

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.

Measures Heard HB 2429 (Public) HB 2085 (Public) HB 2221 (Public) HB 2082 (Public) HB 2126 (Public) HB 2127 (Public) HB 2375 (Public)

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

January 31, 1991 Hearing Room 357 1:00 p.m. Tapes 9 - 12

MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Randy Miller

MEMBER EXCUSED: Rep. Kevin Mannix

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: Stan F. Mayfield (HB 2126, 2127) Morella Larson, Real Estate Commissioner (HB 2126, 2127) Charlie Williamson (HB 2375) Mike Reed, OLCC (HB 2221) Ralph Rodia, State Fire Marshal (HB 2085) Bob Garrison, Marion County Fire Dpt (HB 2085) Sid Bodie, State Fire Marshal (HB 2085) John Deer, City of Portland Fire Dpt (HB 2085) John Gervais, National Electrical Cont. Assoc. (HB 2085) Norma Paulus, Super. of Public Instruction (HB 2429) Donna Hunter, Empl. Div. (HB 2082)

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TAPE 9, SIDE A

005 REPRESENTATIVE BAUM, CHAIR: Calls the meeting to order at 1:00.

PUBLIC HEARING ON HB 2085

012 GREG CHAIMOV: Discusses what the bill does. Authorizes the State Fire Marshal to impose civil penalties. Under current law they can suspend permits and licenses but must rely on local law enforcement agencies to enforce violations of the laws which contain fines. Discusses exhibits provided by the Fire Marshal. There is a fiscal impact, about \$40,000.

038 RALPH RODIA, BUREAU CHIEF OF BUREAU OF HAZARDOUS WASTES: Introduces himself and other gentlemen with him. Representing the State Fire Marshal in support of HB 208 5. See Exhibit A for written testimony. Discusses and comments on written testimony.

078 CHAIR BAUM: What is the intent of the bill? Is there an issue of stacking fines that may result from some business being fined by other agencies as well as your own?

082 RALPH RODIA: We are only asking for administrative sanctions over areas we already have authority over. We are not requesting additional powers beyond those already have. Asking for sanction powers in addition to the criminal powers.

091 CHAIR BAUM: Do you have enforcement over same area as Electrical Board and Fire Safety?

094 RALPH RODIA: Refers the question to Sid Bodie.

093 SID BODIE, DIVISION CHIEF OF THE STATE FIRE MARSHAL, OPERATIONS DIVISION: There are some codes which are jointly shared with other agencies. Those sections are specifically designated as to who enforces it.

101 CHAIR BAUM: A common violation might cause a fire hazard and might get fined from two agencies for committing the same violation. Isn't that a possibility?

106 SID BODIE: No.

107 REP. CLARK: The Das have to prosecute right?

110 RALPH RODIA: In most cases, yes.

112 REP. CLARK: What is limiting the penalty?

118 RALPH RODIA: Not sure. Do not have that information.

120 REP. CLARK: Explains information counsel provided. The highest fine found is \$100. It goes from \$100 to \$1,000 per day.

124 RALPH RODIA: The \$1,000 is consistent with other legislation that exists for the State Fire Marshal. It is also consistent with the value set by other agencies such as OSHA. This is an administration sanction and there is no requirement it will go to \$1,000 per day. It is a maximum amount. There would be some schedule adopted.

136 REP. CLARK: What would happen with the civil penalties?

129 RALPH RODIA: According to the bill they would go into the State Fire Marshal's Fund which is used by several agencies to support other programs.

143 REP. CLARK: Any sense of what revenue needs will be?

148 RALPH RODIA: Comments on fiscal impact statement provided.

157 REP. MILLER: You administer the laws regarding the distribution of gas.

RALPH RODIA: Yes.

REP. MILLER: With respect to the potential \$1,000 penalty, how much of that will be levied to people self serving their gas?

169 RALPH RODIA: It has been the habit to work with these violators and not be heavy handed. We would implement the penalties on a graduated basis.

184 REP. MILLER: Comments on particular example of a dealer who allowed self service at station.

199 RALPH RODIA: The intent of the penalty is not in punitive fashion because the owner is voicing an objection to law. There must be some hazard along with civil disobedience. Thinks \$1,000 per day is extreme for expression of civil disobedience unless there were other reasons.

304 SID BODIE: The current penalties are so light that a business in a high money operation can ignore the penalties and basically write them off as the charge of doing business.

218 REP. MILLER: Comforted by fact that they would look at, and weigh, attitude and the threat to public safety. Is self service a safe practice?

233 RALPH RODIA: Will give different view of the hazards of gas dispensing. Gas contains benzene. To have untrained people dispensing gas is potentially to expose them to toxic materials. Must have the training to make sure there was not a problem. State Fire Marshal does not have authority over the health hazard.

255 REP. MILLER: May looking at transferring this to State Health Division or send out a memorial so the other 48 states that consider it safe will know our views.

261 REP. BELL: Refers to written testimony, number 2, where you state part of the rationale for wanting this bill is local enforcement agencies put these violations in such a low priority and you are asking to raise the fine. If the local enforcement agencies could fine a \$1,000 would they be more apt to do this without involving the State?

