

House Committee on HUD April 11, 1991 - Page

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 HOUSING AND URBAN DEVELOPMENT

April 11, 1991 Hearing Room 174 8:00 a.m. Tape 64 - 66

MEMBERS PRESENT: Rep. Bob Repine, Chair Rep. Judy Bauman, Vice-Chair  
Rep. Marie Bell Rep. Rod Johnson Rep. Dave McTeague Rep. Gail Shibley  
Rep. Ron Sunseri

STAFF PRESENT: Janet McComb, Committee Administrator Kimberly  
Burt, Committee Assistant

MEASURES CONSIDERED: HB 2652 (PUB) HB 2704 (PUB)

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TAPE 61, SIDE A

005 CHAIR REPINE: Calls the hearing to order. (8:00 a.m.)

Roll Call: Representatives Johnson, McTeague, Shibley, Sunseri & Repine answer "present".

PUBLIC HEARING ON HB 2652 Witnesses: Dennis Luke, Oregon State Homebuilders Association Bruce Anderson, Oregon State Homebuilders Association Fred Vannatta, Oregon State Homebuilders Association Jim Stemberge, Deputy Administrator, Construction Contractors Board, (CCB)

Staff submits SMS, revenue impact statement & (-2) amendments, (EXHIBIT A).

020 DENNIS LUKE, BUILDER & PRESIDENT, OREGON STATE HOME BUILDERS ASSOCIATION: Submits written testimony and informative material in support of HB 2652, (EXHIBIT B).

REP. BELL arrives. (8:07 a.m.)

LUKE: It isn't the intention of HB 2652 to stop people who want to build their own home to live in.

080 REP. SUNSERI: How much do people save by not paying the fees?

LUKE: About \$1,000.

085 REP. SHIBLEY: What about someone building their own home that has a problem and has to move; how could we get an exception and keep the intent?

LUKE: This brings the burden of proof back to the person building the house who has taken the exemption.

REP. SHIBLEY: My concern is with "prima facia" evidence.

LUKE: We could make an exception for hardship cases.

REP. SHIBLEY: I would like the hardship issue addressed so that there is a legitimate recognized avenue for this.

140 BRUCE ANDERSON, OREGON STATE HOMEBUILDERS ASSOCIATION: The legal term of "prima facia" would take into account extenuating circumstances and that was why we used that language.

That is also linked with the "intent to sell".

CHAIR REPINE: What is the past history of fines?

LUKE: There are 500 civil penalties per year for approximately \$300,000; currently only about \$100,000 is collected each year and we estimate this bill would increase the total civil penalties assessed by \$100,000 per year with an additional \$50,000 collected.

242 LUKE: (In response to REP. JOHNSON) We would keep the one year time period; that is the time period in California and it has been effective.

REP. JOHNSON: Aren't you looking for people who do this more than once?

LUKE: If the person is building the house to sell, the person buying it is entitled to the protection of licensed contractors; we feel that if something is going to go wrong with the house, it will happen within that first year.

300 REP. JOHNSON: How do civil penalties come into play there; if someone buys a house and something is wrong, how would this effect that situation?

LUKE: If you buy a house from a person who built it themselves, there is no bond or warranty; you would have to sue them to get any remedy.

REP. SUNSERI: Who does the homeowner have to prove himself to?

LUKE: The inspector.

345 REP. BELL: Where do fine fees go?

ANDERSON: Approximately 80% of the civil penalty fees go into the general fund; they are only permitted to keep 20%.

380 ANDERSON: We do have some proposed amendments and I have submitted a form from the CCB that is a basic check list for owner/builders and it also explains some of the laws on the reverse, see (Exhibit B).

The "intent to sell" language would be added to that form.

REP. MCTEAGUE leaves. (8:28 a.m.)

410 ANDERSON: Describing amendments.

470 FRED VANNATTA, OREGON STATE HOMEBUILDERS ASSOCIATION: Last session the legislature passed a new process for identifying an independent contractor and that section of the law has had some strange interpretation.

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The problem we are trying to deal with are the provisions of the statute that say that the general contractor is responsible if the subcontractor doesn't have unemployment compensation and workers' compensation on their employees.

