

HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

August 22, 2003
1:30 PM

Hearing Room E
Tapes 134 - 138

MEMBERS PRESENT: **Rep. Dan Doyle, Chair**
 Rep. Linda Flores, Vice-Chair
 Rep. Laurie Monnes Anderson, Vice Chair
 Rep. Vic Backlund
 Rep. Phil Barnhart
 Rep. Betsy L. Close
 Rep. Joanne Verger

STAFF PRESENT: **Cara Filsinger, Administrator**
 Janet Adkins, Administrator
 Rick Berkobien, Administrator
 Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: **SB 302 A – Public Hearing and Work Session**
 SB 308 A – Public Hearing and Work Session
 SB 913 A – Public Hearing and Work Session
 SB 916 – Work Session
 SB 590 B – Public Hearing and 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 134, A		
004	Chair Doyle	Calls meeting to order at 2:08 p.m., announces order agenda items will be considered and that SB 655 A will not be considered today. Opens a public hearing on SB 302 A.
<u>SB 302 A – PUBLIC HEARING</u>		
014	Joshua Marquis	Clatsop County District Attorney. Explains the current DUII court process and sentencing, and the provisions of SB 302 A. It is anticipated this bill will save somewhere around \$700,000 to \$800,000 a year in police overtime by local agencies. The savings to the state are undetermined. States he is convinced there will be 10-15 percent fewer hearings in Clatsop County because defendants will do what the diversion law was originally intended to do. It will create incentives for people in diversion programs to complete the programs. Treatment providers believe this will be an incentive because the defendants would know they would not get the second, third, and fourth chance. Introduces Brad Berry, President, Oregon District Attorneys Association, and Ann and Bruce Pratt, Crime Victims United.
054	Rep. Barnhart	Comments this is an important bill to his own district attorney. Ask if the effect of the new language in Section 2(1)(a) means a defendant would have to make a choice and not be able to get back to the other

- path.
- 069 Marquis States this would make them choose one path or the other. In about 80 percent of the Oregon courts, including Lane County, the judges do not allow people to litigate motions to suppress.
- 084 Rep. Barnhart Comments that when someone enters a guilty plea and they are sent to diversion, it gives the therapist and counselor a huge tool to get the person through the program successfully.
- 090 Chair Doyle Enters into record a letter dated August 22, 2003 from Jerome Cooper, Chair, Governor's Advisory Committee on DUII (**EXHIBIT A**).
- 093 Ann Christian Public Defense Services Committee. Comments the fiscal impact will be positive for the system overall. States there is an adverse impact for the courts and for public defense because under law there is no constitutional requirement that counsel be appointed to people who want to enter diversion and do not have to plead guilty.
- 105 Shawn McCray Attorney in private practice in Eugene, Past President, Oregon Criminal Defense Lawyers Association, and handles DUII cases. Testifies in opposition to SB 302 A. States she is very concerned about the practical impact to her clients. Explains scenarios of her clients having the opportunity and are eligible for the diversion program. Expects to see more cases going to trial. The process is working; people are going to diversion, and people successfully complete the program.
- 161 Chair Doyle Asks what a client's justification would be if the client does not complete the diversion program, to then seek a trial.
- 170 McCray Responds that there may be an issue of an illegal stop by the police officer. States in those close cases she is telling her clients to go into diversion. It is very rare when someone does not complete the program.
- 182 Chair Doyle Closes the public hearing and opens a work session on SB 302 A.

SB 302 A – WORK SESSION

- 186 Rep. Flores **MOTION: Moves SB 302 A to the floor with a DO PASS recommendation.**
- 188 **VOTE: 7-0-0**
AYE: In a roll call vote, all members present vote Aye.
Chair Doyle The motion CARRIES.
REP. FLORES will lead discussion on the floor.
- 194 Chair Doyle Closes the work session on SB 302 A and opens a public hearing on SB 308 B.

SB 308 B – PUBLIC HEARING

- 180 Chair Doyle Advises members that two sets of amendment being considered.
- 214 Steve Doell President, Crime Victims United of Oregon. Comments on the current sentencing law. States he has seen cases that have not been brought by the victims when they see what the prison term is. They want to see those prosecutions brought and see people found guilty if a crime has been committed and be registered as sex offenders. There is a provision in the bill that says for first degree Class A felony sex crimes, those offenders will receive on the second strike a presumptive life

- sentence. They believe this completes the 1049 template.
- 289 Norm Frink Multnomah Co. District Attorney's Office. Testifies in support of SB 308 B. States that Mr. Schrunk endorses the bill. They think this is the last major area of Measure 11 category of cases where there needs to be some discretion given to judges.
- 303 Rep. Barnhart States that on page 3, in lines 23 and 24 we are removing language on age of defendant, and then writing a new provision. Asks if that effectuates the change.
- 316 Frink Explains that the new provision is implementing the change to cases that are either pending sentencing or have already been sentenced. During the 2001 legislative session the provision was put in with the five year limitation. The proposal removes that limitation. Most cases currently are resolved to a less than mandatory minimum by way of plea negotiations. But there are some isolated cases where that resolution has not been possible and sentences are more than they think appropriate.
- 351 Rep. Barnhart Asks for a review of the bill.
- Frink Explains SB 308 B.
- 388 Rep. Barnhart Asks if Section 5 gives the judge the discretion to give less than the minimum sentence, but the judge would have to make additional findings in some cases, and one finding—that the defendant is no more than five years older than the victim—is being taken out.
- 395 Frink Responds affirmatively.
- 401 Rep. Barnhart Asks if Section 6 applies to people who have already been sentenced under this rule.
- 401 Frink Responds affirmatively.
- 424 Brad Berry Yamhill County District Attorney, Vice President, Oregon District Attorney's Association, and Chair of their Legislative Committee. Comments on both support and opposition to the SB 308-B9 amendments (**EXHIBIT B**) by members of their Executive Committee. States there is a strong feeling that Ballot Measure 11 offenses were overwhelmingly passed and ratified by Ballot Measure 94. District attorneys throughout the state think they use great discretion in exercising the authority given them over Ballot Measure 11. Believes those attorneys would say it is working well and would oppose any further changes to Measure 11 offenses.
- 464 Berry States that SB 308 as originally submitted dealt with two principle issue. One defining deadly force, and another requiring that defendants not receive personal financial information of victims and other witnesses. States he want to be sure that does not get lost in the shuffle. Explains current law on disclosure of information about victims of crime.

TAPE 135, A

- 042 Chair Doyle Advises members that SB 308 B is being considered in addition to the SB 308-B9 (**EXHIBIT B**) and the SB 308-B5 (**EXHIBIT C**) amendments.

