

SENATE COMMITTEE ON JUDICIARY

March 21, 2005
1:00 P.M.

Hearing Room 343
Tapes 74 - 76

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 63 – Work Session
 SB 287 – Work Session
 SB 331 – Work Session
 SB 330 – Work Session
 SB 946 – Public Hearing
 SB 567 – Public Hearing
 SB 549 – Public Hearing
 SB 599 – Public Hearing
 SB 645 – 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 74, A		
003	Chair Burdick	Calls the meeting to order at 1:12 p.m. and opens a work session on SB 63.
<u>SB 63 – WORK SESSION</u>		
008	William E. Taylor	Counsel. Describes SB 63 relating to the Department of Public Safety Standards and Training (DPSST) denying an application for training for a public safety officer. Introduces the -2 amendment and submits written testimony from DPSST director John Minnis (EXHIBITS A & B).
030	Sen. Beyer	MOTION: Moves to ADOPT SB 63-2 amendments dated 3/17/05. VOTE: 5-0-2 EXCUSED: 2 - Prozanski, Ringo
032	Chair Burdick	Hearing no objection, declares the motion CARRIED.
035	Sen. Beyer	MOTION: Moves SB 63 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 5-0-2 EXCUSED: 2 - Prozanski, Ringo
037	Chair Burdick	Hearing no objection, declares the motion CARRIED.

044	Chair Burdick	Closes the work session on SB 63 and opens a work session on SB 287.
<u>SB 287 – WORK SESSION</u>		
045	William E. Taylor	Counsel. Describes SB 287 relating to an exception to the prohibition on use of hearsay as evidence. Introduces the -2 amendment (EXHIBIT C).
067	Tom Lininger	Law Professor, University of Oregon. Testifies in support of SB 287 and discusses the use of hearsay in trials.
112	Tim Sylwester	Department of Justice. Comments on the reasoning behind the -2 amendment.
141	Sylwester	Details the problems in homicide cases with using hearsay as evidence.
165	Sylwester	Addresses the impact of the -2 amendment on the effects of the bill.
195	Sen. Ringo	Wonders about the wording of the bill in relation to the term “cause”.
203	Sylwester	Discusses the reasoning behind the drafting language.
211	Lininger	Talks about the conduct relating to the process of preventing a witness from testifying.
234	Sen. Ringo	Asks if there is a definition of “wrongful” in the -2 amendment.
238	Sylwester	Expresses his opinion on the definition of “wrongful” as relating to SB 287 and the -2 amendment. Shares a possible scenario that will hopefully clarify the bill.
267	Sen. Ringo	Hesitates to support the term “wrongful” in this bill.
272	Sylwester	Cites specific examples of why the term is needed.
283	Chair Burdick	Stresses that the term “wrongful” might not be the correct word for the bill.
285	Taylor	Talks about the case, <i>Reynolds vs. The United States</i> , in relation to this issue.
306	Chair Burdick	Discusses her problems with the -2 amendment.
320	Lininger	Addresses the problems over the -2 amendment and why it is needed.
359	Sylwester	Details the need for the -2 amendments by discussing child abuse cases.
375	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in support of SB 287 without the -2 amendment.
435	Skye	States the concerns of the OCDLA relating to the issues of hearsay and this bill.
474	Skye	Discusses wrongful conduct in keeping a witness from testifying.
041	Peter Gartlan	Chief Defender, Office of Public Defense Services. Submits testimony and testifies in opposition to the -2 amendment for SB 287 (EXHIBIT D). Stresses the need for adopting the federal rules as opposed to passing the -2 amendment.
075	Sybil Hebb	Oregon Law Center. Testifies in support of SB 287 and the -2 amendment.
084	Chair Burdick	Asks if there would be any problems with the -2 amendment not being adopted.
088	Sylwester	Talks about how the -2 amendment addresses certain discrepancies in Oregon law relating to the forfeiture by wrongdoing principle. Addresses the problems with the -2 amendment.
130	Chair Burdick	Wonders if a challenge would be less likely under the original bill as opposed to the bill with the -2 amendment.

TAPE 75, A

133 Sylwester Responds yes, and discusses the issue of federal versus state rules.

140 Chair Burdick Ask about the constitutionality of the -2 amendment compared to the original bill.

144 Sylwester Stresses the possibility of the US Supreme Court interpreting federal cases and impacting the ability of this bill (which uses the federal rules as a template) to function.