We are trying to build a process by which the general contractor won't be responsible for something they don't know about.

The Department of Insurance and Finance has taken the position that the language in the original law means that when you put someone on your payroll, you are no longer registered with the Construction Contractors Board.

We believe that these amendments are an important piece of this bill.

111 REP. JOHNSON: Will this protect the general contractor or do we need more specific language?

VANNATTA: The purpose and intent is that a contractor's registration isn't invalid until the board takes action on it; when the board does take action on it and invalidates the registration, they know and they change their records and the general contractor in the public can then know.

REP. JOHNSON: If an exempt subcontractor hires an employee and receives written notice, pursuant to this law, the next day, before the general contractor finds out, the subcontractors employees could get hurt and then you would be right where you are now?

VANNATTA: I understand that problem and we have set up a provision in the statute, and the board has operationalized it, that says a general contractor may take a list of their subcontractors to the board and ask to be notified if any are unregistered.

There is a fee for it, but then the same time the board sends the notice of cancellation to the subcontractor, they send a notice to the general contractor; that is already in law.

155 REP. JOHNSON: Can we add "and to persons who have requested notice pursuant to ORS..." so that if they don't mail a notice to the general contractor there isn't a hole someone can climb through?

VANNATTA: I like that, but that is a public policy question.

REP. JOHNSON: We could send notice by certified mail.

185 REP. BAUMAN: How does the board know that the registration is invalid?

VANNATTA: It has to come to their attention for some reason.

REP. MCTEAGUE returns. (8:45 a.m.)

REP. BAUMAN: We are placing a responsibility on the board to identify when someone registered as exempt is violating the conditions, then they must get the notice to that person.

VANNATTA: The public policy question arises over the extent to which a general contractor should be responsible for the subcontractor, who by definition is free from direction and control.

We believe the general contractor should not be held responsible for the action of the subcontractor and that is the issue here.

250 VANNATTA: This gives the general contractor notice and allows the Construction Contractors Board to make it clear to subcontractors.

REP. BAUMAN: I am concerned that we are giving more responsibility to the board while this will "pull the teeth" from the board.

LUKE: If a general contractor hires a subcontractor and that person is registered exempt, and they bring employees on the job and the general contractor allows them to do that, the general contractor has assumed responsibility.

VANNATTA: To the extent to which the general contractor knowingly conspired with the subcontractor, there are provisions in the law for penalties against the general contractor for violation of the law; if the two work together the general contractor will share in the penalties.

300 JIM STEMBRIDGE, DEPUTY ADMINISTRATOR, CONSTRUCTION CONTRACTORS BOARD (CCB): The purpose of this was to make sure that contractors were liable for the employees they hire and to limit the flow of liability from a subcontractor to a general contractor.

ORS 656.021 provides that the general contractors responsibility when contracting with a subcontractor is to make sure that the subcontractor is registered with the Construction Contractors Board and that is the information flow that the system depends on.

This proposed amendment would clarify that the registration remains valid and would be valid at the time the general contractor hired the subcontractor, provided the general contractor verified that the registration was in place.

If there was a problem after that verification, the liability for workers' compensation costs or premiums wouldn't flow to the general contractor, but would remain with the subcontractor who violated the law by hiring employees without the appropriate registration.

STEMBRIDGE: If they are listed as exempt it means they have no employees; they aren't exempt if they hire employees.

It isn't a question of the employee being covered, but who is liable to pay the premiums and or costs.

375 STEMBRIDGE: Two years ago the legislature tried to keep that liability from flowing unfairly to the general contractor who may have no knowledge of any employees being hired by the subcontractor who the

general contractor hired with the understanding that the subcontractor wouldn't hire employees.

388 CHAIR REPINE: As a general contractor, I currently have a subcontractor painting a house for me; if last night he decided to hire two people to help paint the house and someone is injured, I become the liable party.

435 REP. BAUMAN: I would imagine that there are pressures in the market place that would create a situation where a sole proprietor would make a bid on a job to complete it quickly.

