

## SENATE COMMITTEE ON JUDICIARY

March 19, 2003  
8:00 a.m.

Hearing Room 343  
TAPES 62 - 63

**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:**         **Craig Prins, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **SB 620 Public Hearing**  
                                  **SB 611 Public Hearing**  
                                  **SB 683 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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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 62, A</b>		
004	Chair Minnis	Calls the meeting to order at 8:10 a.m. and opens a public hearing on SB 620.
<b><u>SB 620 PUBLIC HEARING</u></b>		
011	Mary Botkin	American Federation of State, County and Municipal Employees (AFSCME). Testifies in support of SB 620 that requires agency employing police or corrections officer to reimburse officer for attorney fees incurred as result of criminal prosecutions and investigations against officer under specified circumstances. Submits testimony of Scott Campbell ( <b>EXHIBIT A</b> ).
023	Dwayne Skinner	Department of Corrections. Submits testimony and testifies in support of SB 620 ( <b>EXHIBIT B</b> ).
050	Chair Minnis	Asks if counsel has reviewed the "use of force" case referred to.
054	Bill Taylor	Committee Counsel. Replies that he has not, but will get copies for the committee.
061	Chair Minnis	Asks what the central issue is that needs to be fixed.
063	Skinner	Explains that fees need to be reimbursed to an officer after being exonerated.

069	Chair Minnis	Asks if Mr. Penn, Marion County District Attorney, takes these cases to a grand jury.
070	Skinner	Says he prefers them to be determined by one's peers.
073	Chair Minnis	Asks why the Portland Police Association contract language is used in this legislation.
074	Skinner	Explains that it is so that what is being asked is not something new.
082	Chair Minnis	Asks if collective bargaining would serve the purpose instead of a statutory change.
083	Botkin	Believes that public safety officials should be protected beyond what they can get at the bargaining table.
101	Chair Minnis	Asks if AFSCME has tried to bargain for a contract provision.
103	Botkin	Says, yes, it is being considered at this time.
131	Sen. Walker	Asks about the procedure when there is an allegation of excessive use of force.
140	Skinner	Explains the procedure.
150	Sen. Walker	Asks how often this happens.
153	Skinner	Says it does not often happen.
157	Chair Minnis	Asks what the internal process is in the Department of Corrections.
168	Skinner	Says there is an internal affairs board.
178	Chair Minnis	Asks who investigates the allegations.
181	Skinner	Says the Oregon State Police investigate allegations.
188	Vice Chair Burdick	Asks at what point an outside agency intervenes.
196	Skinner	Explains that it depends on the charges filed.
201	Vice Chair Burdick	Wonders what happens if the state police find no reason to pursue a charge.
206	Skinner	Says there could be administrative sanctions applied.
211	Vice Chair Burdick	Asks at what point a lawyer is needed.
214	Skinner	Explains it would be when a criminal charge is made.
224	Vice Chair Burdick	Wonders about a charge less than criminal.
234	Skinner	Says anytime the Miranda Rights are read, a lawyer is needed.
247	Vice Chair Burdick	Asks if the bill should only address officer-involved shootings.
253	Botkin	Expresses concern that excessive force could be the issue and it should be covered as well.
290	Chair Minnis	Explains that excessive force would be handled by internal affairs.
295	Chair Minnis	Closes the public hearing on SB 620 and opens a public hearing on SB 611.

**SB 611 PUBLIC HEARING**

313	Cindy Robert	American Institute of Architects (AIA). Introduces John Baker. Submits testimony and testifies in support of SB 611 that imposes pleading requirements for claim against architect, registered landscape architect, professional engineer or professional land surveyor if claim arises out of provision of services within course and scope of activities for which person is licensed ( <b>EXHIBIT C</b> ).
374	John Baker	Board Member, AIA. Testifies in support of SB 611. Explains the bill gives notice to design professionals of standards expected.
433	Robert	Explains the footnotes on the bill ( <b>Exhibit C</b> ).
466	Vice Chair Burdick	Asks about the technicality of cases dismissed.
481	Baker	Explains the responsibility of the parties involved.

