

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 JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

February 21, 1991Hearing Room 357 1:00 p.m.Tapes 28 - 31

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

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely,
Committee Assistant MEASURES CONSIDERED: HB 2530 PH
(Construction Contractors) HB 2353 PH (Human Remains) HB 2062 PH
(Landscape Contractors) HB 2386 PH (Corporation Law) SB 385 PH (Adverse
Possession) HB 2594 PH (Vaccine Manufacturers)

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TAPE 28, SIDE A

004 CHAIR BAUM, CHAIR: Calls the meeting to order at 1:30 p.m.

WORK SESSION ON HB 2530

019 GREG CHAIMOV: Discusses the packet on HB 2530-1, (EXHIBIT A). Also have Associated General Contractors amendments, (EXHIBIT B).

020 MOTION:REP. MANNIX: Would like to modify on line 7, and with this change moves the HB 2530-1 amendments to the bill.

058 REP. MILLER: Will it be understood in these amendments that any of the bidders that competed for this project may bring action?

REP. MANNIX: Yes.

REP. MILLER: If nine unsuccessful bidders, then nine times \$10,000?

REP. MANNIX: Yes. Emphasis using somebody and establishing that person knowingly violated legal requirements.

066 REP. CLARK: Where did the figure \$10,000 come from as a limit?

REP. MANNIX: It's \$10,000 to cover anybody. Off top of head figures.

075 REP. CLARK: Trying to tie \$10,000 to something.

REP. MANNIX: Makes it worthwhile for someone to drag someone else to court.

082 REP. CLARK: Why no punitive damages as opposed to \$10,000 figure?

Could sue for either liquidated damages. Plus if the violation were outrageous enough jury would award punitive damages, why is this not more sufficient?

089 REP. MANNIX: Reason for liquidated damages was to facilitate proving a case. Wanted a simple formula rather than the formula in the bill. No magic to the figure, looking for range of what a business person would have made.

098 CHAIR BAUM: Motion to amend the bill by the adoption of the HB 2530-1 as amended. Any objection to amending the amendments. Hearing none, it is so ordered.

MOTION:REP. MANNIX: Move the amended 2530-1 amendments to the bill.

105 REP. BRIAN: Is there any precedent for the number in enforcing other civil statutes?

REP. MANNIX: ORSA penalties go up to \$10,000. Within the range of the heavy civil penalties imposed by an administrative agency when penalizing people for violations of safety laws.

114 REP. BRIAN: Discusses small projects and the fine.

REP. MANNIX: Open to suggestions on the amount of the fin.

119 REP. JOHNSON: Suggests changing the word "greater:" to "lesser" would address the needs of functional response to size of contract, making 10% or \$1,0000 whichever is less.

127 REP. EDMUNSON: Would resist suggestion because it would mean small contract violations are not worth it. Encourages bidder to assume does not matter on small contract. These laws are designed to protect employees.

REP. JOHNSON: Injured person does not get money.

REP. EDMUNSON: The state subsidizes costs.

REP. JOHNSON: The state does not get money either.

REP. EDMUNSON: Could talk along time about noncomplying employers.

REP. JOHNSON: Discussing private right of disappointed bidder.

REP. EDMUNSON: Point is the policy is to requires bidders to comply with requirements.

REP. JOHNSON: Gives example.

154 REP. MILLER: Offer as friendly amendment to keep in 10% figure and bring \$10,000 to \$5,000 and stay with greater one.

REP. MANNIX: Accepts as friendly amendment.

CHAIR BAUM: Any objection to friendly amendment.

REP. JOHNSON: Opposed to whole bill.

CHAIR BAUM: Amendment is so ordered. Back on Rep. Mannix's motion to

adopted amendment as amended twice. \$10,000 is now \$5,000. Any further discussion, any objection? Hearing none, so ordered. Chair raises issue on language regarding 6 years and conclusively presumed language.

174 REP. MANNIX: Took care of that. Deleted all that language. Have to establish a violation occurred.

CHAIR BAUM: How about 6 years?

REP. MANNIX: Item 5 has not been discussed.

179 CHAIR BAUM: Wants to get comments of Rep. Shiprack.

187 REPRESENTATIVE BOB SHIPRACK, DISTRICT 23: Have not contemplated that. Agrees with Rep. Edmunson's analysis of language. Boiler plate, time limitation for other reactions in construction. 6 years is a long time.

197 CHAIR BAUM: How does this normally work?

REP. SHIPRACK: Can't imagine it taking longer than 2 years.

202 REP. BRIAN: What about building freeway with construction time of 3 to 4 years?

CHAIR BAUM: It is after substantial completion.

REP. BRIAN: Agree.

213 MOTION:REP. EDMUNSON: Moves on line 21 of printed bill to delete "6" and insert "2".

CHAIR BAUM: Any objection to that amendment? Hearing none, it is so ordered.

220 REP. MANNIX: Raise issue and discusses prevailing wage law. Is it easy to establish? How is it determined?

REP. SHIPRACK: The statute would only come in if there is a public works contract involved. Other prevailing wages are part of the bid document.

240 CHAIR BAUM: Also expanded public works project.

REP. SHIPRACK: Correct, last session did that.

250 MOTIONREP. MILLER: Moves HB 2530 as amended to the full committee with do pass recommendation.

CHAIR BAUM: Rep. Miller moves HB 2530 as amended to full committee. Further discussion?

257 REP. MANNIX: Took out prevailing wage language at one point but not in two other places.

260 CHAIR BAUM: Proposing to amend to take prevailing wage language out of lines 11 and 15. Discusses proposal. Any objections to conforming amendment. Hearing none, so ordered.

