

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

February 23, 2005 Hearing Room 357

8:30 A.M. Tapes 19 - 20

MEMBERS PRESENT: Rep. Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2518 - Public Hearing

HB 2278 - Public Hearing

HB 2090 - Public Hearing

HB 2288 - Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 19, A

004 Chair Ackerman Calls the meeting to order at 8:35 a.m. and announces the order in which the bills will be heard. Advises there will be no work session on HB 2518 or HB 2090.

013 Chair Ackerman Opens a public hearing on HB 2518.

HB 2518 – PUBLIC HEARING

016 Sam Sears Counsel. Explains HB 2518, which allows the Public Safety Memorial Fund Board, upon showing of good cause, to extend the 30-day time limit that applicants have to request reconsideration of an order issued by the board. Describes the responsibilities of the board. Discusses the -1 amendments to HB 2518 (**EXHIBIT A**).

031 Rep. Mitch Greenlick House District 33. Cites circumstances of a constituent's case.

056 Marilyn Lorance Certification and Records Supervisor, Department of Public Safety Standards and Training (DPSST). Explains that DPSST administers the Public Safety Memorial Fund and staffs the memorial fund board. Advises that needed additional information is often unavailable within the 30-day time frame in current statute. Testifies as neutral on HB 2518. Believes HB 2518 will provide additional flexibility needed.

079 Rep. Garrard Expresses concern that with the amendment, there will be no time limit at all.

086 Rep. Greenlick Believes the language is written in the interest of the applicant.

091 Rep. Garrard Reiterates concern about not having a time frame for completion.

096 Rep. Greenlick Indicates he thinks the language is okay but could amend to put a time limit on the extension if the committee wants it.

100 Chair Ackerman Believes that a motion to extend the time could specify the length of time requested.

106 Rep. Greenlick Assumes that is the way it would work, as the request is by the applicant.

113 Chair Ackerman Closes the public hearing on HB 2518 and opens a public hearing on HB 2278.

HB 2278 – PUBLIC HEARING

- 121 Sam Sears Counsel. Explains HB 2278, which creates new circuit court judge positions. Describes makeup of Committee on Trial Court Judicial Resources and the studies made to determine judicial needs.
- 129 Chair Ackerman Announces that today is Oregon Trial Lawyers Lobby Day and welcomes visitors.
- 135 Wallace P. Carson, Jr. Chief Justice, Oregon Supreme Court. Testifies and submits testimony in support of HB 2278 (**EXHIBIT B**). Describes the history and responsibilities of the Trial Court Judicial Resources Committee. Explains that the number of judges per district is determined by the legislature.
- 194 Tim Willis Chair, Joint Committee on Oregon Trial Court Judicial Resources. Testifies in support of HB 2278. Explains the process used in making recommendations for judicial selection.
- 234 Willis Refers to the 2002 and 2004 committee reports included in **EXHIBIT B**. Explains that the 2002 report contains detailed explanations of needs in each of the judicial districts and is based on 2001 case studies.
- 253 Willis Continues by explaining that the 2004 report is based on 2003 information. Points out that although the priorities were changed between the two reports, the same districts are in need.
- 288 Willis Points out that the addition of a correctional facility to a judicial district causes increases in workload, from inmates.
- 320 Willis Discusses plans for new correctional facilities near Madras that will overwhelm that district. Expresses concern about the approximate two-year delay in judicial appointments.
- 351 Willis Invites committee members to contact members of the Trial Court Judicial Resources Committee for further information.
- 368 Willis Concludes with a concern about the importance in having a competent, trustworthy and efficient judicial system, and that a lack of sufficient staff causes case backlogs.

TAPE 20, A

- 020 Rep. Krieger Asks about the costs that will be incurred per judge in the next biennium.
- 023 Carson Responds that the 2005-07 biennium will have a six-month obligation and the full amount for 2007-09. Understands it will cost \$379,000 per judicial position, which includes 4.3 full time equivalencies.
- 042 Rep. Krieger Asks if there is an additional position in Clatsop County that is not included in the priority list.
- 047 Willis Replies that it should have been added.
- 049 Carson Explains that HB 2278 was a placeholder as the committee recommendations were not available when filed. Refers to a hand-engrossed version of HB 2278 that shows the number of positions recommended by the committee (**EXHIBIT C**).
- 061 Rep. Garrard Comments that with each new judicial position there is a financial impact to the county. Asks about the amount of that impact and if that is an unfunded mandate to the county.
- 070 Wills Refers to the 2004-2005 committee report that shows the suggested discussion items sent to each judicial district (**EXHIBIT B**). Doesn't have exact numbers but indicates the committee is sensitive to the issues.
- 086 Rep. Garrard Inquires if any counties have objected to having an additional position.
- 090 Willis Recalls that most have not objected. Offers to follow up with more specific information.
- 095 Rep. Garrard Responds that the information is needed in order to consider the positions to be funded.
- 101 Carson Comments that this has been a point of contention since the state took over the county employees, and there have been committees over time to try to work with counties with financial problems.

