

SENATE COMMITTEE ON
JUDICIARY

May 21, 1993 Hearing Room C
1:00 p.m. Tapes 167-168

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber

MEMBERS EXCUSED: Sen.

STAFF PRESENT: Karen Quigley, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Work Session on SB 322
 Public Hearing & Possible Work Session on SB 764,
 SB
 722, SB 1110, SB 1123
 Possible Reconsideration & Work Session on SB 413

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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.

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TAPE 167, SIDE A

003 SEN. SHOEMAKER: Opens the hearing at 1:16 pm in the absence of the
Chair.
>Committee will not consider SB 811, SB 1108, SB 722.

SB 413: Increases amount of homestead exemption, mobile home and property
 exemption, and exemption for mobile home alone for single debtor
 and for joint debtors.

016 SEN. SHOEMAKER: Bill was tabled but up for reconsideration.

020 MOTION: SEN. HAMBY: moves to RECONSIDER SB 413.
VOTE: Hearing no objection, the bill is RECONSIDERED.

025 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews bill and SB 413-1 amendments
 and summary table (EXHIBIT A).

035 DAVID NEBEL, OREGON LEGAL SERVICES: Submits and reviews written

testimony in support of the bill (EXHIBIT B).

>Reviews amendments and summary table.

106 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Good bill should pass.

Concurs with Nebel.

111 SEN. SMITH: Could you speak to amounts? What makes this more

acceptable to the interested parties?

MARKEE: The original bill doubled the exemption. This version raises

from 15 to 25 which is more reasonable.

>This bill only doubles some of the exemptions and not all like the original did.

137 SEN. SMITH: How often should we revisit these amounts?

MARKEE: That is a difficult question, perhaps Nebel could answer better.

>Every 10 or 12 years is not frequent enough.

154 MOTION: SEN. HAMBY: moves to ADOPT SB 413-1 amendments, dated 5/18/93.

VOTE: Hearing no objection, the amendments are ADOPTED.

156 MOTION: SEN. HAMBY: moves SB 413, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. SPRINGER is excused.

160 SEN. SHOEMAKER: The motion CARRIES.

SEN. HAMBY: will lead discussion on the floor.

SB 764: Requires court to impose as condition of probation that defendant

remove graffiti under certain circumstances.

WITNESSES:

SENATOR JOHN LIM

JACILYN ZIMMER, SENATOR TRICIA SMITH

167 SENATOR LIM: Submits and reviews written testimony in support of the

bill (EXHIBIT C).

227 SEN. SHOEMAKER: Notes on line 11 & 12 that community service includes

removing graffiti, either created by person or by another. Should bill

allow either or both?

SEN. LIM: That is acceptable.

236 SEN. RASMUSSEN: Suggests appropriate language.

SEN. LIM: That is clear.

239 SEN. SHOEMAKER: On children's penalty, court may order child to perform personal service consisting of removing graffiti. Does that mean graffiti the child created?

SEN. LIM: Something he created or any others.

247 SEN. SHOEMAKER: If victim does not agree, court may compel removal of graffiti by defendant at different location, what does that mean?
>Requests clarification of lines 20-22.

263 SEN. WEBBER: Reviews possible interpretation of the provision, which indicates that victim may not want defendant at their home removing graffiti they placed.

SEN. LIM: Possibly.

268 SEN. SHOEMAKER: Don't know then, why do we need subsection b?

270 JANE LEO, LEGISLATIVE ASSISTANT TO SEN. LIM: Meaning is the same in both subsections. Graffiti to be removed is that created by individual or at another site.

279 SEN. SHOEMAKER: Do we lose anything by removing subsection b?
Reviews language without the subsection.

285 SEN. LIM: looks good to me.

286 SEN. RASMUSSEN: Is there some requirement that you agree to perform personal service under the statute? Personal service must have some description or meaning in the statute.

Committee spends several minutes reviewing the statute in relation to the bill.

322 SEN. SHOEMAKER: Recesses consideration of the bill for further review and advice from Legislative Counsel.

SB 322: Prohibits knowingly presenting false claim to public body for

payment.

329 SEN. SHOEMAKER: Convenes hearing on SB 322. In the absence
of
committee counsel, recesses on SB 322 and takes up consideration of SB
1123.

SB 1123: Authorizes Superintendent of State Police to establish code
of
ethical conduct.

WITNESSES:

KEITH FAJER, INTERN, SENATOR HAMBY

BOB KEYSER, OREGON STATE POLICE OFFICERS ASSOCIATION

JERRY RUSSELL, OREGON STATE POLICE

348 KEITH FAJER: Submits and reviews written testimony in support of
the
bill (EXHIBIT F), with SB 1123-1 amendments (EXHIBIT G).

