

1505 REPRESENTATIVE SIMPSON inquired of Mr. McMurdo if this bill would apply to school districts and Mr. McMurdo indicated that it would.

1507 REPRESENTATIVE WILHELMS asked Mr. McMurdo if this bill would apply to legislators and he answered that it would not since legislators do not fall into the category of state employees - legislators are elected into office. REPRESENTATIVE WILHELMS raised interesting questions concerning whether or not legislators would be considered in full-time public service in relation to per diem benefits.

HB 2651 - Allows safekeeping of investment instruments of Oregon Investment Council and Local Government Investment Pool with responsible New York bank or trust company other than state fiscal agency.

1557 Gary Delaney, Administrative Manager of the State Treasurer's office, supports the bill. (See EXHIBIT "F") He said he would like to have the language in the bill adopted which in effect would allow the bidding process concerning banks to completely separate those bids - one dealing with bond and coupon payments and the other dealing with investments and safekeeping activities.

1589 REPRESENTATIVE OTTO asked who is paying for this service. The state pays for both services was Mr. Delaney's reply. REPRESENTATIVE OTTO further asked that if these two functions were separated, would the state then have to pay even more. Mr. Delaney said there is a check paid for the investment and safekeeping service. A service fee is attached to it according to the number of transactions, the number of items in safekeeping. On the bond and coupon paying side, there is no fee charged although they operate on the balances available because the money is placed at the bank on the due date for bond and coupon maturing and the bank operates off of balances and makes sufficient fees from them.

1599 REPRESENTATIVE OTTO asked if these two functions were to be separated, would it increase costs for the state. Mr. Delaney said he did not foresee this to pose a problem. Mr. Delaney feels it would make the banks want to offer additional services to the state in order to obtain their accounts.

1610 REPRESENTATIVE OTTO moved that HB 2651 be moved to the Floor with a "do pass" recommendation and to be placed on the Consent Calendar. The motion carried, 5-0 (voting, Aye: Markham, Magruder, Otto, Simpson, Davis; Excused: Byers and Wilhelms). REPRESENTATIVE OTTO will carry the bill.

HB 2554 - Relating to builders.

1630 Christy Park, Committee Administrator, outlined what the bill proposes to do. She explained the bill by Sections.

1661 Jerry Van Scoy, Executive Director, Associated Floor Covering Contractors, spoke for the bill. He said anyone in the State of Oregon who performs work on a residential structure, with just a couple of minor exclusions, is supposed to register with the Builders Board. A surety bond is required for most in the amount of approximately \$3,000.00 for most contractors. The contractor must also show evidence of a certain amount of liability insurance. He said this was enacted as a form of consumer protection.

1679 REPRESENTATIVE MARKHAM asked Mr. Van Scoy if every homebuilder contractor has to register with the Builders Board. Mr. Van Scoy said he believes that almost anyone who performs work on a residential structure, including apartments, must register with the Board. This also would include any remodeling performed on a structure.

1688 REPRESENTATIVE OTTO referred to a piece of legislation in 1975, the proposed amendments to which he was opposed, which said that if you were not registered with the Builders Board and performed work on a home, the homeowners could refuse to pay that contractor. Mr. Van Scoy said that is not the law (see lines 6-14 on page 2 of HB 2554), but he would like to have the original law reenforced. He said there are about 5,000 persons or businesses not registered with the Builders Board and are performing work. There are presently approximately 15,000 registered with the Builders Board. He would favor a three-teared bonding application as compared to a flat \$7,500 requirement. His association is concerned about the higher cost of a bond. HB 2921 proposed that the increase be to \$10,000. He feels that maybe the homebuilder contractor should have a \$7,500 bond and perhaps the subcontractor should have a \$5,000 bond. He said the little guy (see lines 26-27 of Section s(2)) should pay \$1,00 or \$2,000.

1780 Mr. Van Scoy referred to Section 3(h) which is of great concern to him. He feels that homeowners should not have liens placed against them when they have paid the contractor but the contractor has not paid the subcontractors he has hired to do jobs for him on the homeowner's property.

1800 REPRESENTATIVE OTTO asked if the subcontracting company could file a complaint directly to the Builders Board without filing a lien on the homeowner's property in order to recover monies owed to them. Mr. Van Scoy said they could file a complaint if they were encouraged to do so. However, most subcontractors file liens because they are not always familiar with the processes of the Builders Board. He indicated that \$250.00 to \$500.00 per day would be more appropriate for a penalty for violation of any provision of this proposed law, rather than a \$1,000 fine. He feels enforcement should be a vital concern in the passage of this bill. There are presently approximately 200 claims coming into the Builders Board per month for bad work.

Tape 6 - Side 2

0001 CHAIRMAN DAVIS said that in his reviewal on HB 2669, which relates to health and dental insurance coverage for student-workers or half-time workers who are public employees, that the fiscal impact would require that the bill be referred to Ways and Means. Therefore, the CHAIRMAN recommended that the bill be sent to the Floor to be referred to Ways and Means with no recommendation from the Committee.

0064 Bill Fritz, Oregon Federation of Teachers, AFL-CIO Public Employees Commission (see EXHIBIT "G") said he was aware of the 18 million dollar fiscal impact report. He said that under the fiscal impact statement (see EXHIBIT "H") which applies to a little over 13,000 state employees, that was not the intent of the bill. He would rather have a bill passed that does not mandate any expenditure whatsoever which would be a permissive bill. CHAIRMAN DAVIS said he did not see the need for the bill if it was not going to cost anything in relation to dental

benefits to state employees. The CHAIRMAN said it is not proper for the Committee to act on any bill with a fiscal impact such as the one proposed under this bill.

0162 CHAIRMAN DAVIS made a motion to move HB 2669 to the Floor with a recommendation that it be referred to Ways and Means with no recommendation. The motion carried, 5-0 (voting, Aye: Markham, Magruder, Otto, Simpson, Davis; Excused: Byers and Wilhelms).

0178 Bill Lamb, Home Builders' Association, spoke for HB 2554. He feels most of the bill is pretty good language. His Association does object very strongly though to the raising of the bond up to \$7,500. He said they are very difficult to buy. He feels that if the bond fees are increased, this process will eliminate a lot of small contractors right out of business.

0200 REPRESENTATIVE OTTO asked what recourse a homeowner would have if the bonds were not raised, considering that some contractors have three to four claims against them at any given time. Mr. Lamb said the solution is for homeowners to buy a HOW insurance policy to protect them against ever having to go to the Builders Board. It was designed for new homes and will soon cover remodeling jobs too. This policy is backed by a reputable insurance company and will protect a contractor from going broke as well. His organization does not like Section 3(h) or (i). They feel it confuses the issue.

0278 CHAIRMAN DAVIS said he would be rescheduling this bill for another hearing. He also suggested that the representatives of each of these organizations and from bonding companies get together to discuss what they would like to have incorporated into the bill since they have disagreements at the present as to what should and should not be put into the bill.

0303 CHAIRMAN DAVIS introduced his LC drafts to the Committee Members. However, VICE-CHAIRMAN MARKHAM requested that the CHAIRMAN have his secretary draft a brief summary of each LC draft in order to make it easier on the Members to understand the drafts.

0322 The meeting was adjourned.

Tape 6 - Side 1 (0890-1850)
Tape 6 - Side 2 (0001-0322)

Respectfully submitted,


Holly Blanchard, Committee Assistant

Summary of Exhibits:

Exhibit "A" HB 2207, Joe Barkofski
Exhibit "B" HB 2207, Robert K. McAllister
Exhibit "C" HB 2207, John C. Williams, Superintendent, Oregon State Police Dept.
Exhibit "D" HB 2716, John A. Reuling, Jr.
Exhibit "E" HB 27k6, City of Eugene
Exhibit "F" HB 2651, Gary Delaney
Exhibit "G" HB 2669 & HB 2670, Bill Fritz
Exhibit "H" HB 2669, Fiscal Impact Statement
Exhibit "I" HB 2669, Graduate Teaching Fellows Federation (no verbal, only written)
testimony

Tape 7 - Side 1

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS

March 27, 1979

1:30 P.M.

Hearing Room "D"
State Capitol Bldg.

