

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

February 27, 1991 Hearing Room E 830 a.m. Tapes 49 - 51 MEMBERS
PRESENT:Rep. Bill Markham, Chair Rep. Larq 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. Liz Van
Leeuwen, District 37 STAFF PRESENT: Randall Jones, Committee
Administrator Carolyn Cobb, Committee Assistant MEASURES
CONSIDERED: HB 2686 - Authorizes Oregon Racing Commission to Adopt
rules Regarding Tolerances for Medication, PH, WS HB 2687 - Requires
Agency Directives to Individuals To Be In Writing, PH, WS HB 2688 -
Adopts Federal Late Payment Provision Applicable to Public Improvement
Contracts, PH, WS SB 109 - Modifies Requirement That Agency Adopting
Certain Standard or Specialty Code by Rule Fle, PH, WS

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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 49, SIDE A

003 CHAIR MARKHAM: Calls the meeting to order at 8:39 a.m.

HB 2686 - AUTHORIZES OREGON RACING COMMISSION TO ADOPT RULES - PUBLIC
HEARING Witnesses: David S. Nelson, Chairman, Racing Division of Oregon
Quarterhorse Association Cliff Babbitt, Executive Secretary, Horse
Breeders Protective Association George Dewey, Multnomah Kennel Club Dr.
Jim Hoffman, Member, Oregon Racing Commission Steve Barham, Executive
Director, Oregon Racing Commission House Comm;itee on State and Federal
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026 DAVID S. NELSON, CHAIRMAN, RACING DIVISION OF OREGON QUARTERHORSE
ASSOCIATION: Submits and summarizes written testimony (EXHIBIT A).
105 REP. SOWA: I assume the College of Veterinary Medicine at Oregon
State University will have the option to appoint a pharmacologist to
this board so they can get the best data to determine how long these
drugs will stay in the system. 110 NELSON: We would certainly support
that. That would be an appointment that is up to the Racing Commission.
116 REP. ROBERTS: Are you saying HB 2686 will answer this question
for both the greyhounds and the horses? 120 NELSON: I believe it
will. Explains an amendment to the bill being offered by the Multnomah
Kennel Club. 128REP. ROBERTS: Should the legislature prescribe the
makeup of the board? 133NELSON: We would not object to the
legislature specifying the makeup of the board. We could not tell you
today everyone who should be on it. 140 REP. ROBERTS: How about Rep.
Sowa and some others writing a letter to the Commission to specify the
expertise they would like to see represented on the board?
146 NELSON: I think that would be very well received by the
Commission. 150 CLIFF BABBITT, EXECUTIVE SECRETARY, HORSE BREEDERS
PROTECTIVE ASSOCIATION: This is a very important bill to our survival,
whether it be our avocation or our profession, and we urge its passage.
176 GEORGE DEWEY, MULTNOMAH KENNEL CLUB: We support this bill.
Technology is moving so fast that testing is now picking up trace and
minute items that were never detected before. -Explains the capabilities
of modern technology. -Urges reasonableness in testing. -Describes
medication from secondary sources showing up in dog tests. -Urges HB
2686 be amended on page 2, line 1, by deletion of the word "prescribed."
239 CHAIR MARKHAM: The Commission doesn't have administrative rule

authority to cover this? 242 DEWEY: They do not at the moment.
245 REP. ROBERTS: When did this problem first begin? 248 DEWEY: It
first developed at the dog track a number of years ago, when the tests
started to pick up vitamins. 256 REP. ROBERTS: Why haven't we seen
this type of bill at a previous session?

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proceedings, please refer to the tapes. Howe Committee on State and
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259 DEWEY: Now the problems are becoming more severe. -Describes
research being done at Oregon State University.

283 DR. JAMES HOFFMAN, OREGON RACING COMMISSION: We agree with the
previous testimony.

296 REP. ROBERTS: The Commission did not have the administrative rule
powers to mitigate this situation?

302 STEVE BARHAM, EXECUTIVE DIRECTOR, OREGON RACING COMMISSION: The
Commission presently has the authority to adopt a permitted medication
program. When the procaine issue came up we adopted a rule that
permitted procaine at a level of one microgram per milliliter. The
Commission would not want to adopt a rule that says "permitted". The
problem has become too complex to be dealt with administratively.

