

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

January 16, 1991 Hearing Room E 8:30 a.m. Tapes 1 - 4 MEMBERS

PRESENT: Rep. Bill Markham, Chair Rep. Larry Sowa, Vice Chair Rep. Marie Bell Rep. Mary Alice Ford Rep. Tom Novick Rep. Carolyn Oakley Rep. Lonnie Roberts MEMBER EXCUSED: None VISITING MEMBER: None STAFF

PRESENT: Randall Jones, Committee Administrator Carolyn Cobb, Committee Assistant MEASURES CONSIDERED: HB 2043 - Registration With Contractors Board, PH HB 2044 - Procedures for Loss of Public Funds or Property, PH HB 2045 - Procedures for Loss of State-Owned Property, PH HB 2061 - Contractor Registration Requirements, PH HB 2112 - Adequacy of Courtrooms, Offices and Jury Rooms, WS - HB 2184 - Transfers Responsibilities, PH HB 2257 - Clarifies Authority of Department of General Services, PH - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 1, SIDE A

003 CHAIR MARKHAM: Calls the meeting to order at 8:35 a.m.

010 CHAIR MARKHAM: The first order of business to consider adoption of the Committee Rules, (EXHIBIT A).

011 REP. ROBERTS: Under rule 13 of the model committee rules, you can no longer amend a measure conceptually, it has to be in writing.

027 CHAIR MARKHAM: According to the record the Committee eliminated Rule 13 at the last session.

027 MOTION: REP. ROBERTS moved the model committee rules be adopted by the State and lIouse Comm; - e on State and Federal Affairs January 16, 1991- Page 2

Federal Affairs Committee.

039 VOTE: In a roll call vote, the motion carried, with Rep. Bell, Rep. Ford, Rep. Novick, Rep. Oakley, Rep. Roberts, Rep. Sowa, and Chair Markham voting AYE.

040 CHAIRMAN MARKHAM: Asks the committee members and staff to introduce themselves.

138 CHAIR MARKHAM: Asks witnesses and others in attendance to identify themselves.

HB 2061 - CONTRACTOR REGISTRATION REQUIREMENTS. PUBLIC HEARING
Witnesses: Jim Stembridge, Deputy Administrator, Oregon Construction Contractors Board Dan Lubbers, Real Estate Consultant Genoa Ingram, Oregon Association of Realtors

233 JIM STEMBRIDGE, DEPUTY ADMINISTRATOR, OREGON CONSTRUCTION CONTRACTORS BOARD, submits and summarizes written testimony in favor of HB 2061 (EXHIBIT B).

254 REP. ROBERTS: What you are actually talking about is residential contractors.

257 STEMBRIDGE: The Construction Contractors Board is residential and

non-residential.

258 REP. ROBERTS: How many things would hit under the \$2,500 and below?

261 STEMBRIDGE: There are several categories of registration. A new category proposed is under \$2,500 for residential construction. The bill itself applies to all contractors, residential and nonresidential. It makes no substantive changes in non-residential.

291 STEMBRIDGE: Continues summary of written testimony.

303 REP. ROBERTS: Has the legislature set the limit on the civil penalty?

305 STEMBRIDGE: There is a \$1,000 limit.

308 CHAIR MARKHAM: Item number 3 adds construction inspection services to the definition, how are they handled today?

309 STEMBRIDGE: There is no regulation of construction inspections services that are provided by private businesses that we know of.

313 CHAIR MARKHAM: You have not been doing this in the past and you want to do it?

314 STEMBRIDGE: We are proposing this as a response to consumer complaints and complaints from building officials that there presently is no regulation in this area. Explains duties of inspectors. The Board thinks there should be regulation of inspectors and supports the measure. The public has no recourse now other than the courts and this would provide a Construction

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Contractors Board claim process. 357 REP. ROBERTS: The bill deals with establishing a higher minimum on the surety bond? 359 STEMBRIDGE: That was implemented in the last legislative session. There are no changes in the bond amounts being proposed this session. 370 STEMBRIDGE: Continues summary of written testimony. TAPE 2, SIDE A t 088 REP. ROBERTS: There is a gray area on a contractors bond where bill has to be paid twice, because the contractor has not paid the suppliers and they have to be paid again. Some suppliers are not protected because it is not residential. Wasn't something done in the last session to address those concerns? 100 STEMBRIDGE: Yes, small business is now included in the definition of residential. 139 REP. ROBERTS: Bonding rules should strike a balance between protection for the public and cost to the contractor. 142 STEMBRIDGE: Discusses various contractor categories under the measure. - Reviews cost of registering with the board. 161 STEMBRIDGE: This legislation was proposed and pre-session filed on behalf of the Construction Contractors Board. -It has the Governor's recommendation. -The Construction Contractors Board has asked for favorable action on the measure. 177 REP. SOWA: Frequently when things are changed for the better, it creates problems with new procedures. There are major changes here. Example is residential tree service. 206 STEMBRIDGE: Tree service people were put into the law last session, no

