

SENATE COMMITTEE ON JUDICIARY

February 22, 2005
1:00 P.M.

Hearing Room 343
Tapes 42 - 43

Corrected 10/26/05

MEMBERS PRESENT: Sen. Ginny Burdick, Chair
Sen. Charles Starr, Vice-Chair
Sen. Roger Beyer
Sen. Floyd Prozanski
Sen. Charlie Ringo
Sen. Vicki Walker
Sen. Doug Whitsett

STAFF PRESENT: William E. Taylor, Counsel
Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD:

SB 235 – Public Hearing and Work Session
SB 236 – Public Hearing and Work Session
SB 237 – Public Hearing and Work Session
SB 238 – Public Hearing
SB 239 – 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 42, A		
004	Chair Burdick	Calls the meeting to order at 1:13 p.m. and opens a public hearing on SB 235.
SB 235 – PUBLIC HEARING		
006	William E. Taylor	Counsel. Describes SB 235 relating to places of public accommodation. Introduces the -2 amendments (EXHIBIT A).
022	Wendy Johnson	Deputy Director, Oregon Law Commission. Submits testimony and testifies in support of SB 235 (EXHIBITS B – D). Details the Oregon Law Commission's relationship with the Legislature.
078	Sen. Ringo	Asks for the definition of "place of public accommodation."
081	Johnson	States that Exhibit D defines the term.
091	Chair Burdick	Inquires if a "place of public accommodation" would include housing units.
096	Johnson	Replies that those terms may be under a different section, and she doesn't believe this bill covers them.
098	Taylor	Reads the definition on page 2 of SB 235.
109	Sen. Whitsett	Questions if there is any exclusion for small business.
117	Johnson	Answers yes.
126	Denise M. Spielman	Commissioner, Oregon Disabilities Commission (ODC). Stresses that she does not represent her employer and she is on personal time. Reads testimony in support of SB 235 (EXHIBIT

		E). Answers earlier questions about the bill and the American Disabilities Act (ADA).
164	Spielman	States that the ODC provides training for businesses in response to their responsibilities and rights under the ADA.
179	Chair Burdick	Comments on the difficulties dealing with conflicts between the federal and state laws.
184	Sen. Beyer	Brings up the issue of the -2 amendment concerning federal and state law.
207	Kevin O'Reilly	Submits written testimony of Jerry Ryan and testifies in support of SB 235 (EXHIBIT F).
262	Bob Joondeph	Director, Oregon Advocacy Center. Submits testimony and testifies in support of SB 235 (EXHIBIT G). Mentions federal court decisions relating to the removal of barriers for disabled individuals.
315	Joondeph	Describes the necessary requirements for true equality of service. Points out that, within reason, a business must think about methods of assisting those individuals with disabilities.
338	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries (BOLI). Submits testimony and testifies in support of SB 235 (EXHIBIT H).
360	Ohlemiller	Continues reading testimony (Exhibit H).
422	Ohlemiller	Continues reading testimony (Exhibit H).
465	Ohlemiller	Continues reading testimony (Exhibit H).
TAPE 43, A		
055	Sen. Walker	Addresses the issue of federal and state laws conflicting.
069	Sen. Beyer	Points out the confusion inherent in administrative rules dictating laws, as they can be changed continuously without a local business being aware.
097	Johnson	Affirms that federal and state laws change all the time as well. States that SB 235 is meant to direct businesses to the ADA as a template to follow.
109	Chair Burdick	Inquires as to where businesses would look to find changes in the administrative rules.
111	Ohlemiller	Responds with information on where to find this data. Talks about a BOLI hotline that answers questions concerning administrative rules.
132	Chair Burdick	Wonders if this is just another step for businesses to follow.
136	Ohlemiller	Responds yes, but BOLI would be easily available for businesses to contact.
145	Sen. Beyer	Asks if their administrative rules are beyond statutory authority.
150	Ohlemiller	Affirms that she believes they are within statutory authority.
160	Sen. Beyer	Expresses his confusion with conflicting testimony (Exhibit H).
166	Ohlemiller	Replies with information on federal and state differences on statutory authority.
179	Sen. Beyer	Raises the issue of conflicting rules on the state and federal level.
187	Taylor	Asks for clarification on this issue.
191	Ohlemiller	Responds with information on state and federal law.
205	Sen. Whitsett	Inquires as to the access to state courts.
211	Johnson	Discusses the statutes relationship with the courts.
220	Sen. Whitsett	Asks why this has never been brought into state court.
225	Ohlemiller	Replies that they don't exactly know. Cites information on court cases.
247	Sen. Whitsett	Inquires as to the ease of accessing state courts.
248	Johnson	Responds that the bill is meant to ease access to state courts.

