

HOUSE JUDICIARY COMMITTEE

June 21, 2005 Hearing Room 357

8:30 A.M. Tapes 68 - 69

MEMBERS PRESENT: Rep. Wayne Chair Krieger, Chair

Rep. Greg Macpherson, Vice-Chair

Rep. Andy Olson, Vice-Chair

Rep. Bob Ackerman

Rep. Jeff Barker

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kim Thatcher

Rep. Kelley Wirth

STAFF PRESENT: Joe O’Leary, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

SB 528 – Public Hearing and Work Session

HB 3476 – 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 68, A

002 Chair Krieger Calls the meeting to order at 8:38 a.m. Opens a public hearing on SB 528 A, which establishes processes for pleading and proving enhancement facts that may be used in criminal proceedings to impose term of imprisonment beyond presumptive guidelines sentence. Introduces Judge Barron who testifies by phone.

SB 528 – PUBLIC HEARING

009 Sen. Ginny Burdick Senate District 18. Testifies in support of SB 528. Describes details of the *Blakely* fix.

062 Sen. Burdick Addresses the Kansas model for the *Blakely* fix.

116 Sen. Burdick Comments on the decision to make *Blakely* retroactive for cases currently in the system.

140 Rep. Ackerman Questions whether the District Attorney would be required to allege the precise sentencing guidelines which they would apply that would provide for upward enhancement in the event that enhancement facts are alleged in the indictment.

047 Sen. Burdick Responds negatively. Believes sentencing guidelines would go around the crime itself.

153 Joe O’Leary Counsel. States that the sentencing guidelines, not the measure, define enhancement facts, though some are vague. Adds that they must be plead in the charging instrument, or otherwise given notice by the state.

183 Rep. Ackerman Desires to confirm that the specific guideline would be alleged in the indictment or otherwise given notice.

190 Sen. Burdick Responds that the issue is provided for in the bill.

194 Rep. Ackerman Remarks that enhancement facts must be defined. Inquires whether the innocence or guilt of the defendant would be tried along with enhancement facts, unless defendant opts out. Questions if workgroup considered that enhancement facts should not be tried before a jury.

203	Sen. Burdick	Responds that Kansas does it that way, and the workgroup discussed it, but the decided to take the combined approach instead.
207	Rep. Ackerman	Inquires about position of ACLU.
209	Sen. Burdick	Responds that she does not recall the ACLU's position. Comments that there is a provision that if enhancement facts are prejudicial.
218	Judge Rick Barron	Presiding Judge, 15 Judicial District. Believes group approached the issue with the consensus, if enhancement facts relate to the offense, the evidence will come up in the trial anyway.
235	Rep. Macpherson	Inquires about sunset provision and whether changes would be made in the 2007 session with sufficient experience with these rules. Suggests a longer sunset would be better.
252	Sen. Burdick	Believes case law is imminent. Addresses consecutive sentences ruling, and says SB 528 A is drafted to include consecutive sentences. Mentions other cases that will soon surface.
284	Chair Krieger	Inquires if Judge Barron would like to testify.
289	Barron	Comments on the <i>Blakely</i> workgroup.
349	Barron	Continues comments on how the workgroup came to a consensus to deal with this difficult problem.
376	Jonathan Fussner	Department of Justice (DOJ) on behalf of Attorney General Hardy Myers. Testifies in support of SB 528 A.

TAPE 69, A

012	Fussner	States that it will take many years of case law to determine what <i>Blakely</i> will apply to. Comments on the broad definition of enhancement factor.
049	Kelly Skye	Legislative Representative, Oregon Criminal Defense Lawyers Association. Testifies as neutral on SB 528 A. Explains concerns about retroactivity provisions.

