

OREGON LAW COMMISSION

April 24, 2001

Hearing Room 343

3:00 p.m.

Tapes 8 - 9

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Sen. Kate Brown, Vice Chair

Steve Blackhurst

Chief Justice Wallace P. Carson, Jr.

Jeff Carter

Sandra Hansberger

Prof. Hans Linde

Greg Mowe

Attorney General Hardy Myers

Dean Symeon Symeonides

Prof. Bernie Vail

Prof. Dom Vetri

Rep. Max Williams

STAFF PRESENT: David Kenagy, Executive Director

Michelle Mhoon, Assistant to the Executive Director

Shirley Gunter, Administrative Assistant

MEASURE/ISSUES HEARD: Approval of Minutes for February 22, 2001 Commission Meeting. Executive Director's Report

Recommendation of Program Committee/Saving Statute

Recommendation of the Program Committee/Eminent Domain

Oregon Law Commission Bill Status Report

Section by Section Analysis on HB 2611

Conflicts Law Applicable to Contracts Comments

Testimony on SJR 39

Testimony on HB 3165 and HB 3374

Post-Report Procedures Memo

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 8-A		

006 Chair Shetterly Meeting was called to order at 3:30 p.m. The Chair asks for approval of the February 22, 2001 Commission Meeting Minutes. There being no objections or revisions the minutes are approved. Apologizes for the late start and the change in rooms. The room assigned to the Commission was still in use by a legislative hearing committee so it became necessary to move this meeting to Hearing Room E. The chair advises that Commissioner Hardy Myers needs to attend another meeting so will be leaving at 4:00 and asks that his item be first on the agenda after the Executive Director's report

024 David Kenagy Reports on changes occurring with the Law Commission staff and gives highlights on some legislative requests for Law Commission assistances. Michelle Mhoon, Assistant Executive Director, is leaving to join the law school staff at Willamette University to teach Legal Research & Writing and to study for the Oregon Bar.

035 Chair Shetterly Acknowledges the many contributions Michelle has made to the Commission and states she will be sorely missed. The Chair reviewed Michelle's experience, her wise and patient advice to the Executive Director and Commissioners, her great communication, organizational and legal support. Delegates to the Executive Director to present Michelle a token of our esteem and friendship, which we hope, will continue in the years to come.

081 David Kenagy Presents Michelle with a framed picture of the State Capitol Building. Also announces that Shirley Gunter will be retiring at the end of May. He recognizes all the good work Shirley has contributed over the past ten months to the Commission and itemized many of the minute details with which she served the Commission. Presents Shirley with a framed picture of the State Capitol building as well. Introduces Linda Waugh, who will be taking Michelle's place as the Assistant to the Director. Linda comes from the office of the Legislative Counsel with the blessing of Greg Chaimov. Gives a brief overview of Linda's qualifications.

161 Chair Shetterly Directs Commissioners to jump down to Item #4 on the agenda and asks Hardy Myers to present this item.

169 Hardy Myers States that there are two action items from the Program Committee that need addressing. The first is behind Tab 7 and is a recommendation that originated from Professor Holland at the University of Oregon Law School in relation to clarifying ORS 12.220, a "Saving Statute". **(EXHIBIT A) Memorandum written by Extern Student, Alexa Crutchfield, dated April 16, 2001 re Recommendation of Program Committee/Savings Statute.** An analysis is included in the Report so at this time I would make a motion for the formation of the Work Group in accordance with this recommendation.

179 Chair Shetterly Asks for discussion and/or questions. Acknowledges Justice Carson.

181 Wallace Carson Explains that he fully intends to support this and though knowing that Maury Holland is the distinguished Director of the Oregon Council on Court Procedures, wonders if there is a history of why it would fit in court procedures and if that is why it was coming to us.

185 Chair Shetterly Comments that he does not know and asks for clarification.

186 David Kenagy Comments that the Savings Statute is in ORS 12.220 and not in the ORCP and so technically it is outside of their jurisdiction. Suggests that's one way of looking at it.

192 Chair Shetterly Asks for questions or discussion.

193 Hans Linde Asks if it would it be wise to ask the council to recommend something to us even though it happens to be in the statutes?

199 David Kenagy In forming the Work Group, particularly with Maury Holland, the expertise of the Council on Court Procedures will be fully available. It would be prudent to bring their expertise to bear.

202 Hans Linde Thinks it may be prudent but he was focusing on another point.

203 Chair Shetterly Comments that we have a natural bridge or liaison between the two.

206 Hardy Myers Moves that we approve the formation of the Savings Statute Work Group and appoint Commissioner Dom Vetri as Chair, Professor Maury Holland as Reporter and delegate the task of selecting Work Group members for the Savings Statute Work Group to the Chair of the Commission, the Chair of the Work Group and the Reporter.