**TAPE 63, A**

034	Sen. Ringo	Expresses his concerns about other professions that might be, or want to be, included in this legislation.
056	Robert	Discusses the certificate of merit. Says that this statute applies to ORS 30.785 that is already specific to architects and engineers.
075	Chair Minnis	Talks about the architectural profession compared to other professions.
084	Sen. Ringo	Wonders if there is something about the profession that causes frivolous lawsuits.
093	Robert	Points out the study done on professional liability claims against architects and engineers that is included in <b>Exhibit C</b> .
101	Baker	Clarifies further the services provided by architects and engineers.
137	Sen. Ringo	Asks what proof is necessary and when to file a claim.
145	Baker	Explains the rule that applies and the process.
163	Sen. Ringo	Says he would want to scale back some of the requirements.
178	Chair Minnis	Asks for clarification of how notice is handled.
186	Sen. Ringo	Explains procedure in federal and state civil courts.
210	Robert	Explains that this bill is not a model of what other states have done.
202	Sen. Ringo	Clarifies his stand on the bill as it is written.
238	Vice Chair Burdick	Asks if including a requirement of certification that a professional had been consulted would be helpful.
264	Baker	Says, yes, that is what this bill is trying to accomplish.
302	Vice Chair Burdick	Asks if this bill would apply when an individual architect is sued.
309	Baker	Says this bill would not apply in that circumstance.
345	Chair Minnis	Recesses the meeting at 9:00 a.m.
354	Chair Minnis	Reconvenes the meeting at 9:15 a.m. and re-opens the public hearing on SB 611.
362	Richard Lane	Oregon Trial Lawyers Association. Submits testimony and testifies in opposition to SB 611 ( <b>EXHIBIT D</b> ). Says he is willing to come back at a later time.
388	Chair Minnis	Asks that a work group be formed to work on some modifications to the proposed legislation.
398	Bill Joseph	Committee Counsel. Says he will coordinate the work group.
420	James Marvin	Asks to be a member of the work group.
428	Chair Minnis	Closes the public hearing on SB 611 and re-opens the public hearing on SB 620.

**SB 620 PUBLIC HEARING****TAPE 62, B**

005	Mary Botkin	AFSCME. Says that after consulting with members, they have agreed to narrow the bill.
033	Chair Minnis	Closes the public hearing on SB 620 and opens a public hearing on SB 683.

**SB 683 PUBLIC HEARING**

056	Kathleen Dewoina	Coldwell Banker Mt. West Real Estate. Testifies in support of SB 683 that authorizes buyer to recover as damages three times amount of earnest money deposited pursuant to owner's sale agreement or earnest money agreement if sale fails to close and seller unreasonably refuses to release earnest money.
101	Chair Minnis	Asks how one would define "unreasonably refuses" as written in the bill.
115	Dewoina	Explains how that would apply in an earnest money contract.
130	Sen. Walker	Asks where earnest money is deposited.
133	Dewoina	Says it is deposited with a title company.

136	Sen. Walker	Asks how often this problem comes up.
136	Dewoina	Says it doesn't happen often, but it is damaging to buyers with little money to forfeit.
151	Sen. Walker	Asks what organizations she belongs to, and if they have taken a position on this bill.
154	Dewoina	Lists the organizations to which she belongs, and says none have taken a position on this bill.
159	Vice Chair Burdick	Asks why a seller would not agree to release earnest money, if they know it will stay with the title company.
164	Dewoina	Explains that some sellers just choose to be unreasonable.
198	Sen. Ferrioli	Says he has a number of issues with this bill.
251	Chair Minnis	Says the wording is unclear as to fault.
270	Sen. Ferrioli	Gives a scenario when a failed sale is the buyers fault and says there is no protection for the seller.
290	Sen. Ringo	Explains what action would be taken in the example given.
301	Dewoina	Explains that conditions of a sale are always in writing.
339	Matt Farmer	Oregon Association of Realtors. Testifies in opposition to SB 683. Says the bill is asymmetrical and unreasonable.
444	Sen. Walker	Asks how rare this problem is, and what is being done to fix the earnest money dispute.
455	Farmer	Says earnest money disputes are fairly common, and what is uncommon is a party not releasing it out of spite. Explains what remedy is being worked on by the Oregon Association of Realtors.
501	Chair Minnis	Closes the public hearing on SB 683 and adjourns the meeting at 9:50 a.m.

## **EXHIBIT SUMMARY**

**A – SB 620, written testimony of Scott Campbell submitted by Mary Botkin, 1 p**

**B – SB 620, written testimony submitted by Dwayne Skinner, 14 pp**

**C – SB 611, written testimony submitted by Cindy Robert, 16 pp**

**D – SB 611, written testimony submitted by Richard Lane, 1 p**

**E – SB 620, printed material submitted by staff, 18 pp**