substantive changes were proposed in this measure. 234 REP. SOWA: What about school districts and community college districts? 240 STEMBRIDGE: There is a provision in the current law that school districts who build and sell homes as part of their construction classes are required to register. 252 REP. BELL: Do you think it would be helpful to us to request a copy of HB 3461? 253 STEMBRIDGE: HB 3461 is included in ORS 701. 297 REP. BELL: Who would oppose this bill and why?

304 STEMBRIDGE: Inspection services might oppose it. House Committee on State and Federal Affairs January 16, 1991- Page 4

314 REP. BELL: Are we talking about registration versus licensing?

315 STEMBRIDGE: This provides for registration, there may be some who would like to include testing.

340 REP. OAKLEY: Would mobile home setup firms qualify for the \$2,500 bond? 347 STEMBRIDGE: It is a \$2,000 bond. The limitation of the amount of work they could do on any one project is \$2,500. 389 REP. OAKLEY: Is there regulatory reciprocity between Oregon and California? 394 STEMBRIDGE: At present there is very little reciprocity. -Oregon partially relies on the bonding companies to furnish information.

TAPE 1, SIDE B

015 CHAIR MARKHAM: How is your department involved in the obtaining of a building permit, that is done through the county, isn't it?

020 STEMBRIDGE: They are authorized by the state agency, I'm not sure what the relationship is. The Construction Contractors Board has no jurisdiction on building permits.

023 CHAIR MARKHAM: You said previously that if you are called in to find out they did not have a building permit, they are in great trouble.

026 STEMBRIDGE: We make them tear it out in any case if there is a claim filed where the work is of poor quality. If the permit had been obtained in accordance with Oregon law, there would not be a problem in the first place.

029 CHAIR MARKHAM: The problem would probably not be there because he has a contractor's license.

030 STEMBRIDGE: In some cases the contractors will talk home owners into a project saying I can take care of this, you don't need to a permit.

045 DAN LUBBERS, REAL ESTATE CONSULTANT: I am here to support HB 2061. There is a need for regulation of building inspectors. 057REP. ROBERTS: You are saying inspectors should have to accept some responsibility for their actions. 058 LUBBERS: My primary concern is protecting the public. The big problem is it is a real wide expanse. -Describes how he conducts a typical residential inspection. 075REP. ROBERTS: Are you bonded and what coverages do you carry?

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079 LUBBERS: Enumerates different coverages carried. 088 REP. ROBERTS: What is difference in the various types of insurance? 094 LUBBERS: Consumers not covered by the surety bond. It assures that I will fulfill my contractual obligation. The only insurance that protects the consumer is an errors and omissions policy. 111 REP. ROBERTS: Is errors and omissions coverage like malpractice insurance? 113 LUBBERS: Right. 129 REP. BELL: What is a worst case scenario of someone who is not trying to do a professional job? 136 LUBBERS: There are people who take a code inspection class, and then advertise they are certified. -Describes the professional associations that reputable inspectors generally belong to. 151 REP. ROBERTS: Are you saying there is a problem with state inspectors? 155 LUBBERS: They sometimes act as if they have too much control over an individual's property. -Gives example of what may happen on an inspection when there has been a building code change since the house was constructed. 183 CHAIR MARKHAM: Are the banks refusing to lend on the old standards? 186 LUBBERS: No. 191 CHAIR MARKHAM: Then where is the problem? 194 LUBBERS: It depends on how the inspector is trained, where they are coming from, and what organization is overseeing the project. 206 CHAIR MARKHAM: When someone goes to a community college and gets an inspection certificate, is the state the only place they can go to work? 209 LUBBERS: The problem with school system is they trained a lot of people who are now looking for jobs. So they become self-employed inspectors. 216 REP. NOVICK: Were you telling us that as long as an inspector furnishes the written report he contracted to give, the bond will not compensate the homeowner if the inspector made a mistake? 227 LUBBERS: The general contractor's bond will not cover a roof that leaks or other problems. 234 REP. NOVICK: If we are adding bonding for consumer protection, it is really not going to. ,

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236 REP. BELL: You believe bringing inspectors under the regulation of the Construction Contractors will upgrade the profession in Oregon?