283 REP. MILLER: Comfortable with moving the bill as amended to the full committee.

CHAIR BAUM: Rep. Miller moves HB 2530 as amended to full committee with do pass recommendation. Further discussion?

286 REP. JOHNSON: Discusses reasons for being opposed to the bill. Comments on negative environment to do business in state. Creating situation where innocent contractor can follow all rules while making bid and if fails to pay some premium and keep up with all rules in the next 2 years, have swarm of attorneys bringing him to court and bring actions. Comments on where the money is going.

330 REP. CLARK: "An innocent contractor", comments on the word "knowingly violated" is in there bill. Curious about "innocent".

REP. JOHNSON: Innocent when makes bid and in next 2 years falters resulting in lawsuit.

348 REP. CLARK: Wants Counsel's understanding of phrase "knowingly violated ORS 656.017" and the other statutes mentioned.

352 GREG CHAIMOV: Would interpret same as Rep. Johnson. Does not speak to the time the bid is made.

362 REP. MANNIX: When contracts are bid, will check out whether company is complying. Discusses way to play dirty with this. Comments on failure to pay withholding taxes.

383 CHAIR BAUM: Have to deal with comma in line 9 after "contract". Seems to imply "knowingly" would not apply to failure to pay taxes. Discusses "knowingly".

397 REP. MANNIX: Can stick a word in there: "knowingly fails".

CHAIR BAUM: "Knowingly fails".

REP. MANNIX: Fails would be current.

CHAIR BAUM: Comments on chance of someone getting in over head.

REP. MILLER: Withdraws motion.

413 MOTION:REP. MANNIX: Moves to insert "knowingly" in front of "fails" on line 9.

TAPE 29, SIDE A

009 CHAIR BAUM: Rep. Mannix moves to insert on line 9, "knowingly" before "fails". Everyone understand?

REP. MANNIX: It should be current, there is a continuing obligation.

CHAIR BAUM: Discusses amendment.

REP. MANNIX: Trying to make tense consistent. Should be "failed"?

CHAIR BAUM: Any objections. Hearing none, so ordered.

024 MOTION:REP. MANNIX: Moves HB 2350 as amended to the full committee with do pass recommendation.

CHAIR BAUM: Rep. Mannix moves HB 2350 as amended to full committee with do pass recommendation. Further discussion.

029 REP. JOHNSON: Violating these laws are subject to sanctions already by government agency.

032 CHAIR BAUM: Repeat please.

REP. JOHNSON: Already have situations where violations of these statutes are subject to public sanctions; fines, lose of license, etc. Talking about changing the enforcement entity from government to lawyers.

REP. CLARK: Supports the bill. Ought to be called the honest bid promotion act. Discusses function of bill.

CHAIR BAUM: Calls for the vote.

VOTE: HB 2350 as amended to full committee. AYE: Bell, Brian, Clark, Edmunson, Mannix, Miller, Baum NO: Johnson EXCUSED:

CHAIR BAUM: HB 2350 as amended is passed to full committee. Rep. Shiprack will carry to House floor. Closes work session.

(Tape 29, Side A) PUBLIC HEARING ON HB 2353 Witnesses: Lawrence Thorp, Dave Nobel, Doug Heider

066 LAWRENCE THORP, OREGON STATE BAR: (EXHIBIT D) Discusses proposed amendments. Discusses problem with funeral directors. It is not method of disposition but the ceremony.

098 DAVID NOBEL, OREGON FUNERAL DIRECTORS OF OREGON: Not in great opposition

to this. Discusses what bill would do to funeral homes. Comments on amendment. Offers examples.

154 CHAIR BAUM: Under ORS 97.130.

DAVID NOBEL: Recognize and agree there are 2 sections of law that are contradictory. Cleaning up needs to take place. Concerned about lack of direction and authority.

161 CHAIR BAUM: Seems to have conflicting provisions under 97.130 involving right to control disposition of remains first. Conflict with the two statutes.

DAVID NOBEL: One listing decedent is referring to right to make anatomical donations. Comments on reality.

179 CHAIR BAUM: What about section for cemetery authority?

DAVE NOBEL: ORS 97.145?

186 CHAIR BAUM: ORS 97.141.

DAVE NOBEL: Looking at this from the funeral directors' standpoint.

195 CHAIR BAUM: Any further questions?

REP. BELL: Eluded to problems regarding lawsuits from survivors. Seems

in the bill it would take all problems away from funeral homes.

DAVE NOBEL: Discusses concern of including decedent at top of list.

218 REP. BELL: If there is a written notice from the decedent saying what wants should carry it out. Would take question out of funeral home hands.

DAVE NOBEL: Would make it clear. Discusses reality.

245 DAVE NOBEL: Discusses letter by Executive Director of Oregon State Mortuary and Cemetery Board. Governing agency is in opposition to this bill.

260 REP. MANNIX: Do they have alternative approaches?

DAVE NOBEL: Highlights the letter. Bill is too ambiguous about written instrument required. Safeguards for authentic documents are not met.

283 REP. MANNIX: What about provisions for anatomical gifts?

DAVE NOBEL: No notarization is required. Discusses Oregon Donor Program.

298 REP. MANNIX: Want the person who pays to be able to decide.

DAVE NOBEL: Reasonable thing to expect.

REP. MANNIX: Helpful if Directors would come up with specific alternative proposals.

