

Senate Government Operations April 1, 1991 Page 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.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

April 1, 1991Hearing Room "B" 3:00 p.m. Tapes 53 - 54

MEMBERS PRESENT:Sen. Glenn Otto, Chair Sen. Jane Cease, Vice-Chair Sen. Jim Bunn Sen. Ron Grensky Sen. Tricia Smith Sen. Dick Springer

MEMBERS EXCUSED:Sen. John Kitzhaber

STAFF PRESENT: John Houser, Committee Administrator Jayne Hamilton, Committee Assistant

MEASURES CONSIDERED:SB #896 - Relating to private building inspectors, PH SB #924 - Relating to administration of building codes, PH

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TAPE 53, SIDE A

005 CHAIR OTTO: Called the meeting to order at 3:17.

(TAPE 53, SIDE A)

PUBLIC HEARING

SB 896 RELATING TO PRIVATE BUILDING INSPECTORS

Witnesses:John Brennehan, Senator, District #2 Gary Wicks, Building Codes Agency Peggy Collins, Building Codes Agency Dan Lubbers, Private Inspector Michael Larson, Home Owner Bob Hall, PGE Michael Cliburn, Oregon Building Officials Association Penny Been, S & B Building Inspection Services Chris Nolte, Home Owner Joel Goldstein, Home Owner Genoa Ingram, Oregon Association of Realtors

007 HOUSER: Distributed fiscal impact statement on SB 896, Exhibit A.

008 JOHN BRENNEMAN, DISTRICT #2: Described a situation where a private inspector had acted negligently while inspecting the home of a friend, and cost the family the marriage along with a large amount of money. "This is an area where Oregonians are being harmed. It's an area that has no control at this point, and needs some. I support this legislation very strongly."

045 GARY WICKS, BUILDING CODES AGENCY: Read written testimony, Exhibit B. Made reference to fact sheet, Exhibit C. "We believe that SB 896 is not perfect, but is a good step forward in trying to bring some regulation to a industry that is, apparently, causing some significant problems."

093 HOUSER: In section 5 of the bill it talks about obtaining a report that includes negative findings. Is the term "negative findings" something that is sufficiently defined just by using it in that way, or what would constitute a negative finding in an inspection report?

106 WICKS: Our interpretation of that language would be just a statement that the inspection would show that there is something wrong with the building. There isn't any standard that we know in the practice that would define that.

112 GRENSKY: What would you think about amending the bill instead of using "negative finding?" Why not use something like; An inspection report indicating that some repair work is required?

118 WICKS: We don't have a problem with that at this time.

125 OTTO: How many complaints do you get over a period of time?

128 WICKS: We haven't kept a record of them, but our sense is that we've had about 10-15 over the years, relating to these types of

problems.

132 CEASE: Where does one find a private building inspector?

138 PEGGY COLLINS, BUILDING CODES AGENCY: There are listings and advertising in both the yellow pages and news pages.

142 CEASE: Private building inspectors is what they commonly call themselves?

144 COLLINS: Yes.

146 CEASE: Is this a wide spread practice that could be found all over the state?

149 COLLINS: Yes.

150 WICKS: In our fiscal note we estimated about 200 people engaged in the private inspection business in Oregon.

155 CEASE: What did you base that on?

156 COLLINS: We have been informed that there are 40-50 inspectors in the Salem area, and there are at least that many in the Portland area. We added the remainder to represent other areas of the state. Distributed newspaper article, Exhibit D.

178 DAN LUBBERS, PRIVATE INSPECTOR: Read written testimony, Exhibit E. Is strongly opposed to the bill. Believes that the responsibility should be put on the builder not the inspector. If a lawyer were to be involved in a real estate transaction and find a flaw in the sellers contract, he's not necessarily held to disclose that to everybody if the deal falls through. I think the inspectors deserve the same. That is part of The Code of Ethics of The National Association of Home Inspectors, that there is confidentiality to whoever orders the inspection.

236 GRENSKY: If an inspection reveals some problems, this bill would require that an inspection report to be passed on to subsequent potential buyers down the line. What's the problem with that?