- 053 Walt Beglan Deputy District Attorney, Marion County. Explains that he prosecutes child abuse cases and manages the team that handles those cases. States he has no further comments on discovery aspects, but wants to raise concern on the proposal on the change to Measure 11 as it relates to the second degree sex offenses and Sex Abuse I.
- Explains the purpose of the five-year age difference was to focus on peer-age related conduct and to look at the consensual type of conduct and provide some kind of window, an opportunity for judges. This broadens it to a much older, dangerous population to reach a much more vulnerable population, which is 12-year olds. Explains that when they feel there is an alternative, such as doing a Rape III, a non-Measure 11 offense, in capturing the behavior but not having a significant 75-month sentence. In Marion County it is not a practice to not file cases when there is good evidence just because the sentence might be really heavy; they look at the alternatives.
- 073 Rep. Flores Asks if there is consideration when talking about a victimizer who may be 17 but has the mental capacity of a much younger person.
- Beglan Responds they also consider the different factors.
- 100 Stephanie Tuttle Marion County District Attorney's office. Comments that one of the concerns in the bill is the fact that it would allow people who have already been convicted to have a second look. It is a concern because as victims go through the system, they are told they can have certainty once the judge has made his decision. Those who are offended rely on that. If it is allowed to be retroactive and people who have been sentenced for the crimes are allowed to come back to the court and petition to get out of prison or have their sentences substantially changed, it would do a disservice to those victims who have counted on those sentences.
- 115 Rep. Flores Asks if the Marion County practice of looking at the mental capacity in cases is the same in every court.
- 119 Baglan Explains that it is not a formal process. Each district attorney reviews the merits of the case starting with the evidence. Believes every district attorney goes through the same process of looking at it. Comments on how he works on cases.
- 137 Rep. Verger Asks if they also look at delinquent behavior in parents that allow unsupervised siblings.
- 145 Baglan Responds affirmatively. Explains their efforts to work with other agencies and the juvenile court system.
- 158 Rep. Barnhart Asks if the court has to find the other conditions, except for the age difference.
- Baglan Responds that is his understanding.
- 189 Frink States he would share the concern on retroactivity if it were not for the requirement in the bill that the petition for retroactive application would have to be made by both the district attorney's office and the defense. States that Dale Penn, Marion District Attorney, does not have any problem with the changes in the amendments.
- 214 Rep. Monnes Comments that she would not want to see any of the requirements

- Anderson
231 Frink lessened.
Responds that it is important to remember what the consequence is. It means that instead of getting an automatic 75-month sentence, the judge, if he decides there are substantial and compelling reasons other than things in the statute, the judge can depart from the mandatory minimum. When the judge does that, the presumptive sentence is still a significant prison sentence, not the 75 months. Explains situations where this comes up, and states it is surprising in many cases how the victims do not wish the perpetrator to be sentenced to 75 months.
- 262 Rep. Monnes
Anderson
Frink Comments that Frink is saying that a few people are not being prosecuted that should be prosecuted.
Responds that is part of what he is saying. There are a small number of cases but still a significant number of cases where everybody involved believe that the punishment should be less than the 75 months mandatory minimum. But, because that cannot be accomplished through a plea agreement or diversion, and because the person is found guilty after a trial, they have cases where the defendant, the victim, the court, and the district attorney's office are saying this should be something less than 75 months. They cannot do that under the current law. This would provide a window of discretion as the legislature did with Assault II cases and other second degree cases.
- 296 Rep. Monnes
Anderson
Frink Asks if we are saying sex abuse crimes are lesser than the other crimes.
Comments that Rep. Monnes Anderson may be looking at a list of prior offenses and if a person had been convicted of them in the past they would not be eligible for this judicial discretion.
- 313 Rep. Flores
Frink Asks which crimes are Measure 11 crimes.
Responds that most violent offenses that are first or second degree offenses are Measure 11 offenses. There are probably 20 plus crimes. This 1049 concept, which gives some discretion not to impose the mandatory minimum sentence, has generally been applied to the second degree crimes that are under Measure 11.
- 339 Rep. Close
Rep. Frink Comments on situation of a young man finding out later that the girl with whom he had consensual sex was under age. Asks if the court always considers an underage female a victim, if there is any evidence that they actually solicited the contact.
Responds that statutorily they are the victim even though the circumstances might or might not exist. When they do exist, it is a factor the court can take into account when sentencing.
- 373 Rep. Barnhart
Frink Asks if all these statutes deal with sexual behavior which is prohibited because one of the parties is under age.
Responds affirmatively.
- 381 Rep. Barnhart
Frink States that defenses are built in based on the age of the person being charged with the crime.
Agrees with Rep. Barnhart.
- 415 Rep. Barnhart States the prosecutor can choose to use many charges in these kinds of

cases. Cites age-related incidents. Asks if the prosecutor has discretion in pursuing these kinds of cases.

- 435 Frink Responds that they do under some circumstances. The grand jury also has a role in making the decisions. Gives example where discretion could not be used.
- 472 Rep. Barnhart Comments he thought the point of Measure 11 was to remove this kind of discretion from the court.
- 476 Frink Responds that prosecutors were not involved in drafting Measure 11. It was recognized early 1995 that there were certain areas where there should be some judicial discretion.

TAPE 134, B

- 020 Steve Doell Speaks in support of allowing the judge to consider the findings. Comments on murder and sex abuse cases.
- 073 Rep. Monnes
Anderson Comments on cases that are the result of stupidity on the part of the kids. States it is difficult to choose this one from all the other Measure 11 crimes.
- 090 Doell This would take all second degree crimes, with the exception of manslaughter in the second degree, and give the judge the ability to make the decision. It leaves in tact the first degree offenses for the mandatory sentences.
- 112 Frink Comments there was wide support and discussion of this when sentencing was discussed in previous legislation.
- 125 Rep. Flores Comments that Frink earlier referenced a problem in the Hispanic or Latino community. Asks if statistics are available.
- Frink Responds that In Multnomah County cases they usually see young men in their 20s, often Hispanic, in a consensual sexual relationship with a 12 or 13 year old girl.
- 147 Rep. Flores Comments this is perhaps a cultural situation. Asks how the cases come to their attention.
- 152 Frink Responds they review on a weekly basis the pending cases. States he cannot reference any study. It is only antidotal on case reviews they do on a weekly basis.
- 168 Rep. Flores Asks how the relationship comes to their attention when there are consensual relationships.
- 172 Frink Responds that the information sometimes comes from schools or parents. Adds that these cases are usually resolved because there is negotiation.
- 183 Rep. Verger Comments on judges using discretion.
- 196 Frink States that the presumption will be the mandatory minimum sentence will still be the sentence. This provides for a window of opportunity, subject to the requirements listed in the statute, subject to the court finding an additional substantial and compelling reason, which can also be reviewed by the appellate courts.
- Rep. Verger Asks if the young individual may not have to necessarily serve in prison for a long time because we are going to give them an

