

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

March 18, 1991 - Hearing Room 357 1:00 p.m. Tapes 56 - 58
MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Kevin Mannix Rep. Randy Miller MEMBER
EXCUSED: Rep. Jim Edmunson Rep. Rod Johnson STAFF PRESENT: Greg
Chaimov, Committee Counsel Jeff Steve, Committee Assistant MEASURES
HEARD: HB 3048 - Measure 5 HB 2125 - Escrow Companies HB 3052 -
Eliminates Bar Examination

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation
marks report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes. -

TAPE S6, SIDE A 004 CHAIR BAUM: Opens meeting of Civil and Judicial
Adminsitration Subcommittee at 1:00 p.m.

HB 3048 - MEASURE S - PUBLIC HEARING Witness: Bob Weir, Dept. of Justice

009 CHAIMOV: Presents summary of HB 3048.

> Referred from Committee on Revenue and School Finance. The
subcommittee is borrowing the bill to recommend procedures for appeals
on Measure 5 cases.

> When the bill was last in front of the subcommittee, there were two
areas of concern with the working draft. -One was the length of time
between the adoption of the ordinance for taxation and the deadline for
the taxpayer to appeal. -The other item was whether a government needed
to give notice of the action adopting the ordinance. > The proposed
amendments (EXHIBIT A) dated March 18, 1991, are from the Department of
House Committee on Judiciary March 18, 1991 - Page 2 Revenue. This is a
marked copy of the revisions made in response to the committee's
concerns.

> It has 60 days instead of 30 days for the time for taking an appeal of
the government action. That 60 day period is consistent with the time
period in writ of review statutes.

> The marked copy of the amendments also includes a provision requiring
local governments to put an ad in the newspaper notifying its
constitutents that the taxation decision has been made and this at needs
to be placed in the regular part of the newspaper not just in the public
notices section. . >Also have a letter from R. William Linden, State
Court Administrator, (EXHIBIT B) approving the decision to have Measure
5 issues sent to the Oregon Tax Court.

REP. CLARK: Spealcs to amendments to HB 3048. 064 BOB WEIR, DEPT. OF
JUSTICE: Testifies that Dept. of Justice is comfortable with the
revisions.

(Tape 56, Side A) HB 2125 - ESCROW COMPANIES - PUBLIC HEARING Witnesses:
John Stanley, President, Columbia Title Company Morella Larsen,
Commissioner, Oregon Real Estate Agency

082 CHAIMOV: Presents summary of HB 2125.

> There are substantial proposed amendments (EXHIBIT C) that have been

worked out by the Real Estate Agency and the escrow industry. There are a few points of disagreement remaining even with these amendments.

100 JOHN STANLEY, PRESIDENT, COLUMBIA TITLE COMPANY: Submits testimony and testifies in opposition to HB 2125. (EXHIBIT D)

>The major problem with the bill and the amendments is it gives broad powers to the Real Estate Agency to settle claims. When the Agency normally has a hearing, it is an administrative hearing between the Agency and the company if they believe some violation of a regulation has occurred.

> The Real Estate Agency wants to bypass the circuit court and basically hold their own court. In their court they would want to be the judge, the jury, the prosecutor, and the one who writes the check out to settle the claim, without allowing title companies to have access to the courts.

> Section 7, Negligence Provision, is repetitive language and should be deleted.

206 > The bill started out removing escrow agents as trustees on deeds of trusts. The amendments remove that provision and people in the title industry feel the provision should not be removed. There have been out-of-town and out-of-state companies that are doing trustee sales.