243 LUBBERS: You have a bank that's saying we need a pest inspection, and we want everything fixed on it. You have an inspector who smiles and goes underneath the house, pulls bugs out of his pocket and says you've got bugs, and you're going to have to have an application. This bill now says that even if that deal falls apart, it has to be disclosed to the next deal even though it may be a bogus report.

252 GRENSKY: Should we assume people are working fraud on people?

254 LUBBERS: There is a lot.

255 GRENSKY: That's exactly why we're talking about doing this.

256 LUBBERS: That's why we're here, because we are actively working toward some legislation.

257 GRENSKY: I'm not interested in that right now. What I am interested in though is why we can't disclose the information on the report to the next potential buyer. What's wrong with that?

264 LUBBER: There's nothing wrong with what you're saying, but there has to be some confidentiality.

265 GRENSKY: Why?

266 LUBBER: Those people paid good money to find that information out.

267 GRENSKY: With usually no expectation of confidentiality.

268 LUBBER: I can't say that.

269 GRENSKY: I buy a lot of property, I'm also an attorney, and I can tell you that I've never expected that report to be kept confidential. Usually realtors keep them to show to the next potential buyer so they don't have to pay for it again. That isn't going to work. What's your next argument.

275 LUBBER: You being a lawyer, if you find something out in a case, are you required to disclose that? Can we have the same professional courtesies that you get?

278 GRENSKY: I want to know why you should.

281 LUBBER: It's not that we should, it's why the person involved in

the real estate transaction should.

282 GRENSKY: Tell me why. So they can work a fraud on the next buyer, and not tell them that the under structure is messed up? That's not very good public policy from where I'm sitting.

286 LUBBERS: They may have corrected the condition.

287 GRENSKY: Then they'll have that to go with the report when they show it to them.

288 LUBBERS: Why should the person ever have to know.

289 GRENSKY: Fine, fair enough.

291 LUBBER: This is a young and growing industry that is constantly changing. Reviewed the changes. I would like to propose that this be moved to the Builders Boards Agency and let them administer it.

329 WICKS: We're not seeking to expand our authority here. Both the civil penalties, and the certification requirements are things that we already do. What we've done in the bill in trying to draft legislation is to take our experience in electrical and other fields, certify and license people, and put it in the Building Codes Agency. If you want a certification function then the Building Codes Agency should be included. If you simply want them registered with a contractors licensing board, then you would agree with the recommendation that this individual is making.

365 LUBBERS: I'd like to suggest that there be some error and omissions requirements, and requirements on the style of a report. It needs to provide a check list so people will know what was checked. Require a fidelity bond that would protect the persons belongings in the house while the inspector is there. I see the state taking on a lot of liability for certifying these people and not really providing that much for the consumer.

392 OTTO: I think our testimony this afternoon will show a lot of need for the bill. I hope you will stick around.

398 CEASE: Your testimony says that HB 2061 basically does what this bill does.

402 LUBBERS: Yes.

403 CEASE: Has it passed the House?

408 LUBBERS: Yes.

430 CEASE: If I inherited a home and didn't know that there was an inspection on the house that indicated it was in need of repair, and I sold the house without giving the inspection notice to the buyers, I would be in violation of this bill.

443 LUBBERS: I think you will find there are other laws that the real estate industry is concerned about that cover that situation, and you really are putting a lot of weight on the back of an inspection company.

449 CEASE: I'm not saying the bill is not a good idea, I just think it needs some work.

452 GRENSKY: As I look at your summary, you are not contending that it requires you, as an inspector to make that report available within a year to a potential buyer, are you? That's not what it does. It says if you give a report, that person, or that person's agent, is required to give that report to a potential buyer within a year, not you. Do you understand that?

464 LUBBERS: Yes, but it will end up being us, and if that is the case why isn't that a separate bill in the real estate law?

TAPE 54, SIDE A

021 GRENSKY: What do you mean it will end up being you? You give your report and walk away, that's the end of it for you. If I'm the owner of the house and the deal falls through that I required the inspection on, when another buyer comes along and I know I have \$5,000.00 worth of termite damage, I can't take that report and throw it away and say I've never had a report. With this bill I'll have to show that person or I'll be in violation of the law.