326 REP. ROBERTS: I still want the legislature to have some input as to
the appointments to the board. Do you have any problem with that?

332 HOFFMAN: We certainly do not.

335 REP. SOWA: I realize that testing in many areas is very expensive.
Would you explain to the committee how additional testing needed to
implement this bill may cause additional financial burden to the
Commission or the racing community.

350 HOFFMAN: Yes, the testing has gotten more expensive. Explains what
is involved in some of the testing, and some of the problems
experienced.

407 REP. SOWA: I think this bill is really necessary to give the
Commission and its staff the ability to work on the problems.

422 REP. BELL: What part of the testing costs are borne by the owners
of the animals?

427 BARHAM: None. The only exception to that is if additional tests are
required, the Commission pays half and the owner pays half. -Explains
the costs involved in different types of tests.

TAPE 50, SIDE A

035 REP. BELL: Was it necessary for you to ask for an increase in your
budget to have more sophisticated testing?

038 BARHAM: Discusses the Commission's budget request for testing
funds. This bill does not have any additional fiscal impact.

045 REP. BELL: I notice most of our regulatory commissions are funded through other funds that are generated from the body they regulate. What part of the Commission's budget is provided by the owners and racers?

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049 BARHAM: A limited part of the Racing Commission budget is also other fund. By statute we also give money to other beneficiaries such as special agricultural shows, counties and to the general fund. We are a revenue producer for the state.

HB 2686 - AUTHORIZES OREGON RACING COMMISSION TO ADOPT RULES - WORK SESSION

081 MOTION: REP. ROBERTS moved to amend HB 2686 by deleting on page 2, line 1, the word "prescribed." n 085 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.

093 MOTION: REP. ROBERTS moved HB 2686 as amended to the floor with a "do pass" recommendation. 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. 107 REP. ROBERTS: Asks Rep. Sowa to draw a list suggested board members.

HB 2688 -ADOPTS FEDERAL LATE PAYMENT PROVISION APPLICABLE TO PUBLIC IMPROVEMENT CONTRACTS - PUBLIC HEARING Witnesses: Kim Mingo, Associated General Contractors John Gervais, National Electrical Contractors Association Emerson Hamilton, National Electrical Contractors Association

126 KIM MINGO, ASSOCIATED GENERAL CONTRACTORS: Gives background of why legislation is being requested. -Explains provisions of the bill. -Discusses related legislation that is pending. -Associated General Contractors is willing to work with the National Electrical Contractors Association in order to put together one piece of legislation.

171 REP. ROBERTS: Line 16 refers to 150% of the disputed amount. How do you calculate 150 %?

174 MINGO: It would also include progress payments, so if the general contractor is aware there is a potential claim by the Bureau of Labor because a subcontractor has not paid prevailing wages, he can withhold up to \$15,000.

197 RFP. NOVICK: Does this bill interfere with the business relationship of the general contractor and a subcontractor?

201 MINGO: This bill would not interfere with the contractual relationships between the general contractor and the subcontractors.

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207 REP. NOVICK: If a subcontractor has not completed their work and there is a progress payment from the public agency, this would not mandate the withhold?

211 MINGO: That is why there is a clause regarding a good faith dispute. If the subcontractor has not completed the work, the agency would be entitled to withhold that portion. 216 JOHN GERVAIS, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: Our bill is HB 2976. It is more of a total overhaul of the prompt pay concept that goes along federal guidelines. Suggests putting together a working subcommittee to merge the two bills. 237 EMERSON HAMILTON, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: Slow pay is a definite problem in the industry. HB 2688 leaves an important part of the cash flow equation out, which is payment from the contracting agency to the general contractor. On public contracts we frequently experience payments of 60, 90 or 120 days even on progress payments. 260 CHAIR MARKHAM: Are you talking about state, county and city, but not federal? 265 HAMILTON: The federal law was passed two years ago, and requires prompt payment to the general contractor and flow-through to the subcontractors. 276 CHAIR MARKHAM: You would like to bring the state and local government contracting requirements under the same umbrella as the federal law? ~