211 Chair Shetterly States that Commissioner Hardy Myers moves to approve the formation of the Savings Statute Work Group, appoint Commissioner Dom Vetri as the Chair, appoint Professor Maury Holland as Reporter for the Work Group and delegates the task of selecting Work Group members for the Saving Statute Work Group to the Commission Chair, the Chair of the Work Group and the Reporter for the Work Group. Asks for any objections and hearing none, the Motion carries for the formation of the Saving statute Work Group with Commissioner Dom Vetri as the Chair, Professor Maury Holland as the Reporter and I will work with the Chair and Reporter to round out the membership of the Work Group.

Vote: 13-0

So ordered.

227 Hardy Myers Explains the other half of the Program Committee's recommendation behind Tab 8, **(EXHIBIT B) Memorandum from Extern Student,**

Kristin Flickinger dated April 13, 2000 re: Recommendation of Program Committee/Eminent Domain Code, that originated with a proposal from Commissioner Greg Mowe for the formation of a Work Group to address ORS Chapter 35, the Oregon Eminent Domain Code. Commissioner Mowe reviewed for the Program Committee several provisions of the current code, which are either unclear or might benefit from modification. Those are inventoried in the report that appears behind Tab 8. Asks for a motion or discussion.

239 Chair Shetterly
240 Hardy Myers
Suggests that we take a motion and open it for discussion.
Moves to approve the formation of the Eminent Domain Code Revision Work Group, appoint Greg Mowe as Chair and delegate the task of selecting a Reporter and Work Group Members to the Chair of the Commission and the Chair of the Work Group.

244 Chair Shetterly
States that Commissioner Myers moves that we approve the formation of the Eminent Domain Code Revision Work Group, appoint Commissioner Mowe as the Chair of the Work Group, delegate the task of selecting a Reporter and Work Group Members for the Work Group to the Chair of the Commission and the Chair of the Work Group. Asks for discussion.

248 Greg Mowe
There was an amendment in 1997 to the Eminent Domain Code, which fixed some problems but did not address other statutory language leaving ambiguities that are noted in the memo; there was an attempt to fix them in 1999 but the legislation got bogged down and ultimately did not pass. These discrepancies have been noted in prior legislation. There is a list of items; the first two items are technical and merely require people to agree on them. However, four more items could be more substantive so it is my intent to assemble a Work Group that consists of Practitioners and Governmental Representatives on both sides of Eminent Domain issues to see if there is a broader consensus. If not, I propose a fix of the technical problems and if there is a consensus perhaps we could go further and address some issues such as pre-condemnation surveys that are hanging out there with a lot of inconsistent law.

272 Chair Shetterly
Asks for further discussion. There is none.
States that there is a motion before us and asks if there are any objections. Hearing none the motion is carried.

Vote: 13-0

275 Justice Carson
So ordered.
Suggests to the Chair and the Chair of the Work Group that Kathleen Beaufait who is a longtime worker on the Legislative Counsel, did the last revisions about 30 years ago on Eminent Domain be asked to serve, if available and in agreement to serve.

284 Chair Shetterly
Comments that the formation of the Eminent Domain Revision Work Group is approved and Commissioner Mowe is appointed as Chair, the selection of Recorder and members of the Work Group will be delegated to Commissioner Mowe and the Commission chair with a notation of Kathleen Beaufait's name being placed into nomination.

296 David Kenagy
Asks if there is anything else from the Program Committee and hearing that there is nothing at this time, returns to Item 3 to ask Dave Kenagy for a report on the Bill Status.
Informs that Michelle Mhoon is to report to the Commission on the Bill Status. Refers to Tab 4 (**EXHIBIT C**), **Oregon Law Commission Bill Status Report**, which includes a brief summary on each of the bills. Although things are changing quickly updates as recent as two hours ago will be included in the report.

302 Michelle Mhoon
Gives a brief summary because what happened up to two hours ago can be found in the report. The short summary is that the Public Body Bill HB 2425 has been signed by the Governor; this Bill is all the way through the system. The Judicial Review Procedures Act, HB 2246, is deferred until the next legislative session. The other eight Bills have passed the House and are waiting for Hearings in the Senate Judiciary Committee. The Conflicts Bill had a Hearing today and was passed out of Senate Judiciary Committee to the floor of the Senate. Another hearing for one of the Juvenile Bills is scheduled on Thursday, April 26, for HB 2392 – Child Support Obligations Bill. The other six are waiting for hearings before the Senate Judiciary Committee.

