

# SENATE COMMITTEE ON JUDICIARY

March 25, 2003  
8:00 a.m.  
71

Hearing Room HR 343  
Tapes 69-

**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**  
                                  **Bill Joseph, Counsel**  
                                  **Ann Martin, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **SB 100 Public Hearing**  
                                  **SB 487 Public Hearing and Work Session**  
                                  **SB 304 Public Hearing and Work Session**  
                                  **SB 617 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>69, A</b>		
005	Chair Minnis	Calls the meeting to order at 8:10 a.m. Opens a public hearing on SB 100.
<b><u>SB 100 PUBLIC HEARING</u></b>		
010	Philip Schradle	Department of Justice. Submits testimony and testifies in support of SB 100 which establishes rules and procedures for transmission of record to court when petition is filed in circuit court challenging order other than contested case issued by state agency. Discusses -3 amendments ( <b>EXHIBITS A &amp; B</b> ).
101	Sen. Ringo	Asks Mr. Schradle for some examples of the most common types of orders other than in a contested case.
107	Schradle	Explains that it can take a variety of forms.
131	Sen. Ringo	Asks how it would end up in court.
130	Schradle	Responds that the next step would be for that person to file a petition in circuit court for judicial review. Says that is the process that's in place right now.
157	Sen. Burdick	Asks if there could be a case where the evidence is presented to the agency and the agency decides not to make it part of the record.
160	Schradle	Answers, no. Says that the agency is required to forward the record on to the circuit court.
165	Sen. Burdick	Asks if there is any provision for the agency to say that the evidence is irrelevant and that they are not making it part of the record.
167	Schradle	Concludes that the reviewing court determines if the agency

179	Stephen Bushong	correctly determined if the evidence is relevant or irrelevant. Oregon Department of Justice. Submits testimony and testifies in support of SB 100 ( <b>EXHIBIT C</b> ).
283	Bushong	Discusses cases.
343	Sen. Burdick	Asks what happens during a contested case hearing and who gets to request that.
348	Bushong	Explains the process of a contested case hearing.
359	Sen. Burdick	Wonders if there is any process that provides an avenue for people to get a contested case hearing.
374	Bushong	Stresses that Oregon Law establishes the right to a contested case hearing in a number of statutes.
391	Sen. Burdick	Comments on contested case hearings for major cases.
400	Bushong	Agrees that it would be a different kind of record. Adds that in the <i>GASP</i> case there was a public process, but it wasn't a contested case process.
414	Sen. Burdick	Asks if there had been a contested case process involved in the <i>GASP</i> case, could they have saved money.
420	Bushong	Replies that he does not have the figures. Says that you could have an argument either way that it would or would not save money.
<b>70, A</b>		
003	Bushong	Continues his testimony in support of SB 100.
021	Sen. Burdick	Expresses her concerns for major cases that do not go through the contested case or circuit court process. Asks if Mr. Bushong has thought about ways to address that.
034	Bushong	Explains that did happen before <i>Norden</i> . Answers that requiring a contested case hearing in every instance is a significant commitment of resources.
058	Sen. Burdick	Asks about <i>PERS</i> case.
065	Bushong	Explains that in the <i>PERS</i> instance, the review would still be before the Circuit Court.
076	Sen. Ringo	Inquires about discovery opportunities before an agency.
081	Bushong	Responds that when a petition for review is filed in circuit court, that triggers the normal discovery rules.
092	Sen. Ringo	Wonders if at the agency level, if there is not the right to issue a subpoena to third parties.
095	Bushong	Says that is right when there is not a contested case process required by law.
102	Sue Oliver	Oregon Department of Environmental Quality. Submits testimony and testifies in support of SB 100 ( <b>EXHIBIT D</b> ).
158	Milton Jones	Attorney, Associated Oregon Industries. Submits testimony and testifies in support of SB 100 ( <b>EXHIBIT E</b> ).
256	Sen. Ringo	Says he assumes that the administrative law judge is making factual determinations. Asks if that is correct.
261	Jones	Answers, yes.
263	Sen. Ringo	Wonders if there are circumstances where the public would think that someone in the agency has a certain bias that a circuit court judge would not have.
271	Jones	Says that's possible and that is why a person would withhold information from the agency.
286	Sen. Ringo	Asks what's the standard for reviewing factual errors at the appellate level.
290	Jones	Explains standard review.
297	Sen. Ringo	Mentions that he wants to understand the process a little better.