278 HAMILTON: It would not be exactly the same as the federal law. HB 2688 does provide for interest on late payments and HB 2976 also addresses that. One of my concerns about HB 2688 is that it does provide excuses for late payment. I have no problem in not paying for work that is defective or not done properly, but we need to require documentation that those excuses are justified. I would support the ideas of having the two groups work together to produce one bill. 297 REP. NOVICK: In your own business do you have any accounts that are not net thirty?

312 HAMILTON: We have some, but thirty days is the norm. 323 REP. NOVICK: If the state or municipality has the opportunity to negotiate better terms, does this lock them into a shorter time period?

327 HAMILTON: The shorter time is more cost effective because the contractor will factor in the cost of longer terms. 341 CHAIR MARKHAM: If there is no objection, we will set this bill aside until a subcommittee can work with the interested parties to merge the two bills. Appoints Rep. Sowa to head the subcommittee.

HB 2687 - REQUIRES AGENCY DIRECTIVES TO INDIVIDUALS TO BE IN WRITING - PUBLIC HEARING Witnesses: Liz Van Leeuwen, State Representative, District 37 Janet Carlson, Executive Department

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380 LIZ VAN LEEUWEN, STATE REPRESENTATIVE, DISTRICT 37: Gives background of the bill. Reports countless calls received from frustrated citizens who were confused about what they had been told by state agencies.

TAPE 49, SIDE B

016 REP. VAN LEEUWEN: Gives an example of the problem.

032 REP. ROBERTS: Was the conflicting information because more than one person at the state agency talked to them?

036 REP. VAN LEEUWEN: Part of the problem was conflicting information from different agency staff, and part was conflicting information from the same individual. Appointments were made that were not kept. The emotional stress for the average citizen in dealing with state agencies is so great that it is difficult afterwards for them to remember what they have been told.

049 REP. SOWA: Do you intend this bill would cover routine questions that come into an agency?

060 REP. VAN LEEUWEN: What I have found is that the agency almost always refers the person to their legislator. I am particularly referring to Children's Services Division and Adult and Family Services. A check sheet could be done very easily and I don't think it would make that much more work for the agencies.

076 CHAIR MARKHAM: Doesn't the second sentence on line 9, which says the agency may also communicate with the individual orally, destroy the bill?

079 REP. VAN LEEUWEN: I do not think so because it is in addition to the written communication. Specific directives should be in writing.

089 REP. BELL: Some of the complaints I get are not for the individual to meet requirements of the law or agency rule, but edicts that need to be in writing so the individual can refer back to them. In subsection 3, if a person thinks the written material is too complicated, they can complain to the governor to have it ruled null and void. Do we want to put the governor in the position of having to rule on all these? 106

REP. VAN LEEUWEN: I think the governor is probably going to be supporting the agency person, so I doubt there are going to be too many appeals unless the agency person is out of line. Having to put their directives in writing will cause the agencies to be a little more responsible.

114 REP. BELL: Describes a constituent's problem with the Employment Division which it appears under this measure would have to go to the governor.

121 REP. VAN LEEUWEN: That is what the governor's ombudsman is for.

126 REP. ROBERTS Line 5, says "when reasonable", does that make the bill so broad, it is meaningless? The message has to be in simple terms and sent by certified mail so there is no loophole. If someone wants to protest to the governor, does the timeline keep running or does it end until the governor makes a decision?

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146 REP. VAN LEEUWEN: On line 5 I have no problem in removing the "when reasonable" wording. I was thinking more of delivering the written material to the individual when they are in the meeting with agency staff. The time: line is up to the committee.

162 REP. NOVICK: There are a variety of cases when the writing would not be in simple language such as that of the Justice Department or

Public Utility Commission. Doesn't removing "when reasonable" open up a lot of potential problems?