Th House Committee on Judi ciary March 18, 1991 - Page 3

244 >Discussion regarding the \$1500 claim limitation. , 314 MORELLA LARSEN, COMMISSIONER, OREGON REAL ESTATE AGENCY: Submits testimony and testifies in support of HB 2125. (EXHIBIT E)

(Tape 56, Side A) HB 3048 MEASURE 5. WORK SESSION Witnesses: Steve Hawes, Deputy Commissioner, Oregon Real Estate Agency Jim Sibbald, Chairman, Escrow Committee, Oregon Land Title Association Pat Ritz, President, Oregon Title Insurance Company Aveta Lavendear Kenneth Ryder, Vice President. Key Title Company

MOTION: Rep. Clark moves that the Judiciary Committee, Subcommittee on Civil Law, send a positive recommendation to the Revenue Committee regarding the document entitled proposed amendments to HB 3048, dated March 18, Dept. of Revenue,

VOTE: Hearing no objection, motion adopted.

(Tape 56, Side A) HB 2125 - ESCROW COMPANY - REOPENS PUBLIC HEARING 416 STEVE HAVVES, DEPUTY COMMISSION, OREGON REAL ESTATE AGENCY: Testifies in support of HB 2125.

>Goes through the bill section by section (EXHIBIT F) explaining the bill changes and amendments to HB 2125.

TAPE 57, SII)E A

050 > Discussion regarding Section 5 on surety bond. > Situation has not changed with the smaller companies. They are already posting a \$25,000 or \$35,000 bond or cash deposit.

087 > Discussion regarding Section 6 on waiver provision.

iHave taken a small step to increase the security of the consumers in the industry and that is to eliminate the waiver and to raise some of the minimums at the upper end and remove the \$200,000 cap. Those are the changes in the bond deposit requirements in this bill as amended.

200 > Continues discussion of each section changes. 285 > Discussion of Section 14 which removes provision allowing escrow agents to act as trustees to act as trustees in trust deed foreclosures. in trust deed foreclosures. > The Real Estate Agency is proposing that what was Section 14 come out of the bill. At the start of the task force proceedings, this was one of the questions raised by the industry. To House Committee on Judiciary March 18, 1991 - Page 4

accommodate the discussions we included the amendment in the bill.

> It is a policy question that should be decided by the Judiciary Committee.

329 >The amendments provide an operative date to Section 16 in the bill. The bond or deposit changes would not take affect until July 1, 1992. That would allow the license year starting July 1 of this year to be under the old bond deposit standards. 344 JIM SIBBALD, CHAIRMAN, ESCROW COMMITTEE, OREGON LAND TITLE ASSOCIATION: Testifies in support of HB 2125. >The membership of the Oregon Land Title Association is composed of the title insurers in the State of Oregon and their agents throughout the state. Estimate that the members close about 95 percent of the escrows in the state. >The Escrow Committee began working on HB 2125 on March 21, 1990. Have a year's work invested and countless meetings. The bill is a culmination of that year's work. >The Board of Directors of the Land Title Association voted to endorse this bill with the following caveats: -Feel that new language in ORS 696.535 (k) which is Section 7 of the bill, is not appropriate. Suggest that language be written to provide for action upon the proving of incompetence or repeated acts of negligence. -Concerned that there is possibility the bill would be amended to delete the changes to ORS &6.790, Section 14 of the bill. 427 > In summary, the Oregon Land Title Association feels that this bill as amended is worthy of passage. 445 > Discussion regarding waiver provision.

470 CHAIMOV: Do you want escrow agents acting as trustees in the statutes or out of the statutes?

SIBBALD: We want them out. Prefer original version of bill.

TAPE 56, SIDE B

035 PAT RITZ, PRESIDENT, OREGON TITLE INSURANCE COMPANY: Testifies in support of HB 2125.

> In discussion of the bond waiver the deliberations of the committee and the Real Estate Agency concerning that waiver were not all brought forward. Before it was proposed to eliminate the waiver, the Real Estate Agency said they wanted to have a certified financial statement to support a request for waiver. The title industry was very concerned that certified financial statements would become part of the job and they are extremely expensive. The title companies rejected that as a proposal.

