

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

January 28, 1991 Hearing Room E 8:30 a.m. Tapes 13 -15
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: Rep.
William Dwyer STAFF PRESENT: Randall Jones, Committee Administrator
Carolyn Cobb, Committee Assistant MEASURES CONSIDERED: HB 2061-
Exempts Certain Units of Government From Contractor Registration
Requirement, PH HB 2434 - Deletes Expenditures of State Treasurer and
Department of Justice From Definition of "Governmental Service
Expenses", PH HJR 9 - Permits Electors to Order Referendum on Act or
Part of Act Regardless of Date It Is To Become Effective, PH

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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 13, SIDE A

003 CHAIR MARKHAM: Calls the meeting to order at 8:37 a.m.

HB 2061 - EXEMPTS CERTAIN UNITS OF GOVERNMENT FROM CONTRACTOR
REGISTRATION REQUIREMENT - PUBLIC HEARING Witnesses: Dan Lubbers, Real
Estate Consultant Tom Myers, American Technology Systems Jim Stembridge,
Deputy Administrator, Construction Contractors Board

014 DAN LUBBERS, REAL ESTATE CONSULTANT: We are concerned that the bill
adds "building inspector" to the definition of general contractor. The
fear is that those House Committee on State and Federal Affairs January
28, 1991 - Page 2

people who do aSB estos inspections and others will have to become
double-licensed as a general contractor. Present requirements for
general contractors do not adequately protect the public. Submits and
summarizes written testimony (EXHIBIT A). 092 REP. SOWA: What would
happen if a contractor did not complete the necessary work? 096
LUBBERS: If he completed everything indicated in the inspection, I
believe his obligation is fulfilled. 124 RFP. SOWA: How would this
bill, as drafted, protect the consumer? 126 LUBBERS: There are
loopholes in this measure to the benefit of the contractors. A
requirement for errors and omissions insurance would improve the
measure. - If this measure passes, I would hope that in dispute
arbitration, we would get inspectors to sit on that board rather than
general contractors because of the difference in their expertise. 207
CHAIR MARKHAM: Does the state offer examinations for inspectors? 209
LUBBERS: The state has training classes for inspectors and they give
them a certificate saying they have completed the course. The state then
gives them the power to enforce the codes. There are some other things
that would be nice to have, testing and membership in a national
organization. In Oregon not many inspectors in the business have been
operating for more than three years. About 30% of the real estate
transactions have a pre-inspection. 254 REP. BELL: You are not happy
with the bill as presented? 258 LUBBERS: No, but it is a good place to
start. 278 TOM MYERS, AMERICAN TECHNOLOGY SYSTEMS: Gives background of
industry. -Describes his company and its system. -Professionals do have
errors and omissions insurance. -Industry exists to protect the
consumer. -Describes American Society of Home Inspectors. -Experts in

determining if an expert is needed for further evaluation of a certain area. 390 REP. ROBERTS: How much is your bonding? 395 MYERS: Our errors and omissions insurance is \$2 million. TAPE 14, SIDE A 023 REP. FORD: If an inspector omits a defect in the building, does the consumer have the basis for a claim against him? 027 MYERS: Absolutely.

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-Explains difference between a surety bond and a fidelity bond.

045 REP. FORD: If it is an incorrect report and there is no errors and omissions insurance, what recourse is there?

047 MYERS: There is civil recourse as a buyer against the inspector.

053 MYERS: There are two major national organizations that provide professional standards and code of ethics, the American Society of Home Inspectors and the National Association of Home Inspectors.

071 REP. ROBERTS: Do you agree that an inspector should be on the Construction Contractors Board? 076 MYERS: Absolutely. 086 JIM STEMBRIDGE, DEPUTY ADMINISTRATOR, CONSTRUCTION CONTRACTORS BOARD: The Construction Contractors Board replaced the Builders Board. We would like to work with members of the committee on any other unresolved issues. 109 REP. ROBERTS: Does the Construction Contractors Board also deal with geological problems in the construction industry?

