

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 25, 2005 Hearing Room 357

8:30 A.M. Tapes 88 - 90

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

GUEST MEMBERS: Rep. Wayne Krieger

Rep. Greg Macpherson

Rep. Andy Olson

STAFF PRESENT: Joe O'Leary, Counsel

Sam Sears. Counsel

Bill Taylor, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2285 – Public Hearing

SB 921A – Public Hearing and Work Session

SB 324A – Public Hearing and Work Session

SB 35 – Public Hearing and Work Session

SB 94A – Public Hearing and Work Session

SB 106A – Public Hearing

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 88, A

003 Chair Ackerman Calls the meeting to order at 8:50 a.m. Announces the order of hearings. Urges witnesses to focus their testimony on the -3 amendments to HB 2285 due to time constraints.

018 Chair Ackerman Opens a public hearing on HB 2285.

HB 2285 – PUBLIC HEARING

020 Sam Sears Counsel. Explains HB 2285 and specifically the -3 amendments **(EXHIBIT A)** which prohibit an inquiry into the purposes for which an Administrative Law Judge (ALJ) disqualifies himself or herself from a contested case; provides that disqualification by an ALJ is not official misconduct, incompetence, inefficiency, indolence, malfeasance, or other unfitness to render effective service; and provides that disqualification may not be the basis for a disciplinary action or a criterion in the performance evaluation of the ALJ.

027 Chair Ackerman Notes that many of the witnesses signed up were planning to testify on the -2 amendments, which will not be heard. Invites the proponents to testify.

045 Vance Day Attorney. Testifies in support of HB 2285. Provides history on the -3 amendments. Indicates that this matter is critical for the independence of judges. Provides an example. Requests the petition to amend OAR 438-006-0095 and related evidence be entered into the record **(EXHIBIT B)**.

074	Chair Ackerman	Requests summarization of the contents of EXHIBIT B .
077	Day	Responds that EXHIBIT B is the record and letters from the claimant's side and the employer's side of the bar association requesting that this be placed into Oregon administrative rules, which is the same rule for which they are requesting codification.
087	Day	Summarizes from a letter from Maureen Bock, Chair of the Workers Compensation Board in EXHIBIT B regarding reasons for recusal. Refers to letters from ALJ John McCullough in EXHIBIT B requesting reasons for recusal.
121	Kevin Mannix	Resident, Salem, Oregon. Testifies in support of HB 2285 and the -3 amendments. Informs that ALJs in workers comp do not hold hearings to gather evidence for another's decision, but do what judges typically do in civil actions in circuit court.
142	Mannix	Discusses the recusal issue. Raises concern about providing specific reasons for recusal.
177	Mannix	Indicates he doesn't want the ALJs being managed when it comes to fairness. Believes that the Management/Labor Advisory Committee is not in support of bill. States that this is a public policy decision for this committee.
199	Rep. Garrard	Asks how much detail is needed for a reason of recusal.
205	Mannix	Raises a concern about "opening the door" at all and explains why.
220	Chair Ackerman	Inquires about the possibility of a bill that allows discretionary disclosure rather than mandatory.
224	Day	Answers that there may still be pressure from the presiding judge. Continues that the ALJ already has discretion.
235	Chair Ackerman	Asks about the presiding judge's authority to require ALJ disclosure.
240	Day	Understands that there is a written policy that says it is discretionary.
251	Chair Ackerman	Inquires about the location of the written policy.

255	Day	Refers to EXHIBIT B which contains a request to amend the process which was denied.
261	Chair Ackerman	Seeks clarification that the source of authority is now a policy of the ALJs.
262	Day	Answers, the Workers Compensation Board (WCB).
264	Chair Ackerman	Asks if it is just the WCB or if it applies to all ALJs.
267	Day	Replies, just the WCB.
267	Mannix	Adds that this is simply in the context of the WCB, which selects the presiding ALJ who runs the WCB hearings division, a separate operation from other state agencies.
281	Chair Ackerman	Inquires if the -3 amendments should be expanded to include all agencies or confine to the WCB system.
286	Mannix	Answers this is a good place to start.
312	Layne Barlow	Oregon Men's Association. Clarifies that this deals with recusal, not disqualification. Believes that portions of the -3 amendments should be included in ORS 183.645 to apply to all hearings officers and ALJs.
348	Maureen Bock	Chair, WCB. Testifies as neutral on HB 2285 and the -3 amendments. Advises that the petition was denied by the Board as they did not have time to consider it before it proceeded. Continues that a work group of members from both sides of the Bar was formed to work on a rule to be considered by the entire Board the end of June. Describes the Board's organization, hearings process and recusal process.