337 Chair Shetterly
Refers to the two action items under the Bill Status. The Juvenile Code Revision Work Group approved a Section by Section Analysis on HB 2611-1 during the March meeting of the Juvenile Work Group and we would like the Commission to adopt that Report as a Commission Report. Asks if Senator Brown would make a motion on that that Report.
Asks if Michelle is referring to the Report behind Tab 5 (**EXHIBIT D**), **Section by Section Analysis on HB 2611?**

348 Michelle Mhoon
339 Chair Shetterly
340 Sen. Kate Brown
Confirms that Tab 5 (**EXHIBIT D**-described above) is correct.
Recognizes Senator Brown.
Moves that we adopt the Section-by-Section Analysis of HB 2611,

the Oregon Rules of Juvenile Court Procedure, and that the Section-by-Section Analysis is presented to the Legislative Assembly subject to non-subjective corrections.

345 Chair Shetterly States that Commissioner Brown moves that we adopt the Section-by-Section Analysis of HB 2611, as the Oregon Rules of Juvenile Court Procedures, and the Section-by-Section Analysis is presented to the Legislative Assembly subject to non-substantive corrections. Again, it is the Report behind Tab 5 (EXHIBIT D-described above) in your notebook. Asks for discussion on the Motion. (discussion follows).

364 Hans Linde Comments that this was not before the House and asks if it will catch-up with the Bill in the Senate. (It was confirmed that that is correct.)
389 Sen. Kate Brown Explains that at the top of page 4 the word "it" needs to be removed. Discusses that HB 2611 has been through objections from the bench in a couple of different categories. One group saying "... they didn't think we needed any more procedures in juvenile court ..." to "... this is really going to complicate matters...". The Work Group met and addressed most of the concerns and now the Judges, who had concerns about the Bill, are now supportive (or willing to be quiet) because they do not know a lot about Juvenile Court processes. Thanks were extended to Judge Darling who was the intermediary between the Judges, Circuit Court Judges and the Work Group.

419 Bernie Vail Explains that on page 6, subsection 4 at the top, in the third line-the word "most" might be vagrant and could be removed. These are non-substantive changes. Some discussion ensued.

481 Chair Shetterly Recognizes that the words, "is" and "most" can be looked at by Dave Kenagy, Commissioner Brown and the Committee that is dealing with this to determine if the words could be removed. Asks for any other comments.

States that there is already a motion before us. Are there any objections to the motion? Hearing none, Motion is carried.

Vote: 13-0

So ordered.

Tape 9-A

046 Michelle Mhoon Directs attention to Tab 6, (EXHIBIT E) *Conflicts Law Applicable to Contracts Comments*, which are comments prepared by Professor Jim Nafziger and points out that they have been circulated among the Conflict of Laws Work Group. Asks the Commission to consider adopting these Comments as Commission Comments and recommends that Professor Vetri make a motion for the Commission to adopt.

051 Dom Vetri Moves to adopt the Conflicts Law Applicable to Contracts Comments. Advises that the group has been working on these Comments before the Commission approved the Bill, and now requests this final draft be adopted.

054 Chair Shetterly **States that Commissioner Vetri moves to adopt the Comments to HB 2414, Conflict of Laws Applicable to Contracts, and that the comments be presented to the Legislative Assembly subject to non-substantive corrections.**

059 Chair Shetterly Thanks Professor Vetri, Dean Symeonides and members of the Work Group for their outstanding work. Announces that it met with favorable acceptance in the Senate today. Asks for other discussion on the motion.

068 Hans Linde Wants to include Chair Shetterly in the list of those who facilitated the acceptance.

072 Chair Shetterly Thanks Hans Linde and **asks for further discussion on the motion? There being none, the motion is carried with no objection.**

Vote: 13-0

So ordered.

075 Chair Shetterly Comments that it is time for Item 5.

076 Hardy Myers Notes that the comments do not identify the Conflicts Bill.

079 Chair Shetterly Acknowledges that the cover sheet of the Comments does not identify the Bill. This is a non-substantive amendment but suggests that this be amended to include Bill number. Asks for anything else before progressing to Item number 5.

087 Dave Kenagy Refers to Executive Director's Report section 2 B and the legislative request before going on to Number 5.

090 Chair Shetterly Thanks Dave for the suggestion.

091 Dave Kenagy Addresses the Chair and members of the Commission and refers to Tab 2 and Tab 3. Starting with Tab 2 (EXHIBIT F), *Memorandum from David Kenagy re: Testimony on SJR 39, dated April 4, 2001 directed to the Senate Health and Human Services Committee*. This covers information regarding something new as far as the Law Commission is concerned. Recalls that under an authorizing statute the Legislature is permitted to direct, instruct or request the Oregon Law Commission to undertake certain projects on behalf of the Legislature. Notes that there are two such requests of which we are