274 RALPH RODIA: Most local agencies do not have any civil sanctions power. They cannot issue penalties. Talking about the particular regulations we are required to enforce. We have to go to the local people for criminal prosecution not for civil because the way the system is set up. This is a state agency without many administrative sanctions and cannot pursue criminal sanctions without the help of the local DA.

293 REP. BELL: Rather than give the ability to the state, why not give it to the local departments because they are much more in tune with local events.

297 RALPH RODIA: Some of local jurisdiction have done that such as Portland but most do not have the local authorities to do that.

306 REP. JOHNSON: Who are typical violators?

311 RALPH RODIA: Everyone. Gives a few examples.

337 REP. JOHNSON: It is intended for business people instead of non business citizens.

RALPH RODIA: Yes.

REP. JOHNSON: Do most of these people know they are in violation?

343 RALPH RODIA: Yes in that they have been inspected a number of times previous. Do not intend to invoke penalties until after several attempts, to let them comply.

352 REP. JOHNSON: Would you be opposed to having notice language in the bill?

358 RALPH RODIA: That is the intent except for extreme, blatant cases.

Discusses instant notice with suspended penalty.

369 REP. JOHNSON: What would you define reasonable period of time?

371 RALPH RODIA: In most cases, violations are given a week or more and they can request extensions.

378 REP. JOHNSON: Would you be comfortable with 15 to 30 day limit?

382 RALPH RODIA: Would be difficult to put that in because some have to be corrected immediately because of the danger which cannot be allowed to go on for several days.

389 REP. JOHNSON: Will you help to draft such language?

RALPH RODIA: Yes.

REP. JOHNSON: How important is it that you consider each day a separate violation for purposes of this bill?

RALPH RODIA: Only in so far as there is someone who continuously violates it and is so sever that a single penalty will not get them to stop.

413 REP. JOHNSON: If it was evident the violation was continuing for month, you would not retroactively assess the fine?

TAPE 10, SIDE A

007 RALPH RODIA: No.

REP. JOHNSON: The intent is for each day after they are noticed.

RALPH RODIA: Yes.

REP. JOHNSON: Are there people to conduct these hearings?

018 RALPH RODIA: Have informal conference procedures and formal hearings through the APA.

REP. JOHNSON: The money from fines is given to the department fund. Why?

019 RALPH RODIA: Decided to put it into the general fund which we are not the only party to.

096 REP. BELL: How big of an agency are you and do you cross into local fire district jurisdiction?

030 RALPH RODIA: The State has exempt and nonexempt districts. Major cities are exempt and have their own fire marshals. In those other areas, we go in and service them. There is some overlap and it is coordinated.

039 REP. BELL: How many staff people do you have?

047 SID BODIE: Have 13 field representatives distributed all over the state. They have literally hundreds of occupancies in each of those districts which they are responsible for.

050 JOHN DEER, SENIOR INSPECTOR WITH THE PORTLAND BUREAU OF FIRE, RESCUE AND EMERGENCY SERVICES: Offers remarks in support of the bill. See Exhibit B.

071 ROBERT GARRISON, FIRE MARSHAL OF MARION COUNTY DISTRICT: Offers testimony in support of the bill. Discusses own experience. Had no option but to go to the DA who are too busy to help. It is a real frustration. Asks for support in this legislation.

093 REP. BELL: Does this have to be a local decision or something that could be put in the statutes to allow local entities to do the same thing?

095 ROBERT GARRISON: Can be handled on both levels. Both could be done but if we could at least get it for the State Fire Marshal it would be dealing with a big part of the problem.

102 REP. CLARK: Comments that the local DAs are overworked Asks for clarification on these points.

108 ROBERT GARRISON: Was speaking only for Marion County.

RALPH RODIA: Meant they are so busy they get nothing done.

114 CHAIR BAUM: Some of the local DAs are not interested in some of these violations. Briefly closes the hearing.

PUBLIC HEARING ON HB 2429

124 GREG CHAIMOV: Introduces the bill and discusses what is in the packet. It is a reaction to the recent passage of Measure 5. Schools are worried about declines in staff and want to replace those people with volunteers that would be immune from claims of negligence and makes the schools immune from volunteer's negligence.

144 NORMA PAULUS, SUPERINTENDENT OF PUBLIC INSTRUCTION: Does not need the bill now. It was imperative to get the teacher out of the administrative work. Wants to restructure this system so their time is a better spent with the children. Before Measure 5, came up with way to organize volunteers to take up some of the noninstructional duties of the teacher to free up their time. After Measure 5, it became absolutely imperative. Some schools are already doing a good job of this. In the smaller communities, where they did not have the resources to train the people, met with tremendous opposition. Discusses another bill that will come before the committee later. Can solve the problem by treating these volunteers as agents under the Tort Claims Act and through the administrative rule process the necessity for them to be trained to lessen the liability. That is the status of where I am with this now.

207 REP. JOHNSON: Did you find there was one school district who would like to take advantage of this?

NORMA PAULUS: Yes, for instance the ESD Legislative Committee would be more

comfortable with it. Senses there would be a great deal of opposition to this for legitimate reasons.