408 SEN. WEBBER: Interested in seeing what would be in the code of
conduct?
State police were equally shocked by the case in question.
>Concerned about changing the relationship employer/employee field.

424 FAJER: Bill does state that the Superintendent will establish code
of
conduct.

TAPE 168, SIDE A

016 JERRY RUSSELL: Submits and reviews written testimony in support of
the
bill (EXHIBIT E).

098 BOB KEYSER: Testifies in opposition to the bill.
>Code can be implemented through policy rather than state law.

130 SEN. SHOEMAKER: Is it a fact or not that reinstatement of the
officers
in the case that led to this was the result of labor union pressure?

RUSSELL: The union filed grievance on their behalf.

134 SEN. SHOEMAKER: A conduct code would not be a term or condition
of
employment, hence not part of collective bargaining agreement, how can
you say we don't need a law given those facts?

RUSSELL: OSP can terminate officers for behaviors.
>The issue is difference in treatment, not whether the officers'
actions
were wrong.

151 SEN. SHOEMAKER: Any evidence of that in arbitration?

RUSSELL: Don't have that information.

153 SEN. SHOEMAKER: So you don't know, you are simply suggesting it could be true?

RUSSELL: It was discussed in arbitration.

156 SEN. SMITH: Notes law would be helpful, union could challenge otherwise, whereas law would allow line to be drawn. Cannot bargain for things that are illegal.

RUSSELL: Reiterates that the issue is treating people the same.

169 SEN. SMITH: Concurs but at some point a limit has to be set.

175 SEN. RASMUSSEN: Notes discussion is relying on the article which states that the unequal treatment issue was raised in arbitration.
>Clarifies information that the committee is reviewing.

192 SEN. RASMUSSEN: What is the impact of lines 8-10? What is the effect of indicating that code and violations are not terms and conditions of employment?
>Concerned committee is undoing arbitration with this code?

208 RUSSELL: Important to look at what is in the code of conduct.

218 SEN. HAMBY: Responds to Sen. Rasmussen's concerns.
>Confidential information led to the bill.

SB 764: Requires court to impose as condition of probation that defendant remove graffiti under certain circumstances.

227 SEN. SHOEMAKER: Recesses hearing on SB 1123 and convenes on SB 764 while a quorum remains.
>Legislative Counsel indicates questionable language is necessary because it is necessary to have victim approval to order personal service. Alternative is needed if the victim does not agree.

241 MOTION: SEN. SHOEMAKER: moves to ADOPT amendments to line 12, inserting "or both".
VOTE: Hearing no objection, the amendments are ADOPTED.

247 SEN. RASMUSSEN: Wonders if language at the end of line 22, "at some other location" makes any sense?

SEN. SHOEMAKER: Purpose is to reflect the possible desire of the

victim

not to have graffiti removed by individual at the same location.

259 QUIGLEY: Clarifies citation in the bill.

267 MOTION: SEN. SHOEMAKER: moves SB 764, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

273 SEN. SHOEMAKER: The motion CARRIES.

SB 322: Prohibits knowingly presenting false claim to public body for

payment.

274 SEN. SHOEMAKER: Convenes hearing on SB 322.

277 QUIGLEY: Reviews bill and SB 322-A3 amendments (EXHIBIT D).

300 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 322-A3 amendments, dated

5/20/93.

VOTE: Hearing no objection, the amendments are ADOPTED.

309 TERRY LEGGERT, DEPARTMENT OF JUSTICE: Comments on corrections to -A3

amendments.

>Proposes technical corrections to page 1, line 24.

324 SEN. SHOEMAKER: How will subsection b read?

LEGGERT: Reads "In any civil action brought under this Act, no proof of specific intent to defraud is required..."

332 MOTION: SEN. SHOEMAKER: moves to ADOPT Leggert amendments to the SB

322-A3 amendments.

VOTE: Hearing no objection, the amendments are ADOPTED.

345 MOTION: SEN. SHOEMAKER: moves SB 322, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. SPRINGER

is excused.

349 SEN. SHOEMAKER: The motion CARRIES.

SB 1123: Authorizes Superintendent of State Police to establish code of

ethical conduct.

355 SEN. SHOEMAKER: Reconvenes hearing on SB 1123.

SEN. HAMBY: Asks OSP witness to respond to Sen. Shoemaker's question.

365 SEN. SHOEMAKER: If the officers were reinstated because complaint
was brought under the collective bargaining agreement and arbitrated on
those grounds would the law not be needed to keep it out of collective
bargaining?