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| 131 | Carson | Continues with explanation of continuing efforts to work with counties. |
| 140 | Willis | Offers to review the minutes of hearings to obtain specific responses from each district. |
| 142 | Rep. Flores | Asks about the fact that Clackamas County did not show up in 2003 but is number two in 2005. |
| 148 | Willis | Responds that since Clackamas County did not request a full time judicial position, they were left off. |
| 151 | Rep. Flores | Asks a priority ranking question about Multnomah County. |
| 154 | Willis | Explains that the committee uses a case-weighted study. |
| 165 | Chair Ackerman | Refers to EXHIBIT C . Asks if this committee should prioritize the judges or leave as shown in the hand-engrossed version of HB 2278. |
| 174 | Carson | Responds that the hand-engrossed HB 2278 shows the full recommendations (EXHIBIT C). Indicates that page 5 of the 2004-2005 report shows the committee's priority recommendation (EXHIBIT B). |
| 195 | Chair Ackerman | Asks if the priority should be placed in HB 2278 or if the discussion should take place in Ways and Means. |
| 196 | Carson | Replies that it is important to know this committee's thinking. |
| 207 | Chair Ackerman | Inquires about last priority for Crook and Jefferson Counties, as contingent on construction of new facilities. |
| 213 | Willis | Comments that it is difficult to put in priority. States that if a facility is constructed, a judge will be a high priority. |
| 221 | Rep. Krieger | Offers to discuss issues with the Ways and Means co-chair. |
| 228 | Chair Ackerman | Asks if a work session should be held at this time. |
| 229 | Rep. Krieger | |

Replies, if you wish, and if an amendment is necessary, it can be handled in the full committee.

- 240 Rep. Brad Witt House District 31. Reports on the -1 amendments to HB 2278 **(EXHIBIT D)**. Feels the amendments are adequately addressed in the hand-engrossed version of HB 2278 **(EXHIBIT C)**.
- 268 Paul Snider Association of Oregon Counties. Testifies as neutral on HB 2278. Raises concern about fiscal impact to counties depending on how the “blanks” are filled in.
- 302 Snider Discusses the proposed Madras facility and joint funding of a judgeship.
- 332 Snider Suggests looking at the whole public safety system.
- 373 Snider Offers to provide a fiscal impact to counties based on number of judgeships created.
- 382 Rep. Garrard Issues a disclaimer about any prior conversation about HB 2278.
- 388 Chair Ackerman Asks about a task force that was formed in the 2003 legislative session to study facilities.
- 397 Snider Replies that there was legislation to establish a task force, but it died in Ways and Means.
- 401 Chair Ackerman Inquires if there is a similar bill this session.
- 402 Snider Answers, yes.
- 406 Chair Ackerman Asks if the financial details should be worked out in Ways and Means and this committee act on the merits of the positions only.
- 412 Snider Believes that would be appropriate.
- 428 Chair Ackerman Sees the role of this committee as deciding on the basic merits of needs for positions.
- 440 Chair Ackerman

Directs counsel to prepare a -2 amendment consistent with the hand-engrossed HB 2278.

448 Chair Ackerman Closes the public hearing on HB 2278 and opens a public hearing on HB 2090.

TAPE 19, B

HB 2090 – PUBLIC HEARING

012 Sam Sears Counsel. Explains HB 2090, which prohibits the Board of Maritime Pilots from factoring in the cost of a hearing when establishing fee amounts. Describes the makeup of the Board, which is responsible for payment of hearing fees.

030 Rob Douglas Columbia River Steamship Operators Association. Testifies in support of HB 2090.

041 Chair Ackerman Asks if the State Marine Board is involved.

043 Douglas Replies, no; it is the Board of Maritime Pilots.

044 Chair Ackerman Inquires if that board is statutorily created.

045 Douglas Responds, yes it is.

046 Chair Ackerman Asks if it is a functioning board, elected or otherwise.

047 Douglas Replies that they are appointed.

049 Chair Ackerman Inquires if there is anyone in attendance representing that board.

050 Douglas Does not know.

053 Chair Ackerman Raises a concern about changing the authority of the board without representation.

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| 056 | Jim Townley | Executive Director, Columbia River Steamship Operators Association. Explains the association's responsibilities. Advises there are three pilotage grounds (Coos Bay, Columbia River Bar and Columbia River), each of which has a right to petition for rate increases. Believes it is a repetitive, frequent and expensive method of establishing rates. |
| 079 | Townley | Points out that the pilots are highly paid professionals. Comments that the cost of rate increases, if spread over all members, amounts to less than one percent of gross pay. |
| 100 | Chair Ackerman | Requests clarification on how the industry works, how it is regulated and how fees are assessed. Asks about grievance proceedings. |
| 104 | Townley | Provides clarification and advises that grievance proceedings are before an administrative law judge. |
| 108 | Chair Ackerman | Asks for an overview on how the regulatory phase of the system operates. |
| 110 | Townley | Explains the process set by the governing board, which requires entering into negotiated settlement. Continues that at the end of the process the attorney fees are brought before the Board of Maritime Pilots for reimbursement through tariffs. |
| 135 | Mike Haglund | Counsel to Columbia River Bar pilots. Testifies in opposition to HB 2090. Explains that the river pilots are like a utility under Oregon law and can only charge fees that are approved through a rate proceeding process. Continues that a petition is needed for a fee increase and each line item is subject to a "reasonableness" test. |
| 160 | Haglund | Believes that attorney fees are a legitimate expense. Describes a current \$200 per vessel assessment. Raises a concern that under HB 2090 the only ones with funding to cover the cost of a contested rate proceeding would be foreign flag ship owners. |
| 182 | Haglund | Advises that if pilot groups are unable to recover legal fees, the quality of rate proceedings will be affected. |
| 212 | Sears | Seeks clarification on who pays the fees. |
| 217 | Haglund | Advises that the board does not pay tariff or pilotage fees. |