223 REP. JOHNSON: Need to go on record saying it is a good idea but can find some other way to achieve this now.

NORMA PAULUS: Did not think I could accomplish the goal without lessening the liability on the part of school districts. Believes it can be done through the administrative route. If I cannot, then it will be back.

REP. JOHNSON: Would be supportive of this.

237 NORMA PAULUS: Thanks Rep. Johnson for his support and offer to help.

243 CHAIR BAUM: Can keep the bill around until the end of session is not the intent of the Chair to proceed with this. Closing the hearing.

PUBLIC HEARING ON HB 2085

261 CHAIR BAUM: Asks if there is more testimony. There is none so the hearing is closed.

PUBLIC HEARING ON HB 2221

274 GREG CHAIMOV: Briefs the committee on the bill. It would expand OLCC's ability to impose civil penalties on various licensees. Current law allows them to suspend and fine licensees. Since it was enacted, the legislature has created additional types of licensee who are not covered by that provision. Some would prefer to be fined rather than suspended. Discusses packet of information provided to the committee. There will be a small fiscal impact.

307 MIKE REED, ASSISTANT ADMINISTRATOR OF THE OLCC: Offers testimony in favor of the bill. See Exhibit C. When OLCC fines a license violation, we issue a ticket. A fine is likely to assure compliance. There is an option of giving of either a suspension or paying a fine. The overwhelming majority choose to pay the fine. Beer and wine license are in ORS Chapter 471 and distilled spirits licenses are in Chapter 472 which has a specific provision that OLCC can accept a fine from any licensee under that chapter. There is no parallel in Chapter 471. Half of the 22 beer and wine license are permitted by statute to pay a fine and the other half are not. This bill would treat all licensees equal in this respect.

CHAIR BAUM: OLCC has been in contact with the licensee about this proposal?

MIKE REED: Only in touch with the Oregon Restaurant Association who has no concern about this.

360 REP. BRIAN: How many administrative rules OLCC does have?

MIKE REED: OLCC has adopted 122 rules in the past 3 years, about 13 were a result of new legislation or on the advice of the Attorney General. About 6 or so repealed and 67 were changed as statutorily mandated review. Only 23 were new rules adopted.

401 REP. MILLER: What is the normal period of suspension?

403 MIKE REED: For a serious violation, such as selling to youth or serving a drunk, would be 10 days.

REP. MILLER: Is that a minimum?

MIKE REED: That would be the standard if there were no aggravating or mitigating circumstances. Gives examples of mitigating circumstances such as training.

419 REP. MILLER: Comments on an example of teachers cutting classes short with respect to alcohol server program. Does this actually happen?

498 MIKE REED: If they cover the mandatory curriculum in a shorter

period of time that is fine but in this case there was a complaint they taught a 6 hour class in 2 hours and left out major parts of the curriculum.

TAPE 9, SIDE B

017 REP. MILLER: Those who are serving go back for refresher courses?

MIKE REED: State law requires recertification every 5 years.

022 REP. MILLER: The incident mentioned did not involve veterans?

MIKE REED: They would probably have been new servers.

027 REP. MILLER: Is this a real problem for which you need this authority?

040 MIKE REED: Yes. Discusses problems with businesses that obtain one day licenses for special events. OLCC may have to refuse to issue those kinds which could have an impact on a community or a charity.

043 REP. CLARK: Looking at the fiscal impact statement and the grand total of the estimated effect on revenues is \$3,288 per biennium. Legislative Fiscal comments the agency estimates that this broadening of sanction authority would yield an addition three penalties per year. Unconvinced there is a substantial problem out there if you will only be using this three times per year.

051 MIKE REED: This is a question of

REP. CLARK: You just told Rep. Miller there was a real problem. So there is a real but not a substantial problem?

MIKE REED: It is real when it occurs because it only happens about 3 times it is not substantial. Special license that could be refused in the future could have an impact on the participants.

063 REP. CLARK: So just the fact of having the sanction authority might assist in what OLCC is doing, right?

MIKE REED: Yes.

REP. CLARK: The treat of those civil sanctions?

MIKE REED: Yes. There have been cases involving special licensees where the holder really is a gambler.

REP. CLARK: The gamble being that they will not pull the ticket?

MIKE REED: Yes.

071 REP. MILLER: With respect to the threat of the enforcement a helpful tool. Under current circumstances in the one day license, wher it is a charitable situation, what do you currently do? Do you discuss it with them and tell them OLCC will be watching next time?

MIKE REED: Yes.

082 REP. BELL: It is not a substantial problem but an equity problem as far as treating all of them equally?

MIKE REED: Correct.

088 CHAIR BAUM: Calls further witnesses. Closes hearing and goes into work session.

WORK SESSION ON 2221

092 REP. CLARK: Moves to amend the bill in line 24 deleting the figure of "\$2,000" and insert the figure of "\$1,000".

CHAIR BAUM: Rep. Clark has moved to amend the bill. Calls for discussion.

098 REP. BELL: Do people pay to take the course and how much do they pay? So if the teacher is in violation they have to take it all over again.

CHAIR BAUM: Ask Mike Reed to come back up to answer.