185 Sen. Prozanski Inquires about the comparison between the -2 amendment and the original bill.

200 Sylwester Talks about the drafting choices in the original bill, and the concerns the Department of Justice has with not adopting the -2 amendment.

265 Sen. Prozanski Comments on the federal language already dealing with many of the situations addressed.

278 Lininger Talks about what the -2 amendment will offer to the original SB 287 and goes on to discuss the federal court proceedings in relation to the bill.

323 Chair Burdick Inquires about the broadening of the language in the -2 amendment.

332 Sylwester Replies with information on the drafting language in the -2 amendment.

354 Sen. Prozanski Discusses the burden of proving the wrongdoing in relation to keeping a witness from trial.

371 Sylwester Details the process of proving criminal conduct in making a witness unavailable for testifying.

428 Chair Burdick Asks for a work group to address the concerns over the -2 amendment and return with tighter language.

443 Sen. Prozanski Wonders about certain drafting choices possible to fix the issues with the -2 amendment.

480 Taylor Talks about the work group for SB 287.

TAPE 74, B

033 Chair Burdick Closes the work session on SB 287 and opens a work session on SB 331.

SB 331 – WORK SESSION

037 Chair Burdick Carries over to Tuesday, March 22, 2005.

041 Chair Burdick Closes the work session on SB 331 and opens a work session on SB 330.

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SB 330 – WORK SESSION

043 William E. Taylor Counsel. Describes SB 330 relating to stenographic reporters in the courtroom. Introduces the -2 amendment (**EXHIBIT E**).

051 Lara Smith Oregon Court Reporters Association. Testifies in support of SB 330 and the -2 amendment.

060 Scott Crampton Director, Appellate Court Services, Oregon Judicial Department. Submits testimony and testifies in support of SB 330 and the -2 amendment (**EXHIBIT I**).

068 Sen. Whitsett Asks about court reporters placing a specific cap per page.

071 Smith States that a cap is already in place.

076 Sen. Starr MOTION: Moves to ADOPT SB 330-2 amendments dated 3/17/05.

VOTE: 5-0-2

EXCUSED: 2 - Ringo, Walker

080 Chair Burdick Hearing no objection, declares the motion CARRIED.

080	Sen. Starr	<p>MOTION: Moves SB 330 to the floor with a DO PASS AS AMENDED recommendation.</p> <p>VOTE: 6-0-1</p> <p>EXCUSED: 1 - Ringo</p>
082	Chair Burdick	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. WALKER will lead discussion on the floor.</p>
081	Chair Burdick	Closes the work session on SB 330 and opens a work session on SB 331.
<u>SB 331 – WORK SESSION</u>		
086	Sen. Walker	Cites a possible conflict of interest.
093	Chair Burdick	Closes the work session on SB 331 and opens a public hearing on SB 946.
<u>SB 946 – PUBLIC HEARING</u>		
104	William E. Taylor	Counsel. Describes SB 946 relating to requiring the judge to order report of proceedings in aggravated murder and murder trials. Introduces the -1 amendment (EXHIBIT F).
119	Mary Fagan	Oregon Court Reporters Association. Submits testimony and testifies in support of SB 946 (EXHIBIT G).
160	Fagan	Details the benefits of having a trained court reporter.
179	Chair Burdick	Asks about how court reporters deal with equipment malfunctions.
183	Fagan	Explains the methods used by the court reporters to capture all audio material.
201	Sen. Walker	Describes the abilities and provisions of the stenographic reporters.
226	Sen. Whitsett	Asks about the funding problems facing the courts.
231	Lara Smith	Oregon Court Reporters Association. Addresses some possible amendments dealing with the problem of funding.
241	Sen. Whitsett	Inquires if courts already employing a reporter would not continue to employ their services if the costs increased.
249	Smith	Replies that the question is best asked to the presiding judges who make those decisions.
262	Paul Snider	Association of Oregon Counties. Testifies in opposition to SB 946. Stresses the problems with SB 946 from a fiscal standpoint. Emphasizes the financial problems currently facing counties, and the increased costs that would be forced upon them if this bill passes.
316	Chair Burdick	Asks about the fiscal impact.
318	Snider	States that he got the fiscal impact from the Judicial Department.
305	Monica Melhourn	Office of the State Court Administrator. Stresses that the information cited earlier is not a fiscal impact; instead it was her independent research.
363	Sen. Prozanski	Wonders who paid for the court reporting services in the past.
396	Scott Crampton	Oregon Judicial Department. Testifies in opposition to SB 946. Offers reasoning behind his hesitance to support the bill. Brings up several issues that are not addressed in SB 946. Talks about the responsibilities of funding this bill in the past and the future.
459	Sen. Prozanski	Stresses his opposition to the -1 amendment.
501	Taylor	Explains the effects of the bill.
TAPE 75, B		
036	Sen. Prozanski	Asks about the funding for the bill.
038	Taylor	Cites information on who would be responsible for the funding.
043	Sen. Prozanski	Inquires about the costs to the defendants in a court system that requires a stenographer.

