

SENATE COMMITTEE ON JUDICIARY

January 21, 2003 Hearing Room 343

8:00 a.m. Tapes 1 - 2

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Ginny Burdick, Vice-Chair
 Sen. Ted Ferrioli
 Sen. Charlie Ringo
 Sen. Charles Starr
 Sen. Vicki Walker

STAFF PRESENT: **Bill Taylor, Counsel**
 Craig Prins, Counsel
 Bill Joseph, Counsel
 Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: **SB 32 - Public Hearing**
 SB 35 - Public Hearing and Work Session
 SB 33 - Public Hearing
 SB 36 - Public Hearing
 SB 42 - Public Hearing and Work Session
 SB 41 - Public Hearing and Work Session
 LC 1494, LC 1495, LC 1497, LC 1498, LC 1499, LC 1501, LC 1742

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 1, A		
003	Chair Minnis	Calls the meeting to order at 8:10 a.m. and introduces the committee and staff and asks for comments from committee members.
144	Craig Prins	Committee Counsel. Announces future meetings.
186	Chair Minnis	Suggests other opportunities for informational meetings.
204	Chair Minnis	Recesses the meeting at 8:20 a.m.
206	Chair Minnis	Reconvenes the meeting and 8:37 a.m.
207	Prins	Introduces the committee rules (EXHIBIT A). Points out changes to the rules.
228	Sen. Walker	Says she prefers 48 hour notice of committee meetings, and video conferencing for testimony.
243	Chair Minnis	Reminds the committee that their meetings are televised in the building.
259	Vice Chair Burdick	MOTION: Moves to ADOPT the proposed Committee Rules 1/20/03. VOTE: 6-0
262	Chair Minnis	Hearing no objection, declares the motion CARRIED.

265 Chair Minnis Opens a public hearing on SB 32.
SB 32 - PUBLIC HEARING
267 Bill Joseph Committee Counsel. Introduces SB 32 which modifies the role and responsibilities of court visitors in protective proceedings.
301 Susan Grabe Oregon State Bar, Public Affairs Program. Introduces Dady Blake.
308 Dady Blake Oregon State Bar, Elder Law Section. Submits testimony and testifies in support of SB 32 (**EXHIBIT B**).
367 Ann Christian Oregon Judicial Department. Testifies in support of SB 32.
396 Vice Chair Burdick Closes the public hearing on SB 32 and opens a public hearing on SB 35.

SB 35 - PUBLIC HEARING

402 Bill Joseph Committee Counsel. Introduces SB 35 that requires prior court approval for payment of compensation to persons employed by fiduciary.
439 Dady Blake Oregon State Bar (OSB). Submits testimony and testifies in support of SB 35 (**EXHIBIT C**).
479 Chair Minnis Asks when this law would apply.
484 Blake Explains an instance when this bill would apply.

TAPE 2, A

034 Chair Minnis Asks who appoints the conservatorship.
036 Blake Replies that they are appointed by the court usually through a family member.
052 Chair Minnis Asks about the process.
055 Blake Explains the process.
069 Vice Chair Burdick Asks about an analysis of the burden on the courts.
074 Blake Says the request came from the court.
096 Sen. Walker Asks about expenditures.
105 Blake Explains how expenditures would be supervised.
124 Sen. Ferrioli Asks for clarification of the conservator process.
137 Blake Explains the process.
149 Sen. Ferrioli Gives his interpretation of the bill.
166 Blake Responds there is a burden of responsibility on the attorneys.
214 Sen. Ferrioli Explains that he still has questions.
222 Sen. Ringo Says he sees this bill as a safeguard.
241 Brooks Cooper Oregon State Bar (OSB), Elder Law Section. Addresses Sen. Ferrioli's question and says he believes this bill to be valuable.
283 Sen. Walker Asks why reports are annual and if semi-annual would be better.
288 Cooper Says he does not believe the reporting would make a difference.
301 Sen. Walker Relates understanding of the reporting system.
308 Cooper Replies that he agrees.
322 Chair Minnis Says it is his understanding that the law is already in place.
333 Cooper Explains his view.
344 Sen. Minnis Asks if judges don't already do this kind of work.