104 MIKE REED: The cost is \$22 to \$30 depending on school or instructor. If a person who took the course passed the exam it would not effect their certification.

109 REP. JOHNSON: There are no provisions for appeal of the fines, is there an automatic right to appeal somewhere else?

MIKE REED: Yes. There would be contested case hearing before the agency and then could appeal it to the Court of Appeals.

114 CHAIR BAUM: Any objection to the proposed amendment? Hearing none, so ordered.

116 REP. BRIAN: Moves HB 2221 as amended to the full committee with a do pass recommendation.

CHAIR BRIAN: Moves the bill to full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Marie Bell: Aye Rep. Tom Brian: Aye Rep. Kelly Clark: Aye Rep. Jim Edmunson: Aye Rep. Rod Johnson: Aye Rep. Kevin Mannix: Excused Rep. Randy Miller: Aye Chair Ray Baum: Aye

CHAIR BAUM: HB 2221 passes to full committee. Asks Rep. Miller to carry the bill.

PUBLIC HEARING ON HB 2082

135 GREG CHAIMOV: Discusses HB 2082. It will streamline how the Employment Division may attachs it liens to personal property when an employer fails to make the required payment of employer unemployment fund. Under current law the Division may attach it to personal property by filing its notice of claim of lien in each county within the state. This bill will allow them to file a single document with the Secretary of State and one other county thereby reducing the number of lien materials to be filed. There is a small fiscal impact and large revenue impact.

155 DONNA HUNTER, TAX MANAGER FOR EMPLOYMENT DIVISION: Introduces people: Roger Lint, Supervisor of Technical Support Unit and Randy Jordan from the Department of Justice. See Exhibit D. Discusses what the current law requires, reading from the written testimony. The purpose of this bill is to permit the warrant to replace the notice of lien claim as the document creating the lien. Believes it would provide the best features of both documents and reduce the paperwork and filing

costs. Gives the Employment Division lien the same priority as the U.S. Internal Revenue Service. It will improve collection efforts at very little cost.

180 REP. CLARK: Who gets left out or moved over as the Division's liens are elevated along with the IRS? Who takes second priority?

184 DONNA HUNTER: The Division gains equal footing with IRS, does not move ahead of any state taxes or county taxes. Can keep the money here in the state for advantage of state trust fund.

189 REP. CLARK: Where are you in priority scheme now?

DONNA HUNTER: Basically in third place behind IRS and all other state and county taxes.

REP. CLARK: This bill does move you past all other state and county taxes.

DONNA HUNTER: No, just equal footing with IRS. Still maintains that prior to all liens except state and county tax liens and labor liens.

201 REP. BRIAN: Directs to line 10 and 11 of the bill. The language being deleted out of the existing statute says "the notice of lien claim shall contain a true statement of the demand after deducting all just credits and offsets." The recordation language gets picked up to serve the purpose you are trying to do in the new language. Do not see this language (above) being picked up anywhere.

210 ROGER LINN, EMPLOYMENT DIVISION: Essentially this recording document is required as part of warrant procedure and is on the document.

216 REP. BRIAN: Clarifies question. Is it appropriate to delete it from the statute?

223 RANDALL JORDAN, ATTORNEY GENERAL OFFICE: Our understanding is that the material is designed into the issued warrant. Those things have all been taken care of by the time a warrant is issued.

233 REP. BRIAN: Is that information there in anticipation of the law? If we remove this language, would someone later say it is not required and it does not need to be on the warrants.

237 RANDY JORDAN: The warrant has to state the balance due at this time. If you change law in that respect you would have the same law with respect to the warrant that requires them to spell out those things. It is not spelled out in warrant statute but it does state the amount due has to be established

247 REP. JOHNSON: Asks for citation for warrant statute.

RANDY JORDAN: 657.642.

CHAIR BAUM: That is were the requirement comes from as the foundation for you putting it on the warrants the offset provisions in the warrant. Or is it based on this law being the way it was?

258 RANDY JORDAN: Explains background on issuing the warrant. Civil suit procedures require having the amount spelled out. At the time the warrant is issued they have gone through the entire process of crediting the specific items and the offsets before the warrant can be issued.

268 REP. JOHNSON: What will this law do?

274 RANDY JORDAN: It will eliminate current statutory language that gives the IRS absolute priority ahead of the Division lien. The purpose is to remove "lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of the notice of claim or lien except taxes and labor liens." It allows IRS to say we are a tax and are prior to any liens regardless of filing time.

293 REP. JOHNSON: Will it have the first in time is first in right option over the federal people?

RANDY JORDAN: Yes.

REP. JOHNSON: Will this require you to actually file fewer papers in fewer places? Where will the papers not be filed under this system?

300 RANDY JORDAN: If going to use the lien process, yes. The Division will almost certainly file the warrant if wanted to use the lien statute they would be required to file the notice of claim with the county clerk. Under proposed law, they will no longer have to file claim of lien, the warrant will be the document that initiates the lien.

308 REP. JOHNSON: Still be filing warrants in each county that you want to in order for it to be effective in the county but will not file a lien statement as well.

RANDY JORDAN: With respect to real property, will still need to file a warrant in every county where you want to obtain a lien, with the county clerk.