- opportunity to not make the mistake again.
- Frink We are giving them an opportunity to ask the court for that chance and for the court, if it makes all the findings, to give them that chance.
- 215 Rep. Barnhart Asks if this has been considered in other legislation this session.
- Frink Responds no. Comments there has been legislation in every session and they thought they addressed the problem with the changes during the 2001 session.
- 252 Rep. Barnhart Comments on studies that have been done over time about the relationships between the sexes and ages.
- Frink Responds that he is absolutely confident that no predatory sex offender will escape punishment under the mandatory minimum sentence even with this measure.
- 261 Jim Austin Representing Ted Hughes and the motion picture industry. Testifies in support of the SB 308-A5 amendments (**EXHIBIT C**). Comments that Rep. Barnhart had questions relating to the illicit piracy of digital film information at a previous hearing. There were concerns that a felony offense might be a little punitive, at least for the first act and a person being convicted. The amendments call for the first offense to be a Class A misdemeanor and any subsequent offense, after conviction, to be a felony.
- Chair Doyle Reminds members this was in a separate bill that the committee heard. One of the issues was that if a person walked onto the premises of a movie theatre with a recording device they were considered to have been guilty of trespass. It was determined it should not be a trespass issue and that removed the issue from the bill with the relating clause of trespass. SB 308 B relates to crime and can be used if the committee wishes.
- 346 Rep. Barnhart Comments that the trespass was unworkable. Someone would have to be punished for a specific behavior and someone could not be punished for carrying a cell phone that has recording capabilities into a movie theatre, or carrying a movie camera into a movie theatre. Explains that is why we now have the language “knowingly operating an audiovisual recording device in a facility where a motion picture is being exhibited. States there is a statute on the books that make it, perhaps a Class C misdemeanor to video tape a movie. Someone with a digital camera would not be guilty of violating that statute. The only issue left has to do with any civil liberties issues he may have missed or with the federal preemption question—that is whether or not the federal government because of the copyright and industrial property rules may preempt the entire area and we may be using state money to prosecute matters that the federal government should be dealing with.
- 383 Austin States this is a \$20 billion industry and solicitation and distribution to solicit film is extremely costly to the industry.
- 390 Andrea Meyer ACLU. Sates there is a problem in the whole area of the law. Suggests it should be the subject of an interim study by the Interim Judiciary Committee. Explains their concerns with Section 5 and the penalty provisions in the HB 308-A5 amendments.

TAPE 135, B

- 024 Shawn McCrae OCDLA. States she has the same concerns as Meyer, and questions the use of scarce resources for ambiguous language in Section 5.
- 082 Chair Doyle Asks why someone going onto private property would not have the owner's permission.
- McCrae Responds that it is covered in the trespass statute. It is duplicative. If we want to get at the illicit piracy of movies, we need to have a statute that is carefully tailored and narrowly drawn to meet that. The way this is set up it may not meet a constitutional challenge for being vague and over broad. Unnecessary litigation will be generated. Agrees the matter should be referred to the interim to be more carefully studied and dealt with.
- 093 Rep. Monnes Suggests the language be narrowed to "records" and "recording with."
Anderson The intent of the bill would be that it is "recording" the movie.
- McCrae States the issue is not "recording the movie," the issue is "at the facility."
- 116 Chair Doyle Suggests amending the language to say "knowingly records a motion picture with an audiovisual recording device in a facility." States his concern is that we are not getting to the intent.
- Meyer States that the ACLU is interested in fixing this but there is another statute about illegally trying to record and sell video tape. It needs to be updated as well. This statute could be brought up to date for someone going in and simply recording, but the statute is not being updated where someone then tries to sell it, which is probably the more egregious action. Adds that "recording" and "video tape" and "sound recording device" are already defined in the statutes and now we would have "audiovisual recording device" added to the statute. Suggests they all be cleaned up.
- 139 Rep. Barnhart Agrees the issue should be referred to the Interim Judiciary Committee.
- 151 Rep. Close Comments this could be handled in the interim but does not see a problem with working to get an amendment in the remaining time to try to help the motion picture industry.
- 157 Rep. Flores Agrees with Rep. Close. States she understands the concerns with the language, however, we can do something to help the drift toward a continuing problem that can have significant financial impact in the motion picture industry.
- 170 Chair Doyle Closes the public hearing and opens a work session on SB 308 B.

SB 308 B – WORK SESSION

- 173 Rep. Flores **MOTION: Moves to ADOPT SB 308-B9 amendments dated 8/22/03.**
- Rep. Barnhart States that the issue of judicial discretion for sentencing is there are situations that have become patently unfair. Speaks in opposition to the SB 308 B9 amendments. States he is very supportive of Section 10 that makes a Class A felony for a sex crime into a life sentence if the person has committed a prior Class A felony sex crime. States he is very concerned about allowing reduction of sex crimes for people who

- are more than five years older than the victim.
- 236 Rep. Monnes Anderson States she agrees with Rep. Barnhart. States she supports Section 10 and would still like to take a look at the ramifications of Sections 6 and 7 and will vote no. States she may be a yes on the floor after consulting with some people.
- 247 Rep. Close Comments that her constituents have asked for flexibility in the sentencing guidelines and that she trust the judges in Linn County. They typically know the people in the community well and they are elected. Believes they are competent to make these decisions and will support the motion.
- Rep. Verger Comments he believes when people voted for Measure 11 they were looking for first degrees. Thinks they wanted to be very, very tough on hardened criminals. States she is convinced by the testimony that the judges will act as they should in determining the difference between the criminal intent and the young person who is making their first mistake. Adds that she would trust the judges in Coos County.
- 281 Rep. Backlund States he thinks this will be okay and will support the motion.
- 288 Rep. Flores Comments that to remove the prospect of continuing to have a one-size-fits-all resolution of matters under Measure 11 is not good. Thinks this is probably a response to growing concerns there have been issues that did not fit within the intent of Measure 11.
- 313**
VOTE: 5-2-0
AYE: 5 - Backlund, Close, Flores, Verger, Doyle
NAY: 2 - Barnhart, Monnes Anderson
The motion CARRIES.
- 320**
Chair Doyle
Rep. Flores
MOTION: Moves to ADOPT SB 308-B5 amendments dated 8/14/03.
- Chair Doyle Notes that the SB 308-B5 amendments add to SB 308 B. States that the hope is that we can get this to the Senate and into a conference committee and have another opportunity to address the issues.
- 363 Rep. Barnhart Advocates for sending the issue to the Interim Judiciary Committee.
- 390 Rep. Backlund Comments that we should seek a solution rather than wait two years.
- 408 Chair Doyle Advises that if the bill does go to conference committee and the issues cannot be resolved, the SB 308-B5 amendments can be deleted.
- Rep. Barnhart States with the Chair's assurance, he will support the amendment.
- 423**
VOTE: 7-0-0
AYE: In a roll call vote, all members present vote Aye.
The motion CARRIES.
- Chair Doyle**
Chair Doyle
 Clarifies that the SB 308-B9 and SB 308-B5 amendments are added to SB 308 B and it will be up to Legislative Counsel to properly draft the amendments.
- 442**
Rep. Flores
MOTION: Moves SB 308 B to the floor with a DO PASS AS AMENDED recommendation.
- 446 Rep. Monnes Anderson Explains she will be voting no because of the discussion on second degree rape. States she will be talking to judges in her district.
- Rep. Verger States she is concerned about the SB 308-B5 amendments knowing that

it will get changed. Asks if the SB 308-B5 amendment might kill the bill on the floor.