356	Vice Chair Burdick	Explains her understanding of the responsibilities of the attorney rather than the judge.
372	Cooper	Agrees with her understanding.
393	Sen. Ferrioli	Asks if there is a bonding process of the fiduciary.
397	Cooper	Says bonding can be required.
422	Sen. Ferrioli	Contends that the burden is on the attorney, not the judge.
453	Sen. Ringo	Says that he is concerned about the accountability issues of this bill.

TAPE 1, B

030	Chair Minnis	Reads a section of the bill and says he likes the idea of posting a bond.
048	Sen. Walker	Says from her personal experience, it is not cheap to attain a bond.
052	Cooper	Agrees.
057	Chair Minnis	Asks about a legal strategy.
059	Cooper	Clarifies the strategy.
076	Vice Chair Burdick	Says this is not the final solution, but a small check.
088	Chair Minnis	Closes the public hearing on SB 35 and opens a public hearing on SB 33.

SB 33 - PUBLIC HEARING

103	Brooks Cooper	OSB Elder Law Section. Submits testimony and testifies in support of SB 33 (EXHIBIT D).
177	Sen. Ringo	Asks if there would be any confusion on other types of financial accounts.
177	Cooper	Explains other accounts have different statutes and rules.
201	Chair Minnis	Says that we will need to get an amendment drafted.
215	Tim Martinez	Oregon Bankers Association. Says they worked with the OSB on this bill.
220	Sen. Walker	Likes the bill.
229	Sen. Minnis	Closes the public hearing on SB 33 and opens a work session on SB 35.

SB 35 - WORK SESSION

231	Sen. Minnis	Asks Sen. Ferrioli if he supports SB 35.
234	Sen. Ferrioli	Says he does not.
251	Chair Minnis	Asks if there is a list of judges requesting this bill.
255	Blake	Gives the judges names.
260	Sen. Burdick	MOTION: Moves SB 35 to the floor with a DO PASS recommendation.
		VOTE: 5-1
		AYE: 5 - Burdick, Ringo, Starr C., Walker, Minnis
		NAY: 1 - Ferrioli
267	Chair Minnis	The motion CARRIES.
		RINGO will lead discussion on the floor.
299	Chair Minnis	Closes the work session on SB 35 and opens a public hearing on SB 36.

SB 36 - PUBLIC HEARING

301	Dady Blake	Oregon State Bar, Elder Law Section. Submits testimony and testifies
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in support of SB 36 which requires professional fiduciaries to undergo annual criminal records check (**EXHIBIT E**).

331 Chair Minnis Asks who the background checks.

332 Blake Says the fiduciaries obtain their own.

344 Chair Minnis Asks what is actually in a check.

347 Blake Describes what is in the check.

361 Sen. Ferrioli Says this is an example of fiduciary overkill.

379 Chair Minnis Asks for clarification of the background check.

370 Blake Explains the extent of what a background check will show.

388 Chair Minnis Asks why a credit history is not required of the fiduciary.

390 Blake Responds.

445 Sen. Ringo Asks what a professional fiduciary is.

457 Blake Says it is someone who does this for a living, such as a social worker; someone with a healthcare background.

TAPE 2, B

020 Sen. Ringo Asks how many there are in Oregon.

023 Blake Estimates there are a hundred people.

027 Sen. Ringo Asks of any awareness of fiduciaries who have gone astray.

031 Blake Says yes, and gives examples.

050 Sen. Ferrioli Thinks a credit report and a statement of economic interest would be more valuable than a criminal update.