025 LUBBERS: What will happen will be the real estate agent will smile and say there was a termite report on this and they found something, and it was done by such and such a company. The new buyer will call us up and ask us for the report. Our code of ethics says that we do not

disclose that information to anybody but the person who requested the inspection in the first place.

030 GRENSKY: The reason you have that is to make the next guy go out and buy another dry rot report. There's no good reason to keep a confidential report like that, and you have yet to give me one. Unless you can come up with something besides what your code of ethics says, I know it's perpetuation of your business.

034 LUBBER: Your code of ethics says that too.

035 GRENSKY: There's a lot of reasons why attorneys can't divulge information from clients, but you have yet to tell me why a dry rot report cannot be shown to another potential buyer. Until you do that I think it's real good public policy that if one's done, that everyone down the line should get to see that report.

039 LUBBER: Make the real estate agent do that.

040 GRENSKY: What if the agent doesn't have it?

045 LUBBERS: I'm saying the inspection company needs to have the ability to keep that confidential. You're saying that the real estate agent doesn't need to do it, and Sen. Cease is saying that the home owner may not even know it happened. Somehow we've got to stick someone with the disclosure. Who are we going to stick?

052 GRENSKY: If your report is going to get disclosed, what difference does it make if I get it from you or the owner? We all agree that it's going to get seen.

054 LUBBERS: We have no understanding of where that real estate transaction is. They may be making a decision that is based upon our report, that the buyer or seller may not even know about. You're saying we're going to have to make it public knowledge.

059 GRENSKY: That's right. What's wrong with that? You give it to the potential buyer and you give it to the owner of the property, but for some reason you don't want to give it to the next person who comes along.

063 LUBBERS: We only give it to the person who pays for the report.

064 GRENSKY: Exactly! So the next person who comes along can pay for it again. Isn't that really what the confidentiality thing is all about?

065 LUBBER: No.

066 GRENSKY: Well then tell me a good reason why another buyer shouldn't see the report. It's a practical matter they do anyway.

067 LUBBER: I know they do, and I have no problem with them seeing it. The buyer or seller, whoever is the owner of that report, would like to know they have some value in that report.

075 MIKE LARSON, CITIZEN: Explained how an improper inspection caused him to purchase a home full of problems, not enclosed in the report given to him by an inspector, and how it eventually cost them a large amount of money in repairs to the foundation, and several other areas of the home. He also had to get another inspection in order to find out what was needed to make the home livable which cost an additional \$150.00, which indicated the house needed several thousand dollars of repair to make it livable. Is now in the process of hiring a lawyer.

142 OTTO: After you had the second inspection, were you satisfied with the report?

144 LARSON: Yes.

154 OTTO: What about the claim of the first inspector that he was licensed and bonded?

156 LARSON: As it turned out, he was not licensed or bonded as an inspector.

160 BOB HALL, PGE: Read written testimony, Exhibit F. Referred to proposed amendments included in the testimony.

180 MICHAEL CLIBURN, OREGON BUILDING OFFICIALS: Read written testimony, Exhibit G. Read proposed amendments included in the testimony.

191 SMITH: Why do you think it's better the way you have it amended?

192 CLIBURN: We can find no standards for certification to which we can

certify these sort of inspectors. Currently, we have specialty codes which are adopted by the Building Codes Agency for new construction.

205 SMITH: You're suggesting licensing first, and then determining whether or not they have the qualifications to do the job?

207 CLIBURN: That's not uncommon. We have a lot of contractors who are not certified, yet they are licensed to go out and build these homes. When you hire a private inspector to go out and look at a house, we're not certain to which standards you're going to weigh his qualification. We find nothing, in our review of any standards that are published, against which we could develop a certification.

215 SMITH: Isn't it true that the general public believes that if a person is licensed they are qualified to do the job?

224 CLIBURN: Yes.

225 SMITH: Until you have standard qualifications, isn't it dangerous to give them a license?

226 CLIBURN: No, I disagree. We think that the method of licensing is to assure the individual is registered by the state in the capacity of a private building inspector, and that he's posted the necessary assurances that if we have complaints against that individual, the consumer can file a complaint with the Contractors Board.