Members Present: Representative Drew Davis, Chairman
Representative Caroline Magruder
Representative Glenn Otto
Representative Jo Simpson

Members Excused: Representative Bill Markham, Vice-Chairman
Representative Gary Wilhelms
Representative Bud Byers

Witnesses: George Birnie, an attorney from Portland representing the
American Insurance Association

Ben Fortner, Administrator, Builders Board

Michael Friel, Director, Oregon Government Ethics Commission

Paul W. Harvey, Jr., Ethics Commission

Michael Farley, Executive Director, Common Cause

Representative Nancie Fadeley

Ann Picar, Co-President, Flexible Ways to Work, Portland

Betty Reynolds, Management Analyst, Budget and Management Div.,
Executive Department

Paul Christerson, Administrator, Board of Engineering Examiners

Sidney Bazett, Legislative Consultant

0008 CHAIRMAN DAVIS called the House Committee on State Government Operations to order at 1:45 P.M. and indicated that the Committee would hear HB 2554 first since it was carried over from the previous hearing.

0027 George Birnie, an attorney from Portland, representing the American Insurance Association which is an association of a number of capitol stock insurance companies, spoke to the Committee on the costs involving bonding contractors. These insurance companies that he represents write surety bonds for businesses. He explained that a bond would cost a contractor \$50.00 every \$1,000 on the bond, i.e. a \$5,000 bond would cost the insured \$250 every year. He said that surety companies are not anxious to write these kinds of bonds. He said that what these insurance companies object to concerning the bonding of contractors is that no examination to prove that a contractor is competent in his work is required when the contractor applies for a bond with these companies through the Builders Board. Therefore, the insurance companies hold the burden of providing a bond to an individual or business who has not been checked out to verify that his work is good.

0138 REPRESENTATIVE OTTO asked if new people coming into the industry would have any difficulties in getting a bond. Mr. Birnie said that new individuals coming into the area might experience some difficulty, but that they will eventually obtain the bond. They would not have to pay a higher premium but surety companies may require a deposit of something like the full amount or less than the full amount; a cash deposit. He said only a very unusual circumstance would prevent an applicant from obtaining a bond, something like a positive adverse factor in his bond application before that would be denied.

0188 REPRESENTATIVE OTTO asked that if competency tests were required before bonds were issued, would this result in the lowering of bond fees. Mr. Birnie said he felt this would not lower the cost of bonds to the contractors. The main reason for this feeling on his part is that the bonds are issued on the basis of competency of the applicant and therefore it has no way to measure competency, other than perhaps litigation.

0220 Ben Fortner, Administrator, Builders Board, explained to the Committee the process for obtaining bonds. He said very few people are denied bonds. He said losses on bonds are low. He indicated that 18% of the builders registered with the Builders Board have claims against them or their businesses. One out of ten of that 18% go to a hearing, and possibly to a bond.

0258 CHAIRMAN DAVIS asked Mr. Fortner if a bonding agency will bond someone at \$3,000 but not at \$7,500. Mr. Fortner said that when the bond values are increased, sometimes the public will try to get at these bonds for recovery purposes but when things settle down, there are fewer claims against the bonds.

0311 Mr. Fortner explained his interpretation of the bill and offered some changes in the language as he feels it would be more appropriate and understandable. He also would like the claimant to be able to get to the bond through the Builders Board if there is a claim filed against a builder. As the law now reads, the claimant can feasibly have liens put against his property because the builder that he paid for the work completed, did not in turn pay his subcontractors who performed work on the claimant's property and therefore the claimant, under present law, is liable.

0410 REPRESENTATIVE OTTO asked how frequently subcontractors bring claims against a builder to the Builders Board. Mr. Fortner said he could not give specific figures on that issue, but that he has seen a good number of such claims. Mr. Fortner said the claims are usually for nonpayment under the contract for services rendered. He said these claims are sometimes for both labor and materials.

0433 REPRESENTATIVE OTTO verified that the subcontractors could file a Mechanic's Lien and also a claim with the Builders Board for recovery purposes.

0470 REPRESENTATIVE SIMPSON referred to Section 4(1) and asked Mr. Fortner how many people have had to forfeit and pay. Mr. Fortner said very few people falling under this category have to pay because they are usually broke, and in an extremely difficult situation they leave the country. Also, a good many go out and continue to build and literally thumb their noses at the Builders Board because there is no enforcement arm. He said that all they can penalize a person for is \$1,000 if he

is not registered and is not bonded. This law also is limited to a per contract restriction which came from the Attorney General's office. The Builders Board can also get an additional violation if the contractor or business in question made a bid - one claim for the bid and one claim for the actual entering into the contract, but for days of work absolutely nothing. This situation has resulted in the provision in the bill which would allow a penalty charge for each day of work. However, Mr. Fortner stressed that a builder who is registered with the Builders Board comes out worse than the non-registered builder because he has a bond that the Builders Board can get to whereas the non-registered builder leaves no recourse for the Builders Board.

0515 REPRESENTATIVE OTTO directed the Members to Section 1(2) of the bill and told Mr. Fortner that at the previous hearing there was a request to restore that language into the bill and also to increase the 25% figure to 50%. Mr. Fortner said he did not feel that was necessary. He also suggested that the Builders Board does not need the money as specified in that subsection and that perhaps the injured party should receive the funds recovered.

0522 REPRESENTATIVE OTTO suggested to the CHAIRMAN that the parties involved in the composition of the bill, meaning the Builders Board, the Home Builders Association, etc., get together to come up with a workable bill.

0536 CHAIRMAN DAVIS read a letter from the Oregon State Home Builders Assoc. which indicates that the Association feels there are some serious problems as the bill is presently written. (See EXHIBIT "A") The CHAIRMAN requested that these groups have a meeting which will be open to the public to try to make a workable bill. (EXHIBIT "B" also pertains to this bill).

0560 CHAIRMAN DAVIS introduced his LC bills to the Committee Members (see EXHIBIT "C").

0628 REPRESENTATIVE OTTO clarified with the CHAIRMAN that these are the CHAIRMAN'S bills which the CHAIRMAN would like to have introduced to the Committee. Also, that they would subsequently have to be submitted to the Speaker's office for approval. REPRESENTATIVE OTTO said he was willing to extend that courtesy, but that he wanted it understood that by extending that courtesy, it did not indicate in any way that he is in favor or opposed to any of these measures. Thus, the introduction of these LC bills to the Committee does not indicate any feeling either for or against these proposed measures by the Committee Members.

0647 REPRESENTATIVE OTTO moved that the Committee remove SB 125B-Engrossed from the table. The motion carried, 4-0 (voting, Aye: Magruder, Otto, Simpson, Davis; Excused: Byers, Markham, Wilhelms.)

0658 Christy Park, Committee Administrator, gave the history of the bill. On February 20, 1979 the bill was passed out of Committee, with an intent for amendments. Those amendments were drafted and there was a problem with them which was caught on the Floor right before the 3rd reading. The bill was sent back to Committee where it is right now. Since that time REPRESENTATIVE OTTO has requested additional amendments which are hand-engrossed into the bill (see EXHIBIT "D").

1442 REPRESENTATIVE OTTO asked Mr. McGoffin asked if he has taken the amendment to IRS. Mr. McGoffin said that not until the amendments were a fact would he take them to the IRS because he felt they would not be interested in projected legislation. REPRESENTATIVE OTTO said that since they are a unit of government, they should be run through their office in order to get their opinion on the proposed amendments.

1462 Ms. Shepard offered that she felt there would not be a question of equity as raised by Mr. McGoffin because the bill is based on the basis of income.

1485 The CHAIRMAN asked that Mr. McGoffin run the proposed amendments through the IRS office to find out whether or not they would make the PERS a taxable organization. He said that no action would be taken on the bill until that information is ascertained. Christy Park pointed out that the bill was amended at the last hearing to make the mandatory retirement age 75 instead of 70.

HB 2554 - Relating to the Builders Board.

1513 Christy Park explained the combined proposed amendments dated 4/19/79 (see EXHIBIT "L"). Mr. Gil Riddell, Legislative Counsel went through these proposed amendments which first would reduce the bond amount from \$7,500 to \$5,000. Christy passed out a one-page opinion by the Oregon State Home Builders Association (see EXHIBIT "M") in reference to the bond amount. The organization feels that the proposed amount of \$5,000 is too high.