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| 241 | Rep. Flores | Asks for further clarification, that the legal fees are a result of an administrative contested case hearing. |
| 246 | Haglund | Replies, largely. Explains that regular counsel is needed at monthly meetings of the Board of Maritime Pilots to conduct business. |
| 256 | Chair Ackerman | Asks if HB 2090 is directed by the use of attorney fees and if it is singling out the maritime pilots, or if other groups are affected. |
| 262 | Haglund | Replies that they are being singled out. Explains that HB 2090 would make it illegal for the pilots to include legal fees and expert witness costs in a rate proceeding in their qualifying expenses. |
| 273 | Rep. Wirth | Asks about the motivation behind HB 2090. |
| 277 | Haglund | Answers that the process of rate setting would be significantly affected and give the steamship companies a huge advantage. |
| 315 | Haglund | Discusses wages of Oregon pilots compared to other parts of the country. |
| 326 | Dave Fiskum | Columbia River Pilots. Testifies in opposition to HB 2090. Believes removing attorney fees is not warranted. Urges not considering bill. |
| 355 | David Halmagyi | Business Manager, Columbia River Pilots. Points out importance of access to instant counsel and cites some examples. |

TAPE 20, B

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| 010 | Halmagyi | Describes the rate setting hearing process. |
| 037 | Halmagyi | Believes HB 2090 is unfair. |
| 044 | Rep. Garrard | Asks for clarification of example cited. |
| 048 | Halmagyi | Is unsure that HB 2090 applies to rate proceedings only. |
| 055 | Rep. Garrard | Asks counsel's opinion on the scope of HB 2090. |

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| 059 | Sears | Indicates he is unclear what attorney fees are included. |
| 077 | Fiskum | Comments that he came up with two different interpretations and feels HB 2090 is ambiguous. |
| 084 | Sears | Asks if other fees are currently included in the rates. |
| 086 | Halmagyi | Replies that the normal cost of legal representation in the course of business is included. |
| 088 | Sears | Inquires if that includes attorneys on retainer. |
| 090 | Halmagyi | Answers, yes. |
| 091 | Chair Ackerman | Asks if the board has regulatory authority and shouldn't that be the venue for this proceeding. |
| 098 | Halmagyi | Responds that it is clearly in the board's power. |
| 101 | Chair Ackerman | Comments that additional information is needed. Wants to hear from a representative of the Oregon Board of Maritime Pilots. |
| 110 | Chair Ackerman | Closes the public hearing on HB 2090 and opens a public hearing on HB 2288. |

HB 2288 – PUBLIC HEARING

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| 116 | Sam Sears | Counsel. Describes HB 2288, which allows junior lien holders to recover excess proceeds obtained from the foreclosure sale of incumbent property. Explains current procedure. |
| 121 | Casey Mills | Debtor/Creditor Section, Oregon State Bar. Testifies and submits testimony in support of HB 2288 (EXHIBIT E). Explains that existing statute does not provide payment to junior creditors. Comments that HB 2288 is modeled after the priorities in Article 9 of the Uniform Commercial Code and an existing Washington statute. |
| 175 | Rep. Flores | Asks what property, other than motor vehicles, would remain in this category. |

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| 173 | Mills | Responds, any personal property other than a fixture, and provides examples. |
| 178 | Rep. Flores | Seeks further clarification. |
| 184 | Mills | Cites a specific case. |
| 200 | Chair Ackerman | Asks if HB 2288 simply clarifies the rights of junior lien holders. |
| 203 | Mills | Replies, yes. |
| 206 | Chair Ackerman | Closes the public hearing and opens a work session on HB 2288. |

HB 2288 – WORK SESSION

209 Rep. Garrard MOTION: Moves HB 2288 to the full committee with a DO PASS recommendation.

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

**211 Chair Ackerman The motion CARRIES.
REP. GARRARD will lead discussion in the full committee.**

219 Chair Ackerman Closes the work session on HB 2288 and adjourns the meeting at 10:15 a.m.

EXHIBIT SUMMARY

- A. HB 2518, -1 amendment, staff, 1 p
- B. HB 2278, Report from Joint Committee on Oregon Trial Court Judicial Resources, Wally Carson, 91 pp
- C. HB 2278, hand engrossed bill, Wally Carson, 2 pp
- D. HB 2278, -1 amendment, Rep. Brad Witt, 1 p
- E. HB 2288, written testimony, Casey Mills, 1 p