> Real Estate Agency is in a quandry when it tries to evaluate the net worth of these companies. House Committee on Judiciary March 18, 1991 - Page 5

Evaluating a title plant is extremely difficult.

> By limiting those parties that can act as a trustee, would certainly help from the standpoint of loss exposure. > Concur with Mr. Sibbald's comments about the issue of negligence. Negligence is a loaded term. Would like to see wording like "pattern of negligence" used rather than just negligence.

> Ceiling on the maximum bond required has been eliminated. Would like to see \$200,000 reinstated.

> Recommends adoption of bill as amended even if suggested changes are not done. 112 AVETA LAVENDEAR: Addresses Section 14 that allows trustees to be licensed as escrow agents. Would like to see it left the way it is.

> Only two independent companies that are licensed escrow agents in the State of Oregon doing foreclosures. All other companies are still doing foreclosures in the State of Oregon but they are doing so through attorneys. There have never been any losses reported for an escrow agent that is acting for a trustee under a trust deed to do foreclosures in the state of Oregon.

> Feel the licensing and auditing requirements are a very strong regulation for trustees who act as trustees in the State of Oregon. The requirements for maintaining an office and files keep other companies from coming in.

> If you take this out of statute, there will not be any way for an independent company to act as trustee to do foreclosures in the State of Oregon. It will remain to attorneys and title companies only and there won't be a way for an escrow agent to be authorized to act in that capacity.

150 KENNETH RYDER, VICE PRESIDENT AND GENERAL COUNSEL OF KEY TITLE COMPANY: Testifies in support of HB 2125.

> Has some concerns about Section 7, the proposed addition of the negligence sanction.

>If this is made a statutory provision, it is there until it is revoked or declared to be unconstitutional.

> Feels the removal of the \$200,000 bond cap is unnecessary.

(Tape 56, Side B) HB 2125 - ESCROW COMPANIES, WORK SESSION

196 MOTION: Rep. Miller moves to amend HB 2125. On page 4, lines 39 through 43, restore the language. On page 5, lines 28 and 29, subsection (k) delete that language.

VOTE Hearing no objection, motion adopted.

MOTION: Rep. Miller moves to amend the HB 2125-1 amendments as follows: On page House Committee on Judiciary March 18, 1991 - Page 6

4 of the amendments, delete lines 4 and 5. This would restore the language in the original bill.

VOTE: Hearing no objection, motion adopted.

MOTION: Rep. Miller moves to amend the HB 2125-1 amendments as follows: On page 2, line 7, delete ."\$ and insert "as provided in paragraph (b) of the subsection".

VOTE: Hearing no objection, motion adopted.

MOTION: Rep. Miller moves HB 2125 as amended be sent to the full committee with a do pass recommendation.

REP. BRIAN: Requests that language of amendments be worked out before presenting to full committee.

VOTE: Motion carried with all members present voting aye. Rep. Edmunson and Rep. Johnson excused.

(Tape 56, Side B) HB 3052 - ELIMINATES BAR EXAMINATION, PUBLIC HEARING
Witnesses: John Barlow, Oregon State Board of Bar Examiners Bryon Johnston, Willamette College of Law Maury Holland, University of Oregon Law School Rep. Kelly Clark, House District 27 Rep. Randy Miller, House District 24

350 CHAIMOV: Presents summary of HB 3052.

> Has in it a provision that would limit bar membership to a resident of the state. Believe there used to be such a provision in the statute and it was declared unconstitutional and that portion of the statute was deleted by the 1985 Legislative Assembly.

HB 3407, which is similar, will not have a public hearing today.