472 Chair Doyle Responds that the bill will go to the House floor with the SB 308-B5 amendments. States that they will work with the Senate to make sure the Senate does not concur with the amendments so the bill will go to conference committee.

TAPE 136, A

002 Rep. Barnhart Comments that one section of SB 308 B has not been addressed. Asks what the statute of limitation is for the crimes listed on page 3 in lines 26-29.

018 McCrae Responds it would be whatever the current statute of limitations is for the level of felony or misdemeanor that the crime is. Believes it is three years for a felony.

020 Beglan Responds those in the list would be C felonies and believes it would be three years.

034 McCrae States the time limitations under ORS 131.125 is three years.

038 Rep. Barnhart Asks why this needs to be changed to eight years.

042 Meyer States the ACLU has a concern because of different treatments of different crimes.

061 Tuttle Comments these are crimes where it is harder to find out what is going on and where there might be organized criminal activity.

071 Rep. Barnhart Comments on felony research and animal interference under ORS 167.312.

083 Rep. Close Comments on interim committee testimony on eco-terrorism, Believes that is why lines 24-29 are in the bill.

Chair Doyle Comments that the items do address eco-terrorism which seems to be confronting Oregon and the research facilities. Believes it is appropriate to resolve the issue.

089 Rep. Barnhart Agrees that violations should be punished. The issue is whether we should extend the statute of limitations from three to eight years Believes a concern should be whether a defendant could defend themselves that late.

116 Rep. Close Comments that it is alleged that several people in this state who have perpetrated some of the crimes disappear into an underground because of the criminal activity. It may not be possible to find them in three years and believes that is the situation with some cases that are pending.

124 **VOTE: 5-2-0**
AYE: 5 - Backlund, Close, Flores, Verger, Doyle
NAY: 2 - Barnhart, Monnes Anderson
The motion CARRIES.

Chair Doyle

REP. DOYLE will lead discussion on the floor.

129 Rep. Barnhart **Serves notice of a possible Minority Report.**

130 Chair Doyle Closes the work session on SB 308 B and opens a public hearing on SB 913 A.

SB 913 A – PUBLIC HEARING

- 138 Bill Linden Association of Oregon Faculties. Testifies in support of SB 913 A with the SB 913-A2 amendments (**EXHIBIT D**). This reconciles an existing conflict between the ORS chapter 351 and the administrative rules regarding what health services can be provided and to whom at the health centers on campuses of the University System. Explains that the attorney general has ruled that only students can be served at these health centers. Under the administrative rules, faculty and staff are being served for very limited purposes, such as immunizations, some first aid, and some very limited lab services. The health centers provide triage medical services at large events on campuses. It sets in place a framework for individual campuses to make the decision about what services they will provide at their health centers. This bill will not affect current services provided to students.
- 188 Linden States that one issue that came up since the bill passed the Senate had to do with a concern this language might allow the Oregon University System to opt out of the Public Employee Benefit Board (PEBB) system. Notes a letter from Legislative Counsel to Chair Doyle (**EXHIBIT E**) that says it will not affect the present system. Each campus will have to factor in liabilities. Explains that the SB 913-A2 amendments (**EXHIBIT D**) were drafted because of a concern that they would somehow be transforming these health centers into a new type of medical clinic.
- 206 Linden States there are also concerns about liability. Each campus will have to factor liability concerns into their decision. They think the liability concerns are very potential and speculative. States there have been no liability issues arise or lawsuits at OSU for services that are provided to faculty and staff.
- 229 Cindy Becker Assistant Director, Department of Administrative Services (DAS). Introduces David Hertwig, Administrator of the Risk Management Division. States the department is opposed to the bill even though the SB 913 A2 amendments clarify the issues with PEBB and OUS. They are concerned there is no definition of “health services.” They do not know what kinds of services might be offered and that leads to liability. Thinks this has a significant cost potential. They are also concerned about the health centers turning into medical centers and doing things they were never intended to do.
- 254 David Hertwig Administrator, Risk Management Division. Department of Administrative Services. States they have concerns about health services and the lack of a definition of a level of care that might be provided. They have questions about who adopts and who reviews the medical protocols that will be used without clear authorization to provide the services, and a description of who would provide the care. It is important to have discussion about what will be provided. They do not believe an adequate analysis has been done about the liability. They are taking the position that they will require OUS to purchase medical malpractice coverage. They do not know what the underwriting exposure might be to assess a charge back to the

- universities through the current allocation system.
- 276 Rep. Barnhart Asks if the department has the authority to require OUS to purchase malpractice insurance.
- 305 Hertwig Responds he believes the department does.
- 308 Rep. Verger Asks if they have campus health centers.
Hertwig Responds they do.
Rep. Verger Asks if health centers are in direct competition with local providers.
- 315 Hertwig Responds he would not conclude that it would be direct competition. It is not a concern he is bringing forward today.
- 320 Rep. Flores States that the competition is mentioned in a letter from Grattan Kerans **(EXHIBIT F)**.
- 325 Chair Doyle Asks if Becker is only speaking for DAS.
Becker Responds she is only speaking for DAS.
Hertwig Responds he is only speaking for DAS.
- 329 Chair Doyle Advises that no one from OUS is here to testify and that is why the committee has the letter from the Chancellor's office **(EXHIBIT F)**.
- 330 Rep. Flores Asks if DAS has concerns about who is responsible to manage the care and the scope of care provided now.
Hertwig Responds they do have concerns. Thinks they are most concerned about having an expansion of the services to dependents of students, faculty and staff without a more thorough discussion about the exposure, and the potential financial costs to make a more reasonable determination about whether to proceed.
- 355 Becker Responds that because it is so undefined at this point, this opens the door to any range of services. There could be a huge increase in the population from pediatrics to geriatrics; that is not what the student health centers were designed for.
- 369 Rep. Flores Comments that Linden said faculty members would pay for the services they receive from the student health centers. Asks if that mitigates the cost factor.
- 374 Becker Responds the concern is not the cost for the service, one concern is liability. Medical malpractice insurance will be a different cost for the OUS. Adds that the student health centers were not designed to be medical centers.
- 388 Melissa Unger Director, Oregon Student Association. Testifies in support of SB 913 A **(EXHIBIT G)**.
- 436 Rep. Barnhart Advises Unger that the committee has received a letter from Grattan Kerans in the Chancellor's office opposing the bill **(EXHIBIT F)**. Asks if the bill is worded such that the State Board may reject a campus decision.
- 447 Unger Responds yes.
- 451 Rep. Barnhart Comments that he reads the statute to say that the Board can decide if the campuses get to talk about this.
Unger Responds she believes that is true.