REP. JOHNSON: Understood that everything had to be filed in the real property recorders instead of having to go from place to place.

RANDY JORDAN: For real property that is correct, there is no change with respect to real property. With respect to personal property

CHAIR BAUM: Accounts receivable, money coming in, etc.?

RANDY JORDAN: Describes real property. There is the potential change in the current statute in that it will clarify that if it is filed in one county and attach the real and personal property in that county, and follow with the Secretary of State, you will then have a lien on all personal property throughout the state.

359 CHAIR BAUM: On the UCC-1 statement it is required to be specific as to property and what is being liened. The intent of the bill is to allow the state to have a lien at the Secretary of State's office that will apply to all equipment, inventory, etc., that the employer owns throughout the entire state of Oregon. Will it say that on the lien?

373 RANDY JORDAN: Anticipates it would not describe the property at all. It is not currently described on the notice of claim to lien.

CHAIR BAUM: That has to be filed in every county.

RANDY JORDAN: Not necessarily true. File it in the first county and have a right to take it to the Secretary of State and it will track the property as it moves from county to county.

382 CHAIR BAUM: The State has lien privileges over the private parties. Comments on filing security lien.

395 RANDY JORDAN: That is the standard rule, not the case with the

current statute. A lien filed in the county will have a lien over all other encumbrances except for tax and labor liens. Currently, to protect themselves, they need to check the county clerk and the Secretary of State.

417 CHAIR BAUM: Having the state follow the procedures done in private to secure purchases of personal property. It will keep the public from having to check the county clerk's records when the state is involved.

DONNA HUNTER: Correct. The Division would have the ability to file the warranty at the county and file it with the Secretary of State to make it a state wide thing. A place where a lender or creditor could go.

TAPE 10, SIDE B

010 REP. JOHNSON: ORS 657.540(3) is the priority statute for these liens. Clarification is needed on the statute and the testimony on timing.

023 RANDY JORDAN: Once you file you have a lien against personal property and it would be first.

037 CHAIR BAUM: Closes public hearing on HB 2082.

WORK SESSION ON HB 2082

034 CHAIR BAUM: This makes it simpler from a practitioner's point of view. Can go to the Secretary of State's office and have one place to pick up all the liens on personal property. Cleans up the statute. Thinks it is a good bill.

041 REP. JOHNSON: Agrees except the statute states at the bottom of the page, "a copy of this ... may also be filed with the Secretary of State's office." Does not require it to be filed. So they don't have to do it and can still do it in the county level.

044 CHAIR BAUM: Calls witnesses back to discuss line 28. If they don't intend to collect they are not going file one. Please address the "may".

048 DONNA HUNTER: The "may" is there for flexibility. We intend to file with the Secretary of State. Need to get a feel for success rate and don't want to overwhelm the Secretary of State. Have about 1,700 warrants per year currently.

059 REP. BRIAN: Wants to know what the Secretary of State's office thinks about this and whether or not the fiscal impact includes extra staff that may be needed.

060 DONNA HUNTER: Have checked and they feel it is a good idea. Does not indicate a problem with work load. There is a similar program the Dept. of Revenue has had since in 1989.

066 REP. BRIAN: But you have 1,700.

DONNA HUNTER: Will not be filing that number. Need the "may" in there. There are some that we would get a "bigger bang for the buck" in filing a warrant with the Secretary of State.

069 REP. JOHNSON: Paragraph 2 of Section 1 discusses: "the lien shall be perfected" and Section B says "to personal property where ever located in the state". That is the one that requires the Secretary of State's office, sub B of Section B. Discusses sub a of Section 2, line 14, "anything in the county" is encumber without a filing at the Secretary

of State's office. Seems there ought to be a system set up that the Secretary of State's office is the place to check and if there is nothing there assume there is no lien.

082 DONNA HUNTER: Comments on statement. There are about 1,900 warrants filed on an annual basis. Not sure the Secretary of State would want to handle all of those.

062 CHAIR BAUM: This bill allows the real and personal property warrants to still be filed on the county level and on more significant matters, you may go to the Secretary of State's office. Lawyers will still not know where to check. There is still the "double check" required.

103 REP. CLARK: There are time when a lawyer has to check other places.

107 GREG CHAIMOV: Correct, most practitioners still check in the county and Secretary of State.

111 RANDY JORDAN: There are similar provisions for Dpt. of Revenue and SAIF liens. There are other state liens filed only with the county.

126 CHAIR BAUM: The major benefit of this bill is it gives you a simple avenue in collection.

DONNA HUNTER: It will improve collection efforts.

128 CHAIR BAUM: Asks for further questions. On the bigger claims, there will be a recording at the Secretary of State's office. Little ones will still be at the courthouse.

137 REP. CLARK: Moves the bill to full committee with a do pass recommendation.

CHAIR BAUM: Rep. Clark moves the bill to full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Marie Bell: Aye Rep. Tom Brian: Aye Rep. Kelly Clark: Aye Rep. Jim Edmunson: Aye Rep. Rod Johnson: Aye Rep. Kevin Mannix: Excused Rep. Randy Miller: Aye Chair Ray Baum: Aye

CHAIR BAUM: HB 2082 passes to full committee. Asks Rep. Clark to carry the bill.