		Asks if the findings of fact by an agency have to be supported by the record.
306	Jones	Answers, that is correct.
316	Sen. Burdick	Asks what Oregon standard is for overturning agency decision.
322	Jones	Says that he believes that the Oregon standard is whether or not the decision by the agency is supported by the record.
333	Sen. Burdick	Thinks that it would be easier to overturn an agency decision by the Oregon standard than by federal standard.
340	Jones	Concludes his testimony in support of SB 100.
363	Janice Krem	Oregon Administrative Law Section, Oregon State Bar. Submits testimony and testifies in opposition to SB 100 ( <b>EXHIBIT F</b> ). Expresses her concerns about the -3 amendments ( <b>Exhibit A</b> ).
<b>69, B</b>		
002	Krem	Continues her testimony in opposition to SB 100.
031	Sen. Burdick	Asks where administrative law judges come from.
033	Krem	Answers that they are generally employed by the hearing officer panel. Provides example.
071	Chair Minnis	Asks for clarification on why a contested case would be sent to the circuit court.
077	Krem	Says that there are a variety of reasons why they would do that.
078	Chair Minnis	Asks why an agency would hold a contested case hearing.
094	Krem	Says that an agency does not have to hold a contested case hearing.
101	Sen. Ringo	Asks if Ms. Krem wants everyone to be able to have a right to a contested case hearing.
104	Krem	Responds that she thinks it should be an option, but this bill does not offer enough due process.
111	Sen. Ringo	Asks if there are other sets of disputes resolved in other ways than by a contested case hearing.
114	Krem	Says that she doesn't think that's an accurate description because an agency does not have to give a contested case hearing.
119	Sen. Ringo	Feels she is not satisfied with the current situation.
123	Krem	Responds that is correct because this bill does not address a proceeding that is enough like a contested case proceeding.
142	Sen. Ringo	Says that they are not envisioning a whole new process. Asks where the Administrative Law Section was on this issue prior to the <i>Norden</i> case.
147	Krem	Explains that the <i>Norden</i> case was expressed in an opinion and that was the status quo.
154	Chair Minnis	States that he is not happy with the Oregon State Bar this session. Closes the public hearing on SB 100 and opens a public hearing on SB 487.

**SB 487 PUBLIC HEARING**

176	Sen. Rick Metsger	Senate District 26. Submits testimony and testifies in support of SB 487 ( <b>EXHIBIT G</b> ).
200	Craig Prins	Committee Counsel. Introduces SB 487 which adds animal control officer to crime of assaulting public safety officer.
210	Becky Hoffman	Deputy, Hood River County Animal Control. Submits testimony and testifies in support of SB 487 ( <b>EXHIBIT H</b> ).
331	Sen. Burdick	Asks what happened to the woman that assaulted her.
342	Hoffman	Answers that a jury let her off and explains.
359	Susan Russell	Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 487.
368	Sen. Ringo	Asks if expanding the definition of "animal control officer" may

383 Sen. Ferrioli have any other ramifications other than what has been discussed. Recalls that past legislation increased the penalty for assaulting an official in a sporting event. Wonders why Ms. Russell would not want to protect a safety officer.

394 Russell Explains that their concern is that at some point a line needs to be drawn between categories.

384 Jim Dohr Code Enforcement Specialist, Albany Police Department. Submits testimony and testifies in support of SB 487 (**EXHIBIT I**).