116 STEMBRIDGE: It basically deals with improvements to real property. If the measure goes through and inspections were included in the definition of contractor, if there was an inspection of an improvement, then the board's jurisdiction would cover that. 135 REP. NOVICK: What is your attitude about the amendments proposed by the building inspectors? 141 STEMBRIDGE: I have not seen their proposed amendments, I know they are concerned about the bonding provisions, but we feel very comfortable with them. Most of the claims from home owners that come to the Construction Contractors Board are settled prior to hearing. 156 REP. NOVICK: Mr. LuWers has suggested a variety of guidelines to be imposed on inspectors, what is your position on them? 163 STEMBRIDGE: Our position is they are not needed. -Describes the claims process. 181 REP. NOVICK: Under the bonding requirements, if the inspector gives a written report, even if he misses something, the consumer would not be able to get redress. 189 STEMBRIDGE: I would say that is not true. The cases we hear often involve these same issues. We are comfortable adjudicating those types of claims.

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203 REP. FORD: What does the appeals process cost? 210 STEMBRIDGE: The claims process of the Construction Contractors Board is designed to be a low cost alternative to the courts. There is also an alternative in the bill to go to arbitration. 258 REP. ROBERTS: How many members on the board? 259 STEMBRIDGE: There are nine members, five of them sit on the Claim Appeals Committee. 271 REP. ROBERTS: Does the statute

dictate the exact makeup of the board?

274 STEMBRIDGE: Yes. There is one publicly elected official (currently the mayor of Dallas) on the board, and the remaining six members are contractors.

282 REP. ROBERTS: I am prepared to add a member and put an inspector on the board.

289 STEMBRIDGE: It is a concern of a number of groups in construction that they are not fairly represented on the board. 339 CHAIR MARKHAM: Asks all the interested parties to get together and put together a final version of the bill that everyone can agree on, take it to Legislative Counsel, and bring it back to the committee. 362 REP. SOWA: Expresses concern about revising some of the same laws that were changed in the last session. A lot of small contractors are just now getting to the point they can operate under the last changes. Changes should be something pretty dramatic that are liable to last ten years before we disrupt the whole contracting community again.

TAPE 13, SIDE B

HJR 9 -PERMITS ELECTOR TO ORDER REFERENDUM ON ACT OR PART OF ACT REGARDLESS OF DATE IT IS TO BECOME EFFECTIVE - PUBLIC HEARING Witnesses: Bill Dwyer, State Representative Ted Reutlinger, Legislative Counsel

008 BILL DWYER, STATE REPRESENTATIVE: The emergency clause is perhaps the most abused procedure. If an emergency clause is attached to a bill, the citizens cannot refer it. Local governments seize the opportunity on measures that have nothing to do with revenue, to attach the emergency clause which prevents the public from referring. If you are denied the referendum there is only citizens initiative left which is a different process. The balance might be to say that other than tax measures with an emergency clause, the number of signatures that are required for a referendum apply. City governments are the most abusive.

051 CHAIR MARKHAM: Can we control this at the local government level by law,

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without a constitutional amendment? 053 REP. DWYER: I'm not sure. If an emergency clause was attached to a non-tax measure, then the referendum signature requirements are applicable rather than the initiative. It increases the signatures required by about six to four. If we just change the number of signatures required to those for a referendum, we can still make it tough but not impossible. Too many bills have emergency clauses attached when it really is not an emergency. 069 REP. ROBERTS: We give them a window of ninety days, would this wipe that out? 076 REP. DWYER: Now they have ninety days from the date the bill becomes law, but with an emergency clause attached, they do not have the ninety days. 083 REP. ROBERTS: There would still be some chronological limits on when they could obtain the required signatures? 085 REP. DWYER: That is true, but there is no time if the bill has an emergency clause. The question I am trying to address is the abuse of the emergency clause in local laws. 103 REP. BELL: Do the state statutes

define what an emergency is and how it can be used? 109 REP. DWYER: I doubt it. It might be well to define emergency in the statute. 129 CHAIR MARKHAM: Would you be willing to go back to legislative counsel and see if this can be done by statute?