The policy issue is that there are innocent general contractors and then there are not so innocent general contractors and all of us are capable of buying into something that sounds too good to be true.

The question then is with the illegal employee of the exempt contractor still being covered even though the subcontractor didn't pay.

485 VANNATTA: The employee would still be covered; this has no effect on the employees eligibility for unemployment compensation or workers' compensation.

If there is no workers' compensation policy, someone is a non-complying employer and they would pay; if the general contractor has workers' compensation insurance then they will collect the premiums from them.

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060 VANNATTA: There is another approach, instead of the violating contractor falling outside of the system, they could be subject to penalty.

STEMBRIDGE: I believe that this proposed amendment strengthens the registration system as the information we hand out will be accurate at the present time.

REP. BAUMAN: Wouldn't the consumer be in the same position of not having recourse to the bond if the registration were invalid because there had been written notice to the registrant, but the registrants subcontractor didn't tell the general contractor of the notice?

STEMBRIDGE: We encourage consumers to check at the beginning of the job, or anytime during the job to see if they are registered.

REP. BAUMAN: This amendment would protect consumers who currently may not be protected?

STEMBRIDGE: By board rule, the bond remains in effect to cover the consumers.

110 VANNATTA: When this issue came to the board, they said only invalid in terms of the general contractor/subcontractor relationship, not invalid for the rest of the act.

STEMBRIDGE: In any case, if a homeowner hires a contractor, and that contractor is registered even for one day on a project, the homeowner is protected by the contractors registration and bond.

If the contractor isn't registered and the consumer hires them, no claim

would be fileable.

STEMBRIDGE: We must have a prima facia case to take action; we get lots of reports of suspected violations.

REP. SHIBLEY: How does a consumer know that someone is a registered contractor?

STEMBRIDGE: We encourage consumers to call the CCB to find out.

210 REP. SHIBLEY: If the contractor is registered but he has someone else working for him that gets hurt, who is responsible?

STEMBRIDGE: We don't administer workers' compensation law; my understanding is that the homeowner wouldn't be responsible unless there was gross negligence.

240 REP. JOHNSON: We are really looking at people who build houses that they say are for themselves, then sell them for profit.

The way this is written someone couldn't decide to remodel or add on to their home and then within a year sell the home; it occurs to me that we should more narrowly define the group of people we are after.

260 REP. JOHNSON: After the word "structure", insert "other than a non-residential out building or a farm or forest structure built by the owner of the residential farm or forest real property on which such outbuilding or structure is built".

The concept is to carve out some people that we really don't want to cover in this.

VANNATTA: My reaction is affirmative.

STEMBRIDGE: That would be fine, I have no problem with that.

290 STEMBRIDGE: Civil penalty amounts are set by rule, there is some flexibility in how they are assessed; there are about 15 or 16 different situations that a respondent might find themselves in.

The \$50 category is for people who advertise and demonstrate to our satisfaction that they weren't aware of the Construction Contractors Board registration law; that they obtained no work from the advertisement; that they have withdrawn the advertisement and that they agree not to do any kind of construction work at all without first becoming registered.

310 STEMBRIDGE: We have a \$600 penalty for those who advertise; \$1000 for people who actually do work and if there are homeowners involved we negotiate with the respondent, starting off at \$1000 and lower it to \$200, perhaps less if the homeowner gets taken care of, as that is one of our first responsibilities.

An extenuating circumstance is if the person registers upon being notified that they are out of compliance then we will also lower the penalty.

330 STEMBRIDGE: The \$5000 penalty would allow the board additional flexibility, especially for repeat offenders.

345 CHAIR REPINE: I will close the public hearing on HB 2652 and we will recess for the purposes of a short break. (9:23 a.m.)

CHAIR REPINE: Calls the hearing back to order. (9:35 a.m.)

PUBLIC HEARING ON HB 2704 Witnesses: Fred Vannatta, Oregon State Homebuilders Association Don Miner, Oregon Manufactured Housing Association Steve Hawes, Real Estate Agency Carole Irwin-Leal, Public Records Administrator, Secretary of State's Office Lynn Schoessler, Oregon Housing Agency

Staff submits SMS, fiscal and revenue impact statements, (-1) and hand engrossed version, (EXHIBIT C).

