

## SENATE COMMITTEE ON JUDICIARY

April 20, 2005  
1:00 P.M.

Hearing Room 343  
Tapes 114 - 115

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  
Joe O'Leary, Counsel  
Dale Penn, Committee Assistant

**MEASURES/ISSUES HEARD:**

SB 965 – Work Session  
SB 216 – Work Session  
SB 1011 – Work Session  
SB 333 – Work Session  
SB 492 – Work Session  
SB 127 – Public Hearing  
SB 128 – Public Hearing and Work Session  
SB 581 – Public Hearing

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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.

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TAPE/#	Speaker	Comments
<b>TAPE 114, A</b>		
003	Chair Burdick	Calls the meeting to order at 1:32 p.m. and opens a work session on SB 965.
<b><u>SB 965 – WORK SESSION</u></b>		
010	Joe O'Leary	Counsel. Describes SB 965 relating to creating a cause of action for invasion of personal privacy. Introduces the -5 amendment <b>(EXHIBIT A)</b> .
027	Chair Burdick	Talks about the -5 amendment and the sunset clause.
033	Sen. Beyer	Inquires about blanks on line 21 and line 22 in the -5 amendment.
040	O'Leary	States that the lines are left blank to be filled in by the amount of liquidated damages.
051	Chair Burdick	Calls the meeting to ease to discuss the bill further.
068	Chair Burdick	Closes the work session on SB 965 and opens a work session on SB 216.
<b><u>SB 216 – WORK SESSION</u></b>		
071	Joe O'Leary	Counsel. Describes SB 216 relating to allowing the Attorney General to intervene in class action lawsuits to assert a claim on behalf of the class members who fail to submit statements required for the award of damages. Discusses the -1 and -2

091	Sen. Whitsett	amendments ( <b>EXHIBITS B &amp; C</b> ).
095	Chair Burdick	Asks about the consumer protection and education revolving account.
104	Sen. Prozanski	Replies with information on the consumer protection and education revolving account in the Attorney General's office.
	Chair Burdick	<b>MOTION: Moves to ADOPT SB 216-1 amendments dated 4/1/05.</b>
111	Chair Burdick	<b>VOTE: 6-1-0</b>
113	Sen. Prozanski	<b>AYE: 6 - Prozanski, Ringo, Starr C., Walker, Whitsett, Burdick</b>
		<b>NAY: 1 - Beyer</b>
		<b>The motion CARRIES.</b>
		<b>MOTION: Moves SB 216 to the floor with a DO PASS AS AMENDED recommendation.</b>
117	Sen. Beyer	States his opposition to SB 216.
123	Sen. Walker	Explains that the money returns to the defendant sued if this doesn't pass.
120	Chair Burdick	<b>VOTE: 4-3-0</b>
		<b>AYE: 4 - Prozanski, Ringo, Walker, Burdick</b>
		<b>NAY: 3 - Beyer, Starr C., Whitsett</b>
137	Chair Burdick	<b>The motion CARRIES.</b>
		<b>SEN. BURDICK will lead discussion on the floor.</b>
139	Chair Burdick	Closes the work session on SB 216 and opens a work session on SB 1011.
<b><u>SB 1011 – WORK SESSION</u></b>		
142	Joe O'Leary	Counsel. Describes SB 1011 relating to providing a statute of limitations for injuries or death resulting from the use of medications that are intended to inhibit the enzyme known as cyclooxygenase-2.
151	Sen. Prozanski	<b>MOTION: Moves SB 1011 to the floor with a DO PASS recommendation.</b>
155	Sen. Ringo	Affirms that this is an excellent bill and explains the need for its passage.
177	Chair Burdick	Acknowledges the need for the bill.
184	Sen. Whitsett	Offers his opposition to changing a statute of limitation retroactively.
	Chair Burdick	<b>VOTE: 4-3-0</b>
		<b>AYE: 4 - Prozanski, Ringo, Walker, Burdick</b>
		<b>NAY: 3 - Beyer, Starr C., Whitsett</b>
197	Chair Burdick	<b>The motion CARRIES.</b>
		<b>SEN. RINGO will lead discussion on the floor.</b>
200	Chair Burdick	Closes the work session on SB 1011 and opens a work session on SB 333.
<b><u>SB 333 – WORK SESSION</u></b>		
201	Joe O'Leary	Counsel. Describes SB 333 relating to increasing the maximum amount a plaintiff may claim in certain tort actions for which the court must award attorney fees if the plaintiff prevails. Discusses the -1 amendment ( <b>EXHIBIT D</b> ).
222	Sen. Ringo	Explains the need for the bill, but states that it should not be moved today due to a possible amendment.
234	Chair Burdick	Closes the work session on SB 333 and moves SB 333, SB 913, and SB 965 to Monday, April 25, 2005. Opens a work session on SB 492.
<b><u>SB 492 – WORK SESSION</u></b>		