244 LUBBERS: Not really, but we need to know who they are, and they should be held accountable for their actions.

252 REP. BELL: Would the professional associations you mentioned be in favor of this bill?

256 LUBBERS: Yes, although they have some concerns about the Construction Contractors Board governing us since we are also governed by the Department of Agriculture.

260 CHAIR MARKHAM: Recesses meeting at 9:47 a.m.

-Resumes meeting at 10:02 a.m.

267 REP. ROBERTS: Submits letter from Rep. Reiken (EXHIBIT C).

279 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: Submits and summarizes written testimony (EXHIBIT D) in support of the measure.

319 REP. ROBERTS: The first line of the explanation of the bill says "exempts certain units of government from contractor registration

requirements", do you know why that is?

322 INGRAM: I do not. We are concerned only with that part of the bill that addresses the building inspectors.

328 REP. ROBERTS: We need to know if the bill is giving the government extra rights over someone else.

336 INGRAM: Our interest is only the consumer issue and licensing of the inspectors.

349 STEMBRIDGE: At the present time, the law requires school districts to be registered, it makes no statement as to other government jurisdictions. The purpose of the registration to be sure the contractor will around tomorrow or has presented some assets, and to be able to track contractors. I do not believe that is consistent with registering government agencies.

360 REP. ROBERTS: If the Department of Veterans Affairs makes a mistake on the inspection of a residence, who is responsible?

363 STEMBRIDGE: The person could bring a claim against the State of Oregon.

373 REP. ROBERTS: Can he bring a claim without going through court?

375 STEMBRIDGE: We felt uncomfortable having the Construction Contractors Board determining a claim involving another state agency or an agency of local government.

382 REP. NOVICK: Would you clarify the issue of what the bond covers?

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390 STEMBRIDGE: Describes the provisions of the current law relating to claims. TAPE 2, SIDE B

014 REP. BELL: If an entity such as a school builds a home for sale to the public, do they inspect the home themselves or are they required to use a independent inspector?

021 STEMBRIDGE: The government agency and inspection issues are separate. There is no inspection required of homes sold by school districts.

029 CHAIR MARKHAM: Don't those school homes have to be inspected by code inspectors?

032 STEMBRIDGE: They are required by state law and the building codes to have the proper permits.

033 INGRAM: Describes a situation that happened in Newport. There is no recourse when inspector has left town. At least the registration requirement would help track them.

070 REP. ROBERTS: Is there a way to require the registration number be

included in any advertising done by the inspector?

077 STEMBRIDGE: By administrative rule they must now include the registration number in their advertising. 085 INGRAM: This bill pretty much does what my organization would have done. One recurring theme we keep hearing from the inspectors is that there be a requirement to separate inspection from repairs so there is no conflict of interest. The Oregon Association of Realtors does not take a position on that.

HB 2043 - REGISTRATION WITH CONTRACTORS BOARD - PUBLIC HEARING
Witnesses: Clifford L. Freeman, Department of General Services Dell Isham, Oregon Arborists Association Elwood Newhouse, Oregon Arborists Association Jim Stemberge, Construction Contractors Board Kim Mingo, Associated General Contractors

166 CLIFFORD L. FREEMAN, EXECUTIVE ASSISTANT TO THE ADMINISTRATOR, PURCHASING DIVISION, DEPARTMENT OF GENERAL SERVICES: Submits and summarizes written testimony (EXHIBIT E). 188 REP. SOWA: Does the Department of General Services have rule making authority?

190 FREEMAN: Yes, we do. 192REP. SOWA: Would you explain to me why they couldn't under Article J go into rule making and say part of their bid specifications states that no contractor or subcontractor that is not licensed could bid, without changing the state law?

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197 FREEMAN: We could do that. The advantage to having this language in the statute is that it would have a broader circulation and more notice. It would be a mandatory provision by being statutory.

207 REP. SOWA: We just looked at another bill that says nobody is eligible to be a contractor unless he has a license.

212 CHAIR MARKHAM: Who came up with this bill?

213 FREEMAN: This came out of the Construction Public Works Committee that looked at public contracting. The Associated General Contractors suggested this legislation as part of their participation with that group.