383 FRED VANNATTA, OREGON STATE HOMEBUILDERS ASSOCIATION: Testifies in support of HB 2704.

The purpose of HB 2704 is to require certain specified state agencies and local governments to understand the impact of their rules and regulations on the cost of housing.

410 VANNATTA: The cost of shelter is the single most significant factor in the number of homeless.

We are asking that the policy makers think about what they are doing and the impact on the cost of shelter.

452 REP. SHIBLEY: I'm sure that you don't mean to imply that by using substandard or unsafe materials or practices, wiring and so on, that we could somehow decrease the cost of shelter; I think that there is some base line for safety, health and building code parameters that are appropriate given the uses of housing.

VANNATTA: Local government doesn't set those standards, they are set by the Building Codes Agency.

Oregon has advanced, nationally recognized standards for materials and wiring and all of that on that books today.

TAPE 65, SIDE B

035 VANNATTA: Section 2; we listed specific agencies and considering what this committee has done with the Housing Council, that will have to be adjusted.

The Secretary of State's Office has suggested that we included temporary rules as well as permanent rules and we will have amendments to make it clear that the concept was temporary rules as well as permanent rules.

055 VANNATTA: We have tried to limit the kinds of ordinances that local governments adopt that are related to housing costs.

Section 3 defines the housing cost impact statement as an estimate of the effect.

085 VANNATTA: To assist jurisdictions in assessing costs, we set up a process for having them look at it in terms of the impact on a specified dwelling on a lot; we have specified the square feet of the dwelling and the square feet of the lot.

If there are questions, we have given the Housing Agency the authority to step in.

The cost of all housing, both single family owner occupied and rent levels, to a great extent, are driven by the cost of the entry level house and this is a lower end home.

110 REP. BAUMAN: Do you have a target cost per square foot to build in any community?

VANNATTA: No; we don't have a system for tracking square foot costs in one community as as opposed to another.

Section 4; there was a concern that if we set up a process of disclosure people would say that the rule was invalid because of improper disclosure and that wasn't the intent of the statute.

Submits the disclosure statement used today and article from Statement Journal, (EXHIBIT D).

225 DON MINER, OREGON MANUFACTURED HOUSING ASSOCIATION: Testifies in support of HB 2704.

We believe that it is good public policy for government to begin analyzing the effects of it's decisions on the cost of housing.

We recognize that this may present some burden to local governments, but the costs imposed on housing by a governmental decision are there forever.

255 REP. BAUMAN: The purpose of the analysis would be to see if the increase in the cost was justified by the services provided by the governmental unit?

MINER: Yes; all this requires is that they look at the cost.

REP. BAUMAN: Couldn't a local government waive requirements for things like curb height or side walks in order to build an affordable housing neighborhood in accordance with a specific policy toward that, enlisting the cooperation of the other agencies in order to promote that particular policy?

MINER: The cost impact statement might be what motivates local governments to look at changing development standards so that you produce a more affordable house.

REP. BAUMAN: This covers everything and I think we want to target this at affordability issues.

345 STEVE HAWES, REAL ESTATE AGENCY: The agency understands the housing cost issue, but the Real Estate Agency has no business adding it's cost to those developments to review and publish the reports if the local government has done it's job.

We are included here as we used to have some direct housing cost relationship and currently we only deal with the condominium law.

405 HAWES: If we regulate property managers and those managers engage in activity relating to rental housing, we do that at the request of the legislature who gave us the authority to regulate them for the



protection of the consumers and to provide a level playing field among those property managers as they conduct their business.

We are providing a consumer function, we aren't providing or attempting to provide any kind of service directly related to the cost of housing.

470 HAWES: In the proposed amendments, if you look at sub 2 of section 3 on the hand engrossed version, lines 2 & 3 still say that the housing cost impact statement will be made a part of the notice and the proposed rule.

It should be a part of the notice, but not the rule.

495 HAWES: We do endorse the amendment in section 4.

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040 HAWES: We agree that the temporary rules should be included; very often timing forces the use of temporary rules.