1544 Fred Van Natta, Executive Vice-President of the Oregon State Home Builders Association, referred to EXHIBIT "M" which is an analysis of the impact on the cost of increasing the cost of bonds. The Oregon State Home Builders Association sees no justification for raising the costs of bonds.

1581 Jerry Van Scoy, Executive Director, Floor Covering Contractors Association, said that the philosophy of his organization is that the \$5,000 would be considered a low price for a bond. He said something to consider that the bill does not is how many builders and contractors leave unfinished homes and go out of business. As a result many claims are never recovered for homeowners.

1618 Mr. Van Natta said that if a person desires a bond, that person has to guarantee the bonding company that there will be no loss and if insufficient security is raised to satisfy the bonding company they will not write a bond for that person.

1631 REPRESENTATIVE OTTO said he disagreed with the figures presented in EXHIBIT "M" referring to the required bonding amount per house. He said many people who register with the Builders Board and are required to put up a bond never build homes. He relayed that many constituents in his district have well-justified complaints concerning very poor workmanship that amount to well over \$5,000, and considering the cost of building a new home, he feels the \$5,000 amount for a bond is a good figure.

1681 Mr. Riddell continued with an explanation of the amendments as outlined in EXHIBIT "L".

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HOUSE COMMITTEE ON
STATE GOVERNMENT OPERATIONS
April 19, 1979

1757 REPRESENTATIVE OTTO moved that the combined proposed amendments dated 4/19/79 be adopted. The CHAIRMAN moved to amend the combined proposed amendments dated 4/19/79 by inserting on line 17 of page 2, \$4,000. The motion failed, 2-2 (voting, Aye: Magruder, Davis; Nay: Otto, Simpson; Excused: Markham, Byers, Wilhelms).

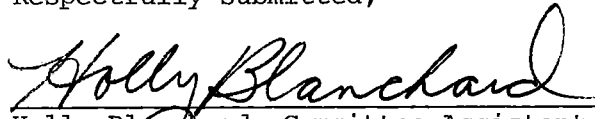
1765 REPRESENTATIVE OTTO moved that the combined proposed amendments (hand-engrossed) be adopted. The motion carried, 4-0 (voting, Aye: Otto, Simpson, Magruder, Davis; Excused: Markham, Byers, Wilhelms).

1769 REPRESENTATIVE OTTO moved that HB 2554 as amended be moved to the Floor with a "do pass" recommendation. The motion failed, 2-2 (voting, Aye: Otto, Simpson; Nay: Magruder, Davis; Excused: Markham, Byers, Wilhelms).

1781 The meeting was adjourned.

Tape 11 - Side 1
(0001-1781)

Respectfully submitted,


Holly Blanchard, Committee Assistant

Summary of Exhibits:

EXHIBIT "A", HB 2887, John Kaufman Testimony
EXHIBIT "B", HB 2887, Jean Teets Testimony
EXHIBIT "C", HB 2887, Oregon Telephone Directory for the Deaf
EXHIBIT "D", HB 2887, Chuck Rahe Testimony
EXHIBIT "E", HB 2887, Manuals of Communications Modules
EXHIBIT "F", HB 2887, Keith Lange Testimony
EXHIBIT "G", HB 2952, Kenneth Cooper Testimony
EXHIBIT "H", HB 2938 & HB 2938, Donald Fordyce
EXHIBIT "I", HB 2937 & HB 2938, Donald Fordyce
EXHIBIT "J", HB 2937 & HB 2938, Donald Fordyce
EXHIBIT "K", HB 2937 & HB 2938, Gary F. Delaney
EXHIBIT "L", HB 2554, Combined Proposed Amendments dated 4/19/79
EXHIBIT "M", HB 2554, Fred Van Natta, Oregon State Home Builders Assoc.
EXHIBIT "N", HB 2554, George Aldridge, V.P., Data & Staff Service Co.
(Note: Only written testimony submitted, no verbal testimony)

Tape 12 - Side 2

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS

May 1, 1979

1:30 P.M.

Hearing Room "D"
State Capitol Bldg.

Members Present: Representative Drew Davis, Chairman
Representative Bill Markham, Vice-Chairman
Representative Bud Byers
Representative Caroline Magruder
Representative Glenn Otto
Representative Jo Simpson
Representative Gary Wilhelms

Staff: Christy Park, Committee Administrator
Holly Blanchard, Committee Assistant

Witnesses: Representative Jim Crest

Representative Bill Rogers

Greg McMurdo, Assistant Secretary of State, Secretary of
State's Office

Warren Hearl, Acting Administrator, Builders Board

Jerry Van Scoy, Executive Director, Floor Covering Contractors
Association

Gil Riddell, Deputy, Legislative Counsel

0001 CHAIRMAN DAVIS called the House Committee on State Government Operations to order at 1:45 P.M. and indicated that there would commence a work session on HB 2554 which relates to the Builders Board. Before there could be any action taken on the bill, it had to be removed from the table (the bill was tabled by rule). REPRESENTATIVE OTTO moved that HB 2554 be taken off the table. The motion carried, 7-0 (voting, Aye: Markham, Byers, Magruder, Otto, Simpson, Wilhelms, Davis). HB 2554 was removed from the table.

HB 2939 - Authorizes transition funds for state officials-elect who succeed incumbents. Exempts judicial offices.

Christy explained that the bill would authorize the emergency board to, in effect, make transition funds available to persons elected to a statewide office who succeeds an incumbent, excluding judges. The funds would come from money appropriated to state agencies the official would head, or from money otherwise available to the Emergency Board to be used for consulting services, traveling expenses, and salaries for staff. Also, the agency for which the official would be heading, would provide office space upon request which would include telephone services and secretarial services. The money and services would be made available after the date that the Secretary of State issues a certificate of election to the official.

PAGE TWO
HOUSE COMMITTEE ON
STATE GOVERNMENT OPERATIONS
May 1, 1979

0072 REPRESENTATIVE JIM CREST who co-sponsored the bill along with REPRESENTATIVE BILL ROGERS, spoke in support of the bill. The two Representatives spoke simultaneously before the Committee regarding the merits of the bill. REPRESENTATIVE ROGERS explained that the Legislature, in the past, has voted on and passed, transition funds for the governor but not for other statewide elected officials. HB 2939 would provide for such funds and that is its purpose. REPRESENTATIVE ROGERS indicated that he had contacted all of the state elected officials and obtained a response from all of them. Clay Myers is supportive of the concept of the bill. The Attorney General, Jim Redden, also is in great support of the bill. REPRESENTATIVE ROGERS indicated that he would have no problem if the Committee would like to put a lid on the dollar figure.

0227 Greg McMurdo, Assistant Secretary of State, said that he felt a \$20,000.00 limit would be too high.

0287 REPRESENTATIVE BYERS moved that a statutory limit of \$7,500.00 be included in the bill, to be placed in the appropriate place in the bill. REPRESENTATIVE OTTO opposed the motion explaining that with inflation he would support an amendment of \$10,000.00 but that \$7,500.00 is too low.

0383 REPRESENTATIVE ROGERS said he would agree with wording that would in effect say, an amount not to exceed \$10,000.00, would be appropriate. REPRESENTATIVE CREST also agreed with the suggestion. Greg McMurdo said he would find that \$10,000 figure reasonable.

0435 REPRESENTATIVE OTTO amended REPRESENTATIVE BYER'S motion to read \$10,000. The motion carried, 7-0 (voting, Aye: Markham, Byers, Magruder, Otto, Simpson, Wilhelms, Davis). The amendment "not to exceed \$10,000.00" was so ordered adopted.

0447 REPRESENTATIVE OTTO made a motion to adopt language in HB 2939 "to not exceed \$10,000.00" to be placed in its appropriate position. There being no objections to the amendment, it was so ordered.

0452 REPRESENTATIVE SIMPSON moved that HB 2939 be moved to the Floor with a "do pass" recommendation as amended. The motion carried, 6-0 (voting: Aye: Markham, Byers, Magruder, Simpson, Wilhelms, Davis; Excused: Otto). The CHAIRMAN indicated that the bill would go to Ways and Means with a subsequent referral.

0467 Christy explained that HB 2554 deals with the bonding for the Builders Board. She referred the Members to the Combined Proposed Amendments dated 4/19/79 which were adopted by the Committee, except for on page 2, line 18 concerning the amount of bonds. The bill presently has the \$5,000 figure but there was discussion concerning a proposed \$4,000 figure which did not agree with some Committee Members.