172 REP. ROBERTS: I am not saying to drop those words entirely, but the matter should be addressed.

178 REP. NOVICK: In subsection 2 where it says the agency may communicate with the individual orally, what procedure would be followed?

184 REP. VAN LEEUWEN: If the Attorney General's office cannot write things in language the rest of us can read, they should restructure. They can put things in simple language if they will. As to the oral part, not only is staff going to be giving them the written material, but they will be talking about it also. It should be made clear that I am not talking just about Children's Services Division, but all state agencies.

203 REP. NOVICK: There are situations where someone is given a directive over the phone and there is no opportunity to do things in writing, would they be required to write it later? 210 REP. VAN LEEUWEN: They need to communicate in writing what they have done and why.

224 REP. NOVICK: I just want to be sure we are not preventing someone from doing their job because they could not do the writing in advance.

230 REP. VAN LEEUWEN: It needs to be done at the time the directive is given, and that may mean it would be mailed.

234 REP. BELL: It is really important to have that follow-up letter, so that when questions come up, the person giving that edict needs to be accountable for what they said at the time. We need to encourage state agencies to remember they are talking to lay people.

250 REP. NOVICK: There are legal and regulatory matters that require the use of legal language and I want to make sure we are not overriding that.

260 REP. BELL: The way to handle that is to state the legal term and then in parenthesis define it in lay language.

264 REP. VAN LEEUWEN: I do not know of an agency that does not have computers that could be set up with standardized material. As the agencies come in and tell you this is going to cost a lot of money, do not believe them because this is going to save them a lot of time and effort and they will have the proof that they gave a particular instruction.

284 JANET CARLSON, EXECUTIVE DEPARTMENT: We support the principal that writing should be in plain and simple english. The standard is already in the law.

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Reasonable is a flexible term. -Discusses questions of how state

agencies and the governor's office might implement the measure. -Reviews questions as to how this bill would be administered.

351 REP. FORD: You heard the concerns that prompted this bill, does this bill address those problems?

360 CARLSON: I am not so sure the language in this bill addresses the kinds of concerns that were raised. We would hope legislators would refer complaints of this type to the Executive Department so we may become aware of them.

374 REP. FORD: In CDS they are consistently changing their directives to the public. Do you mean all we have to do is come to you with these complaints and you will direct the specific agency to correct the situation?

385 CARLSON: It may not be that simple. The language of the bill does not deal specifically with with one agency, but applies to all agencies, which causes some concerns.

398 REP. FORD: Does the Executive Department has any suggestions as to how these problems could be resolved without this language.

404 CARLSON: I could come back with some suggested language or some alternatives.

413 REP. FORD: I would like to work with you on this.

415 CHAIR MARKHAM: Asks Rep. Ford to meet with Rep. Van Leeuwen and Ms. Carlson to try to resolve their differences on the bill.

TAPE 50, SIDE B

012 CHAIR MARKHAM: Recesses meeting at 10:02 a.m.

-Resumes meeting at 10:17 a.m.

SB 109 - MODIFIES REQUIREMENT THAT AGENCY ADOPTING CERTAIN STANDARD OR SPECIALTY CODE BY RULE FILE - PUBLIC HEARING Witness: Gary Wicks, Administrator, Building Code Agency

021 GARY WICKS, ADMINISTRATOR, BUILDING CODE AGENCY: Submits and summarizes written testimony (EXHIBIT I). -Describes his agency and its functions. 049 CHAIR MARKHAM: Does that mean the larger cities take over your duties, provided their codes are as tough? 052 WICKS: That is correct. So most of the metropolitan areas in Oregon have taken over most

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of the code administration and we are left with the rural areas of the state.

056 CHAIR MARKHAM: In the county areas, generally the counties are taking over?

058 WICKS: Yes. We put out a book that gives a pretty clear picture of these jurisdictions. -Oregon is unique in having a state-wide building code. -Some of the codes are not assumable by the local jurisdictions.