**70, B**

003 Dohr Continues his testimony in support of SB 487.

034 Chair Minnis Closes a public hearing on SB 487 and opens a work session on SB 487.

**SB 487 WORK SESSION**

037 Sen. Ferrioli **MOTION: Moves SB 487 to the floor with a DO PASS recommendation.**

**VOTE: 5-0-1**

**EXCUSED: 1 - Ringo**

038 Chair Minnis **Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.**

041 Chair Minnis Closes the work session on SB 487 and opens a public hearing on SB 304.

**SB 304 PUBLIC HEARING**

049 Craig Prins Committee Counsel. Introduces SB 304 which expands basis for waiving youth to be prosecuted as adult.

054 Karen Brazeau Director, Oregon Youth Authority. Testifies on SB 304. Discusses her concerns.

087 Doug Harcleroad Lane County District Attorney. Testifies in support of SB 304.

088 Scott Heiser Benton County District Attorney. Testifies in support of SB 304.

089 John Fisher Polk County District Attorney. Testifies in support of SB 304.

090 Amy Holmes Hehn Multnomah County District Attorney. Testifies in support of SB 304.

091 Brad Berry Yamhill County District Attorney. Testifies in support of SB 304.

147 Sen. Walker Asks what happens if they go over their cap (beds).

150 Berry Answers that if they are at their cap then they will have to find alternatives.

203 Susan Russell Oregon Criminal Defense Lawyers Association. Testifies in support of SB 304.

212 Chair Minnis Closes the public hearing on SB 304 and opens a work session on SB 304.

**SB 304 WORK SESSION**

211 Sen. Burdick **MOTION: Moves SB 304 to the floor with a DO PASS recommendation.**

**VOTE: 6-0**

215 Chair Minnis **Hearing no objection, declares the motion CARRIED. SEN. FERRIOLI will lead discussion on the floor.**

222 Chair Minnis Closes the work session on SB 304 and opens a public hearing on SB 617.

**SB 617 PUBLIC HEARING**

225 Hardy Myers Attorney General. Restitution Task Force. Testifies in support of SB 617 which requires restitution in all cases in which victim suffers injury, loss or damage (**EXHIBIT K**).

235 Connie Gallagher Department of Justice. Testifies in support of SB 617

335	Senator Kate Brown	Senate District 21. Testifies in support of SB 617.
364	Arwen Bird	Executive Director, Survivors Advocating For an Effective System (SAFES). Submits testimony and testifies in support of SB 617 <b>(EXHIBIT L)</b> .
428	Sen. Ringo	Asks if the person that injured her has the ability to pay restitution.
433	Bird	Answers that her case is unusual. Says that he has had the means to pay, but the state has not pursued him and that he has currently filed for bankruptcy.
<b>71, A</b>		
011	Steve Doell	Crime Victims United. Testifies in support of SB 617.
050	Helen Smith	Chief Deputy District Attorney, Multnomah County District Attorney's Office. Testifies in support of SB 617 <b>(EXHIBIT M)</b> .
074	Diane Rea	Board of Parole. Says that she will come back later to testify in support of SB 617.
076	Myers	Explains proposed amendments to SB 617 that they are working on.
088	Sen. Ferrioli	Says that he thinks the policy issue is persuasive.
096	Sen. Ringo	States that he wants to study some issues of this bill later.
108	Susan Russell	Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 617. Says they oppose it as it is currently drafted.
162	Chair Minnis	Closes the public hearing on SB 617 and adjourns the meeting at 10:10 a.m.

## **EXHIBIT SUMMARY**

- A – SB 100, -3 amendments, dated 3/11/03, submitted by staff, 5 pgs.**
- B – SB 100, written testimony, submitted by Phillip Schradle, 2 pgs.**
- C – SB 100, written testimony, submitted by Stephen Bushong, 1 pg.**
- D – SB 100, written testimony, submitted by Sue Oliver, 1 pg.**
- E – SB 100, written testimony, submitted by Milton Jones, 2 pgs.**
- F – SB 100, written testimony, submitted by Janice Krem, 4 pgs.**
- G – SB 487, written testimony, submitted by Senator Rick Metsger, 1 pg.**
- H – SB 487, written testimony, submitted by Becky Hoffman, 3 pgs.**
- I – SB 487, written testimony, submitted by Jim Dohr, 2 pgs.**
- J – SB 487, written testimony of Jim Tomson, submitted by staff, 1 pg.**
- K – SB 617, written testimony, submitted by Connie Gallagher, 2 pgs.**
- L – SB 617, written testimony, submitted by Arwen Bird, 2 pgs.**
- M – SB 617, written testimony of Michael Schrunk, submitted by staff, 1 pg.**
- N – SB 617, written testimony of Vic Falgout, submitted by staff, 2 pgs.**