309 DAVE NOBEL: Willing to work with Mr. Thorp on this.

316 DOUG HEIDER, UNISERVICE, INC.: Offers testimony against the bill. Discusses Uniservice. This bill attempts to make disposition decision consistent with anatomical gifts process. They are not compatible. Discusses cost differences.

368 LARRY THORP: Neither present law nor proposed amendment mandate who makes the decision. Gives amenity to those who disposes of body if follow priority list.

397 REP. MILLER: Closes public hearing.

(Tape 29, Side A) PUBLIC HEARING ON 2062 Witnesses: Jim Stembridge

410 GREG CHAIMOV: Discusses the bill which related to landscape contractors board.

428 JIM STEMBRIDGE, DEPUTY ADMINISTRATOR, LANDSCAPE CONTRACTORS BOARD AND CONSTRUCTORS CONTRACTORS BOARD: (EXHIBIT F) Offers testimony in favor of bill. Makes basic licensing provision for landscape business the same as those for construction contractors. Eliminate needless difference between the two programs currently causing confusing and administrative difficulties.

TAPE 28, SIDE B

055 REP. CLARK: What kind of judicial or administrative remedies?

JIM STEMBRIDGE: Basic judicial remedy is filling lien and foreclosure. Administrative would be filing a claim on another contractors or landscaper.

071 REP. MANNIX: What would reaction be to combining landscape and construction board? Creating an advisory function with a single board.

084 JIM STEMBRIDGE: Have not seen concept. Discusses administrators of both boards.

REP. MANNIX: Have joint administration currently. Enforcement and follow through authority vary, trying to pull that together with this bill.

092 JIM STEMBRIDGE: Correct. Adds there are still some major differences between the boards. Bond amount is different. Discusses other differences.

018 REP. BRIAN: Is there additional testimony?

REP. MILLER: No.

REP. BRIAN: Have other associations been specifically advised of this?

113 JIM STEMBRIDGE: Landscape board has 7 members. Discusses associations. Board members have discussed this.

120 REP. BRIAN: Comments on the board.

124 JIM STEMBRIDGE: Most members of association believe this is needed. States examples.

136 REP. MANNIX: No technical problems with this bill?

JIM STEMBRIDGE: Don't know of any.

142 REP. MANNIX: With no opposition, the committee can discuss combining boards.

147 REP. CLARK: Discusses small landscape contractor businesses.

JIM STEMBRIDGE: Could not argue with that. Discusses percentages of contractors.

164 REP. CLARK: Asking the committee to make regulations consistent for all contractors. Heard the discrepancy between the statutes. Not sure heard problem that needs to be addressed.

172 JIM STEMBRIDGE: Cannot cite specific problems but discusses perception that landscape contractors are under construction contractors board.

197 REP. JOHNSON: Is there statutory definition of landscaping contractor?

JIM STEMBRIDGE: ORS 671.520(2). Explains definition.

223 REP. JOHNSON: Questions premiums for insurance.

JIM STEMBRIDGE: Depends on work being done. Comments on premiums Board sees.

REP. JOHNSON: Asks about the Nurserymen's Association.

JIM STEMBRIDGE: No, cannot.

228 CHAIR BAUM: Closes public hearing on HB 2062.

(Tape 28, Side B) WORK SESSION ON HB 2062

234 REP. BRIAN: Comments on reservation of absence of comments from affected parties.

243 REP. MILLER: With respect to scheduling regarding acting on bill today.

252 REP. MANNIX: This is pre-session filed bill.

264 REP. BELL: Based on fact there were nursery people on Board, believes they would have come to the committee if had a concern.

270 REP. BRIAN: Concurs with Rep. Miller's observation.

276 REP. JOHNSON: Discusses the people on the board. Comments on the smaller contractors.

287 CHAIR BAUM: Not too far off when talking about small business landscaper that appear in the summer. For definition purposes will this reach the yard maintenance people?

303 KEN KUDEL, ADMINISTRATOR OF THE BOARD: Maintenance people do not have to be licensed.

316 CHAIR BAUM: What is the \$100,000 for?

KEN KUDEL: Figure in construction contractor's board law. About the minimum most insurance will write. Discusses insurance and who has liability insurance.

333 REP. JOHNSON: Asks were the small amount of plant instillation is found in the statutes.

KEN KUDEL: There is a provision of \$500 exemption, cannot advertise as a contractor but can as a maintenance. 701.540(3).

345 REP. JOHNSON: Follows up with the definition of landscape contractor, 671 .520(2)(a). Under that definition, does the contractor have to do all things listed in statutes?

365 KEN KUDEL: The board has a number of specialty licenses issued. Discusses specialty contractors. In 671.560(4).

379 MOTION:REP. MANNIX: Moves HB 2386 to full committee with a do pass recommendation.

CHAIR BAUM: Asks for discussion of the motion.

391 REP. JOHNSON: Will vote no on motion. Discusses reasons.

398 CHAIR BAUM: What was the cost for \$100,000 of insurance?

REP. JOHNSON: Testified it was only a few hundred dollars.

402 CHAIR BAUM: Asks for the roll vote.

VOTE: HB 2062 to the full committee. AYE: Bell, Brian, Edmunson, Mannix, Miller, Baum NO: Johnson EXCUSED: Clark

CHAIR BAUM: HB 2062 is passed to full committee with do pass recommendation. Closes work session. Rep. Mannix will carry bill.

TAPE 29, SIDE B PUBLIC HEARING ON HB 2386

024 GREG CHAIMOV: This bill revises corporation law. Discusses the three principle provisions: 1) limited liability of directors; 2) streamline corporate meeting procedures; and 3) derivative procedures. Comments on letter from Andrew Marrow regarding the bill (EXHIBIT H).