248 GRENSKY: You've pointed out a problem with your proposal, by saying that you can become a licensed contractor without certifying that you know what you're doing. Now you're saying that we should do the same thing with building inspectors. We'd like to avoid doing that if possible. Putting it into the Building Codes Agency is a good idea. We need to come up with some standards. Do you feel that we should start certifying both contractors and building inspectors inside the Contractors Board?

270 CLIBURN: No, I haven't broadened my statement to include certification of contractors. Our concern is the standards that would be developed.

281 GRENSKY: Who are electrical inspectors certified with?

282 CLIBURN: The Building Codes Agency.

283 GRENSKY: It seems to me that it would be the logical place for the private inspectors to be certified as well.

288 CEASE: Have you been working on HB 2061?

289 CLIBURN: No. I've just been made aware of it today.

292 CEASE: What does it mean when somebody advertises that they have 25 inspector certifications?

294 CLIBURN: I have no idea. We do have numerous certifications for new construction inspectors.

310 PENNY BEEN, S & B BUILDING INSPECTION SERVICES: Read written testimony,

Exhibit H. Made reference to information included in Exhibit H, relating to inspections needed to be done by their firm after a faulty inspection had already been preformed.

462 CEASE: Are you aware of HB 2061?

465 BEEN: No.

TAPE 53, SIDE B

002 SMITH: Are you recommending that section 5 be amended to change the language from any person, or agent of a person, who retains a private building inspector, to a listing agent?

007 BEEN: Yes. The listing agent would have the file and therefore would know if there are any potential buyers coming into that transaction before anyone.

009 SMITH: Would you foresee that we are going to also include language requiring the buyer to give the inspection to the agent?

012 BEEN: Possibly. That's the only other way that we could figure it out. Or have the inspection companies responsible for getting it to the listing realtor. Once the buyer decides not to buy the home the report gets trashed right now.

020 CEASE: What if it's not a house that goes through that kind of a process?

023 BEEN: I don't know what would happen with that.

024 CEASE: That needs a lot of work on it.

026 OTTO: Also I don't think there's anything mandatory that says home owners have an inspection.

027 BEEN: No there's not. In fact some of the testifying said that the banks require inspections, and they do not. I'd like to address the 25 inspector question. It is our company.

040 CEASE: So the 25 inspector certification means all different kinds?

041 BEEN: Right. He's gone through different organizations. He is an A level inspector. There are A, B, and C levels, A being the highest.

046 OTTO: Do you charge by the hour, by the job, or what?

047 BEEN: We charge by the square footage and age of the home. We also look at the amenities. The average home is \$250.00.

054 OTTO: Do you have a problem with making your report available to others?

055 BEEN: Not at all.

058 CHRIS NOLTE, HOME OWNER: Is in support of the bill due to a faulty inspection resulting in an additional inspection being needed, and a loss of money and damage to the home.

135 CEASE: When the inspection was complete, were you provided with a written report that you signed?

138 NOLTE: The seller was the one who paid for the inspection.

140 CEASE: The seller paid?

141 NOLTE: It came out of the repair fund. It turned out that I only received the summary of the report. I didn't know there was a 17 page report. Described how his roof had caved in after a rain storm.

153 CEASE: Did you see where it says that they will not be held liable for errors, omissions, or judgments of opinions? I'm not sure that we want to start telling people that they should be liable for pointing out what other people should be repairing. It sounds like that's what you're heading for here.

159 NOLTE: No, not at all. The review I got gave the house a glowing report. The house was not in satisfactory condition.

168 CEASE: Did you do an inspection of the house?

169 NOLTE: We did, however, it was a very difficult sell. We didn't have a lot of help from the sellers.

201 JOEL GOLDSTEIN, HOME OWNER: Read written testimony, Exhibit I.

291 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: I had not planned to speak on this bill today. There's been such a great deal of misinformation here today. We respectfully request that HB 2061 be given a hearing before this committee. I also want to respond to an earlier question posed by Sen Cease. She was questioning whether or not there were ads. in the yellow pages. Just in the Salem yellow pages there are page after page of licensed building inspectors, licensed home inspectors, and certified home inspectors. I'd like to set something straight. There is no such thing as a licensed inspector, it does not exist.