- 080 Rep. Macpherson Comments that *Blakely* is procedural, and inquires why it violates constitutional *ex post facto*.
- 095 Skye States that the *ex post facto* clause prohibits giving a sentence greater than what could be applied when the offense was committed.
- 121 Rep. Macpherson Questions whether that would be a problem anytime a procedural change was made in responds to a court decision.
- 133 Skye Clarifies whether question is if *ex post facto* deals with substantive change, rather than a procedural change.
- 142 Rep. Macpherson Responds affirmatively.
- 146 Skye States that more recent *ex post facto* cases state that analysis should be on the end result for the defendant, not whether it was a procedural or substantive change to sentencing.
- 169 O’Leary Adds that *ex post facto* argument is premised that under current law the court has no authority to convene a sentencing jury to enhance the sentence with an upward departure.
- 190 Rep. Macpherson Inquires if *Washington v. Hughes* was challenged on *ex post facto*.
- 192 O’Leary Explains that in light of *Blakely*, under Washington State sentencing guidelines, the judge had no statutory authority, without a statute, to convene a sentencing jury to consider an enhanced sentence. Notes that the necessary component of the *ex post facto* argument is not currently present in Oregon.
- 212 Chair Krieger Calls a recess at 9:20 a.m. Reconvenes at 9:26 a.m. Closes public hearing and opens a work session on SB 528.

SB 528 A – WORK SESSION

218 Rep. Olson **MOTION: Moves SB 528A to the floor with a DO PASS recommendation.**

VOTE: 8-0-1

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

EXCUSED: 1 - Flores

228 Chair Krieger **The motion CARRIES.**
REP. OLSON AND REP. MACPHERSON will lead discussion on the floor.

230 Chair Krieger Closes work session on SB 528 A. Opens a work session on HB 3476, which makes legislative findings that many individuals have significant personal, emotional and economic relationships with other individuals, but are prohibited from marrying.

HB 3476 – WORK SESSION

232 Rep. Olson **MOTION: Moves HB 3476 to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on State and Federal Affairs.**

VOTE: 9-0-0

246 Chair Krieger **Hearing no objection, declares the motion CARRIED.**

248 Chair Krieger Closes work session on HB 3476. Adjourns the meeting at 9:30 a.m.

HOUSE COMMITTEE ON
INFORMATION MANAGEMENT AND TECHNOLOGY

March 15, 2005 Hearing Room 357

1:00 P.M. Tapes 25 - 26

MEMBERS PRESENT: Rep. John Dallum, Chair

Rep. Jerry Krummel, Vice-Chair

Rep. Kelley Wirth, Vice-Chair

Rep. Chuck Burley

Rep. Brad Witt

STAFF PRESENT: Dallas Weyand, Committee Administrator

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

High Performance Computing Briefing – Informational Meeting

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 25, A		
003	Chair Dallum	Calls the meeting to order at 1:00 p.m. Introduces the high school students from Mitchell, Oregon, attending the committee meeting as guests. Opens the informational meeting on high performance computing briefing.

HIGH PERFORMANCE COMPUTING BRIEFING – INFORMATIONAL MEETING

015	Brian Wornath	LCN Media & Consulting Group. Announces that he represents the Oregon High Performance Computing Consortium. Distributes hard copy of <i>General Proposal for Establishing an Oregon High Performance Computing Infrastructure</i> PowerPoint presentation (EXHIBIT A). Begins the presentation with an overview and the goals of developing a supercomputing resource in Oregon.
055	Wornath	Provides an explanation of supercomputing and who would use it.
074	Wornath	

Describes the old-style, traditional, single-purpose computer called a “monolith.”

- 088 Wornath Discusses types of supercomputers. Refers to case studies in **EXHIBIT A, Page 14**.
- 117 Wornath Discusses how much unused computing time is available after regular office hours, creating an affordable and powerful computing “grid.”
- 149 Wornath Continues with justification to develop affordable high performance computing resources within Oregon.
- 184 Wornath Proposes to create a state resource that markets the unused capacity and the accompanying consulting services, offering “one-stop shopping” for high-performance computing.
- 216 Wornath Outlines sources for general initial capitalization. States that earnings from operations would come from leasing affordable high-performance computing time.
- 237 Wornath Shows comparison of estimated financial scenarios (**EXHIBIT A**).
- 313 Wornath Discusses the percentage of return and cost per year of operating a computer grid.
- 381 Wornath Suggests implementing a pilot project to determine the best technical solution. Displays the estimated pilot profitability.