223 REP. ROBERTS: Does this mean that anyone who is registered has to commit to the prevailing wage rate?

229 FREEMAN: This would be part of ORS 279.025.

235 REP. ROBERTS: If someone is not paying the prevailing wage, their bid will not be accepted?

236 FREEMAN: The requirement is that if you are awarded the contract you must pay the prevailing wage.

257 DEL ISHAM, OREGON ARBORISTS ASSOCIATION: Submits and summarizes written testimony (EXHIBIT F) in support of the bill.

292 ELWOOD NEWHOUSE, OREGON ARBORISTS ASSOCIATION: Relates experience in bidding a job which was won by a non-registered contractor.

324 CHAIR MARKHAM: In your opinion, can this be done by administrative rule?

325 ISHAM: It could be done by administrative rule only for the state, I do not believe the Department of General Services could make administrative rules that would apply to all the local governments in the State of Oregon.

341 JIM STEMBRIDGE, DEPUTY ADMINISTRATOR, CONSTRUCTION CONTRACTORS BOARD: The Board has not taken an official position on this bill, however the bill would take care of many of the problems we get involved in. We cannot register contractors retroactively. 361 KIM MINGO, ASSOCIATED GENERAL CONTRACTORS: The Association supports HB 2043. We felt there was a problem stemming from the legislation enacted at the last session, requiring all contractors in the State of Oregon to be registered with the Construction Contractors Board. Many out-of-state contractors not aware of this regulation. This statute would take care of such problems. -The Association is also asking for the addition of an emergency clause. -Asking to make the bill effective as to public contracts which have not yet been advertised.

TAPE 3, SIDE A

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012 REP. FORD: Can you reconcile the fact that successful bidders are registering with the Construction Contractors Board after the fact with the rule that says they cannot be registered retroactively?

014 MINGO: In the situations that I am aware of, where the apparent low bidders were not registered, the public agencies have rejected those bids.

026 REP. EORD: Do they have the problem that the bid has been accepted and nobody has checked to see if they are registered, the work has actually been completed by non-registered contractors?

028 MINGO: That could happen.

032 CHAIR MARKHAM: You are probably not aware of this if the contractor comes in to register after being awarded the contract.

034 STEMBRIDGE: We are involved with the registration decision as soon as all the requirements are in. The law does specify that a bidder must be registered, not just the contractor doing the work.

062 REP. BELL: Who has the authority to enforce this law?

063 MINGO: It is my understanding that it is the public agency.

064 REP. BELL: If our state agencies are not observing the statute, who has jurisdiction over this?

067 CHAIR MARKHAM: Somebody has to bring action against the city, but if it is too small an amount you cannot afford to hire a lawyer to

pursue it.

069 REP. BELL: The state itself does not call its agencies into account if they break the law?

070 FREEMAN: Sometimes in the process of an audit of an agency this will be found, but there is no inspector general to monitor these things. Some contractors do not know they cannot even submit a bid without being registered.

089 REP. SOWA: Does the Construction Contractors Board have any enforcement powers?

092 STEMBRIDGE: Yes, we are authorized to issue civil penalties in the amount of \$1,000 per offense. We have investigators who do site checks and we are processing civil penalties against all violators that we find. 102 REP. SOWA: Do they have to make a formal complaint by filing a form? 104 STEMBRIDGE: We would need to have something in writing and if we have the staff we will follow up on it. In this case since it is a public agency, it should not be too hard to get a copy of the bid. 115 REP. SOWA: What do you mean, "if you have the staff?"
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116 STEMBRIDGE: We have five people in our office who process these things. We get plenty of written complaints from our investigators and from complainants to act on. We do not at the present time have the staff to go out and track these things down other than what we are already doing.

120 REP. FORD: Do you fine them if it comes out they have been registered retroactively in order to obtain a contract?

130 STEMBRIDGE: We have no authority as to whether the contract is awarded to a non-registered contractor. We do have authority to penalize those who bid when they are not registered.

136 REP. FORD: What does the Board do if a bid comes in from an unregistered contractor?

141 STEMBRIDGE: We do not handle the bids. We register contractors and answer inquires. The problem is the contractors who plan to register if they win the bid which is illegal.

155 REP. BELL: This bill seems not to contain any penalties against either the contractor or the contracting agency. 161 STEMBRIDGE: The same liability applies to this situation as to any other government decision that is made in error. The people who are damaged have the right to seek redress from the state.

178 REP. NOVICK: This particular bill is dealing only with the advertising requirement? 185 STEMBRIDGE: If you are going to be considering amendments, we would like you to consider an amendment adding landscape contractor license to the advertisement.