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010	John McCullough	Presiding Administrative Law Judge, WCB. Reiterates that the WCB is neutral on HB 2285 and submits written testimony (EXHIBIT C). Indicates that an analysis of HB 2285 raises the implications of the language. Explains why the reasons for recusal are important.
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038	McCullough	Clarifies that the letter referred to by Mr. Day was requesting a general idea of whether a conflict existed and, if so, the nature of the conflict to assist with future scheduling.
053	Lisa Trussell	Associated Oregon Industries. Testifies in opposition to the -3 amendments. Advises that the workers compensation system was designed for employers and employees of Oregon. Informs that the Management/Labor Advisory Committee is composed of equal representation from the employer and labor communities and is the appropriate body to review legislation such as HB 2285.
087	Rep. Macpherson	Asks why this issue has evolved to a point that a statute change is needed.
093	Bock	Doesn't know the impetus for HB 2285. Discusses process of recusal and scheduling. Notes there is ALJ representation on the advisory group that is working on the petition.
114	Rep. Flores	Asks Ms. Trussell if their opposition to the -3 amendments is based on needing to have a specific reason for recusal.
123	Trussell	Answers, no, the details are not necessary, but it is reasonable to know who the party is so a matter is not scheduled with someone who will end up having to recuse himself.
137	McCullough	Agrees. Explains the phraseology of the letter referred to earlier and the types of reasons requested.
155	Rep. Flores	Comments that it appears to her that Judge McCullough was pressing for details.
166	McCullough	Responds with an explanation of his intent.
175	Rep. Flores	Reiterates that the letter seems to focus on "the clear and specific reason." Believes that what was conveyed is not what was thought to be communicated.
188	McCullough	Answers that was not the intent of that phrase. Continues that at that point it was unclear whether the underlying conflict was with a party, a witness or an attorney, and he was seeking that information.

- 198 Rep. Garrard Comments on his high esteem for Ms. Bock and Judge McCullough. Asks if HB 2285 was passed if it would cause a backlog and affect the number of cases that could be scheduled in a specific time period.
- 205 Bock Replies, that is the potential. Refers to HB 2717 that attempts to address inventory of postponed cases. Continues that last minute conflict reporting causes last minute rescheduling.
- 216 McCullough Adds that the volume depends on the number of recusals but historically there hasn't been many.
- 224 Bock Reports that about 10,000 requests for hearing each year are scheduled with 29 ALJs. States that they request timely notification and whether it is a one-time or ongoing conflict.
- 233 Rep. Flores Requests the number of recusal matters.
- 239 Bock Answers that they hear about 2,000-3,000 cases per year. Advises that recusals are rare and most are handled informally. Explains the scheduling process.
- 258 Rep. Flores Inquires if the -3 amendments are primarily preemptive to better manage cases in the event matters are brought to their attention.
- 265 Bock Responds that they already have a conflict table in place.

The following written material is submitted for the record without public testimony:

- Maureen Bock Chair, WCB. Submits a copy of WCB minutes related to the petition and the related work group (**EXHIBIT D**).
- 274 Chair Ackerman Closes the public hearing on HB 2285 and opens a public hearing on SB 921A.

SB 921A – PUBLIC HEARING

- 300 Wendy Johnson Oregon Law Commission. Testifies and submits written testimony in support of SB 921A (**EXHIBIT E**). Offers that SB 921A cleans up some procedures for adoption proceedings done privately in family court. Continues that SB 921A makes the procedure similar to the

termination of parental rights cases. Refers to the -1 amendments which allow for posting of notice if the court permitted. Explains that the -2 amendments (**EXHIBIT F**) from the Public Defense Services clean up when a court can provide substituted counsel.

352 Joe O'Leary Counsel. Clarifies that the -2 amendments deal with the posting, not the -1 amendments Ms. Johnson referred to, and the -3 amendments deal with substitution of appointed counsel (**EXHIBIT G**). Continues that SB 921A codifies the *Zockert v. Fanning* decision.

368 Scott Adams Attorney, Banks, Oregon. Testifies and submits written testimony in support of SB 921A (**EXHIBIT H**). Advises the SB 921A provides more notice in the initial paperwork sent to a parent whose rights are being sought to be terminated. Clarifies the notification requirements.

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023 Ingrid Swenson Office of Public Defense Services. Testifies in support of the -3 amendments to SB 921A.