0487 REPRESENTATIVE OTTO moved that on page 2, line 18, the \$5,000 figure be deleted and \$4,000 inserted in its place. Then on page 3, on the bottom line, change the \$1,000 figure to \$250.00.

0514 There followed some discussion concerning the \$5,000 as opposed to the \$4,000 figure.

0541 Warren Hearl, Acting Administrator for the Builders Board, indicated that a number of claims have been filed with the Builders Board in excess of \$3,000. He said the greater majority that reach the surety for payment are less than \$3,000 in value.

0555 REPRESENTATIVE OTTO pointed out the difference of a \$5,000 bond as opposed to a \$4,000 bond would only mean \$50.00 to the builder, and that he would not want to see the bill fail on the basis of the amount of a bond and therefore he would go along with the original \$5,000 for a bond.

0627 Jerry Van Scoy, Executive Director, Floor Covering Contractors, referred the Members to Page 2, Section 2(2) which speaks to "superstructures" which he feels should read just "structures".

0650 REPRESENTATIVE BYERS moved to amend the motion to retain the \$5,000.00 amount. The motion carried, 5-2 (voting, Aye: Byers, Magruder, Otto, Simpson, Wilhelms; Nay: Markham, Davis). The \$5,000.00 was retained.

0667 CHAIRMAN DAVIS asked if there would be any objections to deleting the first part of the word "superstructure" to just read "structure". There being no objections, it was so ordered deleted.

0670 REPRESENTATIVE OTTO made a motion to change the \$1,000.00 per day fine to read "\$250.00 for each day of the offence.", which can be found on the bottom of page 3.

0750 There followed discussion revolving around the \$1,000.00 penalty fee as opposed to the \$250.00 penalty fee.

0757 Gil Riddell, Deputy, Legislative Counsel, explained that the intention was to have Subsection 2 read specifically enough so that it would override Subsection 1. In other words, there would not be a ceiling at \$1,000.00. He offered that perhaps at the beginning of Subsection 1, it should read: "Except as provided in Subsection 2 of this Section, Section 4. ORS 701.992 is amended to read:"

0781 REPRESENTATIVE OTTO made a motion to add the language: "Except as provided in Subsection 2 of this Section," and to change the amount to \$250.00. The motion carried, 7-0 (voting, Aye: Markham, Byers, Magruder, Otto, Simpson, Wilhelms, Davis).

0788 REPRESENTATIVE OTTO made a motion to move HB 2554 as amended to the Floor with a "do pass" recommendation to be printed engrossed. The motion carried, 7-0 (voting, Aye: Markham, Byers, Magruder, Otto, Simpson, Wilhelms, Davis). REPRESENTATIVE OTTO will carry the bill.

HB 3058 - Authorizes historic preservation officer to acquire by purchase historically significant personal property. Appropriates \$25,000 to Department of Transportation for biennial expenses of officer under Enrolled House Bill 2177 and \$ _____ for state acquisition of historically significant personal property.

**OREGON STATE
HOME BUILDERS ASSOCIATION**

House Committee on
State Government Operations
March 27, 1979
EXHIBIT "A" (1 page)

565 UNION STREET/SALEM, OREGON 97301

TELEPHONE 378-9066

MEMO FROM FRED VAN NATTA
VIA HUNT AND PECK

Drew:

HB 2554 has serious problems as it is written.

The bonding requirement is higher than necessary, we believe.

The appropriate question is: HOW MANY CONSUMERS ARE
NOT GETTING PAID OFF ON LOSSES UNDER THE PRESENT
BONDING LIMITATION? If many are getting short changed
it should be increased. Otherwise NO!

The additional to suspend a registration include some
very confusing standards.

And \$1,000 a day for each day one is unregistered...What does
one get fined for dumping radio-active material in river? Hanging
wall paper without a registration is worth \$1,000 a day?

Fred VanNatta

HB 2554

THE OREGONIAN, MONDAY, MARCH 19, 1979

3M

D7

FTC focuses on home-building industry

By JEFFREY MILLS

WASHINGTON (AP) — Facing a mounting number of complaints about poorly built homes, the federal government is beginning a nationwide study of how extensive the problem is.

"The indications are that this is a major problem — roofs that leak the first time it rains, plumbing that is not hooked up, foundations that are unsound," said David C. Eisenstein of the Federal Trade Commission staff.

"It's not a joke when you buy a home — the biggest purchase most people ever make — and this

sort of thing happens to you. Right now, we are receiving a steady flow of mail and phone calls complaining and asking, 'What can I do?'"

Because of increasing numbers of complaints, the FTC and the Department of Housing and Urban Development are about to begin a nationwide survey in which a random sample of the nation's buyers of new homes will be asked about defects, he said.

After the survey is completed, several hundred homes will be checked by professional inspectors to gather more data, Eisenstein said.

Officials of the two agencies are unsure just how

widespread shoddy workmanship is. However, an FTC policy briefing book says, "Preliminary estimates are that perhaps 10 percent of new homes may have major defects, such as inadequate insulation or faulty plumbing."

Private groups also have noted the increase in unsatisfied home buyers. Better Business Bureau data indicates an increase in complaints of more than 50 percent over the past two years, a time when the home building industry has been booming.

The industry has not been deaf to the complaints. The National Association of Home Builders established a warranty program in 1974. The program is growing but still covers only a small fraction of new homes.

Under the Home Owners Warranty program, builders offer protection in case of most types of defects in return for an extra \$2 per \$1,000 of the sale price.

For this extra charge, new homeowners get insurance coverage on defects in workmanship and materials for one year and coverage on major structural defects for 10 years.

Another part of the program is third-party mediation of complaints in an effort to avoid lawsuits.

"We had 12 percent of new homes covered last year, and, since we've been about doubling annually in recent years, we expect to have about one-fourth coverage in 1979," said Jane Snow, a spokeswoman for the warranty program.

The industry's warranty program has been interpreted as an effort to stave off federal regulation. Elizabeth Hanford Dole, who resigned recently as an FTC commissioner, told the convention of the home builders' association in January that builders would have to make self-regulation work or brace themselves "for full-scale, hard-hitting regulations."

OREGON LEGISLATIVE ASSEMBLY--1979 Regular S

House Bill 2554

Sponsored by Representatives OTTO, CHREST, Senator GROENER (at the request
of Associated Floor Covering Contractors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Provides that unregistered builder may not file lien or bring suit or action on work subject to builders statutes.

Raises amount of bond from \$5,000 or \$3,000, depending on kind of work done, to \$7,500.

Requires suspension of certificate if amount levied against registrant's bond exceeds amount of bond. Prevents registration of applicant with outstanding court judgment against applicant that would have been levied against bond. Permits Builders Board in either event to require bond of three times or less of ordinary requirement.

Permits Builders Board to revoke, suspend or refuse to issue certificate of registration to registrant who knowingly assists unregistered person to violate builders statutes, wilfully fails to pay for materials or labor performed, falsely denies payment is due to secure discount or hinder or defraud person owed, or enters contract with person who should be, but is not, registered.

Increases civil penalty from \$1,000 per offense to \$1,000 per day of offense.

A BILL FOR AN ACT

Relating to builders; creating new provisions; and amending ORS 701.065, 701.085, 701.135 and 701.992.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 701.065 is amended to read:

701.065. *[(1)]* A builder may not file a lien or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract which is subject to this chapter, unless he was registered under this chapter at the time he *[filed the lien or commenced the suit or action]* **bid or entered into the contract for performance of the work.**

[(2) If a builder who was not registered with the Builders Board at the time he bid or entered into a contract for the performance of work as a builder registers prior to filing a lien or commencing a suit or action based on such work, and if the builder is awarded a judgment for a sum of money in the lien foreclosure proceeding, suit or action, the builder shall pay 25 percent of any recovery under the judgment to the Builders Board.]