049 JAMES HARLAN, DEPARTMENT OF INSURANCE AND FINANCE, POLICY ANALYST: Offers testimony against the bill.

056 CHAIR BAUM: Witness is uncomfortable about Subsection 1 and deleted language.

JAMES HARLAN: Yes.

094 CHAIR BAUM: Is it the preference of the agency to have the language restored?

JAMES HARLAN: Yes. Discusses primary concern on page 1. An erosion of accountability that directors owe to corporation and shareholders.

108 CHAIR BAUM: Section 2, no problem with that.

JAMES HARLAN: No. No problem with Section 3, including the added subsection 4. Specific objections to Section 4. Feel that those particular provisions strip minority shareholders of few remaining rights have. Comments on Delaware law.

113 CHAIR BAUM: No changes until sub 7.

121 JAMES HARLAN: No objection to changes in section 7.

127 CHAIR BAUM: Lines 25 through 27 on page 6.

140 JAMES HARLAN: No objection to that.

148 REP. BRIAN: Same with line 40?

JAMES HARLAN: Correct.

CHAIR BAUM: Page 17, lines 27 through 31?

JAMES HARLAN: No objection.

CHAIR BAUM: There is deleted language on page 8, lines 37 to 44.

154 JAMES HARLAN: Understands the deleted language on line 37 through 44, have been moved to another section. No objections.

CHAIR BAUM: Last change is page 12 adding ORS 60.067. Asks about derivative sections.

JAMES HARLAN: Discusses the road map. Neutral on that. Likes provision which calls for written demand to be made prior to instituting a suit.

CHAIR BAUM: As a good way to start on settling before filing litigation is that why?

JAMES HARLAN: Reason is a significant amount of time and expense in litigation is spent to determine if a demand should have been made first.

CHAIR BAUM: Indicated neutral on whole derivative section. Don't view it as being hurtful to shareholder's interest?

JAMES HARLAN: Reason hedging is Department is not certain there is need for this road map.

167 REP. BRIAN: Concerned on how independent the Committee referenced in Section 22. Is that a fair way to handle this?

174 JAMES HARLAN: Discusses the Independent Director. It is focused narrowly on financial benefit. Not one in the sense of outside director or one who is totally disinterested in outcome of issues.

REP. BRIAN: Expresses concern over burden on the shareholder filing legal action and this Director deciding it is not in the best interest of corporation and the case is dismissed. The shareholder then has to go to court. Loaded against the shareholder.

JAMES HARLAN: Does not disagree with position. The road map as set out will shift burden.

182 REP. MILLER: Talking about private corporation?

JAMES HARLAN: In respect to what?

REP. MILLER: To the independent director. Senses there is a concern regarding directors working for corporation are acting poorly if they decide against the shareholder and in best interest of corporation. Uncomfortable with that.

JAMES HARLAN: Have no disagreement. Comments on directors of corporation.

210 CHAIR BAUM: Does HB 2386 apply to public or privately owned corporation?

JAMES HARLAN: It applies to both.

220 CHAIR BAUM: Publicly owned are publicly traded.

JAMES HARLAN: Discusses differences. Department's concern on the ability of a majority to take action without prior notice to minority is unlikely to be instituted by public corporation because of federal security laws.

236 CHAIR BAUM: Publicly held corporations with traded stock have

federal guidelines that will override most of the provisions in this bill.

JAMES HARLAN: Yes, also occur with private corporation in some rare instances.

244 CHARLES WILLIAMSON, OTLA: Offers testimony against the bill. Comments on no road map is required. Adopting these rules will displace present rules existing in case law and in common law. Shifts law against minority shareholders.

REP. MILLER: Have amendments today?

CHARLES WILLIAMSON: No. Section 24, subsections 1 and 3 are existing law. Subsection 2 allows directors to collect attorneys fees from plaintiff without subjecting to liability for attorneys to successful claimant. Unfair.

279 CHAIR BAUM: Asks to review that again.

CHARLES WILLIAMSON: Subsections 1 and 3 are already law.

CHAIR BAUM: In order for corporation to pay plaintiff's attorneys fees. Order plaintiff to pay corporation's fees.

291 CHARLES WILLIAMSON: Corporation is not usually defendant. If minority shareholders sue directors on behalf of corporation, Directors are defendants and would be reimbursed for attorneys fees.

297 CHAIR BAUM: Attorney's fees paid by corporation to directors.

CHARLES WILLIAMSON: Not provided for in law but it happens. This law says directors can collect attorneys fees from plaintiff but directors are not liable for plaintiff's attorneys fees.

307 REP. BRIAN: It be same each way. Who ever is prevailing side should obtain.

318 CHAIR BAUM: What about saying on line 6 "or to defendant"?

CHARLES WILLIAMSON: Suggests deleting subsection 2. Leaving law as is.

330 CHAIR BAUM: What would be danger of Sub 2 in good faith case?

CHARLES WILLIAMSON: Not sure there is difference between 2 and 3.

352 REP. EDMUNSON: Seems 3 is limited to motions, not a prevailing party provision. Call it failing to admit, not well founded in fact, could stretch to say prevail on any part of proceeding or against any part of complaint.

CHARLES WILLIAMSON: Complaint is a pleading.

372 REP. EDMUNSON: Sub 3 seems broad. Discusses defense experience.

382 CHARLES WILLIAMSON: Plaintiff may not be very large shareholder but be liable for very substantial attorneys fees incurred by corporation and directors. ORCP rule 17 would be liable under standards set forth. Paragraph 2 is asking for more grounds to assess fees.

