

SENATE COMMITTEE ON JUDICIARY

June 10, 2003
8:00 AM

Hearing Room 343
Tapes 158 – 159

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 Joseph, Counsel**
 Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2494A Public Hearing**
 HB 2498A Public Hearing

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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 158, A		
003	Chair Minnis	Calls the meeting to order at 9:00 a.m. and opens a public hearing on HB 2494A and HB 2498A.
<u>HB 2494A & HB 2498A PUBLIC HEARING</u>		
009	Rep. Max Williams	House District 35. Introduces HB 2494A that requires disclosure of expert witnesses in civil actions unless directed by court or agreed to by stipulation, and HB 2498A that sets rate of interest on judgments at nine percent per annum or at weekly average one-year constant maturity Treasury yield for the week preceding date of entry of judgment.
108	Sen. Ferrioli	Expresses concern about disclosure of what an expert witness is paid.
114	Rep. Williams	Comments on the issue of expert witness pay disclosure.
132	Sen. Ringo	Asks where the interest rate of the Federal Treasury Department (FTD) is found.
138	Rep. Williams	Details the availability of the information on the FTD website.
146	Russ Lipetzky	Attorney; Salem, Oregon. Testifies as neutral on HB 2494A, with reference to proposed conceptual amendments (EXHIBIT A).
185	Sen. Ringo	Asks whether Mr. Lipetzky's concerns were raised on the House side.
190	Lipetzky	Explains that the family law community was unaware of the bill until late in the process. Offers testimony regarding HB 2498A.
210	Committee	Discusses the Department of Justice role in determining interest rates.
220	Sen. Ringo	Asks whether Mr. Lipetzky has a possible solution.
225	Lipetzky	Provides that the committee should draft amendments which would exclude domestic relations cases.

227	Sen. Ringo	Offers his interpretation of the issue of concern.
230	Lipetzky	Acknowledges, and further outlines his concerns and possible solutions.
233	Chair Minnis	Asks why the court could not set the interest rate as a part of the judgment.
235	Lipetzky	Points out the inconsistency of the rates which would be set.
250	John Phillips	Oregon Department of Revenue. Submits testimony and testifies as neutral on HB 2498A (EXHIBIT B). Proposes an amendment which would narrow the effects of the bill to exclude certain property cases.
260	Chair Minnis	Asks whether Revenue vented their concerns on the House side.
265	Phillips	Explains they did not know of the bill until it had left the House.
270	Diane Belt	Oregon Association of County Tax Collectors. Testifies regarding HB 2498A.
290	Mark Comstock	Oregon State Bar Debtor/Creditor Section. Submits testimony and testifies in opposition to HB 2498A (EXHIBIT C).
315	Sen. Ringo	Clarifies the court's role in determining the judgment rate.
320	Comstock	Comments on the court's acceptance of treasury yields, and outlines the concerns for the changing interest rate. Points out the difficulty in deciding which federal interest rate to use.
345	Chair Minnis	Asks how the Federal Courts identify the interest rate to use.
350	Comstock	Explains the procedure at the Federal level. Believes it would be a burden on the state courts.
425	Chair Minnis	Asks if he testified at the public hearings in the House committee.
430	Comstock	Indicates that he did not testify before the House committee.
440	Sen. Ringo	Clarifies Mr. Comstock's interpretation of the bill.
455	Comstock	Further offers his interpretation of the bill.
TAPE 159, A		
008	Sen. Ringo	Asks how long the interest rate has been nine percent.
013	Comstock	Comments on the recent history of the interest rate.
017	Scott Gallant	Oregon Medical Association. Testifies in support of HB 2494A and HB 2498A. Discusses the work group that crafted the bills presented.
050	Mike Crew	Attorney. Testifies in support of HB 2494A and HB 2498A. Explains where the interest rate in question can be found.
099	Sen. Walker	Asks for Mr. Crew's response to prior testimony heard on HB 2498A.
107	Crew	Comments on the history of HB 2498A, explaining the bill has broadened in scope since its start.
114	Sen. Walker	Asks whether Mr. Crew has an objection to accommodating those concerns addressed today.
121	Crew	Points out that ideally there would be one interest rate which would bind all parties.
125	Sen. Walker	Comments on the fairness issue of the interest rate.
125	Sen. Ringo	Asks about the incentive issue.
129	Crew	Points out there is an incentive to pay off a judgment due to its affect on credit ratings and future financing availability.
137	Sen. Ringo	Asks whether by lowering the interest rates, there would be more incentive to appeal the judgment, drawing out the payment.
143	Crew	Acknowledges the possibility, but comments on the costs of the appeals process.
160	Sen. Ringo	Further questions whether this measure would increase the number of appeals with marginal merit.