Section 2. ORS 701.085 is amended to read:

701.085. (1) A person applying for a certificate of registration shall file with the board a surety bond with one or more corporate sureties authorized to do business in this state in the amount of *[\$5,000 if the applicant is going to move structures, and otherwise in the amount of \$3,000]* **[\$7,500]** *\$5,000* conditioned that the applicant will, with regard to work subject to this chapter, pay:

(a) All taxes and contributions due to the State of Oregon;

(b) All persons furnishing labor or material, or renting or supplying equipment to the builder;

and

(c) All amounts that may be adjudged by the board against the builder by reason of negligent **[or]** work, improper work, wrongfully causing a lien to be attached to a structure or breach of contract in performing any work subject to this chapter. The board may reduce the amount adjudged to be owed by the builder by any amount unpaid to the builder by the claimant.

(2) The board may reduce the amount of the surety bond required by subsection (1) of this section to an amount not less than \$1,000 for an individual upon a showing that the applicant did not perform work on superstructures exceeding \$30,000 in gross volume during the 12-month period immediately preceding the application.

(3) If the amount the registrant must pay against the bond under this section exceeds the amount of the bond, the board shall suspend the certificate of the registrant until the amount owed is paid. The board, as a condition of ending the suspension, may require the registrant to file a bond of an amount three times or less of that required ordinarily of a registrant under this section.

(4) An applicant for a certificate, who has an outstanding ^{final} judgment by a court against him that a bond under this section would have been subject to, shall not be permitted to register until the judgment is satisfied. The board, as a condition of registering the applicant, may require the registrant to file a bond of an amount three times or less of that required ordinarily of a registrant under this section.

Section 3. ORS 701.135 is amended to read:

701.135. (1) The board may revoke, suspend or refuse to issue or ~~issue~~ a certificate of registration if the board determines after notice and hearing:

- (a) That the registrant or applicant has violated ORS 701.055.
- (b) That the registrant or applicant has failed to pay in full any final judgment on claims adjudged by the board or by a court of competent jurisdiction referred to in ORS 701.085.
- (c) That the insurance required by ORS 701.105 is not currently in effect.
- (d) That the surety bond or deposit required by ORS 701.085 and 701.095 are not currently in effect.
- (e) That the registrant or applicant has engaged in conduct as a builder that is dishonest or fraudulent that the board finds injurious to the welfare of the public.
- (f) That the registrant has violated a rule or order of the board.
- (g) That the registrant has knowingly assisted an unregistered person to act in violation of this chapter. By means including, but not limited to, permitting the person to use the registration of the registrant, acting as an agent, partner or associate of the person or conspiring with the person.
- (h) That the registrant, or agent thereof, wilfully failed to pay when due for materials or services performed under contract to him when he had sufficient funds, either as payment for the materials or services performed or otherwise, to do so.
- (i) That the registrant, or agent thereof, falsely denied that payment was due, or the claim for payment was invalid, for materials or services performed to secure for any person a discount on the indebtedness or to hinder or defraud the person to whom payment was due.
- (j) That the registrant entered into a contract with a person who should have been, but was not, registered under this chapter.]

(h) That the registrant has wrongfully caused a lien to be attached to a structure.

(2) In addition to all other remedies, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction shall not issue for failure to maintain the list provided for in subsection (7) of ORS 701.055 unless the court determines that the failure is intentional.

Section 4. ORS 701.992 is amended to read:

701.992. (1) Any person who violates any provision of this chapter or any rule promulgated thereunder shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$1,000 for each day of the offense.

(2) Any person who is not registered in violation of this chapter shall incur a civil penalty in an amount determined by the board of not more than \$1,000 for each day of the offense.

³
[2] Such civil penalty may be recovered by the Attorney General in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.

[3] The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

SECTION 5. This Act amends statute sections repealed by chapter 842, Oregon Laws 1977. Any statute section amended by this Act that is repealed by chapter 842, Oregon Laws 1977, remains subject to the operative date of the repeal in chapter 842, Oregon Laws 1977, if the repeal becomes operative, and to applicable provisions of sections 50 and 51, chapter 842, Oregon Laws 1977, and ORS 182.605 to 182.635.



OREGON STATE HOME BUILDERS ASSOCIATION

565 UNION STREET/SALEM, OREGON 97301

TELEPHONE 378-9086

House Committee on
State Government Operations
April 19, 1979
EXHIBIT "M" (1 page)

HB 2554



April 19, 1979

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Executive Vice President

DAVID A. HAUG

Association Services Director

DON ELLINWOOD

Safety Coordinator

JOHN DONETH

OSHB Field Representative
HOW Executive Vice President
399-9216

AFFILIATE ASSOCIATIONS

HBA of METRO PORTLAND

Clackamas County Chapter
Multnomah County Chapter
Washington County Chapter
Yamhill County Chapter

HBA of LANE COUNTY

S. Lane County Chapter
Florence Chapter

HBA of SALEM

Polk County Chapter

HBA of CORVALLIS

HBA of JACKSON COUNTY

HBA of JOSEPHINE COUNTY

HBA of GREATER LINN CO.

HBA of KLAMATH BASIN

CENTRAL OREGON BUILDERS

HBA of SOUTHWEST OREGON

LINCOLN COUNTY BUILDERS

HBA of CLATSOP COUNTY

HBA of UMPQUA VALLEY

NORTHEAST OREGON BUILDERS

TREASURE VALLEY BUILDERS

MID COLUMBIA BUILDERS

THOUGHTS ON RAISING THE BOND LIMITS ON THE BUILDERS BOARD

The standard rate on the Builders Board bond charged by insurance companies now is \$50 per thousand, with special rates at \$40 per thousand for some "secure" firms. Assume an average of \$45 per thousand.

There presently are 14,100 registered builders. No one seems to know how many utilize the special exemption for work under \$30,000 per year, but assuming 10% do, the present premiums paid are:

1,410 firms with a \$1,000 bond	\$ 63,450
12,690 firms with a \$3,000 bond	<u>1,713,150</u>

Total estimated cost under current law	\$1,776,300
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Estimated cost per house 1979 (Guessing 20,000 homes built, but recognizing some firms are registered and work only on existing structures.)	\$88.80 per new house
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ADDITIONAL COST UNDER NEW SYSTEM CALLING FOR \$5,000 bond for specialty contractor:

1,410 firms with a \$1,000 bond	\$ 63,450
5,876 * general contractors with a \$7,500 bond	1,980,212
6,814 specialty contractors	<u>1,533,150</u>

\$3,576,812

Additional cost	\$1,800,512
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Additional cost per new house from HB 2554	\$ 90
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Total bond cost per new house	\$ 178.80
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* Best guess from experience of Board under old law is that 40% of contractors are general contractors.

Fred VanNatta
Executive Vice President

Additional Cost \$1,170,000
\$5,000 Bond

\$53.00
per house

DATA & STAFF SERVICE CO.
CONTRACTOR'S WEEKLY
NORTHWEST PLAN CENTER

1922 North Vancouver Avenue
Post Office Box 12053, Portland, Oregon 97212 • (503) 288-0181

House Committee on
State Government Operations
April 19, 1979
EXHIBIT "N" (1 page letter &
1 newspaper)

State Government Operations Committee
453 D
State Capitol
Salem, Or 97310

Dear Sirs:

This letter addresses House Bill 2554.
As you know, our organization writes more than 50% of the Oregon Contractors License Bonds. We believe that ANY raise in the bond penalty from present levels will require stricter underwriting which will in turn reduce the number of Oregon contractors able to obtain bonds. Our Organization feels that a \$5,000 contractors license bond penalty is more reasonable and less anti-competitive (in favor of the larger contractors) than a \$7,500 contractors license bond penalty.

Additionally, it is our belief that this bond should not discriminate against the residential builder vis-a-vis the commercial builder. Therefore, the requirement for the bond should be made mandatory for ALL contractors.

We are enclosing copies of our newspaper, Contractor's Daily, and a brochure on our company's other activities in the construction industry. If we can be of further assistance in your consideration of any legislation affecting our industry, please feel free to call upon us.

Very Truly Yours,



George Aldridge, V.P.
Portland Office

SENATE COMMITTEE

ON

LABOR, CONSUMER AND BUSINESS AFFAIRS

29 MAY 1979

8:00 a.m.