PUBLIC HEARING ON HB 2126

158 GREG CHAIMOV: Gives overview of the bill. Relates to regulation of timeshares. The first part makes it retroactive for owners to have a trustee appointed to manage the property. In Section 2, page 2, it deletes from current statute a provision that is expressly not retroactive. Thus making it retroactive. Discusses the materials in packet. Amendments are proposed by State Court Administrator which discusses who notifies who on trustee actions. Secondly, HB 212 7 deals with memberships and campgrounds. The Real Estate Agency will discuss both bills at once. No fiscal impacts on either bills

198 MORELLA LARSON, REAL ESTATE COMMISSIONER, ADMINISTRATOR OF THE REAL ESTATE AGENCY: Offers testimony on HB 2126. Will comment on the timeshare bill and the campground bill. We are a consumer protection agency and have regulatory responsibility. Both improve that ability to assist in prevention fraud and misrepresentation. Most significant change is in HB 2127. The consumer would receive, rather than a right to use, a fee interest. The problems have been bankruptcy or failure of

the business in which the consumer ends up with a very expensive piece of paper with no secured interest. Gives examples of membership campgrounds.

223 STAN F. MAYFIELD, MANAGER, SPECIAL PROGRAMS DIVISION, OREGON REAL ESTATE AGENCY: Offers testimony on HB 2126. See Exhibit E. The first part relates to the fractional interest description which is being placed in to statute. The definition is added to make it clear the difference between fractional interest and timeshare. The second part relates to judiciary remedy for management failure. See Exhibit F for amendments to HB 212 6.

261 CHAIR BAUM: Sounds like tenants in common.

STAN MAYFIELD: They are both in essence tenants in common of a type but in a timeshare your use is restricted to a certain time. In a fractional interest you and other partners can live together there 365 days a year. Ownership rights are different.

278 CHAIR BAUM: Common fractional interest.

289 MORELLA LARSEN: Appreciates any help in this.

297 STAN MAYFIELD: Confirms that proposed amendments carry forward both agencies intention. Exhibit F.

308 CHAIR BAUM: Closes hearing on 2126.

WORK SESSION

314 REP. MILLER: Moves to amend HB 2126 on page 4, line 2 to delete "court" and insert "trustee" and delete "it's" and insert "the court's".

331 CHAIR BAUM: Further discussion, any objections? Hearing none, it is so ordered.

REP. MILLER: Moves the bill as amended to full committee with a do pass recommendation.

CHAIR BAUM: Rep. Miller moves the bill as amended to full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Marie Bell: Aye Rep. Tom Brian: Aye Rep. Kelly Clark: Aye Rep. Jim Edmunson: Aye Rep. Rod Johnson: Excused Rep. Kevin Mannix: Excused Rep. Randy Miller: Aye Chair Ray Baum: Aye

CHAIR BAUM: HB 2126 passes to full committee. Asks Rep. Brian to carry the bill.

PUBLIC HEARING ON HB 2127

388 GREG CHAIMOV: Explains the bill. Membership campgrounds are like timeshares. This makes the rules more the same. Two of the issues involve creditors rights and the other makes retroactive the requirement that the campground operator have a nondisturbance agreement preventing the operator's creditors from displacing the campers there. Discusses the materials in the packet. No fiscal impact.

424 MORELLA LARSEN: The current membership campground law has had no enforcement and has been very difficult to assist consumers in protecting their interest

TAPE 11, SIDE B

016 STAN MAYFIELD: Offers testimony on the campground bill. See Exhibit G for written testimony. Sections 2, 3, and 4 are taken from similar wording in subdivision, timeshare and condo laws regarding fraudulent activities in advertising. Similar to other land development laws. In Section 4 it discusses the judicial remedies for appointing a trustee. The amendment proposed under HB 2126 by the State Court Administrator would apply here also. (Exhibit F).

034 REP. BRIAN: There are timeshares that do not offer a fee interest that are not campgrounds. Such as vacation resorts. Won't owners of those kinds of timeshares have the same exposure as campground owner currently does?

041 STAN MAYFIELD: The two types of timeshares available are a deeded interest or a right to use. The right to use timeshare still has a recorded document indicating they have a two week right to use a certain piece of property. In a campground it is much like a golf club membership. You have no interest in the real property. If you have no interest, you are an unsecured creditor for bankruptcy purposes.

057 REP. BRIAN: What is the security position of the timeshare owner who is purchasing the right to use for so many days per year for 40 years but is not in a fee simple situation?

061 STAN MAYFIELD: Do not have any information as far as bankruptcy ruling in that area. Assumes, since it is a recorded document, they would be provided with some security.

069 REP. BRIAN: Seems like exposure is there for this problem.

STAN MAYFIELD: In those cases that is a potential. Most timeshares in Oregon tend to be a deeded interest and there are very few timeshares in the state since the law went into effect in 1983.