189 CHAIR MARKHAM: Would you get together with our Committee Administrator on that?

193 REP. FORD: Could we clarify whether the bids were reopened on the State Parks Department contract?

202 ISHAM: My understanding is they did not disqualify all the bidders and rebid the contract. They simply told the low bidder to get his registration up to date and refused to take any more complaints about the matter.

209 REP. FORD: I would request the committee write a letter to the State Parks Department and get a clarification from them.

221 CHAIR MARKHAM: Would you work with staff to write the letter?

228 REP. SOWA: What is proposed here is something that can happen already without a statute change. However to solve the problem, we probably need a bill to correct it.

238 REP. BELL: Would a rule affect the out-of-state contractors that come in, or would a statute be required?

245 MINGO: The administrative rules of the Department of General Services would not govern all

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HB 2044 - PROCEDURES FOR LOSS OF PUBLIC FUNDS OR PROPERTY - PUBLIC HEARING
HB 2045 - PROCEDURES FOR LOSS OF STATE OWNED PROPERTY - PUBLIC HEARING
Witness: Dave White, Administrator, Risk Management Division, Department of General Services
REP. FORD, REP. OAKLEY AND REP. ROBERTS EXCUSED AT 10:55 A.M.
282 RANDALL JONES, COMMITTEE ADMINISTRATOR: Reviews the provisions of the bills.
302 DAVE WHITE, ADMINISTRATOR, RISK MANAGEMENT DIVISION, DEPARTMENT OF GENERAL SERVICES: Explains the functions of his division.
333 CHAIR MARKHAM: Do you cover the liability that the State Parks Department may have over the contracting problem we just heard about?
336 WHITE: When requests for bids are put out, that is somewhat of a grey area. We get involved in a lot of it, but a lot is handled at the agencies' own expense. -Submits and summarizes written testimony on HB 2044 (EXHIBIT G).
TAPE 4, SIDE A
033 WHITE: Submits and summarizes written testimony on HB 2045 (EXHIBIT H).
067 CHAIR MARKHAM: Why is the Department of Revenue involved in the valuation of state buildings?
068 WHITE: We would ask for their help cooperatively. They produce factor books for appraisers all over the state. -Resumes written testimony.

080 REP. NOVICK: Please define "mysterious disappearance."
081 WHITE: The item was not in a known place, at a known time, at the time of its loss.
092 CHAIR MARKHAM: What does this bill do on that?
093 WHITE: It just keeps the rule that we do not cover mysterious disappearance.
096 CHAIR MARKHAM: Do you pay the claim in that situation?
100 WHITE: We do, and then we increase the premiums to cover those costs.
104 CHAIR MARKHAM: Can a legislator come to you and insure their own personal property in their office?

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106 WHITE: They can for theft, fire and other hazards. Although it has been in our policies for some years, we have had only one individual request it.

128 CHAIR MARKHAM: Do you have a deductible?

130 WHITE: There is a deductible of \$500 on personal property, and \$1,000 on real property. For self-insurance there is no reason to have a very high deductible. 131 CHAIR MARKEIAM: Do you have catastrophe insurance?

139 WHITE: We do have. We carry excess insurance.

148 WHITE: Resumes written testimony (EXHIBIT H).

184 CHAIR MARXHAM: Is it fair to say this measure is an insurance upgrading?

185 WHITE: Yes it is. We administer the program through policy manuals which go out to all the state agencies. We come to the Emergency Board or the Ways and Means Committee any time we want to embark on any new programs in self-insurance.

192 CHAIR MARKHAM: Do you get involved in the Department of Forestry fire and timber programs?

194 WHITE: We have the authority to purchase insurance for the state.

205 CHAIR MARKHAM: Would you write a summary of HB 2045 in layman's language.

HB 2112 - ADEQUACY OF COURTROOMS. OFFICES AND JURY ROOMS - WORK SESSION

270 MOTION: REP. SOWA moved to table HB 2112. 272 CHAIR MARKHAM: Hearing no objections, it is so ordered.

Submitted by: Reviewed by: Carolyn Cobb Randall Jones
Assistant Administrator

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EXH:IBIT LOG:

A - Prosposed Committee Rules - Chair Markham - 2 pages B - Testirmony on HB 2061 - Jim Stembridge - 2 pages C - Testimony on HB 2061 - Rep. Rijken - 1 page D - Testimony on HB 2061 - Genoa Ingram - 3 pages E - Testimony on HB 2043 - Clifford L. Freeman - 1 page F - Testimony on HB

2043 - Del Isham - 1 page G - Testimony on HB 2044 - Dave White - 1 page
H - Testimony on HB 2045 - Dave White - 2 pages

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