245	William E. Taylor	Counsel. Describes SB 492 relating to revising the laws regarding driver duties to certain pedestrians. Introduces the -2 amendment ( <b>EXHIBIT E</b> ).
256	Sen. Prozanski	Talks about the -2 amendment.
288	Chair Burdick	Asks if SB 591 is incorporated into this bill.
289	Sen. Prozanski	Replies that it is incorporated into the -2 amendments to SB 492.
291	Mark Landauer	Office of Government Relations, Portland. Testifies in support of the -2 amendment.
296	Mark Lear	Manager, Traffic Investigation Group, Portland. Addresses the -2 amendment.
320	Sen. Beyer	Inquires about clarification on the definition of a bicycle lane in relation to a car lane, goes on to ask about pedestrians.
325	Sen. Prozanski	Clarifies the issue of bicycle lanes compared to regular traffic lanes and pedestrian walkways.
375	Chair Burdick	Talks about the issue of pedestrian and bicycle lanes.
387	<b>Sen. Starr</b>	<b>MOTION: Moves to ADOPT SB 492-2 amendments dated 4/20/05.</b>
392	Sen. Ringo	Points out that he has issues with the bill due to his district's current traffic problems.
407	Landauer	Addresses the problems Sen. Ringo has with the current law being too restrictive and how this bill fixes those issues.
435	Sen. Ringo	Talks about the new traffic violation created by this bill.
441	Landauer	States that this violation is already a Class C traffic violation.
455	Sen. Beyer	Expresses his opposition to the bill.
460	Chair Burdick	Explains the traffic accidents that this bill seeks to stop.
	<b>Chair Burdick</b>	<b>VOTE: 5-1-1</b> <b>AYE: 5 - Prozanski, Ringo, Starr C., Whitsett, Burdick</b> <b>NAY: 1 - Beyer</b> <b>EXCUSED: 1 - Walker</b> <b>The motion CARRIES.</b>
<b>TAPE 115, A 001</b>	<b>Sen. Starr</b>	<b>MOTION: Moves SB 492 to the floor with a DO PASS AS AMENDED recommendation.</b>
004	Sen. Beyer	Declares that he might support the bill later.
	<b>Chair Burdick</b>	<b>VOTE: 5-1-1</b> <b>AYE: 5 - Prozanski, Ringo, Starr C., Whitsett, Burdick</b> <b>NAY: 1 - Beyer</b> <b>EXCUSED: 1 - Walker</b> <b>The motion CARRIES.</b>
011	<b>Chair Burdick</b>	<b>SEN. BURDICK will lead discussion on the floor.</b>
016	Chair Burdick	Closes the work session on SB 492 and opens a public hearing on SB 127.
<b><u>SB 127 – PUBLIC HEARING</u></b>		
017	William E. Taylor	Counsel. Describes SB 127 relating to expanding the definition of “sex crime” for the purpose of sex offender registration to include the crimes of other jurisdictions requiring registration as a sex offender under federal law.
027	Dan Malin	Oregon State Police (OSP). Submits testimony and testifies in support of SB 127 ( <b>EXHIBIT F</b> ).
065	Malin	Talks about the sex offender registration forms used by the federal government.

087	Chair Burdick	Asks about the Wetterling Act. Inquires about the timeline since the bill was passed
089	Malin	Replies that the Wetterling Act was passed by Congress in 1994 and deals with the registration of sex offenders. Explains the difference between state and federal laws on this issue.
118	Sen. Prozanski	Inquires about a possible retroactive clause being implemented with the Wetterling Act in 1994.
129	Malin	States that they should use the federal deadline of 1994 as the statute of limitations cut-off.
143	Taylor	Explains the retroactive law being okay because, according to expo facto law, this was not a punishment.
150	Sen. Prozanski	Desires some more research on the constitutionality of this issue before passing this out of committee.
155	Malin	Points out that the law was not considered punishment, so expo facto did not apply.
169	Chair Burdick	Closes the public hearing on SB 127 and opens a public hearing on SB 128.

#### **SB 128 – PUBLIC HEARING**

174	William E. Taylor	Counsel. Describes SB 128 relating to allowing the grand jury to receive in evidence an affidavit of a representative of the Oregon State Police concerning completeness of certain records of sex offenders.
185	Dan Malin	Oregon State Police. Submits testimony and testifies in support of SB 128 ( <b>EXHIBIT G</b> ).
219	Sen. Prozanski	Goes on the record and summarizes the effects of the bill.
238	Malin	States that the earlier summarization is complete, and discusses the types of documents allowed to be submitted to the grand jury under SB 128.
249	Taylor	Asks how much money this bill would save the state police.
251	Malin	Replies with data on the estimated expenditures related to sending a representative to testify at the grand jury.
268	Sen. Prozanski	Brings up the issue of whether this is a fair and reasonable tradeoff or not.
291	Chair Burdick	Closes the public hearing and opens a work session on SB 128.