097 REP. NOVICK: Does your inspection of amusement rides include carnivals that come in and set up for a week or two?

099 WICKS: We are required to inspect them at least on an annual basis. -Discusses how the agency deals with amusement ride inspections. 109

REP. ROBERTS: Is part of your responsibility to make sure amusement ride operators are bonded and insured?

114 WICKS: No, our agency is only concerned about safety and proper permits. -Resumes written testimony. -Legislative counsel recommended the legislation. 149 CHAIR MARKHAM: I was not aware you had to file something with Legislative Counsel.

153 WICKS: The requirement is in ORS 183.715. 160 REP. BELL: If you don't send it to Legislative Counsel, who actually determines that your new rule is harmonious with the statutes of the State of Oregon?

165 WICKS: We are not suggesting that we not be required to file a rule with Legislative Counsel, only we do not have to file the code book when a rule by reference adopts a national code. 177 REP. BELL: This narrows it down to just to those rules that are a published standard, or by reference?

180 WICKS: That is correct. 190 REP. SOWA: I need to talk with this agency about the justification for their existence. I do not know why we need a Building Codes Agency in this state. The federal government and the counties and cities regulate it also. 203 REP. ROBERTS: The federal standards are minimum, and some of the state standards are higher.

207 WICKS: As far as I know the federal government does not regulate "stick-built" houses, so there is a need for state regulation and enforcement of codes. 221 REP. ROBERTS: Who determines what are "voluminous" rules? How do the contractors and builders get the word when there has been a change in the code? These rninuter combin materiab which paraphrase and/or rummarize etatementr made during thir secrion. Only text enclosed in quotation rnarl~r report a speaker's exact words. For complete contents of the proceedinga, please refer to the taper. House Committee on State and Federal Affaus February 27, 1991- Page 10

226 WICKS: Explains the rule adoption process that all rule changes must go through. -The determination of "voluminous" is done by the Secretary of State or Legislative Counsel. 242 REP. FORD: Asks for an explanation of follow-up by the agency on developed standards. 259 WICKS: We do adopt a lot of standards that are developed at the national level. -A lot of states adopt those standards by reference. 287 REP. FORD: With a standard of that nature you would not have to adopt rules. 292 WICKS: We have to adopt rules to let the public Icnw what we are doing. 315 REP. SOWA: Are your codes minimum or maximum? 320 WICKS: It depends on the particular code we adopt. -Gives examples of codes with different standards. 327 REP. SOWA: You develop a standard, if I build a house that has at least those minimums, can I put it anywhere in the State of Oregon?

335 WICKS: The answer to that is yes. The whole purpose of the statewide codes is to try to bring some uniformity to the standards. We have oversight over any additional local codes. 404 REP. NOVICK:

Doesn't this bill have some potential to save the agency some funds? 414

WICKS: That potential exists. There will be some savings, but we could not identify them specifically. 428 REP. BELL: Has there been any discussion about working with the farmers who are interested in farm housing, to establish codes that would allow their own workers to build, and to adapt the codes to apply to the seasons the housing is used?

438 WICKS: There have been no discussions with our agency about that problem that I am aware of. TAPE 51, SIDE A SB 109 - MODIFIES REQUIREMENT THAT AGENCY ADOPTING CERTAIN STANDARD OR SPECIALTY CODE BY RULE FILE - WORK SESSION 030 MOTION: REP. FORD moved SB 109 to the floor with a "do pass" recommendation.

035 REP. SOWA: I think this whole process is an indication that these bureaucracies abide by the laws we pass when they want to, and don't when they do not want to. Duplication of services is the reason government in this state costs so much money.

050 VOTE: In a roll call vote, the motion carried, with Rep. Bell, Rep. Ford, Rep. Novick,

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Rep. Oakley, Rep. Roberts, Rep. Sowa, and Chair Markham voting AYE.
Submitted by: Reviewed by:

Carolyn Cobb Randall Jones Assistant Administrator

EXHIBIT LOG: A - Testimony on HB 2686 - David S. Nelson - 4 pages B - Testimony on SB 109 - Gary J. Wicks - 4 pages