TAPE 26, A

- 019 Wornath Discusses a possible organizational structure similar to an Oregon high-performance computing consortium. Continues with explanation of challenges.
- 069 Wornath Has spoken with Chief Information Officers around the state, who believe the concept is good.
- 083 Wornath Summarizes by stating that the technology is proven, can easily be applied to numerous applications and uses, and is easily expandable.

121	Chair Dallum	Asks about the “down side.”
125	Wornath	Responds that information technology people will say this is a very specialized area. Believes that ideally the universities and the state would co-develop a pilot program.
148	Chair Dallum	Inquires if this concept is attractive to private enterprise.
155	Wornath	Replies, it is. Continues that there are certain niches that don’t have the financial resources to take on a project such as this. Cites examples of researchers who believe they can use.
192	Chair Dallum	Asks what proposed legislation should look like.
196	Wornath	Answers that funding for a pilot project could be requested.
227	Rep. Burley	Inquires what is preventing us from using this now.
233	Wornath	Responds, nothing. Indicates from a financial standpoint, it is best to consolidate and not have many small clusters.
261	Rep. Burley	Refers to the case studies in EXHIBIT A that were mostly done by private corporations. Comments that if we were going to use public resources, that is a different set of circumstances particularly since we are concerned with security issues.
270	Wornath	Agrees. Offers to provide more up-to-date information. Reports on other states that are doing this for economic development.
313	Rep. Burley	States that the corporate environment is more controlled than ours as we have computers all across the state. Asks how we would insure security.
323	Wornath	Agrees that some environments are better suited than others.
329	Rep. Krummel	Asks if setting something like this up in the new data center might generate the dollars to pay for it.
338	Wornath	

Replies, absolutely. Reports that high performance computing is being done on a limited basis at the Oregon State University Oceanic School.

- 404 Rep. Krummel Asks if there have been discussions with the Department of Administrative Services (DAS) or other privately owned data centers to see if there is an interest.
- 416 Wornath Has spoken with DAS and some small companies affiliated with academics.
- 439 Rep. Witt Inquires if one has to be a participant in the network to be able to utilize supercomputing capacity.

**TAPE 25,
B**

- 011 Wornath Responds, yes, for security reasons. States that the criteria needs to be identified in the business model.
- 020 Rep. Witt Asks if he is aware of any claims in other states that there is not equal access.
- 025 Wornath Answers that he has not heard of any.
- 027 Rep. Wirth Inquires if anyone has expressed an interest in helping finance a pilot study.
- 032 Wornath Replies, absolutely.
- 038 Rep. Wirth Asks how much private money might be available.
- 046 Wornath Replies that there is interest, and some medical schools are trying to lure grants. Believes discussions with interested parties to determine how much money is available would be needed.
- 069 Rep. Wirth Inquires if other states have included some public financing, and how far along they are in the process.
- 077 Wornath Answers, it varies.

089	Wanda Brennan	High School Science Teacher, Mitchell, Oregon. Cites problems of areas with limited internet access. Asks how high-performance computing will benefit them.
096	Wornath	Responds that not all rural areas will receive the same amount of benefit; however, areas with community colleges perhaps can provide access.
140	Chair Dallum	Closes the informational meeting on high performance computing and adjourns the meeting at 2:08 p.m.

EXHIBIT SUMMARY

- A. High Performance Computing Infrastructure, General Proposal for Establishing, printed copy of PowerPoint presentation, Brian Wornath, 67 pp**