#### **SB 128 – WORK SESSION**

295	Sen. Starr	<b>MOTION: Moves SB 128 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-0-2</b>
		<b>EXCUSED: 2 - Ringo, Walker</b>
297	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. STARR will lead discussion on the floor.</b>
302	Chair Burdick	Closes the work session on SB 128 and opens a public hearing on SB 581.

#### **SB 581 – PUBLIC HEARING**

304	William E. Taylor	Counsel. Describes SB 581 relating to modifying the distribution of fines collected in traffic offense cases.
313	Sen. Prozanski	Submits written testimony from Chief of Police Terry Wright from the Tillamook Police Department ( <b>EXHIBIT H</b> ). Talks about the history of this bill and discusses the need for the passage of SB 581.
361	Carl Myers	Municipal Court Judge, City of Keizer. Testifies in support of SB 581.
412	Myers	Discusses the Class B violation in this bill and the maximum amount he is able or required to charge. Talks about the citing of

“California Stops,” and how he would rather educate than fine.

*Note: Tape 114 B is not complete due to equipment malfunction (see Tape 115, B)*

**TAPE 115, B**

026	Myers	Details the current law on this issue.
055	Myers	Stresses the need for the local judges to address this issue with greater authority.
074	Chair Burdick	Inquires about the fiscal impact of this bill.
076	Myers	Replies that the courts should be in the justice business, not the money-making business. Reads an ORS relating to the fines and penalties resulting from breaking the law.
123	Sen. Beyer	Inquires about the price for a unitary assessment in a traffic violation.
125	Myers	Responds that the amount retained by the state and counties through the unitary assessment is only \$37.00.
150	Sen. Starr	Asks about the base fine for these violations.
153	Myers	Stresses that the bill merely needs to refer to the fine itself, not the base.
168	Bradd Swank	Oregon Judicial Department. Submits a summary on the minimum base fine amounts for violation offenses in Oregon and testifies in a neutral stance on SB 581 ( <b>EXHIBIT I</b> ). Discusses the base fines that have been established for the different violations.
215	Swank	Talks about possible amendments to the bill that would assuage certain problems with the unitary county assessment fee being removed as well as the base fine being altered.
256	Sen. Prozanski	Inquires about the proposed amendments from Mr. Swank.
260	Swank	Talks about the different proposed amendments he recommends relating to the exclusion of the term ‘traffic’ and the lack of standard, or guidelines, for the judges to follow when assigning fines.
294	Swank	Discusses the average fines posted by the courts in relation to the legislatures recommended fine during a time of discretionary fines.
281	Mark Landauer	Office of Government Relations, Portland. Testifies in opposition to SB 581.
292	Mark Lear	Manager, Traffic Investigation Group, Portland. Submits testimony and testifies in opposition to SB 581 ( <b>EXHIBIT J</b> ). Comments on traffic accidents in the city of Portland over the past decade.
350	Lear	Addresses the misconception that some police officers don’t write tickets in a residential zone until the driver is going 36 miles. Cites accident information relating to this scenario.
398	Sen. Whitsett	Inquires about the stopping distance in the above scenario in a residential zone.
405	Lear	Replies with information on breaking time and perception reaction time included in those 100 feet of stopping distance.
423	Sen. Prozanski	Wonders about the possibility of increasing fines to decrease accidents.
435	Lear	Stresses the need to find a balance so police officers do not hesitate to write tickets for violations.
464	Chair Burdick	Inquires about police officers not ticketing certain violations in Portland.
470	Lear	Replies with information on upcoming enforcement actions being taken by the City of Portland to address these issues.

Closes the public hearing on SB 581. Moves SB 333, and SB 913, and SB 965 to Monday's agenda. Adjourns the meeting at 2:58 p.m.

### **EXHIBIT SUMMARY**

- A. SB 965, -5 amendment, staff, 1 p
- B. SB 216, -1 amendment, staff, 1 p
- C. SB 216, -2 amendment, staff, 1 p
- D. SB 333, -1 amendment, staff, 1 p
- E. SB 492, -2 amendment, staff, 2 pp
- F. SB 127, written testimony, Dan Malin, 14 pp
- G. SB 128, written testimony, Dan Malin, 2 pp
- H. SB 581, written testimony, Sen. Prozanski, 2 pp
- I. SB 581, Minimum base fine amounts for violation offenses in Oregon, Bradd Swank, 24 pp
- J. SB 581, written testimony, Mark Lear, 3 pp