

SENATE COMMITTEE ON JUDICIARY

February 09, 2005
1:00 p.m.

Hearing Room 343
Tapes 30 - 31

Corrected 10/26/05

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

MEMBER EXCUSED: Sen. Ginny Burdick, Chair
Sen. Vicki Walker

STAFF PRESENT: Joe O'Leary, Counsel
Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

SB 284 – Public Hearing and Work Session

Michael Zusman, Oregon State Bar

Susan Grabe, Oregon State Bar

SB 370 – Public Hearing

Ingrid Swenson, Public Defense Services Commission

SB 371 – Public Hearing and Work Session

Ingrid Swenson, Public Defense Services Commission

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 30, A | | |
| 004 | Vice-Chair Starr | Calls the meeting to order at 1:05 p.m. and opens a public hearing on SB 284. |
| <u>SB 284 – PUBLIC HEARING</u> | | |
| 016 | Joe O'Leary | Counsel. Describes SB 284, relating to the extension of the statute of limitations in certain cases if an attorney passes away before expiration of time allowed for commencement of action. |
| 020 | Michael Zusman | Oregon State Bar (OSB). Reads testimony in support of SB 284 (EXHIBIT A) and talks about the 180-day extension on the statute of limitations. |
| 058 | Sen. Prozanski | Asks why the timeframe of 180-days was conceived as opposed to a greater or lesser number. |
| 068 | Zusman | Replies that the 180 day period was a reasonable time period agreed upon by the committee he directs in the OSB to allow for analysis of the attorney's remaining caseload. |
| 080 | Sen. Prozanski | Inquires about the attorney going over the remaining caseload. |
| 083 | Zusman | States that usually a partner of the deceased lawyer might take the caseload to analyze, however the Professional Liability Fund might assign a lawyer. |
| 093 | O'Leary | Comments that usually the PLF will make a review of the |

| | | |
|---------------------------------------|------------------|---|
| | | caseload or will assign a lawyer to deal with the caseload. |
| 105 | Sen. Beyer | Wonders what civil matters aren't covered in this bill. |
| 109 | Zusman | Replies that this bill is meant to cover any civil lawsuit. |
| 115 | Sen. Beyer | Asks about the statute of limitations on those civil cases. |
| 119 | Zusman | Responds with information regarding the statute of limitations for civil cases. |
| 126 | Sen. Beyer | Wonders why this bill was put forward now as opposed to earlier. |
| 130 | Zusman | Replies that SB 284 probably evolved from the Procedure and Practice Committee last session. |
| 143 | Susan Grabe | Oregon State Bar (OSB). States that there were two attorneys from Eugene that died recently, and the OSB thought this was necessary. |
| 153 | Sen. Beyer | Asks why couldn't the client merely go and get another lawyer, why does SB 284 need to be passed. |
| 157 | Zusman | Responds that the client is generally a lay person with no idea of the statute of limitations in regards to their own case. |
| 166 | Sen. Ringo | Inquires as to a relationship between a client and a lawyer that does not involve a law firm (individual lawyers, private practice, etc.). |
| 173 | Zusman | Replies that there is no difference. States that a law firm would usually have some method in place to deal with an issue of this magnitude while a sole practitioner might not. |
| 187 | Sen. Ringo | Asserts that the client would probably want the 180-day statute increase to be between one or two other lawyers who have dealt with the case and not the entire firm. |
| 195 | Zusman | Agrees. Says there is a written fee agreement between the firm and the client if this scenario occurs specifying a subsequent lawyer if the other is incapable of practicing law. |
| 201 | Sen. Ringo | Asks if every claim in a law firm gets 180 days if a member dies. |
| 206 | Zusman | Responds yes; the wording was developed to streamline SB 284 to apply to everyone equally. Addresses this issue by reading the passage in SB 284 which satisfies the concern. |
| 250 | Vice-Chair Starr | Closes public hearing on SB 284 and opens a work session. |
| <u>SB 284 – WORK SESSION</u> | | |
| 254 | Sen. Prozanski | MOTION: Moves SB 284 to the floor with a DO PASS recommendation. |
| | | VOTE: 4-1-2 |
| | | AYE: 4 -Prozanski, Ringo, Whitsett, Starr |
| | | NAY: 1 - Sen. Beyer |
| | | EXCUSED: 2 - Burdick, Walker |
| 320 | Vice-Chair Starr | The motion Carries. |
| | | SEN. RINGO will lead discussion on the floor. |
| 264 | Sen. Prozanski | Raises concern for clients in this process not knowing a lawyer has passed away. |
| 282 | Sen. Beyer | Comments that he does not believe this is needed, there is no real epidemic. |
| 295 | Sen. Ringo | Cites a hypothetical involving a lawyer and a client involved in this type of scenario. Recommends the passage of SB 284 to cover these types of eventualities. |
| 326 | Vice-Chair Starr | Closes work session on SB 284 and opens a public hearing on SB 370. |
| <u>SB 370 – PUBLIC HEARING</u> | | |
| 332 | Joe O'Leary | Counsel. Describes SB 370, relating to lawyer-client privilege for communications made to the Office of Public Defense |

| | | |
|---------------------------------------|------------------|---|
| 340 | Ingrid Swenson | Services for purpose of seeking pre-authorization for, or payment of, non-routine fees or expenses. |
| 375 | Swenson | Public Defense Services Commission. Reads testimony in support of SB 370 (EXHIBIT B). |
| 400 | Swenson | Discusses examples of why this bill is necessary and how it creates a very narrow exception for lawyers to disclose privileged information. |
| 441 | Vice-Chair Starr | Notes a section of the language in SB 370 that was not intended, and the amendment required to retain the conceptual meaning of the bill. |
| | | Closes public hearing on SB 370 and opens a public hearing on SB 371. |
| <u>SB 371 – PUBLIC HEARING</u> | | |
| 445 | Ingrid Swenson | Public Defense Services Commission. Testifies in support of SB 371 (EXHIBIT C). Asserts that analysis from other professionals for the defense of some clients is often a vital part of the defense. |
| TAPE 31, A | | |
| 035 | Swenson | Discusses the narrow exception SB 371 allows for lawyers to discuss privileged information with other professionals when needed. Declares there are no needed amendments to SB 371. |
| 052 | Vice-Chair Starr | Closes public hearing and opens a work session on SB 371. |
| <u>SB 371 – WORK SESSION</u> | | |
| 054 | Sen. Prozanski | MOTION: Moves SB 371 to the floor with a DO PASS recommendation. |
| | | VOTE: 4-0-3 |
| | | EXCUSED: 3 - Burdick, Ringo, Walker |
| 060 | Vice-Chair Starr | Hearing no objection, declares the motion CARRIED. |
| | | SEN. PROZANSKI will lead discussion on the floor. |
| 061 | Vice-Chair Starr | Closes work session on SB 371. |
| 067 | Joe O’Leary | Counsel. Mentions upcoming field trip to Court of Appeals. |
| 075 | Vice-Chair Starr | Adjourns the meeting at 1:40 p.m. |

EXHIBIT SUMMARY

- A. **SB 284, written testimony, Michael Zusman, 1 p**
- B. **SB 370, written testimony, Ingrid Swenson, 6 pp**
- C. **SB 371, written testimony, Ingrid Swenson, 3 pp**