170	Crew	Concurs, commenting on the possibility of more appeals.
180	Sen. Ringo	Clarifies that the witness acknowledges that by lowering the interest rates there would be more appeals.
185	Crew	Indicates that he could not know how many appeals would be filed.
190	Jim Dorigan	CEO, Northwest Physicians Mutual. Testifies in support of HB 2494A and HB 2498A.
236	Sen. Walker	Asks for further clarification regarding the Governor's Task Force as mentioned in Mr. Dorigan's testimony.
241	Dorigan	Comments on the makeup and function of the task force.
262	Sen. Walker	Clarifies that the solutions offered by the task force were not unanimous.
266	Dorigan	Explains how the issues were dealt with in the task force, and points out the solutions which manifested into HB 2494 and HB 2498.
275	Sen. Walker	Asks whether any of the recommendations were passed on to the Governor.
279	Dorigan	Points out the task force finished when Governor Kulongoski took office.
284	Mark Morrell	Oregon State Bar. Introduces Everett Jack. Testifies as neutral on HB 2494A.
321	Chair Minnis	Asks about tampering with an expert witness.
330	Morrell	Says that risk exists, and outlines how this could happen.
340	Chair Minnis	Asks how other states deal with this issue.
345	Morrell	Discusses how other states and the federal court deal with the issue.
361	Chair Minnis	Wonders about the credibility of a witness.
381	Morrell	Comments on the credibility issue.
436	Sen. Walker	Asks if the bill doesn't also require disclosure of trials which the experts have recently testified in.
445	Morrell	Acknowledges, and explains the importance of trial history of expert witnesses.

TAPE 158, B

041	Sen. Walker	Questions whether an expert witness could be disqualified if they were unable to remember every trial they had been in.
047	Morrell	Allows that is certainly a possibility, and further discusses.
053	Bill Joseph	Committee Counsel. Clarifies the disclosure policy.
070	Morrell	Continues his testimony.
084	Everett Jack	Oregon State Bar. Testifies as neutral on HB 2494A.
164	Morrell	Points out that expert witness costs are not recoverable.
183	Chair Minnis	Indicates his wish to hear the remaining testimony on the two bills at the next meeting.
185	Sen. Walker	Expresses her wish to have the witnesses give testimony at the next meeting.
190	Chair Minnis	Closes the public hearing on HB 2494A, and HB 2498A. Adjourns the meeting at 10:10 a.m.

The following prepared testimony is submitted for the record without public testimony for HB 2494A, and HB 2498A.

William Gaylord	Submits written testimony (EXHIBIT D) .
David Miller	Submits written testimony (EXHIBIT E) .

EXHIBIT SUMMARY

- A – HB 2494A, conceptual amendments, Russell Lipetzky, 1 p.**
- B – HB 2498A, written testimony, John Phillips, 1 p.**
- C – HB 2498A, written testimony, Mark Comstock, 4 pp**
- D – HB 2494A, written testimony, William Gaylord, 2 pp.**
- E – HB 2494A, written testimony, David Miller, 3 pp.**