403 REP. EDMUNSON: Looking at ORCP 17. Makes it clear that expenses on any party may be awarded if case is not in good faith. Is this redundant?

CHARLES WILLIAMSON: Believes so.

REP. EDMUNSON: Sound like ORCP 17.

TAPE 30, SIDE A

016 CHAIR BAUM: Would not need 1 either.

019 ANDREW MARROW, OSB BUSINESS LAW SECTION: (EXHIBIT H) Likes ORCP 17.

026 REP. EDMUNSON: IF ORCP 17 provides all relief Section 24 appears to add or provide, would agree it is redundant and not needed?

ANDY MARROW: Agrees. Discusses what Rule 17 does.

047 REP. EDMUNSON: Refer to model act, where is that?

ANDY MARROW: Most of the Oregon Business Corporation Act is based upon Revised Model Corporation Business Corporation Act. Provided by ABA committee.

REP. EDMUNSON: Have the relevant portions been provided to the committee?

064 GREG CHAIMOV: Explains views of the subsections 1 and 2. Deals with who gets attorneys fees when someone wins whole suit. Subsection 3 deals with who took some unreasonable action during course of lawsuit. Discusses example.

075 CHAIR BAUM: Explains why ORCP 17 is not statutory grounds for attorneys fees.

079 REP. EDMUNSON: ORCP 17 is available.

GREG CHAIMOV: Subsection 3 of bill is unnecessary in light of ORCP 17.

REP. EDMUNSON: Subsection 2 would also be unnecessary.

090 GREG CHAIMOV: Not aware of current provision of law that is equivalent to subsection 2.

CHAIR BAUM: Proceeding was commenced or maintained without reasonable cause or for improper purpose. Does ORCP 17 include that?

GREG CHAIMOV: Yes.

096 REP. CLARK: There is a statute called the frivolous litigation statute.

GREG CHAIMOV: ORS 20.105.

REP. CLARK: How does this relate to that?

100 GREG CHAIMOV: Bad faith litigation section might cover entire litigation. Understands that the provision may be broader in scope than subsection 2.

105 CHARLES WILLIAMSON: Points out there is no liability on a defendant director for asserting defense without reasonable cause or with improper purpose. Should impose liability on plaintiff and defendants.

120 CHAIR BAUM: Discusses ORCP 17.

127 CHARLES WILLIAMSON: Believes ORCP 17 covers whole case.

128 CHAIR BAUM: Discusses experience with ORCP 17. Not used to generate attorneys fees. Never seen 2105 used.

CHARLES WILLIAMSON: Have seen it threatened a lot. Not seen it applied to a whole case but applied to repeated refusals to answer deposition questions.

140 CHAIR BAUM: Discusses bringing a suit as a minority shareholder for benefit of corporation.

153 CHARLES WILLIAMSON: Corporation in practice is paying the defendant director's attorney fees. Have in Section 2 is a penalty.

160 CHAIR BAUM: If wanted to get through to director, who has contract with corporation to indemnify, what is accomplished.

168 CHARLES WILLIAMSON: Intimidating plaintiffs from bringing case.

168 CHAIR BAUM: Only if claim is brought without reasonable cause or for improper purpose. This is at the end of the case.

174 CHARLES WILLIAMSON: Correct.

178 ANDY MARROW: Explains origins of section 4. Not expecting opposition from Department of Insurance and Finance. Section 4 based on Delaware law. Discusses interpretation of subsection 3.

228 REP. BRIAN: If interested in independent investigation, why is it internal?

233 CHAIR BAUM: Discusses Board of Director's decisions. If restore language in subsection, how will it relate to the road map?

254 ANDY MARROW: Views as substantially independent issues.

259 CHAIR BAUM: Comments on examples of Board that intentionally violated some law and subcommittee on Board said it was okay because it is bad for corporation to be subject to this suit. Who wins?

274 ANDY MARROW: If issue raised through derivative action, then plaintiff goes to court and states they are not independent.

CHAIR BAUM: On issues of independence, would those factors in sub 1 play into that determination?

ANDY MARROW: Assumes the court would take it in account.

CHAIR BAUM: Closes hearing. Opens work session

(Tape 30, Side A) WORK SESSION ON HB 2386

283 MOTION:REP. CLARK: Moves to delete Subsection 3 of Section 24.

CHAIR BAUM: Any objections to the motion? Rep. Miller objects.

298 REP. MILLER: Does not speak to objection, lets it sit.

301 CHAIR BAUM: Discusses subsection 3.

307 GREG CHAIMOV: Explains Sub 3. Put there in the event a particular jurisdiction adopting model act does not have something like ORCP 17.

311 CHAIR BAUM: Any other objections?

VOTE: Delete Subsection 3 of Section 24. AYE: Bell, Brian, Clark, Edmunson, Johnson, Baum NO: Miller EXCUSED: Mannix

CHAIR BAUM: Amendment is adopted to the bill.

321 MOTION:REP. CLARK: Moves deletion on line 11 "without reasonable cause or".

REP. CLARK: To the motion: There ought to be attorney fees in bill to deter frivolous claims.

347 GREG CHAIMOV: If take out language out and leave in "for improperly purpose", may be good idea to delete entire section. ORS 20.105 which allows attorneys fee awards would cover same ground.

REP. CLARK: Leaves the motion as it is. Not sure of case law around ORS 20.105.

362 CHAIR BAUM: Explains what the statute states.

REP. CLARK: It is pretty high standard.