039 Chair Ackerman Closes the public hearing and opens a work session on SB 921A.

SB 921A – WORK SESSION

042 Rep. Flores MOTION: Moves to ADOPT SB 921A-2 amendments dated 4/11/05.

VOTE: 3-0-1

EXCUSED: 1 – Garrard

045 Chair Ackerman Hearing no objection, declares the motion CARRIED.

046 Rep. Flores MOTION: Moves to ADOPT SB 921A-3 amendments dated 5/3/05.

VOTE: 3-0-1

EXCUSED: 1 - Garrard

- 048 Chair Ackerman Hearing no objection, declares the motion **CARRIED**.
- 049 Rep. Flores **MOTION: Moves SB 921A to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- EXCUSED: 1 - Garrard**
- 058 Chair Ackerman **The motion CARRIES.**
- REP. FLORES will lead discussion in the full committee.**
- 061 Chair Ackerman Closes the work session on SB 921A and opens a public hearing on SB 324A.

SB 324A – PUBLIC HEARING

- 069 Bill Taylor Counsel. Explains SB 324A which prohibits a public body from entering into a settlement or compromise that requires the terms or conditions of the settlement or compromise be confidential unless federal law requires confidentiality.
- 079 Sen. Vicki Walker Senate District 7. Testifies and submits a copy of her floor speech (**EXHIBIT I**) and a newspaper article (**EXHIBIT J**). Provides information from the article on sexual abuse of state hospital patients.
- 129 Sen. Walker Reads from a transcript obtained by *The Oregonian*. Continues that the sexual abuse spanned the administrations of three governors.
- 178 Pete Shepherd Deputy Attorney General (AG). Conveys that AG Hardy Meyers supports SB 324A. Explains that SB 324A narrows existing law which states a court may enter an order finding some term or condition of the settlement holding that confidential, if the court makes findings that the specific privacy interests of an individual outweigh the public's interest in the terms of the settlement or compromise.
- 226 Rep. Flores Asks Sen. Walker if then-AG Kulongoski and Assistant AG John McCullough were aware of and helped create this confidentiality atmosphere.

238 Sen. Walker Doesn't believe it is the same John McCullough.

240 Shepherd Is doubtful that the John McCullough who was a former member of the Department of Justice is the same John McCullough who testified earlier.

246 Sen. Walker Advises that the John McCullough Jr. who was the Assistant AG at the time is now an attorney in private practice. Continues with the Governor's response to questions about his recollection of the matter.

266 Rep. Garrard Thanks Sen. Walker for her work on SB 324A.

269 Sen. Walker Expresses appreciation of *The Oregonian* for their diligence on this case.

276 Rep. Wirth Notes that background checks on employees were not performed prior to 1991. Comments that background checks performed on preschool teachers is more strenuous.

284 Sen. Walker Doesn't have an answer.

286 Shepherd Doesn't have an answer but can follow up.

288 Rep. Wirth States that a criminal background check is required for preschool teachers.

294 Chair Ackerman Thanks witnesses for bringing the issue forward.

301 Sen. Walker Expresses appreciation to Rep. Flores who has helped take the lead on this issue as well, in addition to other bills to protect Oregonians.

311 Chair Ackerman Closes the public hearing and opens a work session on SB 324A.

SB 324A – WORK SESSION

317 Rep. Flores **MOTION: Moves SB 324A to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

325 Chair Ackerman The motion CARRIES.

REP. FLORES will lead discussion in the full committee.

327 Chair Ackerman Closes the work session on SB 324A and opens a public hearing on SB 35.

SB 35 – PUBLIC HEARING

335 Joe O’Leary Counsel. Describes SB 35 which deals with the Employment Department’s ability to issue a warrant to collect amounts due pursuant to a money judgment.

348 Rob Edwards Oregon Employment Department. Testifies and submits written testimony in support of SB 35 (**EXHIBIT K**).