252	Chair Burdick	Submits written testimony from Danielle Knight and Eugene Organ (EXHIBIT I & J).
253	Chair Burdick	Closes the public hearing on SB 235 and opens a public hearing on SB 236.
<u>SB 236 – PUBLIC HEARING</u>		
255	Chair Burdick	Describes SB 236 relating to statute of limitations period for filing claims of unlawful discrimination in places of public accommodations.
273	Wendy Johnson	Deputy Director, Oregon Law Commission. Submits testimony and testifies in support of SB 236 (EXHIBIT K).
298	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries. Submits testimony on SB 236 (EXHIBIT R).
301	Chair Burdick	Closes public hearing on SB 236 and opens a public hearing on SB 237.
<u>SB 237 – PUBLIC HEARING</u>		
309	Wendy Johnson	Deputy Director, Oregon Law Commission (OLC). Submits testimony and testifies in support of SB 237 (EXHIBIT L).
332	Sen. Beyer	Inquires if this is the same bill as that currently in the Commerce Committee.
345	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries. Submits testimony on SB 237 (EXHIBIT S). Responds with information on both bills.
358	Sen. Prozanski	Clarifies the differences between the two bills.
391	Sen. Beyer	Asks if the same effect will result with the passage of these bills.
402	Sen. Prozanski	Explains the differences between the effects of the two bills.
426	Johnson	Details why the OLC has sponsored this bill.
446	Chair Burdick	Closes the public hearing on SB 237 and opens a public hearing on SB 238.
<u>SB 238 – PUBLIC HEARING</u>		
476	William E. Taylor	Counsel. Describes SB 238 relating to rights of firefighters, tobacco users and members of the Legislative Assembly. Introduces the -1 amendment (EXHIBIT M).
494	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries. Submits testimony on SB 238 (EXHIBIT T).
495	Wendy Johnson	Deputy Director, Oregon Law Commission. Submits testimony and testifies in support of SB 238 (EXHIBITS N & O).
<u>TAPE 42, B</u>		
040	Johnson	Goes over the different sections of Exhibit N .
064	Johnson	Discusses the -1 amendment (Exhibit M).
081	Chair Burdick	Asks for a listing of changes.
086	Johnson	Goes over the rights due to the different classes of individuals (firefighters, smokers, and Legislators).
130	Chair Burdick	Asks about the rights of elected officials.
133	Johnson	Gives information as to the rights of officials.
140	Chair Burdick	Closes the public hearing on SB 238 and opens a public hearing on SB 239.
<u>SB 239 – PUBLIC HEARING</u>		
142	William E. Taylor	Counsel. Describes SB 239 relating to the list of protected classes in civil rights law.
150	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries. Submits testimony on SB 239 (EXHIBIT U).
151	Wendy Johnson	Oregon Law Commission (OLC). Submits testimony and testifies in support of SB 239 (EXHIBIT P).
178	Sen. Beyer	Asks for a list of changes or alterations in SB 239.

165	Johnson	Replies with information on the new classifications.
195	Sen. Beyer	Desires a listing of added or changed wording.
201	Taylor	Discusses and cites examples of the confusion on the wording of the bill and the lack of consistency.
233	Chair Burdick	Closes the public hearing on SB 239.
244	Chair Burdick	Opens a work session on SB 235.
<u>SB 235 – WORK SESSION</u>		
247	William E. Taylor	Counsel. Describes SB 235 relating to places of public accommodation.
258	Sen. Starr	MOTION: Moves to ADOPT SB 235-2 amendment dated 2/22/05.
263	Sen. Beyer	States opposition to the amendment, and dictates his reasoning.
278	Sen. Starr	Talks about his confusion on the -2 amendment providing the Oregon Bureau of Labor and Industries with the authority they already have been exercising in regards to federal statute.
301	Taylor	Explains the references to federal law in relation to this bill.
318	Marcia Ohlemiller	Legal Policy Advisor, Oregon Bureau of Labor and Industries (BOLI). Talks about the language that Legislative Counsel has used, as well as the differences between state and federal law.
346	Taylor	Inquires about the changing of state regulations due to federal standards.
352	Ohlemiller	Responds with information on the policy for rule alteration.
370	Sen. Starr	Raises the concern of disability accommodations.
377	Chair Burdick	Offers clarification on the issue of federal rule making and enforcement.
408	Sen. Starr	Asks if BOLI has been promulgating administrative rules in conformance to federal law absent this legislation.
414	Ohlemiller	Offers information as to BOLI's administrative rules.
466	Chair Burdick	Clarifies BOLI's policy and administrative rule process.
486	Sen. Starr	Declares his support for the -2 amendments.
492	Sen. Whitsett	Expresses his reluctance in leaving the rule making process up to the different agencies as opposed to having the Legislature dictate the methods through statutes.
515	Sen. Walker	Gives information as to her stand on the issue.
TAPE 43, B		
040	Sen. Beyer	Asks about the differences between the federal and state laws.
044	Ohlemiller	Responds with information on the differences.
054	Sen. Beyer	Inquires as to the differences after the passage of SB 235 with or without the -2 amendment.
059	Ohlemiller	Replies that the effects would be exactly the same.
066	Sen. Beyer	Wonders about the effects of not adopting the -2 amendment.
		States that SB 235 is a good bill, but is reluctant to pass such a bill with the -2 amendment.
088	Chair Burdick	Addresses the federal and state law differences, and how SB 235 with the -2 amendments can resolve the issues.
112	Sen. Walker	Brings up the issue of the emergency clause.
117	Sen. Prozanski	Offers clarification on the conflict between federal and state law.
		Points out that the adoption of the -2 amendment is a clean up process for the bill.
146	Chair Burdick	Cites an example of the differences between state and federal law. Calls for a roll vote on SB 235.
178		VOTE: 4-2-1
		AYE: 4 - Prozanski, Starr C., Walker, Burdick
		NAY: 2 - Beyer, Whitsett