Room A, Capitol

Tape 29 - Side 1

Members Present: Senator Richard Groener, Chairman
Senator Ted Kulongoski, Vice Chairman
Senator Charles Hanlon
Senator Lenn Hannon
Senator Bob Smith
Senator Cliff Trow

Members Excused: Senator George Wingard

Staff Present: Rocky Barilla, Committee Administrator
Rich Carlson, Committee Administrator
Joann Ertsgaard, Committee Assistant

Others Present: Representative Glenn Otto
Warren Hearle, Acting Administrator, Builders' Board
Rawlin Westover, Builders Board Member
Jerry Van Scoy
Fred Van Natta, Oregon Homebuilders' Association
Bill Love, State Chartered Savings and Loan Assoc.
Charles Walker, Oregon Savings and Loan Supervisor
Fred Jensen, Fred Myer Savings and Loan
Frank Brawner, Oregon Bankers Association
Steve Telfer, Oregon Association of Counties
E. P. O'Malley, Eugene, Building Material Information
Tom Fender, Salem Bureau, Inc.
Walter B. Collins, Portland, Building Material Dealers'
James Sexson, Water Res.Dept. Credit Association

015 CHAIRMAN SENATOR GROENER called the meeting to order at
8:15 a.m.

HOUSE BILL 2554 - Relating to builders

017 Representative Glenn Otto, District 22, East Multnomah County, discussed House Bill 2554, which he sponsored. Because of the number of complaints filed against builders in Oregon, a problem has arisen with the filing of liens and the adequacy of the builders' bonds. The home builders are comfortable with a \$4,000 bond, but they are not comfortable with the \$5,000 figure, although some representatives thought it should be \$10,000. He felt the \$5,000 bond was adequate. He mentioned the wrongfully filed lien that could be filed against the home and the homeowner has paid the general contractor, who fails to pay the subcontractor and his only recourse is against the homeowner and this is the only way a wrongfully filed lien could occur.

041 SENATOR HANLON understood then that if he were to have a

Tape 29 -Side 1

house built by a general contractor and paid the contractor in good faith, he would have to determine whether the general contractor had paid all of the sub-contractors to be assured he wouldn't be hit with a lien and REPRESENTATIVE OTTO agreed. Many homeowners have been caught in that trap. There are provisions in the bill to suspend the certificate of the general contractor or the contractor and to up the bond requirement. He feels it is a necessary bill and what happens often-times is that a subcontractor's bill could be \$3,000 to \$5,000 dollars or what the bond would require. It does provide additional protection for the homeowners and the subcontractors.

049 SENATOR HANNON wanted to know what would happen if the primary contractor defaults and doesn't meet the requirements of the Builders' Board registration, if there was nothing to prevent that contractor from going down and filing under an assumed name or another business name to go out and do this again, and whether that should be addressed. REPRESENTATIVE OTTO felt that should be addressed, but not in HB 2554, although he has seen that happen.

055 SENATOR HANLON wondered what protection was provided for the homeowners by this bill and REPRESENTATIVE OTTO felt the only thing was the increase of the bonding amount to create enough dollars to satisfy the lien that the home owner had filed against them. It also suspends the general contractor's license for violation of the law and makes it tougher for the general contractor to get bonding in the future. He mentioned the numbers of calls he receives from people in his county with regard to this type of problem.

070 SENATOR GROENER noted that Representative Otto felt \$5,000 was enough, but he wondered if that was sufficient to protect the people and whether it would be that difficult to obtain a \$10,000 bond. REPRESENTATIVE OTTO explained that one of the problems is the sub-contractors also have to be licensed with the Builders' Board. The argument is made that when the bonding requirement is increased, the cost of the premiums are added to the cost of the house or the remodeling.

080 SENATOR SMITH pointed out that one of the reasons he opposed this legislation initially was because he didn't want to restrict the entrance of individuals into the construction field and he knew how difficult it is to get a bond. Usually a person has to have about twice the liquid assets of the bond before a bonding company will touch it. If the bonding requirement is too high, it will restrict new people and older folks who want to do some sub-contracting work. That is one of the reasons the bond is where it is. It should be high enough to protect people and not so high it restricts people.

086 REPRESENTATIVE OTTO was comfortable with \$5,000, although in some cases even a \$15,000 bond wouldn't be high enough, but then there is recourse in the courts and he didn't want to limit the field.

088 SENATOR HANLON asked if he had considered any other way to satisfy the need of the sub-contractor and still protect the home owner, such as requiring the subcontractor to go to the general first and exhaust that before filing a lien. REPRESENTATIVE OTTO indicated he had

Tape 29 - Side 1

not. He further explained that many times the subcontractors are actually subsidizing the general contractor. SENATOR HANLON expressed dismay that the general can get out of paying and the sub goes and gets the home owner and REPRESENTATIVE OTTO thought that would require changing the lien law.

103 SENATOR KULONGOSKI asked about the language on page 1, line 21 and page 2, line 27, with regard to wrongfully causing a lien to be attached to a structure and what that was aimed at and REPRESENTATIVE OTTO explained that was where the home owner has paid off the general contractor and the general fails to pay the subcontractor, then the subcontractor files a lien against the home owner. SENATOR KULONGOSKI wanted to know a lien could be filed wrongfully and REPRESENTATIVE OTTO noted it would be a wrongfully filed lien when the home owner has acted in good faith to pay off the general contractor, thinking that the general contractor has paid off the outstanding obligations to the subcontractor, who then files the lien because of non-payment. The general contractor has been the cause of the lien being filed and could then have the license revoked or suspended.

113 SENATOR KULONGOSKI wondered if sureties would continue to write a bond if it will be forfeited for the filing of a lien against a structure. He asked that someone from the insurance industry take a look at that provision before the bill goes out.

118 SENATOR GROENER asked staff to call the Insurance Commissioner's office to ask if this would be covered.

119 SENATOR KULONGOSKI didn't think adding "wrongfully" to the filing of a lien would make any difference as long as the statutory requirements for filing a lien had been met. SENATOR TROW thought that "wrongfully" modified "cause" and not "lien", because the general contractor caused the subcontractor to file the lien and that is wrong.

124 SENATOR KULONGOSKI also wanted to know the policy reason for not allowing a person with an existing judgment to register that if they had a prior judgement. REPRESENTATIVE OTTO thought that it would apply if a person hadn't acted in good judgment in the past, why they should be rewarded with an opportunity to file again against the Builders' Board for certification. This is an additional defense. SENATOR KULONGOSKI understood that as long as there is a judgment outstanding, the person couldn't be registered, but once the judgment has been paid, the board could require a bond. REPRESENTATIVE OTTO agreed. He pointed out that some builders have a pretty poor track record and this is trying to clean up on the industry.

134 SENATOR HANLON expressed an interest in having the committee take a look at the lien laws to see if there is some way to prevent anyone from filing a lien against a property when all amounts properly due and payable have been paid to somebody to whom it was properly do and get away from the bonding problem and wrongful liens. SENATOR GROENER asked Senator Hanlon to work on this and report back.

141 JERRY VAN SCOY, with the Associated Floor Covering Contractors,

Tape 29 - Side 1

appeared in favor of HB 2554. He mentioned that the subject of wrongfully causing a lien is not an isolated case and he described a situation in which a sub had to file a lien when the general contractor was paid and then left the country. If there were sufficient laws in the homebuilder's law, these things should be worked out through procedures in the Builders' Board where the homeowners can be protected. He hoped that Senator Trow was correct in his grammatical explanation of the wrongfully causing, because that was the original intent in the draft by Legislative Counsel. At the present time, if a home owner was in this situation, the Builders' Board could not entertain the claim. There is nothing in the law if a claim is filed. The Builders' Board would probably cite the remodeling contractor or the general contractor before the board and if there is some other dispute in the workmanship or materials they would be brought before the Board as a practical means of resolving the issues.

156 SENATOR KULONGOSKI noted that in talking about a lien, they are talking about a subcontractor filing against the non-payment of the contract by the general, but he wondered how many other people could file liens against a structure that would fall within this definition or if it is limited to a subcontractor against a general. MR. VAN SCOY felt it could be a sub against a sub. SENATOR KULONGOSKI wondered if a lending institution could file a lien, or someone who perhaps furnishes materials. MR. VAN SCOY thought it was possible. The intent of the amendments were that the board would be given the authority to entertain the claim so that the thing could be resolved. Right now they have no authority to entertain the claim in connection with the lien when someone fails to get paid. SENATOR KULONGOSKI understood that the board would be adjudicating the question of whether the lien is properly or improperly filed but MR. VAN SCOY did not agree, although he felt the Board would determine the wrongful part of the question.