394 REP. KELLY CLARK, HOUSE DISTRICT 27: Testifies in support of HB 3052.

> It is not the intent of HB 3052 to ban the bar examination outright. The intent of the bill was a mod)ified diploma privilege and this bill does some of that. > The people best prepared to determine whether an individual is ready to practice law or not are the people who gave that individual his legal training. > The idea behind HB 3052 is that if an individual graduates from an accredited Oregon law school, and if he took a course of study prescribed by rule by the Oregon Supreme Court, and if he passed a comprehensive examination before he graduated from law school; those factors, plus the passage of an ethics exam, ought to entitle him to be admitted to the practice of law. - House Committee on Judiciary March 18, 1991 - Page 7

> That is what HB 3052 is supposed to do. It does some of it and it doesn't do some of it. Would add the provisions asking the Supreme Court to adopt rules prescribing the course of study and asking that the law schools offer comprehensive exams for those who are on the bar admissions tracking.

> The bar exam would then still be in existence for those who chose not to take the prescribed course of study.

> Thought that would be a more effective and fairer system for admitting people to practice law in this state.

>Rep. Miller's bill, HB 3407, goes in a little different direction. They

both raise the same question: Is Oregon making sure that qualified individuals are being admitted to practice law in Oregon and doing it in a fair way?

TAPE 57, SIDE B 010 REP. RANDY MILL", HOUSE DISTRICT 24: Testifies in support of HB 3052.

>One of the problems that has come up is that the bar examination is given and graded, particularly the grading, in large part by amateur graders.

>For many years the bar examination in this state was graded on a curve. An indefensible practice.

> Have a lot more confidence in the law school professor's ability to determine whether or not someone is capable and competent to practice law, because they are observing that student's performance over a long period of time. It is not a matter of going into a high pressure situation for a two-day period.

> Questions the use of multiple choices in the multistate bar examination.

> Should be qualified to argue vigorously a variety of sides.

> At least the grading is done by computer and that is a lot better than the current system using graders for the essay portion.

> Would the Oregon State Bar be willing to select at random ten lawyers in this state and choose as the standard for the next class the lowest score received by one of those ten? That would be the standard for passing of the next bar examination

142 REP. CLARK: Discusses differences in HB 3407 and HB 3052.

> Amendments to HB 3052 are in process of being prepared. 164 REP. BRIAN: Would those amendments suggest that the current offerings currently of the law schools need changing? House Committee on Judiciary March 18, 1991 - Page 8

REP. CLARK: Not necessarily. To be admitted to practice law in Oregon automatically, student would take the prescribed 12 or 15 courses. Then could take whatever other courses he wid - .

189 > Discussion re what curriculum would be and how this would direct and affect students. Will this change structure of courses offered by law schools? What is mission of law school? 359 REP. CLARK: Have to pass courses first and have to take comprehensive exam at end. REP. BELL: Why can't Oregon Bar get a handle on problems of grading bar exam without eliminating exam altogether? 415 REP. MILLER: It isn't that they can't; in last 20 years they have been asked and they haven't. > HB 3052 does not abolish the bar exam. It simply adds another way one can be admitted to practice law in Oregon.

TAPE 58, SIDE A

021 JOHN BARLOW, OREGON STATE BOARD OF BAR EXAMINERS: Submits and summarizes testimony in opposition to HB 3052.

> Explains the multistate bar examination and how it is administered and

scored, and discusses the grading session and how it is controlled.

> The bar examination compels applicants to make a comprehensive review of their law school experience and knowledge prior to commencement of practice. Asks committee to refer to Dean Kanter's letter (EXHIBIT H) and the article written by Arthur LaFrance (EXHIBIT I) when he was Dean of the Lewis and Clark Law School.

REP. CLARK: Wouldn't a comprehensive law school exam do the same thing?
069 BARLOW: Be careful with amendments so law schools don't offer class on how to take comprehensive exam. > One of the things looking at is how does the multistate correlate with the essay. By and large a person's performance on the essay examination correlates well with their performance on the multistate.

107 MAURICE HOLLAND, DEAN, UNIVERSITY OF OREGON SCHOOL OF LAW: Submits testimony and testifies in opposition to HB 3052. (EXHIBIT J) > Do not want professors that are teaching classes to be graders. Students would feel it would be a tremendous advantage to have a teacher who would also be the grader.