I would also suggest that there should be some definition that includes both temporary and permanent rules, but that excludes procedural rules, specifically the adoption of the Attorney Generals model rules.

I understand what the homebuilders are after; we don't object to providing the statement that says zero, but we think it is a waste of our time and would prefer to see ourselves exempted.

062 CAROLE IRWIN-LEAL, PUBLIC RECORDS ADMINISTRATOR, SECRETARY OF STATE'S OFFICE: We do see some problems in the technicalities of the rule making process and the hand engrossed amendments address some, but not all of those.

We would be happy to work with the association in addressing those.

085 LYNN SCHOESSLER, OREGON HOUSING AGENCY: What is addressed here is something that we would do as a matter of course in our statement of fiscal impact we prepare when proposing rules.

I have amendments, (EXHIBIT E); I would advocate that this reads "housing cost impact statement shall be included in the statement of need and fiscal impact filed with the Secretary of State upon the proposal for adoption or amendment of administrative rule by".

105 SCHOESSLER: The bill talks about the Housing Council adopting rules and we have had difficulty in the past when we adopt rules that other state agencies have to use.

REP. BAUMAN: There is a continuing lack of a strategic plan for housing statewide and this addresses that frustration, without coming right out and saying that we need the strategic plan statewide, period.

SCHOESSLER: We are coordinating and preparing a technical advisory group to deal with the states preparation of a housing affordability strategy for the state.

We are preparing what we call a balance of state affordability strategy that does focus on the lower end housing needs for people who can't really compete in the open competitive market.

REP. BAUMAN: If we were to outline what you already do, including this list of policy making entities within the state whose decisions may impact the cost of housing, would that be "pulling you further out on the limb" than you've already been placed because of efforts to comply with the federal act?

SCHOESSLER: No, part of the prescribed content of the affordability strategy is to examine and inventory public policies in place that effect the cost and affordability of housing.

165 REP. BAUMAN: Does the language in this bill get you to your objective?

SCHOESSLER: I don't know that this bill gets us directly toward that objective; we will achieve that objective in spite of or regardless to this bill, but we do support this bill.

CHAIR REPINE: Could we, by amending this bill, take the concept and make it so that the end result helps you?

SCHOESSLER: I suppose that would be true if we factored in some notification as part of the actions carried out here so the agency would be apprised of those statements as they are prepared and then passed on to us.

230 REP. BAUMAN: My concern is that I don't see a lot of coordination with the goal, although we all know what the goal is, I think we should keep random impacts of housing costs to a minimum and have these decisions made with a sensitivity for the cost benefit analysis.

This will result in a tremendous amount of information and without a comprehensive strategy in place, information is of no value and it is going to be perceived by local governments as a kind of harassment because we are demanding that they provide us with a bunch of information for which we have no articulated program to plug into.

I can see what the idea is but don't see that the institution is in place for this to run in a positive direction.

160 REP. BAUMAN: How many communities does the housing agency, through it's bond program, directly impact?

SCHOESSLER: I would say every community; there are some exceptions in small communities.

REP. BAUMAN: I would suggest that we should put together the examples delivered here to engage the cooperation of local governments and then to enforce this by saying that communities that don't comply won't be eligible for the program until they do.

305 SCHOESSLER: The housing trust fund bill does have some priorities for projects which have local contributions of one sort or another and that is how that is facilitated.

We hopefully have the federal funding for the home program and we will be factoring the same sort of criteria there.

330 CHAIR REPINE: We are adjourned. (10:33 a.m.)

Submitted by:    Reviewed by:

Kimberly Burt    Janet McComb Assistant Administrator

EXHIBIT SUMMARY:

A - HB 2652 SMS, revenue impact statement & (-2) amendments submitted by staff, pp 4 B - HB 2652 written testimony and informative material submitted by LUKE, pp 7 C - HB 2704 SMS, revenue & fiscal impact statements, (-1) amendments and a hand engrossed version, submitted by staff, pp 14 D - Informative material to HB 2704 submitted VANNATTA, pp 2 E - Proposed amendments to HB 2704 submitted by SCHOESSLER, pp 1