132 REP. DWYER: I don't think we can because it is in the constitution. 135 REP. OAKLEY: Would this prevent a city council passing an unpopular ordinance and attaching an emergency clause? 138 REP. DWYER: This measure would not keep that from happening. 144 REP. BELL: We are trying to allow the people to contest the use of the emergency clause. 158 REP. DWYER: Under this bill, the people can say this is not an emergency. 156 CHAIR MARKHAM: Under this measure, the law becomes effective, but the public can still initiate against it? 160 REP. DWYER: Not in true emergencies, but in these kinds of abuses. 174 REP. FORD: If there is a bill facing a deadline or federal money will be lost, could someone who doesn't want it, use this measure to hold up the project? 189 REP. DWYER: The public could later nullify the effect of the law, this gives them the --:

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opportunity to do it, where they could not under current law. 210 REP. NOVICK: I would not want a situation where people can refer every unpopular administrative decision. 229 REP. DWYER: You can do it already. 256 CHAIR MARKHAM: Does line 24 of the measure apply to local government? 263 TED REUTLINGER, LEGISLATIVE COUNSEL: Article 4, Sub-section 5 on page 2, line 22 is the clause that makes it apply to local governments. 273 REP. FORD: What real benefit would this be if a law is going into effect anyway, why not just initiate an appeal. 278 REP. DWYER: Because the amount of signatures required is one-third again as many as for a referendum. 289 CHAIR MARKHAM: The legislature has power to refer, does local government? 292 REUTLINGER: Yes, as long as it is a legislative, not an administrative measure. Discusses number of signatures required for an initiative versus a referendum. 357 REP. FORD: How can this apply to a part of an act? 365 REUTLINGER: That is language that is in the constitution now, people currently have constitutional authority to refer only a part of an act. 371 REP. NOVICK: Would you explain Section 3 C. 373 REUTLINGER: It is based on the language that is currently in the constitution. What it says is you can order a referendum on an act regardless of when it takes effect, but the signatures have to be gathered within the ninety-day time period. The law would go into effect until next general election when referendum would be voted.

TAPE 14, SIDE B 020 REP. ROBERTS: With the confusing language in this measure, won't it just make the situation worse? 028 REUTLINGER: It does change the current system which people seem to understand. An alternative is to define "emergency", which would have to be done as a constitutional amendment. 039 REP. SOWA: Will this measure stop the referendum process as it is now, and when they gather the signatures and file them does it prevent the law from going into effect?

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046 REUTLINGER: Under the current law, if you are successful in getting the required number of signatures, the law does not go into effect.

073 REP. SOWA: Do you want to include administrative actions or just legislative?

075 REP. DWYER: I don't want to affect any government's ability to administer its own government. My objective was to stop the attachment of the emergency clause to prevent referral of the law.

083 REP. NOVICK: Would section C cause all measures with an emergency clause to become effective immediately, even if they have been referred.

087 REUTLINGER: The way it is written now, it would apply to any bill, but that was not my intention.

090 REP. DWYER: My intent was just those with an emergency clause.

100 CHAIR MARKHAM: Recesses the meeting at 10:02 a.m.

-Reconvenes the meeting at 10:12 a.m.

HB 2434 - DELETES EXPENDITURES OF STATE TREASURER AND DEPARTMENT OF JUSTICE FROM DEFINITION - PUBLIC HEARING Witnesses: John J. Radford, Administrator, Accounting Division, Executive Department Don Charlton, Executive Department

109 JOHN RADFORD, ADMINISTRATOR, ACCOUNTING DIVISION, EXECUTIVE DEPARTMENT: Submits and summarizes written testimony (EXHIBIT B).