167 SENATOR HANLON felt that as far as sanctions against the contractor they could act, but as far as protecting the home owner from double payments, the Board would have nothing to do with that. SENATOR TROW felt it penalizes the general contractor.

169 MR. VAN SCOY explained his understanding was that if a home owner files a claim under this bill with the Builder's Board, they would have the authority to entertain the claim and cite the contractor and investigate the claim. If it is valid they could make the contractor pay or allow the claim against the bond. SENATOR HANLON thought they were talking about two different things. MR. VAN SCOY was discussing the practical way the bill will work and if it isn't going to work that way, they want to know it.

175 SENATOR KULONGOSKI was having a problem because of the procedure for filing a lien, which is a notification that there is a lien against the structure and there is a six-month waiting period before filing the suit to enforce the lien. There is a legal procedure for determining the validity of the lien that is brought into court and this goes outside that process and now have administrative determinations on the validity of liens. MR. VAN SCOY didn't think that was the intent.

Tape 29 - Side 1

SENATORS HANLON, KULONGOSKI AND TROW discussed the filing of liens, the question of validity of a lien and who will make the determinations.

184 MR. VAN SCOY didn't think any of these things are meant to be an automatic forfeiture of anything. If the Board operates that way, they would have to take a second look at the entire operation. The building industry has always tried to get the home owners complaints before the Builders' Board with the intent of resolving the grievance. He had never heard of an automatic forfeiture of a bond.

189 SENATOR GROENER felt the bonding company would try to collect from the builder and they never intend to pay anything when they write the bond.

190 MR. VAN SCOY noted that GEORGE BIRNIE had testified before the Government Operations committee in the House about the availability of the bonds and according to him there has been little if any problems with this particular bond and the prior administrator of the Board also knew of no instance where people were not able to register because a bond couldn't be obtained.

195 FRED VAN NATTA, appearing on behalf of the Oregon State Home Builders Association, wanted to encourage the committee to pursue the question of having the lien wrongfully caused to be attached because some lawyers raised some question about that when the bill was debated on the House floor. The purpose was very clear, to provide redress against the builder who accepted payment from the homeowner and then didn't clear all the material and labor suppliers on the job site, which resulted in the homeowner getting a lien that would result in having to pay twice. The builder ought to be the one to pay and if this doesn't do it, then the language should be clarified.

201 SENATOR KULONGOSKI asked what argument was raised in the House and MR. VAN NATTA explained there was concern expressed about the language, that a lien is a lien is a lien, whether it is wrongfully caused and how it is determined that a lien is wrongfully caused is unclear. SENATOR KULONGOSKI asked if it was the intention that the administrative agency would forfeit on the bond prior to the adjudication by a court on the lien itself. MR. VAN NATTA replied that the matter was never discussed. He indicated he didn't understand the lien laws and he wasn't sure that the person who had drafted the bill understood the lien laws either. However, to work he thought the lien had to finally be perfected. SENATOR KULONGOSKI agreed and thought that this centered around the final judgment lien, which could be taken to the Board and then the Board would execute on the bond, but the Board can't make the determination on the lien because the court may not decide it the same way. MR. VAN NATTA agreed that from a practical approach, that is the way it would have to work.

209 SENATOR TROW felt, if it were just a problem with the language, that it could be reworked to say what they want it to say, but if it is a matter of the process, the courts might reverse it later on, that is a serious defect. SENATOR KULONGOSKI thought it could be corrected by saying that after the lien has been perfected, add the legal terminology to trigger that process.

Tape 29 - Side 1

211 SENATOR TROW said he would like to have the homeowner not have to go through that long expensive court battle over the lien. Just go to the Board and state that the lien is wrongfully caused because the general contractor was paid and the general contractor was supposed to have paid the subcontractors, without the homeowner having to go to court.

213 SENATOR GROENER indicated he was going to put the bill into a subcommittee to work this out.

214 MR. VAN NATTA had one other concern for the new builders and that was the size of the bond. Presently the bond premiums approximate \$2 million. Losses last year were less than \$200,000 and the raising of the bond to \$5,000 will have an additional premium cost to the building industry of \$1,260,000 and there will be some additional loss, but it will be less than ten percent, just by what they know of the losses now. That will add, based on their best estimates, about \$50 to the cost of every house and apartment built in the state in the first year after this takes affect. SENATOR GROENER thought this might be profitable for them to form a Home Owners Guaranty Corporation. MR. VAN NATTA advised the committee that the Oregon State Home Builders' Association has initiated a program to write bonds, broker them through their offices and move into creating their own insurance company so they can capture a major portion of that premium. Any insurance program that has a less than ten percent loss and very little underwriting cost has got to be a pretty good deal and from that since, they have a conflict of interest in this legislation, because of the bond were increased from \$ 3,000 to \$5,000, it would be more profitable for them. Also, as the bond goes up, it makes it tougher and tougher to get into the business. He mentioned special problems for small operators.

230 WARREN HEARLE, Acting Administrator of the Builders' Board, had a prepared statement in connection with House Bill 2554, which included an amendment the Board would like to have added to the bill, marked Exhibit "A". He explained the amendment, which was the result of a management study by the Governor's office, at the request of the Ways and Means Committee.

234 SENATOR GROENER indicated he would ask Mr. Hearle to work with a subcommittee with Senator Trow as chairman to get it ready to go. SENATOR TROW asked that someone who understood Senator Kulongoski's concern should also be on the subcommittee and the Chairman agreed.

239 RAWLIN WESTOVER, a member of the Builders' Board, spoke with regard to the bond and noted that very few of their adjudications have been for more than \$3,000. Many of the claims are more than that, but they are able to work them out to a lower figure.

243 SENATOR GROENER announced the subcommittee of SENATOR TROW, Chairman, Senator Kulongoski, Jerry VanScoy, Warren Hearle and Fred Van Natta.

SENATE BILL 539 - Relating to construction liens

247 G. P. O'MALLEY, General Manager of the Building Material

SENATE COMMITTEE

ON

LABOR, CONSUMER AND BUSINESS AFFAIRS

4 June 1979

3:30 p.m.

Room S 226 - Capitol

Subcommittee
Tape 11 - Side 2

Members Present: Senator Cliff Trow, Chairman
Senator Ted Kulongoski

Staff Present: Rich Carlson, Committee Administrator

Others Present: Joe Barkofski, Legislative Counsel
Warren Hearle, Administrator, Builders' Board
Jerry Van Scoy, Association of Floor Covering Contract.
Fred Van Natta, Oregon State Homebuilders' Association
Dena Sweeney, Independent Electrical Contractors
Milford Roop

015 CHAIRMAN SENATOR TROW called the meeting to order at
3:35 p.m.

017 SENATOR TROW explained that the subcommittee was charged with coming up with amendments for HB 2554.

024 JOE BARKOFSKI, Legislative Counsel, discussed the subcontractors filing of a lien as being "wrongful" or if it is the contractor's act. If the purpose of the bill is to stop the subcontractor, the language should be clarified.

053 JERRY VAN SCOY, Association of Floor Covering Contractors, spoke as to the failure to pay the subcontractor being a wrongdoing of the contractor. FRED VAN NATTA, Oregon State Homebuilder's Association, understood this was a loophole in the builders law. MR. WARREN HEARLE, Administrator of the Builders' Board, felt it was the responsibility for the prime contractor to pay the lien and the prime contractor should be liable for failure to pay.

072 There was discussion about situations that occur when a contractor is paid and then does not pay the subcontractors. Those present also discussed the actions available through the Builders' Board and the courts.

104 SENATOR TROW asked Mr. Barkofski to prepare amendments and bring them to the full committee. He agreed to try to stay within ORS 701, but he would probably have to cross reference to ORS 787.

108 SENATOR TROW mentioned amendments from MR. HEARLE, dated 5/29/79. MR. HEARLE explained the problems the Board has with the tremendous number of cases they handle. They would like some changes so they can turn down some of the cases that they do not feel they should be handling. SENATOR TROW was concerned about giving the Board

that kind of authority. MR. VAN NATTA indicated they would support the amendments.

181 SENATOR TROW asked for a mocked up bill with the two amendments and MR. HEARLE will talk to Representatives Otto and Chrest about these proposals.

185 MILFORD ROOP suggested putting up real property as security for insurance and MR. HEARLE agreed that this was reasonable, except that it creates a problem of liquidity. The people who put up their real property probably wouldn't be the ones that would come before the Board.