- 457 Rep. Barnhart Asks if they still want the bill.
Unger Responds yes.
- 466 Chair Doyle Closes the public hearing and opens a work session on SB 913 A.
- 472 **Rep. Flores** **MOTION: Moves to ADOPT SB 913-A2 amendments dated 8/15/03.**
- 478 Rep. Monnes Comments that access to health care is extremely important. It is far
Anderson more convenient for a student with children to go to the local health center to get an immunization, etc. It is an access issue and she hope that each university would carefully consider this option.
- 494 **VOTE: 7-0-0**
Hearing no objection, declares the motion CARRIED.
- Chair Doyle**
TAPE 137, A
- 026 **Rep. Flores** **MOTION: Moves SB 913 A to the floor with a DO PASS AS AMENDED recommendation.**
- 030 Rep. Backlund Comments on protection of DAS interests. Says the goal is laudable and the options provided to the dependents is a good thing.
- 037 **VOTE: 7-0-0**
AYE: In a roll call vote, all members present vote Aye.
Chair Doyle **The motion CARRIES.**
REP. BACKLUND will lead discussion on the floor.
- 040 Chair Doyle Closes the work session on SB 913 A and opens a work session on SB 916.
- SB 916 – WORK SESSION**
- 045 Chair Doyle Reminds committee that Sen. Frank Morse provided testimony on this bill. One issue had not been determined and they were holding back to determine if an amendment would be necessary. The committee has the SB 916-1 amendments (**EXHIBIT H**). Explains that a bill passed the House that had the provision of this amendment that those who fail or refuse to take drug or alcohol tests as required by an employer's written policy would get terminated and under current law would be eligible for unemployment benefits. This amendment addresses that issue. Says there is a similar House bill that is not yet moving in the Senate.
- 067 Rep. Barnhart Asks what the floor vote was on the other bill.
Chair Doyle Asks the committee to stand at ease at 4:35 p.m.
Chair Doyle Calls committee back to order at 4:40 p.m. and asks that the Employment Department clarify the status of the current law and explain what the department's position is on this amendment.
- 077 Renee Bryant Manager of Unemployment Insurance Tax Section, Employment Department. Says amendments would put in statute what exists in rule. States this statute would clarify certain areas of the rules. Believes the drafter's intent was to tighten up the rules and make some of the definitions clearer. The Employment Department is neutral; they can administer this language.
- 087 Rep. Close Asks what the difference is between controlled substance and drugs, and how they interpret the law.

- 090 Bryant States that as she recalls testimony on the Senate side by a representative from AOI, the words more accurately describe the varieties of types of substances as opposed to the strict language of the statutory definition of controlled substances.
- 100 Rep. Flores MOTION: Moves to ADOPT SB 916-1 amendments dated 8/21/03.**
- 103 Rep. Close Comments there was extensive testimony in House Business, Labor and Consumer Affairs Committee and did pass the House.
- 106 Chair Doyle States that it was HB 2824 and passed on a 45-12 vote.
- 109 Rep. Barnhart Asks if the real problem is not that it is okay for people to be drunk or under the influence of drugs on the job, but simply being able to prove that in a way that brings them out from under their ability to get unemployment benefits.
- 101 Rep. Close Responds that the bill references last chance agreements where the employee has agreed to certain conditions of being able to continue working and then he violates the agreement.
- 121 VOTE: 6-0-1**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 1 - Rep. Monnes Anderson
The motion CARRIES.
- 125 Chair Doyle Rep. Flores MOTION: Moves SB 912 to the floor with a DO PASS AS AMENDED recommendation.**
- 128 VOTE: 6-0-1**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 1 - Rep. Monnes Anderson
The motion CARRIES.
REP. CLOSE will lead discussion on the floor.
- 132 Chair Doyle Closes the work session on SB 916 and opens a public hearing on SB 590 B.

SB 590 B – PUBLIC HEARING

- 131 Paul Cleary Director, Water Resources Department. Explains the provisions of SB 590 B. They were not opposed to the 180 days.
- 157 Rep. Linda Flores District 51. Presents a prepared statement (**EXHIBIT I**) and the SB 590-B7 amendments (**EXHIBIT J**).
- 246 Rep. Verger States the cranberry farmers have grave concerns in her district about water rights. Asks if the groups will have an opportunity to participate in some way because the SB 590-B7 amendments do not specify who will be on the interim committee.
- Rep. Flores Responds that if she had her choice, the interim committee will include all the interested parties that deal with the water ownership rights, including special districts and irrigation districts.—every interest party.
- 291 Rep. Verger Asks if there is anything she can do to help people in her district be appointed.
- Rep. Flores Responds she would assume the Speaker would make the appointments.
- 305 Chair Doyle Notes that the bill was sponsored by Sen. Messerle at the request of Water for Life.

- 311 Rep. Close Asks if SB 590 B was sent to the floor then referred to this committee.
Rep. Flores Advises that it was considered by the Water Committee and referred to this committee instead of being voted on.
- 302 Richard Koesan Water for Life. Testifies in support of SB 590 B. They are also supportive of the SB 590-B7 amendments that reflect the underlying concept of HB 3298. The amendments are straightforward. Section 4 of the amendments sets up a presumption that irrigation water use is tied to the land upon which it is used and the user is the owner of the water right. Explains that someone granted an irrigation permit. They would not have been granted the permit unless a clear delineation of the land upon which the water is used was made at the time of the permit application. Section 5 of the amendments establishes an interim committee. The cranberry growers were supportive of HB 3298 and thinks they would be part of the interim committee. The attempt and clear direction is to avoid some unnecessary administrative and judicial proceedings which have arisen during recent years.
- 395 Rep. Barnhart Asks if there are water rights that have never been adjudicated and have never been written down.
Koesan Responds that he thinks the answer would be, are there yet undetermined rights. The answer is clearly yes. Most of the waters east of the Cascade Range has been adjudicated. The adjudication law was first codified in 1909. The process has not changed significantly since that time. Much of the water west of the Cascades has yet to be adjudicated. The biggest adjudication proceeding is currently going on in the Klamath Basin.
- 413 Rep. Barnhart Asks if this means there may be situations in which whoever has the burden of coming forth with the evidence may have difficulty, especially if it is a landowner under the current law.
- 422 Koesan Responds he does not believe so, and does not foresee a situation where this would impede claimants in any future adjudication proceeding.
- 430 Rep. Barnhart Asks if there is a problem with a landowner establishing in an easy way what the water rights are, or that they have water rights.
Koesan Explains that HB 3298 was introduced because the question of ownership has arisen. People in the Grants Pass Irrigation District wanted to cancel their rights but the district said they could not unilaterally cancel their rights and would have to get the approval of the irrigation district. The people said they owned the water right, not the district. That culminated in an attorney general opinion issued in September 2000 (**EXHIBIT K**). Comments on case where the landowner wanted to transfer the point of diversion.
- 483 Rep. Barnhart Comments that he believes the answer to his question is yes.
- TAPE 136, B**
- Rep. Flores Submits copies of the attorney general letter opinion dated September 6, 2000 (**EXHIBIT K**).
- 008 Kristina McNitt Oregon Water Resources Congress. States they represent districts that irrigate over one-half million acres and represent 35,068 individual water users and farmers across the state. Testifies that Oregon Water