058 Chair Burdick Stresses her opposition to the amendment, and desires a work group to discuss the issues.

068 Sen. Walker States that the cases that fall under the bill are critical and require solid court reporting.

081 Chair Burdick Details that the Judiciary committee makes policy decisions and Ways and Means will deal with the funding issues.

103 Taylor Discusses the -1 amendment. Offers drafting language choices to alleviate hesitations among the members.

135 Sen. Prozanski Talks about the changes in the -1 amendment.

141 Sen. Walker Stresses the importance of some of the changes in the -1 amendment.

155 Chair Burdick Closes the work session on SB 946 and opens a public hearing on SB 567.

SB 567 – PUBLIC HEARING

160 William E. Taylor Counsel. Describes SB 567 relating to creating an offense for the failure to properly secure a child.

168 Sen. Prozanski States his support of SB 567 and describes the reasoning behind the bill.

183 Daniel Swift Oregon State Police. Submits testimony and testifies in support of SB 567 (**EXHIBIT H**).

225 Swift Cites stories involving parents who do not properly restrain their child.

244 Joanne Fairchild Trauma Nurse Coordinator, Legacy Emanuel Hospital. Submits a written testimony packet and testifies in support of SB 567 (**EXHIBIT J**).

285 Fairchild Addresses the benefits of using child restraints.

330 Fairchild Talks about an article, “The Forgotten Child,” in her testimony (**Exhibit J**).

379 Chair Burdick Introduces written testimony from Troy Costales supporting SB 567 (**EXHIBIT K**). Closes the public hearing on SB 567 and opens a public hearing on SB 549.

SB 549 – PUBLIC HEARING

393 Chair Burdick Closes the public hearing on SB 549 and opens a public hearing on SB 599.

SB 599 – PUBLIC HEARING

498 Chair Burdick Puts on hold until Tuesday, March 22, 2005. Closes the public hearing on SB 599 and opens a public hearing on SB 549.

SB 549 – PUBLIC HEARING

404 William E. Taylor Counsel. Describes SB 549 relating to requiring hosting organizations to register with the Department of Education. Introduces written testimony from John O. Hishmeh (**EXHIBIT N**).

418 Carlos Cartlidge Lane County. Submits research information and testifies in support of SB 549 (**EXHIBIT L**).

TAPE 76, A

035 Cartlidge Addresses the study he presented as testimony (**Exhibit L**).

057 Bonnie Chalmers Lane County. Submits informational packet on host programs and testifies in support of SB 549 (**EXHIBIT M**).

078 Chair Burdick Closes the public hearing on SB 549 and opens a public hearing on SB 645.

SB 645 – PUBLIC HEARING

081 Chair Burdick Moves SB 645 to March 22, 2005. Closes the public hearing on SB 645 and adjourns the meeting at 3:08 p.m.

EXHIBIT SUMMARY

- A. **SB 63, -2 amendment, John Minnis, 1 p**
- B. **SB 63, written testimony, John Minnis, 1 p**
- C. **SB 287, -2 amendment, staff, 1 p**
- D. **SB 287, written testimony, Peter Gartlan, 1 p**
- E. **SB 330, -2 amendment, staff, 1 p**
- F. **SB 946, -1 amendment, staff, 1 p**
- G. **SB 946, written testimony, Mary Fagan, 1 p**
- H. **SB 567, written testimony, Daniel Swift, 2 pp**
- I. **SB 946, written testimony, Scott Crampton, 2 pp**
- J. **SB 567, written testimony packet, Joanne Fairchild, 23 pp**
- K. **SB 567, written testimony, Troy Costales, 1 p**
- L. **SB 549, research information, Carlos Cartlidge, 4 pp**
- M. **SB 549, information packet, Bonnie Chalmers, 22 pp**
- N. **SB 549, written testimony, John Hishmeh, 3 pp**