088 STAN MAYFIELD: Has one point to address regarding the comments Mr. Chaimov made about the nondisturbance agreement. That is a requirement that has been in the bill. We are putting a definition in the bill which comes from the timeshare language. The problem is that one campground where the encumbrance on the campground occurred prior to the creation of the ground. If going to file for a campground it is necessary for you to provide protection for purchasers so that they will know that their use will not be disturbed.

117 CHAIR BAUM: Closes hearing on HB 2127.

WORK SESSION ON HB 2127

119 REP. MILLER: Moves the amendment labeled the -1 to HB 2127.

124 CHAIR BAUM: Rep. Miller has moved the -1 amendments into the bill. Any discussion, any objections? Hearing none, it so ordered.

127 REP. MILLER: Moves to amend page 2 of the bill, line 12 delete "court" and insert "trustee" and delete "it's" and insert "the court's".

134 CHAIR BAUM: Rep. Miller moves an amendment to page 2, line 12. Any discussion, any objections? Hearing none, it is so ordered.

144 REP. MILLER: Moves HB 2127 as amended to the full committee with a do pass recommendation.

CHAIR BAUM: Rep. Miller moves the bill to full committee.

COMMITTEE ASSISTANT: Roll call vote.

Rep. Marie Bell: Aye Rep. Tom Brian: Aye Rep. Kelly Clark: Aye Rep. Jim Edmunson: Aye Rep. Rod Johnson: Aye Rep. Kevin Mannix: Excused Rep. Randy Miller: Aye Chair Ray Baum: Aye

CHAIR BAUM: HB 2127 passes to full committee. Asks Rep. Bell to carry the bill.

PUBLIC HEARING ON HB 2375

165 GREG CHAIMOV: Offers comments on the bill. This bill amends the professional corporation act. The major provisions are Section 23 which allows different professions to combine in the same corporation and Section 9 which would limit the liability for shareholders.

186 REP. CLARK: Asks for clarification. Questions the Bars' neutral position on the bill which has been pre-session filed at the request of the joint interim judiciary committee at the request of the Business Section of the OSB .

192 CHAIR BAUM: It is quasi-neutral position as taken by the Bar as a whole verses respective sections in their capacities.

193 BOB OLSON, OREGON STATE BAR: That is the answer. The committees and sections have the ability to take separate positions to sponsor bills.

200 REP. CLARK: It is a Bar section bill but not a Bar bill. It is important to draw a distinction. Perception is that OSB is not involved in controversial matters. It is assumed that when they back a bill it is for the technical aspect of judicial administration.

221 BOB OLSON: Generally speaking that is true. This is one of those rare instance where a section feel very strongly about a public policy issue.

244 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Offers testimony in favor of HB 2375. Discusses material previously passed out. See Exhibits K (William Gaylord), and I (Mike Greene). See written testimony, Exhibit H. Objects only to Section 8, the liability section of the bill. Lawyers don't want any more liability but it is not good for clients. If this passes, you will have every partnership in the state or all those who think about it, incorporating as a PC in order to limit their liability. If it is passed, Section 8 especially, the unstable, morally ungrounded professionals who get in trouble, whose partners don't watch out for them, firms that don't have assets will be in trouble.

294 CHAIR BAUM: Asks for information on lawyers having social problems. Has there been a break down on whether it is a sole practitioner or what?

304 CHARLIE WILLIAMSON: In those situations it takes a long time to find out, before a client finds out money gone or there is serious malpractice. Discusses nature of professional. If you leave Section 8 in the bill there is very little need to have a PC bill, it pretty much clutter up the statutes and professionals might as well incorporate as business if you are not going to maintain the liability. Traditionally business corporations were formed by investors putting their money in but not running the corporation where in a PC the investors are working in the corporation daily. Comments on Craig Smith's testimony, Exhibit

J. The most compelling argument against this bill is there is not one example of any professional who has been unjustly held responsible for a tort under existing law. There is not one abuse or problem under existing law that this bill solves.

381 REP. BELL: How many have gone to court to prove innocence?

CHARLIE WILLIAMSON: No examples available. Discusses what the proponent's responsibility is with regard to this bill.

395 CHAIR BAUM: Discusses Rep. Bell's concern. Point of the bill is to cross public policy threshold of whether a professional is obligated to be held responsible for another professional. Especially in small firms. Offers opinion of Chair.

TAPE 12, SIDE A

012 CHARLIE WILLIAMSON: Not aware of that problem discussed by the Chair.

CHAIR BAUM: Fees and assessments continually go up in this world.

CHARLIE WILLIAMSON: Understands that the PLF assessments went down. Oregon is the only state that has everyone mandatorily covered.

CHAIR BAUM: What is the need if we have insurance?

CHARLIE WILLIAMSON: One point is a person who does not cooperate with PLF in defending a case, there is no coverage for the injured party. If the partner is reliable and they cooperate, the injured party would get the money. If this bill passes the partners have no liability and the injured party gets no recovery.

024 CHAIR BAUM: Is that a Bar problem, a professional code of ethics problem or one that can be bought to the court?

CHARLIE WILLIAMSON: It is a problem for the injured person.

028 REP. BELL: Comments on other professionals with regard to this bill. Does not believe a partner must be held liable for judgment calls if done in good faith. Talking about judgment calls not just alcohol and drug problems.