Resources Congress has no position on the original provisions of SB 590, but have grave concerns about the SB 590-A7 amendments. They are concerned about Section 4 of the B 590-B7 amendments that would create a statutory presumption that the owner of the land to which a water right is appurtenant is the owner of the water right.

- 023 McNitt Explains two concerns with the presumptive water right. The amendments address only the irrigation portion of the water rights held by the districts. The question is what happens to the remainder of the water rights for other purposes listed in a certificated water right held by the district. Another question might be how to handle the priority. There is no arguing about appurtenance—that water has to be attached to a piece of land. SB 590 enters into the complexity of multiple partnerships in an irrigation district. Explains relationships of water districts with patrons.
- 048 McNitt States the Section 4 provisions of the SB 590-A7 amendments strips any ownership interest of a district in managing the water. Explains protection provided by the Department of Water Resources against the concept of injury. States that once a person is in a water district, the department steps out. It is up to the district to maintain that relationship for the patrons and protect them from injury. If we add to statute presumptive language about ownership, then an individual inside a district could do whatever they want with the water right, which conceivably could harm their neighbors inside the district. Section 4 also has the potential to drastically extend the adjudication process in the Klamath Basin.
- 088 McNitt Comments on President Bush’s interest in the Klamath Basin, and states that Klamath Water Users Association and Klamath Irrigation District are opposed to the language in the bill.
- 100 Chair Doyle Asks that McNitt provide case law that suggest that water districts have a right to ownership of water rights.
- McNitt Responds she will do that.
- 104 Rep. Barnhart Asks if there is a deed or a certificate or some kind of contract between the owner and water district.
- 111 McNitt Shows copy of a page of a certificate of a water right with the County of Malheur issued to Vale, Oregon Irrigation District and the United States of America, Bureau of Reclamation which confirms the right to use so many CFS from the Malheur River at a certain priority date. States that the remaining 52 pages details the land to which the water is appurtenant.
- 127 Rep. Barnhart Asks if there are cases where the owners do not have documentation.
- McNitt Responds she will do research on the question.
- 134 Rep. Barnhart Asks if the district name on the water right has anything to do with ownership.
- McNitt Responds that they would contend that it does. Gives example of organizing a district in Clackamas and Marion counties. They are developing a water right in the name of East Valley Water District. They are assessing themselves fees to build the water delivery system.

- 152 Rep .Barnhart Comments that it would be their claim that the district owns the water.
McNitt States that in the end the district will own the water interest for its patrons.
- 155 Chair Doyle Asks if McNitt believes there is case law that supports the contention that a water district can take a water right from a landowner, and that landowner no longer owns the water right. If the landowner sells the land, the water right would not follow the land.
- 162 McNitt Clarifies what she said. They can provide case law that shows that the district has an ownership interest. The district cannot unilaterally tell a landowner what they can and cannot do with the property. There are management tools for districts in the statutes. One is for voluntary forfeiture. If a landowner does not use the water for five years, the district has the ability to gather the water up and apply it to beneficial uses in other areas of the district. The districts need the carrying capacity of the water to make the water works function to the last person on the ditch. If one person independently pulls out, that affects the person at the end of the ditch and his property right. There are operating costs to running the district and if people are opting out, then the pool of payees becomes smaller and the costs stay the same or increase.
- 181 Chair Doyle Comments that the issue is whether the owner of the land to which the water right is appurtenant is the owner of the water right. States he does not hear McNitt contesting that. Asks if the person is the owner of the water right.
- 185 McNitt States that appurtenance does not equal ownership. It means the water is tied to the land and is used on that land. In order for the water to move, the person has to go through the district if they are inside a district, and do a transfer process. If an individual owns the water outright, they go through a transfer process through the Water Resources Department. The department protects for injury against other water users.
- 198 Chair Doyle Comments that once a farmer joins a water district and they sell their farm, it is their contention that the water right continues with the water district even though there is a new landowner.
- 204 McNitt Responds that when there is a land sale transaction, you will not be able to move the water. The water is still in the district and the land is still within the perimeter of the district. The water is a value that goes with the land.
- 212 Chair Doyle Comments that the water right would never return to the landowner.
McNitt States that Water Resources Congress does not see the ownership issue as an either or issue. It is a separate and distinct animal from an individual water right holder who applies for and develops water rights with the Department of Water Resources.
McNitt States they support an interim study but are reluctant to have Section 4 in there that sets up a presumption.
- 232 Rep. Flores Asks if McNitt agrees with page 8 of the attorney general opinion **(EXHIBIT K)** that talks about the Bureau of Reclamation