368 CHAIR BAUM: Rep. Clark moves to delete language from line 11. Any comments.

381 REP. MILLER: Will oppose it. It may serve as an incentive to sue.

388 REP. EDMUNSON: ORS 20.105 deal with sole grounds? Comments on statute. No other reasonable basis.

408 CHAIR BAUM: Any further comments. Calls for vote.

VOTE: Deletion of language on line 11. AYE: Brian, Clark, Edmunson NO: Bell, Johnson, Miller, Baum EXCUSED: Excused

CHAIR BAUM: Amendment fails.

TAPE 31, SIDE A

018 CHAIR BAUM: There is another motion that could be made under line 6 to put any defendant instead of corporation.

024 REP. EDMUNSON: Have vote on bill determined.

029 CHAIR BAUM: Any further motions on Section 24?

030 MOTION:REP. MILLER: Moves on page 1, lines 24 through 30 to restore

language and on lines 1, 2, and 3 on page 2 to restore language and bold print beginning at line 4 through 13 be deleted.

035 CHAIR BAUM: Any objections to Rep. Miller's motion?

REP. CLARK: Essentially deletes Section 1.

REP. JOHNSON: Asks to restate the amendment.

REP. MILLER: Restates amendment.

041 CHAIR BAUM: Keeping standards as they are.

044 REP. MILLER: Would like to move this along.

REP. JOHNSON: Potentially friendly amendment. Discusses problem with what is being deleting. Duty of loyalty. Wants to add "duty of loyalty".

052 REP. MILLER: Likes bold language.

CHAIR BAUM: Accept friendly amendment under line 11 to add duty of loyalty?

REP. MILLER: Not sure understand the amendment.

061 GREG CHAIMOV: Understands the amendment is to take current duty of loyalty language and put it in subcategories. Interprets no change of effect of bold language. Discusses bold language.

CHAIR BAUM: Discusses attorneys fees.

GREG CHAIMOV: Withdraws comments made. Misunderstood intent. Would be a change in the effect of law.

REP. JOHNSON: Would keep more specific situations and go back to broad reach of duty of loyalty.

REP. MILLER: Takes as a friendly amendment.

079 GREG CHAIMOV: Under friendly amendment, the bold language stays in adding what would be deleted on line 29 page 1.

106 REP. CLARK: Can give gist of what it does?

CHAIR BAUM: Discusses amendment. Not changing substance just making it clearer.

115 REP. BELL: Don't want to restore term "improperly personal benefits"?

122 REP. BRIAN: Aren't lines 1 through 3 proposed to be restored. Comments on what is restored.

REP. MILLER: Withdraws motion for simplicity. Allows Rep. Johnson to address bold language.

128 REP. JOHNSON: Proposal was to take bill as is on page 1 and 2 with except of adding sentence as Sub E to read as line 29 on page 1 currently does. Discusses effect.

138 CHAIR BAUM: What about Rep. Bell's concern about improper personal benefit?

REP. JOHNSON: Understands sub a on page 2 is designed to capture that.

143 REP. BELL: Did have problem with that. Felt there is a difference between personal benefit and financial benefit.

147 CHAIR BAUM: What kind of benefit?

REP. BELL: A trip, consumable goods, help friends, etc.

153 REP. MANNIX: Believes purpose was people are getting indirect benefits. Ultimately a well run organization will get rid of directors with ulterior purposes. This allows to go directly after them.

162 CHAIR BAUM: Rep. Bell, have questions answered?

160 REP. BELL: Not sure what Rep. Mannix said.

CHAIR BAUM: Limit to what can be measured financially.

170 REP. BELL: Asks about gifts to relatives?

CHAIR BAUM: Tracked through corporation.

180 REP. EDMUNSON: Discusses direct financial benefit received. Comments on indirect or secondary benefit.

183 REP. JOHNSON: If put duty of loyalty back in, would cover situation Rep. Bell is concerned about regarding conflicts and benefits.

193 REP. MANNIX: Under Oregon law, articles of incorporation may limit directors' liability. Not required to do this.

202 REP. CLARK: Calls for question on the amendment.

CHAIR BAUM: Restates the motion by Rep. Johnson. Any objection.

207 REP. CLARK: Objects. Discusses what is in front of committee.

218 CHAIR BAUM: Motion is to add duty of loyalty. Next motion will be to change improper personal benefit.

REP. CLARK: Will hold objection.

221 GREG CHAIMOV: Explains what is before the committee. To add a new subsection e on line 11 and 12 on page 2 which would read the same as current subsection A on page 1 line 29.

222 CHAIR BAUM: Any objection?

REP. BELL: Objects. Based on restoring or eliminating the old language?

GREG CHAIMOV: Would restore the language on page 1 line 29 placing in page 2.

REP. BELL: Eliminated the rest of the italic wording?

231 CHAIR BAUM: Any concerns, any objections. Hearing none, it is so ordered.

234 REP. BELL: Would like to hear what objection would be to having that improper personal benefit be next one after loyalty.

CHAIR BAUM: Asking on line 7 to add the

REP. BELL: On line 13. If loyalty will be on line 11 and 12. At end of bold print.

244 REP. BRIAN: Maybe Counsel could recommend where the best place would be to include essence of line 3 on page 2.

250 GREG CHAIMOV: Recommends deleting "financial" on line 7 and substituting "improper personal".

REP. BRIAN: Is it counsel's intent that phrase "improper personal" would include financial benefit?

257 GREG CHAIMOV: Yes.

MOTION: REP. EDMUNSON: Moves deleting on line 7 page 2 the word "financial" and inserting "improper personal".