375 RUSSELL: Apologizes for losing track of the discussion.

378 SEN. RASMUSSEN: Clarifies concerns; Bill indicates that code would
be set by Superintendent and that if there is a question of fact that
would not be open to arbitration, is that an accurate statement of the bill?

397 RUSSELL: Those violations that would result in termination of
the individual would have the right to appeal.

443 SEN. RASMUSSEN: If there was a disagreement of fact, they would have
no recourse under their contract due to their termination?

450 RUSSELL: They would have due process.

457 SEN. RASMUSSEN: That is not the question.
>The policy issue relates to collective bargaining process, will
individuals be able to go into arbitration?

474 RUSSELL: Right now they do. Department relinquished the trial
board process into a labor contract.

TAPE 167, SIDE B

036 SEN. RASMUSSEN: Why not allow the Superintendent to promulgate a
code and then make it subject to arbitration?
>Why should code be exempted from existing dispute resolution process?

044 RUSSELL: The only cases we are discussing are those cases that are
so severe that they could lead to the termination of the employee. The
arbitration system would still be in effect for all other cases.

051 SEN. RASMUSSEN: The bill does not make those distinctions.

061 SEN. HAMBY: Please speak to past practices and why the
arbitrators decision came out like it did.

066 KEYSER: At a loss to know why the decision was made the way it
was. Indicates dissatisfaction with the results of that arbitration.

094 SEN. SHOEMAKER: Did that arbitration occur because of
collective bargaining agreement? Was it considered a term or condition of

employment?

RUSSELL: Yes.

100 SEN. SHOEMAKER: Anything in the agreement to uphold the discharge
of those officers?

RUSSELL: Nothing in the contract that would allow the conduct of the
two officers in question.

106 SEN. SHOEMAKER: So in no way do you hold the collective
bargaining agreement at fault in this case?

RUSSELL: No.

107 SEN. SHOEMAKER: The only issue is that it allowed the arbitration
to occur?

RUSSELL: That is correct.

110 SEN. WEBBER: Refers to previous question, was there any
procedural requirement or precedent that led to decision?

RUSSELL: No.

118 SEN. WEBBER: Is there any certification of arbitrators?
>Is this a general problem, perhaps generic across agencies? >Agrees
there is a problem but what is the remedy?

127 SEN. HAMBY: Notes that we hold state police to higher ethical
standard than we might other state employees.

131 SEN. SHOEMAKER: Notes that the committee is considering a
specific, unfortunate incident to make change in the rules and those changes are
removed from collective bargaining which could be very dangerous.
>Bill does not establish due process.

149 SEN. RASMUSSEN: Impression is that if parties bargained on a code
of conduct it probably wouldn't be very different? Their views are
probably very similar?

RUSSELL: There would be substantial resistance; it would be difficult
to come to agreement.

160 SEN. RASMUSSEN: Substantial resistance to what?

RUSSELL: To language of the code of conduct.

166 SEN. RASMUSSEN: Would the union association have objections to language in code that prevented the kind of behavior exhibited by these officers?

KEYSER: They would be concerned that the code of conduct apply to everybody regardless of rank and be fair.

214 BILL CROSS, OREGON ASSOCIATION CHIEFS OF POLICE: Submits and reviews written testimony in support of the amendments and the bill generally on behalf of Chief Robert Tardiff, Oregon Association of Chiefs of Police (EXHIBIT H).

237 SEN. WEBBER: How does this relate to BPSST?
>What is the impact and how broad? Does it speak only to sexual assault issues or are there others?
>Do we need to define current provisions to address the problem?
>What are other models for code of ethics?
>Notes need for clear definition of the problem.

266 KEYSER: Refers to the range of behaviors that could be involved, such as sexual assault; cites military references regarding conduct unbecoming an officer. Generally, those are good examples.

294 SEN. SHOEMAKER: Reviews concerns with amendments. What is the statute they refer to, ORS 243.650-762?

RUSSELL: It deals with binding arbitration.

300 SEN. SHOEMAKER: States belief that the amendments are over-reaching. To say removal from employment is not a term or condition of employment seems contrary to definitions.

311 RUSSELL: OSP view is that this applies only to those cases with such outrageous conduct that the individual faces possible termination.
>This would make the trial board the sole source for that determination.
Then it could be appealed through the appellate court.

324 SEN. SHOEMAKER: Suggests OSP and union review and discuss further and return to committee with clear amendments.
>Action at this time seems premature.

341 RUSSELL: Refers to comment that OSP was being held to high standard; don't want to see that standard diminished.

354 SEN. SHOEMAKER: Concurs with Russell and offers praise at

maintaining
that standard.