- determinations.
- 264 McNitt Responds she does disagree with it on behalf of the Water Resources Congress. States that the citation was on a very narrow case law and does not believe it is read by very many water law attorneys to be applicable to broad water statutes. Adds that there are other attorney general opinions that state the opposite.
- 275 Rep. Flores Reads the conclusion on page 9 of the attorney general opinion **(EXHIBIT K)** and asks if it would be better for all landowners to have a presumptive determination until all the water law issues can be worked through over four or five years.
- 302 McNitt Responds she does not believe it would be in the benefit of all landowners. Believes there will disagreement even with the Farm Bureau community. States that some members are members of the Farm Bureau and the irrigation district. States that she is very worried about the immediate consequences to the adjudication process in the Klamath Basin.
- 321 Rep. Flores Asks if there is not a concern that a district can do anything they want and even sell the rights out from under a landowner.
- McNitt States she is unaware of a water right being sold by a district, but is aware of an instance where a family that would benefit from this language relative to a conserved water application to which they objected. They have an ownership claim against the district that has been in the courts for a number of years.
- 370 Rep. Flores Asks that McNitt provide a copy of the attorney general opinion that would be in conflict with the one the committee has today.
- 371 McNitt States she will provide the opinion.
- 376 Rep. Barnhart Asks if the members of the water district sign a contract of some kind that describes their relationships when the district is set up, and if the contract includes what happens if someone wants out.
- 388 McNitt Responds that is the case for most districts. Some older districts do not have contractual relationships. States the districts have by-laws and they are public entities. They create the rules about opting in and out.
- 399 Rep. Barnhart Comments that he does not understand why ownership gets involved. Asks why they cannot sue under the contract if they violate the agreement.
- 409 McNitt States that all districts do not have contractual relationships, but it is an issue they brought forward. The crux of the issues is about how districts and patrons relate to each other and what their responsibilities are. Questions whether there should be signoff with every patron in an allocation of a conserved water project. Perhaps. States she is not sure the ownership question answers anything.
- 429 Amanda Rich Special District Association of Oregon. States they have no position on the underlying bill but do have some concerns with the SB 590-B7 amendments. They support the interim study and will be pleased to participate in any way they can and hope they can be brought to the table. Their concern is they think the conversation should be entered into with a clean slate and the presumption does not create an even

playing field.

TAPE 137, B

- 021 Jean Wilkerson Oregon Farm Bureau Federation. States that the question of water right ownership has become an increasingly important question. States that some landowners are spending valuable resources to defend the ownership of their water rights. The majority of their members feel they have purchased their farm land and perfected their water rights and have ultimate authority of how that water is managed, even if the district helped the landowner in the first place apply for the water rights and even if the district's name is on the certificate. HB 3298 would have clarified this issue but this bill does not. Landowners need to be able to make their own management decisions on their land. They cannot injure other landowners in their ability to use their water right or violate any state or federal law including the Endangered Species Act. The landowners feel that districts are not regulating entities and the farmers are paying for a valuable service in the district through the assessment process. Ownership of water rights is very clear in Oregon.
- 048 Wilkerson States that the amendments to SB 590 B would leave the ownership question for a later date but would give landowners the small advantage of establishing a common base line to start from in understanding that water rights are owned by the landowner. The Oregon Farm Bureau Federation supports SB 590 and the SB 590- 7B amendments.
- 057 Ross Day Director of Legal Affairs, Oregonians in Action (OIA). States they believe water rights are property rights. They think the case law is pretty clear that the landowners own the right to use the water. Comments that his letter to Rep. Flores has footnotes on case law that unless the legislature acts otherwise, the attorney general opinion is controlling at least with regard to state agencies. OIA supports SB 590 and the SB 590-B7 amendments.
- 078 Katie Fast Oregon Cattlemen Association. States the SB 590-B7 amendments are not anti-irrigation districts. Many of their members are patrons of irrigation districts and rely on the working relationship with other patrons within districts to get the water to the irrigated crops and pastureland. However, when districts have begun to claim co-ownership in administrative proceedings there is concern amongst the agriculture community. Water rights are property rights. The water rights increase the land values of irrigated agricultural lands. The water rights go with the land when the land is sold. States they participated in the work group that was lead by Rep. Flores. Many of the groups that were concerned with the original language in HB 3298 were able to work out agreements. The districts were never able to agree with the work group on the general premise of ownership. The Cattlemen's Association is in favor of the SB 590 B7 amendments. States they are willing to work with the interim committee and give any support they can in resolving the issue. Urges that the committee keep Section 4 because the issue needs to be resolved.
- 114 Harlan Levy Staff Attorney, Oregon Association of Realtors. Testifies in support of SB 590 B and the SB 590-B7 amendments. States they see this as a

- property rights issue. The value of the land is tied to the value of the water rights. If the ownership of the water rights is called into dispute, the value of the land could significantly decrease. They believe the water rights are owned by the landowner. This bill would create that presumption in statute if the amendment is adopted, and they support the amendment.
- 128 Rep. Barnhart Asks if a water right can be severable, other than abandonment or cancellation—can a landowner sell his right to someone else to use somewhere else.
- 133 Day Responds he believes they could. Believes it could be transferred for consideration.
- 142 Wilkerson Responds yes. Explains water rights can be transferred and there is a procedure to do that.
- 149 Rep. Barnhart Asks if there is anything in the bill that changes the ownership of water anywhere.
- 151 Wilkerson Responds there is nothing.
- 154 Rep. Monnes
Anderson Asks what happens when a landowner uses more water that they should.
- 161 Wilkerson Responds that the water right system is based on first-in-time, first-in-right—a prior appropriation system. The entitlement to water is based on when the person applied and perfected the water right. If there is a senior water right holder downstream that needs his right fulfilled, he can have the department enforce against other water right users that are more junior upstream to allow the water to go down to fill the senior water right.
- 162 Paul Cleary Comments on the complexity of water law. Ownership of various interest in water rights is inherently complex, particularly when those interests involve features such as multiple diversions, storage, delivery, use, recovery, and reuse within an irrigation district. Water development in the West has always involved partnerships—between the state and federal government, local districts, water users associations, and individual users, where the success of the whole relies on the success of the individual components.
- 214 Cleary States their interest is in strengthening the relationships. Thinks the significant level of controversy and apprehension over the matter today and on HB 3298 should be read as a signal that we have not achieved the necessary consensus to act today. We risk dividing rather than uniting the water user family and we risk long-standing relationships that are key to water user success.
- 223 Cleary Urges that the matter be referred to an interim committee to allow time to fully evaluate the potential effects on all water users, arrive at the consensus that the agency needs in order to effectively administer any change in law and to measure three times and cut once to be sure the cut unites rather than divides Oregon's water user family and in the end provide a long-term certainty and stability that they all need in order to succeed.
- 236 Cleary States they have a concern with Section 4 of the SB 590-B7