368 Chair Ackerman Closes the public hearing and opens a work session on SB 35.

SB 35 – WORK SESSION

372 Chair Ackerman MOTION: Moves SB 35 to the full committee with a DO PASS recommendation.

VOTE: 4-0-0

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

378 Chair Ackerman The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

379 Chair Ackerman Closes the work session on SB 35 and opens a public hearing on SB 94A.

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SB 94A – PUBLIC HEARING

003	Joe O’Leary	Counsel. Explains SB 94A which has to do with the scheme by which reports of child abuse are required to be cross-reported between law enforcement agencies and the Department of Human Services (DHS). Cites current requirement and describes the SB 94A changes.
030	Una Swanson	Child Protective Services Program Manager, DHS. Testifies and submits written testimony in support of SB 94A (EXHIBIT L). Believes prioritizing in administrative rule would assist both law enforcement and DHS to better meet the needs of immediate child safety issues.
048	Bob Tardiff	Police Chief, Newberg, Oregon. Advises he chaired the Systems Entry Subcommittee of the Governor’s Pro-justice System Task Force which identified the need for SB 94. Testifies in support of SB 94A. Believes that SB 94A will help law enforcement’s ability to more rapidly identify and respond to child abuse reports that present critical child safety needs.
056	Julie McFarlane	Juvenile Rights Project. Advises of objections to the initial SB 94 as it eliminated the cross-reporting requirement. Believes the concerns have been addressed in SB 94A.
078	Rep. Garrard	Asks who takes responsibility for the decision, if a misjudgment is made in the time period of reporting.
092	Swanson	Responds that SB 94A requires law enforcement cross-reporting to DHS and DHS reporting to law enforcement, so it would depend on which agency received the original report. Continues that the goal is to work together to be sure errors don’t occur.
102	Rep. Wirth	Asks how many incidents of child abuse are being received.
108	Swanson	Replies that in 2004 DHS received 46,000 reports of child abuse. Advises that not all required a face-to-face contact but all were required to be cross-reported.
113	Rep. Wirth	Inquires if it is a widespread problem across the state.
117	Swanson	Answers yes.
118	Rep. Flores	

Notes that SB 94A requires reporting within 24 hours of certain abuse and within 10 days for others. Requests examples of the criteria that would determine a 24-hour report.

- 124 Tardiff Responds that any issue that deals with the immediate safety of a child would be included in the 24-hour notice requirement, such as sexual abuse and crimes. Advises that all reports received must be sorted manually.
- 139 Rep. Garrard Asks if cross-reporting is two reports passing each other or one department reporting to the other.
- 143 Tardiff Answers, both.
- 147 Rep. Wirth Comments that the majority of child abuse reports are classified as “threat of harm.” Asks if the definition will be tightened up.
- 155 Swanson Answers that the category “threat of harm” is not well understood. Advises that the screening process tries to determine the nature of the abuse and the current threat to the child’s safety. Continues that work is being done to try to clarify. Explains that “threat of harm” is a statute category of abuse.
- 172 McFarlane Adds that there are inconsistencies in the juvenile code. Prefers more descriptive terms of abuse. Has asked the Oregon Law Commission to look at the issue.
- 188 Rep. Flores Recounts an infant death incident in Washington County and raises a concern about who failed the child that died.
- 201 Chair Ackerman Closes the public hearing and opens a work session on SB 94A.

SB 94A – WORK SESSION

- 203 Rep. Wirth **MOTION: Moves SB 94A to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

212 Chair Ackerman The motion **CARRIES.**

REP. WIRTH will lead discussion in the full committee.

213 Chair Ackerman Closes the work session on SB 94A and opens a public hearing on SB 106A.

SB 106A – PUBLIC HEARING

217 Joe O’Leary Counsel. Explains SB 106A is a result of a work group under the direction of Deputy Attorney General Pete Shepherd regarding elder abuse. Summarizes the comprehensive measure. Refers to the -3 amendments (**EXHIBIT M**) tightens the language on the elderly abuse restraining order. States that the -5 amendments (**EXHIBIT N**) require agencies to notify long-term care facilities of predatory sex offenders. Notes that the -5 amendments are not effective until January 6, 2006, and the rest of SB 106A is effective on passage.

275 Chair Ackerman Asks if a similar bill that passed the House is a duplication of SB 106A.

282 O’Leary Believes there is a duplication and that Rep. Hass’s bill is covered by SB 106A. Plans to do a conflict check procedure with Legislative Counsel who makes that determination.

292 Chair Ackerman Inquires about what happens if both bills pass.

293 O’Leary Does not know.

295 Chair Ackerman Wants to preserve Rep. Hass’s authorship of the earlier bill.

301 O’Leary Reports that the bill had a public hearing.

305 Pete Shepherd Deputy Attorney General (AG). Testifies in support of SB 106A. Advises that AG Hardy Meyers supports SB 106A. Adds that the Governor convened an elder abuse task force during the interim to examine an array of issues. Comments that financial abuse of the elderly is a significant problem. Reports that DHS investigated about 1,800 cases of alleged financial abuse. Continues that sexual abuse of the elderly is less common but does occur.

- 359 Shepherd Advises that current law requires reporting of elder abuse to law enforcement. Reports on including firefighters and emergency medical technicians as mandatory reporters under SB 106A. Continues that SB 106A changes the rule on intestate succession.
- 380 Shepherd States that both the -3 and the -5 amendments need to be acted on. The -3 amendments are supported by the Oregon Judicial Department. Submits written testimony by Circuit Court Judge Claudia Burton (**EXHIBIT O**) and Bealisa Sydlik, Office of the State Court Administrator (**EXHIBIT P**) in support of the -3 amendments.