157 > Feels it would not be a good idea to have the course of study in law school prescribed and the law schools conducting and administering comprehensive examinations. House Committee on Judiciary March 18, 1991 - Page 9

175 REP. CLARK: Comprehensive examinations are all over the academic universe. Why should legal education be any different?

181 HOLLAND: They happen in graduate programs and PH D programs, but there they do not have a licensing purpose. They are academic examinations.

>This comprehensive examination would substitute under certain circumstances for the conventional bar exam. Would turn out to be indistinguishable from a bar exams.

>Believes the conflict of interest would be greater if the law school faculty would have the responsibility of preparing this exam and then grading it.

> Considerable discussion about the comparison between a comprehensive examination at the law school or taking the bar examination.

277 BRYAN JOHNSTON, ASSOCIATE DEAN, WILLAMETTE COLLEGE OF LAW: Testifies in opposition to HB 3052. > Law schools will have a hard time getting students out of the bar examination courses and into the esoteric courses. >Discussion regarding pressures on students to take prescribed courses and whether course content and quality of teaching would be affected. 323 One of the nice things about the bar examinations is that it can be retaken. Whereas, that is not true of academic examinations that would be administered in the law school.

352 REP. MASON: The comparison is made that no one goes into any of the major professions without some type of certification. That is true, but one of the ironies of this is that the comprehensive examinations given to medical students pose little if any barrier to any medical student. Graduation from medical school is tantamount to your professional ticket. 381 JOHNSTON: The difficulty is then that the courses would have to be geared to Oregon practice. There are 49 other states. There are a number of other commonwealths. How should we prepare

people to both grasp the full import of the law and its evolution and the rudiments of practicing law in LaGrande. 395BARLOW: Since 1984 the bar examination has been given twice a year and the overall pass rate of those people taking the exam for the first time is 74 percent. During the same time period persons taking the exam for a second time passed at a rate of 53.5 percent and for the third or subsequent time, the passage rate has been 44.4 percent. A lot of people eventually pass the examinations. 427 REP. MILLER: Aslcs that idea be tested of selecting ten lawyers at random in this state and give them the bar examination and use the lowest score as the standard for admittance. xamination and use the lowest score as the standard for admittance.

439 BARLOW: It may present some practical problems but there will be a meeting with the full 439 BARLOW: It may present some practical problems but there will be a meeting with the full board on Thursday and will raise the issue with them. House Committee on Judiciary March 18, 1991 - Page 10

MOTION: Rep. Brian moves that committee suspend the rules to reconsider HB 212 5.

VOTE: Hearing no objection, motion adopted to reconsider HB 2125.

MOTION: Rep. Brian moves that we put in place the \$200,000 cap in HB 2125.

VOTE: Hearing no objection, motion adopted.

MOTION: Rep. Brian moves the bill as amended to the full committee with a do pass recommendation.

VOTE: Motion passed with all members present voting aye. Rep. Edmunson and Johnson excused. 496 CHAIR BAUM: Adjourns Subcommittee on Civil Law and Judicial Administration at 3:30 p.m.

Submitted by: Reviewed by: Mary Walling David Harrell
Assistant Office Manager - EXHIBIT LOG:

A - Amendments to HB 3048 - Dept. of Revenue, 7 pages B - Testimony on HB 3048 - R. Linden 1 page C - Amendments to HB 2125 - Real Estate Agency - 4 pages D - Testimony on HB 2125 - J. Stanley - 25 pages E - Testimony on HB 2125 - M Larson - 1 page F - Testimony on HB 2125 - S. Hawes - 9 pages G - Testimony on HB 3052 - J. Barlow - 7 pages H - Testimony on HB 3052 - S. Kanter - 2 pages I - Testimony on HB 3052 - A. LaFrance - 2 pages J - Testimony on HB 3052 - M. Holland - 2 pages

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