identify the account, I am confident that what Mr. Brawner said about paying
interest on it is correct. I have never come across a case where interest was not paid. I would
say we would want to pay the interest to maintain the account. I would be willing to make credit
unions conform to the same requirements as banks and be silent about it.

CHAIR BARNES: What would the impact be if we amended this to delete ORS 723 .457 (1).
It would put everybody back on the same parity and they could have rules and agreements on
how the interest would be paid.

310 MR. RODEMAN: All (1) does is allow us to do the accounting transfer so we can keep it
efficiently in the credit union. It doesn't have anything to do with dormant accounts or the
interest we pay, except for the $1,000 threshold Rep. Naito has raised. I would rather see (1)
put in the bank statute so they can do the same accounting transfer if it is more efficient for them.
All we are doing is holding the money in a different place within the institution.

311 REP. SCHOON: What if we substitute, on line 21, a period for the second comma and left (2)
in?

337 MR. RODEMAN: The only thing you lose then is Rep. Naito's concern to protect the large
depositor, a concern we echo. It would then be back to institution-to-institution on whether they
pay dividends. I would like to see the protection left in, just raise the threshold.

347 REP. WALDEN: I thought ORS 98.308 superseded this anyway.

349 MR. RODEMAN: ORS 98.308 deals with dormant accounts, when the money goes to the state.
This statute deals with inactive accounts, when you can take them out of the member's name and
put them into an account payable at the credit union.

340 CHAIR BARNES: I would be willing to settle for $500.

367 REP. NAITO: I could go along with Rep. Schoon's suggestion of inserting the period. I still would have the concern that the written agreement would provide for no interest once the account becomes inactive and the large account would not be protected. I would still have that concern. $500 or $1,000 doesn't seem that much different.

363 REP. NAITO withdraws her motion.

385 MOTION: CHAIR BARNES moves that on page 5 of the HB 2208-1 amendments, in line 23, reinstate the deleted language on line 22 and in line 23 reinstate "said account is below" and insert "$500".

392 VOTE: CHAIR BARNES, hearing no objection to the motion, declares the motion PASSED. All members are present.

410 MOTION: REP. NAITO moves that the HB 2208-1 amendments, as amended, be adopted and that HB 2208, as amended, be sent to the full committee with a DO PASS recommendation.

424 REP. WALDEN: I will support the motion, but would like to know at the full committee about the differential in fees for branching.

430 VOTE: In a roll call vote, all members vote AYE.

434 CHAIR BARNES declares the motion PASSED.

TAPE 10, SIDE B

010 CHAIR BARNES opens the public hearing on SB 429 A-Eng.

SB 429 A-ENG. - SPECIFIES LIABILITY OF PERSONS PROVIDING ADVICE OR SERVICES IN CONNECTION WITH OFFER, SALE OR PURCHASE OF SECURITIES.
Witnesses:Jim Harlan, Department of Insurance and Finance
Roy Tucker, Oregon State Bar Task Force on SB 429

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

015 JIM HARLAN, Policy Analyst, Department of Insurance and Finance, introduces Roy Tucker, Chair, Oregon State Bar Task Force on SB 429 and states that the Department of Insurance and Finance supports SB 429 A-Eng.

017 ROY TUCKER, Chair, Oregon State Bar Task Force on SB 429, submits and reads a prepared statement in support of SB 429 A-Eng. (EXHIBIT D).

161 CHAIR BARNES: In reference to responsibility, what effect does the licensing procedures have

on the person's ability to say I wasn't aware of that. It seems to put a higher level of burden on a licensed person as opposed to an unlicensed person?

182 MR. TUCKER: I think we have specifically excluded advice or services rendered by broker-dealers, investment advisers and similar people engaged in the securities business. Those kinds of people are going to be held to the higher standard and will have to establish the burden of proof. That leaves in people like engineers, lawyers, accountants and other kinds of professionals who aren't really involved in the securities business, but who may be participants in a securities offering.

194 REP. NAITO: What is "churning?"

196 MR. TUCKER: It is a practice of abuse that involves turning over, buying and selling, repeatedly securities in a client account for the purpose of generating excessive commissions for the broker without necessarily have the instructions of or for the benefit of the client.

197 JIM HARLAN: I was a member of the task force, but I am here as a policy analyst for the Department of Insurance and Finance. We were in strong opposition to the original bill and I am here on behalf of Laurie Skillman to strongly support SB 429 A-Eng.

222 REP. WALDEN: Why do we have the private right of action?

223 MR. HARLAN: The provisions at page 5, starting at line 32, are new provisions we are proposing to add to the existing securities law covering activities of investment advisers. Current private liability focuses on individuals who sell securities or purchase securities. Investment advisors usually are not involve in the sale or purchase of securities, but are involved in the purchase or sale of investment advice. There is an anomaly in the law in which there is no clear cause of action to reach illegal activities of investment advisers.

255 CHAIR BARNES closes the public hearing on SB 429 A-Eng. and declares the meeting adjourned at 2:54 p.m.

Respectfully submitted,Reviewed by,

Annetta Mullins Terry Connolly
Assistant Administrator

EXHIBIT SUMMARY

A -HB 2208, HB 2208-1 amendments, Steve Rodeman
B -HB 2208, administrative rules and statutes on dormant accounts
C -HB 2208, prepared statement, Gary VanHorn
D -SB 429, Senate Staff Measure Summary, Legislative Fiscal Analysis and

Revenue Impact
Analysis, staff
E -SB 429, prepared statement, Roy Tucker