067 Vice Chair Burdick Asks about the cost of a background criminal check.

073 Blake Says it is fairly nominal.

082 Vice Chair Burdick Asks for clarification of what is in the criminal background check.

090 Blake Says disclosure does not necessarily preclude appointment.

101 Sen. Ferrioli Asks about the responsibility of the professional fiduciary.

105 Blake Talks about what this bill would require of the fiduciary.

106 Sen. Ferrioli Asks if it isn't already required.

115 Blake Responds that this bill could be amended.

123 Sen. Ferrioli Says he questions the sufficiency of the background check.

147 Chair Minnis Asks if there is a list of professional fiduciaries.

150 Blake Says there is a statewide network.

156 Chair Minnis Suggests that a SID number be assigned to the fiduciary.

177 Sen. Ferrioli Refers to ORS 125.240, Sec. 2, subsection A and reads its content.

184 David Yandell Oregon State Police. Says he would like the opportunity to discuss this bill further.

195 Carmen Merlo Oregon State Police. Explains the cost of background checks and what is in those checks.

211 Chair Minnis Summarizes his understanding of the issue.

218 Chair Minnis Closes the public hearing on SB 36 and opens a public hearing on SB 42.

SB 42 - PUBLIC HEARING

225 Mark Morrell Trial Lawyer. Submits testimony and testifies in support of SB 42
(EXHIBIT F).
229 Chair Minnis Closes the public hearing on SB 42 and opens a work session.

SB 42 - WORK SESSION

231 Vice Chair Burdick **MOTION: Moves SB 42 to the floor with a DO PASS
recommendation and be placed on the CONSENT CALENDAR.
VOTE: 5-0-1
AYE: 5 - Burdick, Ringo, Starr C., Walker, Minnis
EXCUSED: 1 - Ferrioli
The motion CARRIES.
SEN. MINNIS will lead discussion on the floor.**

235 Chair Minnis

SB 41 - PUBLIC HEARING

245 Mark Morrell Submits testimony and testifies in favor of SB 41 **(EXHIBIT F).**
274 Sen. Ringo Says this is a good bill.
278 Chair Minnis Closes the public hearing on SB 41 and opens a work session.

SB 41 - WORK SESSION

280 Vice Chair Burdick **MOTION: Moves SB 41 to the floor with a DO PASS
recommendation and be placed on the CONSENT CALENDAR.
VOTE: 5-0-1
AYE: 5 - Burdick, Ringo, Starr C., Walker, Minnis
EXCUSED: 1 - Ferrioli
The motion CARRIES.
SEN. MINNIS will lead discussion on the floor.**

293 Chair Minnis

294 Chair Minnis Closes the work session on SB 41.

296 Counsel Prins Introduces committee measures.

322 Vice Chair Burdick **MOTION: Moves LC's: 1494, 1495, 1497, 1498, 1499, 1501, 1742

INTRODUCED as committee bills (EXHIBITS G - M).
VOTE: 6-0**

332 Chair Minnis **Hearing no objection, declares the motion CARRIED.**

333 Chair Minnis Announces the cancellation of the meeting on 1/22/03, and adjourns
the meeting at 10:10 a.m.

EXHIBIT SUMMARY

- A – Committee Rules, submitted by staff, 2 pp**
- B – SB 32, written testimony, Dady Blake, 2 pp**
- C – SB 35, written testimony, Dady Blake, 2 pp**
- D – SB 33, written testimony, Brooks Cooper, 2 pp**
- E – SB 36, written testimony, Dady Blake, 1 p**
- F – SB 41, 42, written testimony, Mark Morrell, 2 pp**
- G – LC 1494, submitted by staff, 2 pp**
- H – LC 1495, submitted by staff, 2 pp**
- I – LC 1497, submitted by staff, 6 pp**
- J – LC 1498, submitted by staff, 1 p**
- K – LC 1499, submitted by staff, 1 p**
- L – LC 1501, submitted by staff, 4 pp**
- M – LC 1742, submitted by staff, 2 pp**