264 CHAIR BAUM: Any objections?

REP. BRIAN: Is the committee confident that some later interpretation on the amount of personal benefit would include financial benefit.

268 REP. EDMUNSON: Clear intent of motion.

REP. BRIAN: Redundant to say personal or financial?

CHAIR BAUM: Improper benefit includes financial benefit.

274 REP. MANNIX: What is an improper personal benefit.

CHAIR BAUM: Probably why bill was proposed to clear up interpreting what is an "improper personal benefit".

82REP. EDMUNSON: Improper personal benefit includes financial benefits and nonfinancial benefits such as putting a director in position of influence which may gain them or family some benefit other than finance, such as status, office location, use of corporation for political gain. Simply saying Articles of Incorporation could not eliminate it.

296 REP. MANNIX: Discusses ethics laws. May have own standards of what it may mean. Not requiring exemption from liability needs to be there. Amendment is too vague.

314 REP. BELL: Have option to limit liability except for certain item. Believes Board of Directors would know what an improper personal benefit was.

327 CHAIR BAUM: Any further discussion. Calls for vote.

VOTE: Amendment to add "improper personal benefit". AYE: Bell, Brian, Clark, Edmunson, Baum NO: Johnson, Mannix, Miller EXCUSED:

CHAIR BAUM: Motion passes.

342 MOTION:REP. MANNIX: Moves to delete sections 18 through 25 of the bill.

CHAIR BAUM: Motion before committee is to delete section 18 and 25. Any discussion.

350 REP. MANNIX: Speaks to the motion. They are a separable part of the bill. Discusses two changes: 1)limiting liability of directors; and 2) derivative suits. No need to change law regarding derivative suits.

373 REP. BRIAN: This would eliminate setting up of independent committee?

REP. MANNIX: Yes.

377 GREG CHAIMOV: Courts today still appoint independent committees on basis of case law just no statute. Would not be directing courts not to use independent committee.

387 REP. BRIAN: Rather than sanction this practice, would like to provide direction in some other bill. Agrees with amendment.

406 REP. MANNIX: Amendment will eliminate all language setting up standards for derivative shareholder proceedings. Did not look at Section 26 and 27. Changes motion to include 18 through 25 and Section 27.

412 CHAIR BAUM: Discusses Section 27.

TAPE 30, SIDE B

012 REP. MANNIX: Would be repealing.

CHAIR BAUM: Any discussion?

015 REP. JOHNSON: Opposing the amendment.

REP. MILLER: Calls for question.

CHAIR BAUM: Rep. Miller calls for question. Calls for vote.

VOTE: Delete Sections 18 through 25 and 27. AYE: Bell, Brian, Clark, Edmunson, Mannix NO: Johnson, Miller, Baum EXCUSED:

CHAIR BAUM: The motion passes.

024 MOTION:REP. MILLER: Moves HB 2386 as amended be tabled.

027 CHAIR BAUM: Rep. Miller moves to table HB 2386 as amended. Any discussion. Calls for vote.

VOTE: Table HB 2386 AYE: Bell, Brian, Edmunson, Johnson, Miller, Baum NO: Clark, Mannix EXCUSED:

CHAIR BAUM: The bill is tabled 6 to 2.

(Tape 30, Side B) PUBLIC HEARING ON SB 385 Witnesses:

047 GREG CHAIMOV: Allows a person who acquired property through adverse possession before 1990 to keep the property even though the person did not file a claim for record title by the time the new adverse possession law took effect on January 1, 1990. Discusses current law. Discusses hand-engrossed bill (EXHIBIT J). Comments on letter from Eugene L. Grant from last session (EXHIBIT K).

073 CHAIR BAUM: Recesses hearing briefly to accommodate a witness on another bill.

(Tape 30, Side B) PUBLIC HEARING ON HB 2594 Witnesses: Jim Lace

083 GREG CHAIMOV: Creates the Oregon Vaccine Injury Act. There is current federal law that sets up fund for injury. Discussed that federal law. Makes state law awards in vaccine cases like the awards in federal cases.

096 JAMES K. LACE, MC. OREGON PEDIATRICS SOCIETY and OREGON MEDICAL ASSOCIATION: (EXHIBIT L) Offers testimony in favor of bill. Gives brief background information regarding manufacturers. Comments on DPT vaccine. Costs of vaccines have come down and availability has been assured. Intent of bill was to make awards available parallel to federal level. Oregon participates in National Childhood Vaccine Injury Act. Comments on that program. Oregon mandates that children be vaccinated before attendance at school, receive PKU at birth, receive Vit. K, and have eye vaccine against gonorrhea. Comments on how children are vaccinated. Discusses liability by private practitioner compared to county health clinic.

144 REP. EDMUNSON: Would also bring limit down for corporation, foreign, manufacturer. They would be subject to this limit in addition to health care professionals.

JAMES LACE: Yes.

CHAIR BAUM: Apply the manufacture itself.

JAMES LACE: Yes. Apply to the administrator as well as the manufacturer.

152 REP. EDMUNSON: What about foreign manufacturers? Committed to their protection also?

JAMES LACE: More sympathetic to health care professional in Oregon.

164 REP. EDMUNSON: Discusses family experience. Asks about bad batches of vaccines. What is there to indicate to a practitioner that a batch may not have been manufactured properly? Any way to tell?

JAMES LACE: Not by looking at it. Only indication would be reaction of numerous children.

REP. EDMUNSON: Distinction wanted to make clear is that some cases can determine if patient will be susceptible but no way to guard against a bad batch.