042 CHARLIE WILLIAMSON: Comments on Rep. Bell's statement regarding other professionals.

CHAIR BAUM: Comments on health care avenue of this bill.

CHARLIE WILLIAMSON: There is a problem but it is not related to this. Comments on research did a few years ago. It should be the partners keeping an eye on the other and certainly partners are in a better place to judge the competence of the person they are practicing with than the patient.

064 REP. CLARK: Asks for information regarding other states with PC law, such as Washington, California, Idaho, Colorado, etc. The reason is the proponents will claim it is a business climate issue in some ways.

080 REP. MILLER: Believes that 46 other states have similar sections regarding liability.

084 REP. BRIAN: If the bill is to moved along, what is the remaining difference between the PC and corporation? If you remove the items being

proposed basically you have a corporation, business, the remaining difference is we are allowing professionals to put PC behind their names.

097 CHAIR BAUM: The Professional Corporation is going to have a lot more exposure with the negligent supervision than officers of a corporation.

REP. BRIAN: I would like a description of a PC and a corporation.

CHAIR BAUM: Currently we can incorporate under the business act as attorneys.

REP. BRIAN: If we are going to do this, look at amendments to Chapter 60 and abolish 58. What are the tax differences?

112 CHAIR BAUM: PCs are treated differently. Counsel can help obtain that information.

3:30 pm Rep. Clark and Rep. Brian leave to attend another committee hearing.

120 CHARLIE WILLIAMSON: Since 1987 laws were enacted that allegedly put some caps on liability in the medical profession.

126 CHAIR BAUM: The number of physicians in the rural areas are decline because they cannot turn the patients over and do not have enough business to pay the bill regardless.

127 REP. JOHNSON: Seems the key is people can practice alone and there are no other partners to be sued for liability. Can happen right now. Given that reality we have to ask whether we should discourage people from working together. It makes sense to have people working together and we ought to join other 46 states and limit this kind of liability.

141 CHARLIE WILLIAMSON: There is nothing that prevents lawyers from practicing together as separate entities and sharing resources. But when practicing together attorneys can specialize and have internal referrals. If this bill is passed, other partners would have no liability at all, no one for an injured plaintiff to sue. Sees no evidence that anyone in the state has come forward to say they will not become a PC because of this joint liability.

165 REP. BELL: Regarding the injured plaintiff with no one to sue, it is not a constitutional right to have someone to sue and to sue an innocent person is just as bad as to injure someone in the first place.

CHARLIE WILLIAMSON: Agrees it is not a constitutional right to sue. When a person has gone to a firm on the reliance of a name and reputation and to be injured while the people who made the profits from the fees generated saying they do not have any liability. It seems that they should.

182 REP. MILLER: Have the caps that have been placed on doctor's liability reduced premiums?

CHARLIE WILLIAMSON: That is my understanding.

REP. MILLER: You suggested there are a whole lot of OB west of the Cascades.

CHARLIE WILLIAMSON: Yes. Comments on a study did on a previous bill.

197 REP. MILLER: Are those two results from the 1987 legislation desirable results?

CHARLIE WILLIAMSON: Not results of 1987 legislation but coincided with that time.

REP. MILLER: They were unrelated.

CHARLIE WILLIAMSON: Probably related to the publicity and news papers ads that insurance companies have taken out that have influenced juries. Comments on Metzger trial.

208 REP. MILLER: With respect to information on liability in other states. Is it your impression that the figure of 46 other states is accurate?

CHARLIE WILLIAMSON: Believes the majority of states have something similar to this. Will get the figures.

222 REP. MILLER: Why are so many other states misguided with regard to this?

CHARLIE WILLIAMSON: Believes the professionals of those states are very influential with their legislature.

227 REP. EDMUNSON: The Oregon Constitution does provide the right for injured parties to sue for injury: "that every person shall have a remedy" it is not the US but Oregon. Believes we are getting off the point when discussing negligence of partners, the real problem is with non- professionals such as paralegal, assistants, etc. where they are not adequately supervised. That seems to be the real problem as we see a lack of professionals in rural areas. We need to look at who is performing those services and are they being supervised adequately. Would like you to address the tort of negligence supervision and failure to supervise. Invites Mr. Williamson to prepare a response.

267 CHAIR BAUM: Will give Mr. Williamson another opportunity to testify before work session. Will be setting this for Monday. Wants a sample of what other states have done, and Oregon's history on this. Adjourn at 4:45 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2085 - Ralph Rodia - 2 pages
B - Testimony on HB 2085 - John Deer - 2 pages C - Testimony
on HB 2221 - OLCC - 4 pages D -Testimony on HB 2082 - Donna Hunter - 1
page E -Testimony on HB 2126 - Stan Mayfield - 1 page F -Amendments to
HB 2126 - Stan Mayfield - 1 page G - Testimony on HB 2127 - Stan
Mayfield - 1 page H -Testimony on HB 2375 - Charles Williamson - 4
pages I -Testimony on HB 2375 - Michael Greene - 2 pages J -Testimony
on HB 2375 - Craig Smith - 2 pages K -Testimony on HB 2375 - William
Gaylord - 9 page