145 REP. ROBERTS: You are talking about other funds going into the general fund? 146 RADFORD: That is correct. We assess all funds (except dedicated funds), other funds and federal funds, their fair share of some of our administrative expenses. Therefore we recover some of the costs of providing central government administration throughout state government. 155 CHAIR MARKHAM: If a department receives federal funds, you take a portion to cover part of the expense of your administering that department. Do you put those monies in the general fund? 157 RADFORD: Some costs cannot be assessed against federal funds, but money that is recovered goes into the general fund. On an biennial basis, that amounts to approximately \$5.5 million. 164 REP. ROBERTS: Is it too much of a problem to give us a list of the funds and the other funds that would be involved in this? _

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174 RADFORD: We can make those schedules available. Resumes written testimony. -Explains accounting and assessment procedures.

210 REP. FORD: Is the reason for this bill so that those costs that are recoverable will not go into the general fund and therefore will not be part of the spending limitation?

220 RADFORD: In the Central Government Service Charge today, there are no other funds contained within that Central Government Service Charge

component. We are taking a portion of those general fund expenses and allocating them to the other funds and federal funds through the service charge.

228 REP. FORD: It has nothing to do with having a pool of funds that includes funds that don't have to be in the general fund?

233 RADFORD: This is a cost accounting procedure, it is not a fund or a set of funds or a full set of resources. It pulls together those administrative costs from central government that should be or can be recovered, that the general fund used to pay 100 %. 241 REP. FORD: So you are going to be able to use the other fund money instead of using the general fund? 244 RADFORD: That is correct. 253 REP. BELL: Is this just cost recovery or is it a revenue plan to fund more administration? 258 RADFORD: This is a cost recovery plan. Should the citizens of Oregon through the general fund pay 100% of the governor's office, when some of the benefit of the governor's office flows to all of state government? 265 REP. BELL: Of those funds you are assessing, do they actually take up 75% of the governor's office administrative expenses? 269 RADFORD: Somebody arbitrarily said approximately 75% of the governor's office expenses were subject to allocation on a statewide basis. 277 REP. BELL: I would like to see which funds are being assessed before distribution. 284 CHAIR MARKHAM: Is the Department of Geology and Mineral Industries involved in this process? 286 DON CHARLTON, ACCOUNTING ANALYST, ACCOUNTING DIVISION: Yes, I believe they do get a share. 327 CHARLTON: This is not a new charge, it has been in effect for the last twenty years. The basis of bringing this bill forward was some findings by Audits Division and an informal letter of advice by the Attorney General's office that some of the charges set in . 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 content. of the proceedings, please refer to the tapes House Committee on SB tb and Federal Affairs January 28, 1991 - Page 9

this law twenty years ago are no longer appropriate. -Twenty years ago services of the Department of Justice benefited, directly or indirectly, all of state government, while presently they have many programs that benefit directly the consumer, therefore general government should not be charged for those costs.

361 REP. FORD: Please explain your testimony that you estimate the general fund revenues will be decreased by \$967,000. . 370 RADFORD: The bill removes two elements of cost from the administrative charge and adds two elements. By removing the Justice Department and administrative expenses of the State Treasurer, neither of which is now general funded, you are going to decrease the amount of recovery into the general fund.

TAPE 15, SIDE A

028 REP. FORD: In light of the estimated revenue to be decreased, why does the revenue impact statement say no impact on local revenues?

034 JONES: This morning, the fiscal office notified me they were unable to adequately review this bill to determine the fiscal impact, and they are looking at that now. I will ask the revenue office if this was an oversight on their part and will they take a closer look.

Submitted by: Reviewed by: Carolyn Cobb Randall Jones

Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB 2061- Dan Lubbers - 3 pages B - Testimony on HB 2434
- John J. Radford - 4 pages

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