JAMES LACE: Have to use first and find out.

191 REP. EDMUNSON: Comments on letter from a Registered nurse and attorney (EXHIBIT M).

202 CHAIR BAUM: Intent to have it back for more public hearing.
Recesses hearing on HB 2594. Back to HB 2396

WORK SESSION ON HB 2396

204 CHAIR BAUM: Make record state HB 2396 was not tabled. Must have majority vote of what would constitute the full committee. The vote was 6 to 2 in favor of motion to table. Should have been 7 to 1 to be effective. Will close that hearing and let it sit.

PUBLIC HEARING ON HB 2594 Witnesses: Charles Tauman

228 CHARLES TAUMAN, OREGON TRIAL LAWYERS ASSOCIATION: (EXHIBIT N and O) Opposes the bill. Comments on exhibits passing out. Comments on Association on Retarded Citizens. The system does not need to be fixed. Comments on system and the Federal Childhood Vaccine Injury Act. Act prohibits states from making a court remedy. Discusses North Carolina's situation. Explains why cost of vaccines have gone down despite tax applied to cover compensation of Act. There is a cap in this state of \$500,000 to cover victims. Proponents are saying to cut cap in half for children, infants. Discusses federal act, no necessity to prove fault, no tort remedy benefits.

374 REP. MANNIX: The cap is on noneconomic damages?

CHARLES TAUMAN: Correct, both Oregon cap and this proposed one apply to noneconomic damages.

379 REP. MANNIX: Is there a leverage factor?

388 CHARLES TAUMAN: No negotiation that goes on in the federal act. It is a trust fund of the US Claims Court. Adverse party in these proceedings is charged to US Department of Health and Human Services' Medical panel that reviews liability and causation, only legal issue. If report indicates that is causation, there is brief hearing before an administrative law judge to determine amount of damages. Never a settlement in sense of using leverage. Comments difference under federal act and Tort Claim act.

428 REP. EDMUNSON: Asks about bad batches. Would it be unusual to find negligence in that case unless doctor is aware. No reasonable way to discover from the manufacturer.

TAPE 31, SIDE B

021 CHARLES TAUMAN: Yes. Oregon law provides for that. Under a claim against administrator, would be required to show that they knew of the contamination of batch. Current law.

027 REP. EDMUNSON: Is it true that an attorney can name physician as defendant?

032 CHARLES TAUMAN: Depends. If there is no basis, the suit would not continue.

040 CHAIR BAUM: Closes hearing on HB 2594. Open hearing on SB 385.

(Tape 31, Side B) WORK SESSION ON SB 385

053 GREG CHAIMOV: Discusses the hand engrossed amendments to SB 385.

037 MOTION:REP. MANNIX: Moves the insertion of that amendment in to the bill.

CHAIR BAUM: Rep. Mannix moves insertion "in an action brought under subsection (1) of this section or in a separate action for damages only, a person who, throughout the vesting period, used or occupied land of another with the honest and objectively reasonable belief that the person was the actual legal owner of the land shall not be liable for:" on lines 12 through 14 on page 1 of bill. Questions use of the word "objectively", will it require indicia of recorded title?

062 REP. MANNIX: No. Meant it is objective reasonable as opposed to subjective reasonable.

069 REP. MANNIX: Understands means another person can look at basis for belief and can say it was reasonable or not. Discusses subjective. Comments on reasonable man standard.

079 GREG CHAIMOV: Clarifies. Rep. Mannix is correct, would not necessarily have to be supported by some deed but in most circumstances an indicia of title would serve to support.

CHAIR BAUM: What is meant by indicia of title.

086 REP. MANNIX: Defines indicia of title. Gives example.

094 CHAIR BAUM: Boundary disputes.

REP. MILLER: Observes on line 20 the language thought to be deleted is already in there "which belief had an objective basis".

097 REP. MANNIX: Page 2 had to do with when bill would apply. Discuss the 198 9 changes.

107 CHAIR BAUM: Comments on attorneys fees generated by boundary disputes.

121 REP. MANNIX: Calls question.

CHAIR BAUM: Any objection, hearing none, the amendment is so adopted.

MOTION: REP. MANNIX: Moves bill as amended to the full committee with do pass recommendation.

CHAIR BAUM: Rep. Mannix moves SB 385 as amended to full committee with do pass recommendation.

VOTE: SB 385 as amended to full committee. AYE: Bell, Edmunson, Mannix, Miler, Baum NO: 0 EXCUSED: Brian, Clark, Johnson

134 CHAIR BAUM: Bill is forwarded to full committee with a do pass recommendation. Adjourns the hearing at 5:00 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Amendments to HB 2530 - 1 page B- Amendments to HB 2530
- Associated General Contractors - 1 page C - Investigation report
for HB 2530 - 3 pages D - Amendments to HB 2353 - Larry Thorp - 1
page E - Amendments to HB 2353 - 1 page F- Testimony on HB
2062 - Jim Stembridge - 2 pages G - Testimony on HB 2386 - Andrew
Marrow - 4 pages H - Testimony on HB 2386 - Andrew Marrow - 3
pages I - Testimony on SB 385 - Fran Kohler - 7 pages J - SB
385 Hand Engrossed - Greg Chaimov 1 page K - Letter for SB 385 -
Greg Chaimov - 3 pages L- Testimony on HB 2594 - James Lace, M.D.
- 4 pages M - Letter on HB 2594 - Rep. Edmunson - 2 pages
N - Memorandum on HB 2594 - Charles Tauman - 11 pages
O - Testimony on HB 2594 - Charles Williamson - 2 pages