195 There was discussion about administering such a proposal and how collection could be made. MR. VAN NATTA felt that the builder that goes broke in a big way could never have a bond big enough to cover all the losses. In the discussion about the amount of the bond required SENATOR TROW indicated he was concerned about the amount of the bond, but he didn't think he wanted to make a recommendation to the full committee to change the amount.

243 SENATOR TROW reviewed the amendments that are to be made and when they are ready, the bill will be brought back to the full committee.

246 CHAIRMAN SENATOR TROW adjourned the meeting at 4:25 p.m.

Respectfully submitted,


Joann Ertsgaard
Committee Assistant

Tape 32 - Side 1

598 MR. HOWATT mentioned three typographical errors in the amendments. Page 1, line 22, change capital "P" in Policy to lower case; on page 5, line 8, should be section 7 rather than 8; and on page 6, line 14, add "a" after "by".

599 MOTION: SENATOR KULONGOSKI moved adoption of the amendments to the amendments.

600 VOTE: There being no objection to the motion it was adopted.

601 VOTE: On Senator Wingard's motion to send the bill to the floor, the motion carried with Senators Hanlon, Hannon, Trow, Wingard, Kulongoski, and Groener voting aye. Senator Smith excused.

602 SENATOR GROENER announced that SENATOR WINGARD would carry the bill on the floor.

HOUSE BILL 2554 - Relating to builders

602 SENATOR TROW expressed displeasure that he had not seen the amendments or been made aware that the bill was to be on for work session, inasmuch as he was the chairman of the subcommittee that worked on the bill.

TAPE 32 - Side 2

009 SENATOR KULONGOSKI explained the amendments by Legislative Counsel of 6/7/79. Most of the amendments are to be used by the Board in determining the facts in a dispute.

018 MR. VAN SCOY, of the Builder's Board, said the reason he went to Senator Kulongoski was that he knew he had expertise in the lien laws and he wanted to make sure, since Senator Kulongoski had raised the problem on liens and Senator Trow had responded to him, he wanted to have him see this. SENATOR TROW didn't disagree with that, but felt he should have known more about what was going on.

024 SENATOR WINGARD didn't want to take action on the bill at the meeting if the chairman hadn't seen the amendments.

025 SENATOR KULONGOSKI explained that the people involved have agreed, in trying to put everything in the bill it is too cumbersome and they have agreed to delete the references to the liens from the amendments to the bill. Then the wrongfully causing the lien to be attached has been deleted on line 21 and page 2, line 27. The rest

Tape 32 - Side 2

of the amendments have been accepted, except for one small point and that is Mr. Van Natta's disagreement with the \$5,000 bond. SENATOR TROW remembered talking about that in the subcommittee and there was no agreement, but they would come back to the full committee for an agreement.

029 MR. VAN SCOY indicated they were prepared to amend to \$4,000. FRED VAN NATTA, representing the Oregon Home Builders Association, said his people would accept \$4,000 as a compromise. \$5,000 makes it tougher for anyone to get into the business. SENATOR GROENER couldn't see what difference a thousand dollars would make. SENATOR WINGARD felt it keeps people from getting into the business. MR. VAN NATTA said his people said \$3,000 and he was told to oppose any increase in the bond. SENATOR GROENER asked if going from \$4 to \$5,000 would mean a person wanting to become a builder wouldn't be able to and SENATOR WINGARD felt that when it goes from 0 to \$3,000 it keeps people out of business. The bill would eliminate people. SENATOR GROENER asked if he would be willing to increase it to \$4,00 and SENATOR WINGARD said he didn't want to increase it at all. SENATOR TROW indicated that, if the principals agree, he would go for \$,000.

041 MOTION: SENATOR WINGARD moved that the bond be set at \$3,000.

042 SENATOR KULONGOSKI said he would object to the motion. He knew this was the problem with the bill in the House and REPRESENTATIVE OTTO had trouble getting it passed over there and there will be trouble with this amendment and there will have to be a compromise in the House that will set it at \$4,000. SENATOR GROENER asked if the House would accept \$3,000 and MR. VAN SCOY thought they would. SENATOR GROENER thought Representative Otto would be the one to concur in the amendment. He thought they should approve the \$3,000 as suggested by Senator Wingard. He thought he was right.

051 VOTE: The motion to amend to \$3,000 carried with Senators Hanlon, Hannon, Trow, Wingard, Kulongoski and Groener voting aye. Senator Smith excused.

052 MOTION: SENATOR KULONGOSKI moved adoption of the amendments dated 6-7-79, which includes the deletion of lines 4 to 14 of the amendments and the deletion in the A-Engrossed Bill of line 21 "wrongfully causing the lien to be attached to a structure" and page 2, lines 27 and 28 "that the registrant has wrongfully caused the lien to be attached to a structure".

055 VOTE: The motion carried with Senators Hanlon, Hannon,

Tape 32 - Side 2

Trow, Wingard, Kulongoski and Groener voting aye.
Senator Smith excused.

056 SENATOR WINGARD wanted to know what the bill would do now. SENATOR TROW asked staff to explain the bill and Mr. Carlson was not prepared to explain the bill. SENATOR KULONGOSKI explained the bill that the amendments on the bottom of page 1 and top of page 2, establishes a procedure for the Builders' Board to be able to resolve the complaints that are filed. The claims are in the A-Engrossed Bill, lines 13 through 21. He explained the remainder of the bill.

071 SENATOR WINGARD asked if the bill gives the Board power to WARREN HEARLE, Administrator of the Builders' Board, said that the amendments are the result of a recent study requested by the Ways and Means Committee. They have become crowded with claims of a nature they weren't able to handle well and were doing a poor job across the board and this gives them a base for establishing priorities to concentrate their efforts on those cases they can best handle. He mentioned the four specific deletions. Eliminating the present duplication of being in court and before the Board and allows the Board to withdraw. SENATOR WINGARD asked if they can all live with the bill as it is now and MR. HEARLE agreed.

082 SENATOR GROENER pointed out that if the board deems it necessary, they have the ability to require a bond three times the amount, so if there is a problem, they have the authority to increase the amount of bond the person would carry up to \$9,000, to take care of that problem to be sure the work would be good. MR. HEARLE agreed. SENATOR GROENER thought reducing the bond was a good idea. SENATOR WINGARD indicated he would vote no on the bill. SENATOR KULONGOSKI asked if there was anything that could be done. SENATOR WINGARD didn't like the bill and the process. SENATOR GROENER didn't either and wanted to wait until the next meeting. SENATOR TROW thought it ought to be moved out and get rid of it.

090 MOTION: SENATOR TROW moved HOUSE BILL 2554 to the floor with a Do Pass as Amended recommendation.

091 VOTE: The motion carried with Senators Hanlon, Hannon, Trow, Kulongoski and Groener voting aye. Senator Wingard voting no and Senator Smith excused.

098 SENATOR HANLON discussed the action that was taken on Senate Bill 389 and hoped that what Senator Wingard had started would lead the insurance companies to get caught up in improving these policies even more.

Addition requested to House Bill 2554.

Request by Agency, Builders Board, May 29, 1979

Submitted by Warren J. Hearle, Acting Administrator

That ORS 701.145 is amended to read:

701.145. Any person having a claim against a builder of the type referred to in ORS 701.085, may file with the board a statement of claim in such form as the board prescribes. The board may decline to accept, or to continue processing, a claim, if, (a) the same issue is being or has been submitted to a court of competent jurisdiction or other public or private authority for determination; or (b) the claimant does not permit the builder against whom the claim is filed to be present at any inspection made by the board; or (c) the claimant does not permit the builder against whom the claim is filed to comply with any recommendations made by the board relative to the claim (excepting in those instances in which the board determines that the builder is incapable of complying with the recommendations), provided that the builder was registered at the time the work was first performed, and is registered at the time of compliance with the recommendations; or (d) the board determines that the nature or complexity of the claim is such that the court system is the more appropriate forum for adjudication of the matter. Upon [receipt] acceptance of the statement of claim, the board shall give notice to the builder against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule promulgated thereunder has occurred, the board shall recommend to the registrant such action as the board considers appropriate to compensate the claimant for any damages incurred as the result of the violation. If the builder performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.