359 KEYSER: Requests that a member of the committee facilitate
discussions.

367 SEN. SHOEMAKER: Unsure of which member could facilitate discussion.

370 SEN. WEBBER: Its Sen. Hamby's bill.

SEN. HAMBY: Notes ORS cites.

377 SEN. WEBBER: Would be helpful to get the input of an expert in
this
area of the law.

SB 1110: Allows court to transfer matter to another court after entry
of
judgment or decree for purposes of modification or enforcement.

407 QUIGLEY: Reviews bill and amendments from Oregon Judicial
Department
(EXHIBIT I).

421 SEN. SHOEMAKER: Locates amendments.

424 SEN. RASMUSSEN: Reviews bill. No objections to amendments.
>Notes need to delete reference to civil procedure in relating clause
to
narrow it somewhat.

TAPE 168, SIDE B

037 KINGSLEY CLICK, DEPUTY STATE COURT ADMINISTRATOR: Testifies in
support
of the bill and amendments.

048 SEN. SHOEMAKER: Either court would have jurisdiction to modify
original
order of decree? Concurrent jurisdiction?

CLICK: Yes. Only one court can hear the matter at a time.

054 SEN. SHOEMAKER: Both can make decisions?

CLICK: Yes.

056 SEN. SHOEMAKER: Original court could modify the actions of
the
auxiliary court?

CLICK: On motion by the parties.

060 SEN. RASMUSSEN: Disagrees. Party would have to prove change
of
circumstances?

CLICK: Yes. If there was a change of circumstance then the case would
return to the original county and begin over.

065 SEN. WEBBER: This is like babysitting, where original court retains control but you let the case out for one purpose and then it comes back?

SEN. RASMUSSEN: Yes, but this babysitter has a bigger hammer.

069 SEN. WEBBER: Rent a court?

SEN. RASMUSSEN: Yes, essentially. Clarifies the copying issue.

079 SEN. WEBBER: The court of origin is the host court?

SEN. RASMUSSEN: Correct. Comments on record keeping obligations.

087 SEN. SHOEMAKER: Concerning section 2 of amendments, could you clarify the amendments to ORS 107.174?

094 SEN. RASMUSSEN: Provision adds two things; Transfer the matter to auxiliary court, or by telephone.

104 CLICK: Clarifies amendments to ORS 107.174.

121 SEN. SHOEMAKER: Expresses concern; section 1 would apply to 107.174 without any specific amendment?

CLICK: Yes.

125 SEN. SHOEMAKER: So substance of section 2 amendment is to permit the appearance before either court by telephone? Seems that change needs notice and hearing in its own right?
>Suggests removing the provision and consider on the House side?

136 CLICK: If the other bill passed that would make it moot. Notes that the entire section 2 could be dropped without devastating effects.

142 SEN. SHOEMAKER: Would be more comfortable moving the bill without that section.

145 SEN. RASMUSSEN: Strike section 2 from OJD amendments.

149 MOTION: SEN. RASMUSSEN: moves to ADOPT OJD amendments with the deletion of section 2.

VOTE: Hearing no objection, the amendments are ADOPTED.

153 SEN. RASMUSSEN: Need to change relating clause to tighten up civil procedure.

>Can it state; "relating to auxiliary courts"?

SEN. SHOEMAKER: Is auxiliary court a new concept in the law by virtue

of this bill?

160 CLICK: No, also used in ORS 25.100. It is not defined and
only understood in context.

166 SEN. RASMUSSEN: Unsure as to applicability of his suggestion,
but current wording is too broad.

STAFF NOTE: Committee spends several moments reviewing possible
relating clauses.

183 QUIGLEY: Suggests conceptual decision to allow Legislative Counsel
to narrow relating clause.

188 MOTION: SEN. RASMUSSEN: moves SB 1110, AS AMENDED, be sent to
the floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. SMITH and
CHAIR SPRINGER are excused.

197 CHAIR SPRINGER: The motion CARRIES.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

- A - Amendments to SB 413, Staff, 12 pages
- B - Testimony on SB 413, David Nebel, 8 pages
- C - Testimony on SB 764, Senator Lim, 1 page
- D - Amendments to SB 322, Staff, 9 pages
- E - Testimony on SB 1123, Jerry Russell, 4 pages
- F - Testimony on SB 1123, Keith Fajer, 3 pages
- G - Amendments to SB 1123, Staff, 1 page
- H - Testimony on SB 1123, Bill Cross, 1 page
- I - Amendments to SB 1110, Oregon Judicial Department, 1 page