180	Chair Burdick	EXCUSED: 1 - Ringo
181	Sen. Starr	The motion CARRIES.
		MOTION: Moves SB 235A to the floor with a DO PASS AS
		AMENDED recommendation.
187	Sen. Beyer	Declares his hesitance to support this bill due to the -2 amendment.
213	Chair Burdick	Calls for a roll vote on SB 235A.
		VOTE: 4-2-1
		AYE: 4 - Prozanski, Starr C., Walker, Burdick
		NAY: 2 - Beyer, Whitsett
		EXCUSED: 1 - Ringo
218	Chair Burdick	The motion CARRIES.
		SEN. WALKER will lead discussion on the floor.
222	Chair Burdick	Closes the work session on SB 235 and opens a work session on SB 236.
<u>SB 236 – WORK SESSION</u>		
229	Sen. Starr	MOTION: Moves SB 236 to the floor with a DO PASS recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Ringo
232	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. WALKER will lead discussion on the floor.
234	Chair Burdick	Closes the work session on SB 236 and opens a work session on SB 237.
<u>SB 237 – WORK SESSION</u>		
237	William E. Taylor.	Counsel. Introduces the -2 amendment (EXHIBIT Q).
143	Sen. Starr	MOTION: Moves to ADOPT SB 237-2 amendments dated 2/21/05.
		VOTE: 6-0-1
		EXCUSED: 1 - Ringo
247	Chair Burdick	Hearing no objection, declares the motion CARRIED.
250	Sen. Starr	MOTION: Moves SB 237A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Ringo
254	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. WALKER will lead discussion on the floor.
262	Chair Burdick	Closes the work session on SB 237 and adjourns the meeting at 2:50 p.m.

EXHIBIT SUMMARY

- A. SB 235, -2 amendment, staff, 1 p
- B. SB 235, Oregon Law Commission summary, Wendy Johnson, 1 p
- C. SB 235, written testimony, Wendy Johnson, 7 pp
- D. SB 235, Americans with Disability Act, Wendy Johnson, 7 pp
- E. SB 235, written testimony, Denise Spielman, 1 p
- F. SB 235, written testimony of Jerry Ryan, Kevin O'Reilly, 1 p
- G. SB 235, written testimony, Bob Joondeph, 1 p
- H. SB 235, written testimony, Marcia Ohlemiller, 3 pp

- I. SB 235, written testimony, Danielle Knight, 1 p
- J. SB 235, written testimony, Eugene Organ, 2 pp
- K. SB 236, written testimony, Wendy Johnson, 5 pp
- L. SB 237, written testimony, Wendy Johnson, 5 pp
- M. SB 238, -1 amendment, staff, 1 p
- N. SB 238, written testimony, Wendy Johnson, 7 p
- O. SB 238, ORS 476.574, Wendy Johnson, 1 p
- P. SB 239, written testimony, Wendy Johnson, 6 pp
- Q. SB 237, -2 amendment, staff, 1 p
- R. SB 236, written testimony, Marcia Ohlemiller, 3 pp
- S. SB 237, written testimony, Marcia Ohlemiller, 3 pp
- T. SB 238, written testimony, Marcia Ohlemiller, 3 pp
- U. SB 239, written testimony, Marcia Ohlemiller, 3 pp