389 SPRINGER: A previous witness talked about a home he had purchased, and his comments were that the realtor recommended the home inspection service. What do you recommend to your people about whether or not they get into the business of recommending home inspection people?

398 INGRAM: Our association is very careful about that. I don't know if the person was a realtor or a real estate licensee. There's a lot of misinformation about that. I can tell you that our organization does advice two things. 1). An inspection be done, and 2). the person stay out of recommending a particular inspector.

420 SPRINGER: How do you recommend to your people that if they are aware of an inspection, they ask for a copy of the receipt?

429 INGRAM: ORS 696, I believe it's 310, addresses fraud and the commitment that the real estate licensee has to treat all parties fairly.

TAPE 54, SIDE B

PUBLIC HEARING

SB 924 RELATING TO ADMINISTRATION OF BUILDING CODES

Witnesses: Paul Phillips, State Senator, District #4 Russ Joki, Tigard School District Joe Krumm, North Clackamas School District Leticia Maldonado, Portland Public Schools Mike Cliburn, Oregon Building Officials

013 PAUL PHILLIPS, STATE SENATOR, DISTRICT #4: We're here in support of the

measure. The bill itself is not meant to embarrass or insult any government agency. In the area of Tualatin they have been extremely cooperative with our school district. It does bring up two issues. The issue of equity of tax payers, and the issue of ballot measure 5. In the language it does bring up actual cost to tax payers. School Districts are tax payers too. I realize it may require better, or at least different, accounting practices at local government. The requirements are not unrealistic or unreasonable. We believe there is an issue here that needs to be addressed, and it deals with the actual cost of fees and permitting. I'm here to encourage the passage of this bill.

040 RUSS JOKI, TIGARD SCHOOL DISTRICT: Concurred with Sen. Phillips testimony. Received letter relating to SB 924 dated April 4th, 1991, Exhibit J.

045 CEASE: Could either of you tell me how, on line 15, you determined the reasonable hourly rate?

048 JOKI: We would have deferred to the cities and counties to provide a schedule of some kind for that.

053 CEASE: You'd look for something that was within an X amount of time and that would be it?

056 JOKI: If I may give an example. The Tualatin Valley Fire District collected over \$20,000.00 as a percentage of a permit fee that was charged by the city of Tualatin. For that money they reviewed architectural plans, and did things like location of fire plugs, number of exits, hallway patterns, numbers of dampers on the architects plans, the access to the sight for fire fighting equipment, and the number of sprinkler units. We assume that kind of a review would take two to three weeks.

072 PHILLIPS: Distributed written testimony on fees charged for middle and high schools, Exhibit K.

127 JOE KRUMM, NORTH CLACKAMAS SCHOOL DISTRICT: We're looking at 600 new students, each year between 1990 and 1995. We're currently planning to build an elementary school, and a second phase of a junior high school, and recently the voters have approved a bond to add 11 other class rooms as well, in four other buildings. North Clackamas has built two schools in the past two years. The building permit and plan check fees for Mt. Scott Elementary were \$14,800.00, and \$17,500.00 for just the first phase of Sunrise Junior High School.

161 LETICIA MALDONADO, PORTLAND PUBLIC SCHOOLS: We do support the bill and

have been informed that it would save the school district anywhere between \$150,000.00 and \$180,000.00 annually.

169 MIKE CLIBURN, OREGON BUILDING OFFICIALS: Read written testimony, Exhibit L.

Meeting adjourned at 5:00

Submitted By:

Jayne Hamilton  
Assistant

EXHIBIT LOG

Reviewed By:

Joan Green  
Administrator

A - Fiscal impact statement for SB 896, staff, 1 page B - Written testimony, Gary Wicks, 2 pages C - Fact sheet, Gary Wicks, 2 pages D - Written testimony, Building Codes, 1 page E - Written testimony, Dan Lubbers, 2 pages F - Written testimony, Bob Hall, 1 page G - Written testimony, Mike Cliburn, 2 pages H - Written testimony, Penny Been, 31 pages I - Written testimony, Joel Goldstein, 2 pages J - Written testimony, Russ Joki, 2 pages K - Written testimony, Sen. Phillips, 2 pages L - Written testimony, Mike Cliburn, 2 pages