- amendments and would oppose inclusion of Section 4 of the SB 570-B7 amendments. Their office and their attorney general are very concerned that injecting a statutory presumption of ownership into the Klamath Basin adjudication at this stage of the adjudication would make the state process vulnerable to challenge from parties that will allege the department and the state cannot make impartial decisions and that we have pre-determined the status of various water rights. The question of ownership is a live issue in the Klamath Basin adjudication.
- 282 Rep. Close Asks if the department did any work on this issue on their own during the last two years.
- 283 Cleary Responds it was an issue that came up during their transfer rule advisory committee. They obviously did not resolve it, but thinks an interim committee with a broader representation would be the way to go.
- 295 Rep. Barnhart Asks if this bill does anything to change the ownership of water.
Cleary Responds they do not believe so. It opens the doors for people to argue that the department has changed the ground rules in adjudication and shifted the burden.
- 305 Rep. Barnhart Asks how the burden works now.
Cleary Responds the burden is on the claimant to defend its claim and the contestants to prosecute their contest.
- 319 Rep. Barnhart Asks what the burden of proof is.
Cleary Responds the burden of proof is that the person has developed the water pre-1909 and put it to continuous use.
- 323 Rep. Barnhart Comments that the burdens he is aware of are things like more probable than not, clear and convincing, beyond a reasonable doubt. Asks if any of those apply to this.
- 328 Cleary Responds there are none to his knowledge but will check with his attorney general.
- 330 Cleary States that Rep. Verger brought up the cranberry growers. Section 5 talks about designated beneficial uses. States there are no designated beneficial uses within statute. There are a number of references to different types of beneficial uses. People should not assume there is a master list of beneficial uses.
- 359 Brendan McCarthy Deputy Legislative Counsel. Offers to answer questions from the committee.
- 364 Rep. Barnhart Asks if there is anything in the SB 590-B7 amendments that actually changes the ownership of any water rights.
McCarthy Responds there is not.
- 370 Rep. Barnhart States that Section 4 establishes a presumption that is described in ORS 40.120. Reads ORS 40.120 and asks-if that is a procedural matter, not a substantive matter of fact. The state could change that and establish some other presumption. Asks if he is correct.
- 385 McCarthy Responds that the state can change the presumption in ORS 40.120.
- 404 Rep. Barnhart Asks if Section 4 of the SB 590-B7 amendments could be repealed

after the study and go back to the procedural rules that were described by Cleary.

- McCarthy Responds, yes. State that proceedings entered into under Section 4 of the amendment would require an effective clause as to which proceedings a change would apply to. Those that would have proceeded to final judgment would have been resolved and would be permanently affected by Section 4.
- Rep. Barnhart Asks what the effect would be on proceedings that would be underway if Section 4 were to pass.
- 428 McCarthy Responds that he believes these amendments could benefit from some clarity in that regard. The general rule is that it would be prospective only, but for what.
- 443 Rep. Barnhart Asks if there is a standard way that the court would interpret this, given the previous question.
- 446 McCarthy Responds that he cannot answer specifically. Believes it is an open issue with the SB 509-B7 amendments.
- Rep. Barnhart Asks if Cleary is raising a problem by talking about adjudication that is underway in the Klamath area.
- 455 McCarthy Responds that this potentially could apply to the Klamath adjudication.
- 460 Rep. Barnhart Asks if a fix would be easy from a drafting point of view.
- McCarthy Responds affirmatively. Advises that another bill has a savings clause and has generated 10 sets of amendments.
- 495 Rep. Barnhart Asks if this is only procedural and does not affect anybody's rights on the ground.
- McCarthy Responds that is his belief.
- 502 Chair Doyle Closes the public hearing and opens a work session on SB 590 B.

TAPE 138, A

SB 590 B – WORK SESSION

- 012 Rep. Flores **MOTION: Moves to ADOPT SB 590-B7 amendments dated 6/26/03.**
- Rep. Barnhart Comments he was not expecting the answers to his last set of questions. Wonders if the issue about where in the adjudication process something is raises any issues for anybody and whether we ought to fix that.
- 020 Chair Doyle Responds that it could be an issue for a conference committee.
- 021 Rep. Monnes Anderson States she has a real interest in making sure the landowners are protected but realizes there is symbiosis that is needed between the special irrigation districts and the landowners because if the landowner wants to transfer his water right somewhere else and that would affect some other water right landowner, then the special districts can go in and help solve the problem. With this amendment the special districts would not have that ability. States she has an issue if this causes further litigation.
- 042 Rep. Barnhart States he does not read this to affect the water rights of anyone. It just tells the court who has to prove something in the event the ownership of the water right is contested. The problem is when there is no

- contract when someone wants to change their situation. Suggest that if there is no law about that, it will have to be written at some point but it is not something the committee is going to do tonight.
- 068 Rep. Verger Comments on failed efforts to resolve problems and states that her constituents would put the Good Housekeeping stamp of approval on Section 4 with great emotion. States she also supports the interim study.
- 091 Rep. Backlund Comments on Old West fights over water rights and the controversy that continues today. States that it seems the amendments would clarify who owns the water is the landowner. States he supports the interim committee that is proposed. Believes the committee should pass the SB 590-B7 amendments.
- 107 Rep. Barnhart Comments he is concerned about the legislative record and that is the only reason he makes this comment. Believes it has been said over and over today that this does not establish ownership; it only establishes the procedure under which a court will consider who the owner might be.
- 114 Rep. Flores Comments there are processes in place that address numerous issues. Comments that a booklet from the department that explains the processes for transferring water rights. Thinks the issue here is the incremental creep, or erosion, of property rights and ownership in definition. That is what this is trying to put in place. Notes that the attorney general opinion uses legal principle and cites numerous case decisions and talks about ownership in and outside districts and inside a federal project.
- 135 **VOTE: 7-0-0**
AYE: In a roll call vote, all members present vote Aye.
The motion CARRIES.
- 141 **Chair Doyle**
Rep. Flores **MOTION: Moves SB 590 B to the floor with a DO PASS AS AMENDED recommendation.**
- 146 Chair Doyle Comments that this issue is ripe to be decided. Comments on Rep. Jenson's floor speech on HB 3298 about how this has been an issue for four sessions. To hear the administrator come in and say this is not the time is something he completely disagrees with. The department has had the time, they have not made the choices and it is now time for the legislature to make a decision that should have been decided long ago.
- 161 **VOTE: 7-0-0**
AYE: In a roll call vote, all members present vote Aye.
The motion CARRIES.
REP. FLORES will lead discussion on the floor.
- 166 Chair Doyle Closes the work session on SB 590 B and adjourns the meeting at 6:13 p.m.

EXHIBIT SUMMARY

A – SB 302, letter from Jerome Cooper, Jerome Cooper, 3 pp

B – SB 308, SB 308-B9 amendments, Steve Doell, 9 pp

C – SB 308, SB 308-B5 amendments, Rep. Doyle, 2 pp

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.

- D – SB 913, SB 913-A2 amendments, Bill Linden, 1 p**
- E – SB 913, Legislative Counsel letter, Bill Linden, 1 p**
- F – SB 913, letter from Grattan Kerans, Grattan Kerans, 2 pp**
- G – SB 913, prepared statement, Melissa Unger, 1 p**
- H – SB 916, SB 916-1 amendments, Sen. Morse, 12 pp**
- I – SB 590, prepared statement, Rep. Flores, 2 pp**
- J – SB 590, SB 590-B7 amendments, Rep. Flores, 2 pp**
- K – SB 590, attorney general opinion, Rep. Flores, 9 pp**