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- 003 Bertran Copp Resident, Monmouth, Oregon. Refers to a proposed amendment that he prepared (**EXHIBIT Q**). Expresses concern for and cites statistics on fraudulent entrapment by guardianship.
- 035 Copp Relates a personal account. Urges consideration of his proposal to delete certain language in the -3 amendments.
- 063 Jim Carlson Oregon Health Care Association. Testifies and submits written testimony in support of SB 106A (**EXHIBIT R**). Refers to groups that worked on the -5 amendments. Relates incidents of dangerous offenders who were admitted to facilities where they re-offended.
- 094 Shepherd Responds to Mr. Copp's concerns. Indicates that Page 3, Lines 32-34 and the -3 amendments deal with the "intersection" between the existing judicially supervised procedures for guardians and conservators. Refers to the -3 amendments that deal with circumstances in which a person is seeking a self-help restraining order from the court. Provides examples. States that Mr. Copp has correctly described the effect of the -3 amendments.
- 144 Shepherd Agrees there are circumstances where guardians or conservators are the perpetrators of financial abuse directed to their charges and they deal with those as consumer protection cases under existing law. Continues that this raises questions about the supervision of guardians and conservators.
- 160 Rep. Garrard Asks if the -5 amendments address Mr. Copp's concerns.
- 163 Carlson Answers no.

166	Rep. Macpherson	Inquires what problem would be created if the remedies available under ORS 124.005 through 124.040 were continued, in addition to those under the court-supervised process.
175	Shepherd	Responds that in many courts the judge has the authority to exercise control over the performance of the people they have appointed. Continues with explanation of self-help and restraining order processes.
207	Chair Ackerman	Asks about a situation when a guardianship or conservatorship is initiated with legal counsel, and then counsel withdraws from the case.
220	Shepherd	Comments that the majority of financial abuse is usually by a family member, not by a guardian or conservator.
243	Chair Ackerman	Announces that the remainder of the agenda will be carried over.
251	Rep. Flores	States that family members are often appointed conservators or guardians and therein lays a problem.
262	Shepherd	Agrees that happens.
267	Rep. Flores	Is concerned about not allowing the opportunity for individuals still capable of their making own decisions, to be able to obtain help.
262	Chair Ackerman	Agrees that most guardianships and conservatorships are family members.
283	Rep. Macpherson	Asks about the reporting obligation by state agencies to health care facilities in the -5 amendments.
292	Shepherd	Explains the work with DHS on the -5 amendments.
301	Chair Ackerman	Requests names of those interested in participating in further discussions.
307	Bealisa Sydlik	Oregon Judicial Department. Advises that the -3 amendments come from their department and her comments would address those and Mr. Copp's concerns.

The following testimony is submitted for the record without public testimony:

	Rick Bennett	Associate State Director, American Association of Retired Persons Oregon. Submits written testimony in support of SB 106 (EXHIBIT S).
314	Chair Ackerman	Closes the public hearing on SB 106A. Announces that another public hearing and possible work session will be scheduled.
328	Chair Ackerman	Adjourns the meeting at 11:00 a.m.

EXHIBIT SUMMARY

- A. **HB 2285, -3 amendments, staff, 3 pp**
- B. **HB 2285, petition, Vance Day, 143 pp**
- C. **HB 2285, written testimony, John McCullough, 2 pp**
- D. **HB 2285, board minutes, Maureen Bock, 9 pp**
- E. **SB 921, written testimony, Wendy Johnson, 9 pp**
- F. **SB 921, -A2 amendments, staff, 1 p**
- G. **SB 921, -A3 amendments, staff, 1 p**
- H. **SB 921, written testimony, Scott Adams, 1 p**
- I. **SB 324, floor speech, Sen. Vicki Walker, 3 pp**
- J. **SB 324, newspaper article, Sen. Vicki Walker, 19 pp**
- K. **SB 35, written testimony, Rob Edwards, 2 pp**
- L. **SB 94A, written testimony, Una Swanson, 1 p**
- M. **SB 106, -A3 amendments, staff, 2 pp**
- N. **SB 106, -A5 amendments, staff, 7 pp**
- O. **SB 106, written testimony by Claudia Burton, Pete Shepherd, 3 pp**
- P. **SB 106, written testimony by Bealisa Sydlik, Pete Shepherd, 1 p**
- Q. **SB 106, proposed amendment, Bertran Copp, 1 p**
- R. **SB 106, written testimony, Jim Carlson, 1 p**
- S. **SB 106, written testimony, Rick Bennett, 1 p**