currently aware working their way through this 2001 Legislative Session. Alerts the Commissioners to their existence, the first being Senate Joint Resolution 39 (now known as SJR 39-3 because of Amendments that we were invited to make as a Law Commission staff in shaping the requests that come to us). This Resolution was first brought to our attention by the Department of Human Services and was a request made of the Oregon Law Commission to assist in reviewing the legal infrastructure surrounding the ability of state law to accept Federal Funds and channel them through private non-profits in partnership with the Department of Human Services for the benefit of recipients. The challenge, of course, is to confront the potential of a conflict arising constitutionally on the separation of church and state as well as a number of other issues that surround any use of public monies when channeled through non-profits including faith based organizations. Senator Shields in the 1999 session passed a Senate Joint Resolution 25 to establish, as a matter of public policy, the desirability of using Federal Funds in this way to further reach Oregonians in need. With the support of Bobby Mink, the interim Director of Human Services, Senator Frank Shields is inviting the Commission to undertake (pursuant to the text of the Resolution that is before them) an analysis of current law. One of the challenges is putting together an appropriate Work Group. Explains that at a hearing on this Bill, representatives of the Oregon Catholic Conference, the American Jewish Committee, the ACLU and others came and were concerned that the critical balance might be upset. Professor Steven Green of Willamette's faculty and myself testified initially as to the availability of the Commission. Once that was on the table, the Amendments were introduced and at a hearing just last week, the Senate, Health and Human Services Committee passed this to the floor of the Senate. That is the current status.

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| 141 | Chair Shetterly | Asks for questions or discussion. |
| 142 | Hardy Myers | Questions if the Bill/Referral was amended to send it to Ways and Means and asks if that can be discussed. |
| 146 | Dave Kenagy | The Committee did not. A Fiscal Impact Statement was proposed on behalf of the Commission (simply as to what it would cost the Commission). What was said in consultation with Chair Shetterly is that \$15,000 per year (\$30,000 for the Biennium) would let the Law Commission continue to pursue this as an issue in addition to the set agenda that comes through the Program Committee. That is what was submitted. Concludes that this is the current status of the Legislative Fiscal Report. |
| 155 | Chair Shetterly | Questions if that is in the Resolution? |
| 158 | David Kenagy | Answers, no, that it is not in the text. This is the time to address it. |
| 162 | Chair Shetterly | Comments that while discussing matters fiscal why not bring us up to date on the Budget request because it probably ties into that. |
| 166 | David Kenagy | Explains that our Law Commission Budget is a line item within the Budget that will be presented by Gregory Chaimov. Greg's Bill for Legislative appropriations to run the Commission as well as Legislative Counsel and other legislative services is scheduled for hearing some time in May, after the analysis comes out on the state of available resources. At this point the Bill is sitting and waiting and has not been scheduled for hearing. |
| 175 | Hardy Myers | Wants to know what is the requested appropriation presently. |
| 176 | David Kenagy | States that it is \$100,000 per year or \$200,000 for the Biennium, which is matched by the Willamette University contribution to put the team together, the facilities and all the rest. |
| 180 | Kate Brown | Seeks clarification. |
| 186 | Hardy Myers | Explains that he was referring to the work directed by this resolution. |
| 188 | Chair Shetterly | Comments that Dave and he have discussed this as a matter of precedent. One or two such legislative requests might be accommodated in a biennium. If the Legislature assigns a specific task to the Commission then consideration in terms of the dollars should be funded for the additional workload of the Commission. His thinking is to make a modest request for funding to follow any specific assignments from the Legislature. |
| 209 | Bernie Vail | Notes that the statute that creates the Commission says that the Senate may direct us to do things. When we ask for the biennial budget, depending upon what we have been directed to do, perhaps we need to raise the budget amount. The idea of asking the Legislature <i>ad hoc</i> for project money is not ideal. The idea that we are a body, which can reject a request from the Legislature unless they put money to it, is not within the scope of the Charter of the Commission. |
| 223 | Chair Shetterly | Clarifies further that he does not see this as rejecting. The Legislature has the statutory authority to assign us to do this and in this respect we are like any agency or commission in other parts of the Government; we have a base budget that is sufficient before we consider the foreseeable on-going activities of the Commission. If in the course of specific legislative activities, the Legislature is going to impose requests or obligations on top of that, I think that it is fair to ask for an appropriation in addition to the base budget which does not |

contemplate these additional requests. The Legislature could say that we need to find room in the budget to do this but I do not think it hurts to raise that as an issue when request is being made for additional services. I do not think we have the authority to say, no, but it is understandable that there is a cost to anything that we are asked to do.

243 Hans Linde Makes a 'footnote', clarifying that he would not go so far as to say that this Commission is just like any governmental commission. This Commission can probably say "no" to things that others cannot because it comes from all three branches. He just wants to 'raise a yellow flag' and have the record show that we cannot be told to do anything.

264 Chair Shetterly Comments on this particular project that it is one that is appropriate on its merits but we need the extra resources. Recalls that Dave and he had discussed whether this was something that we wanted immediately to distance ourselves from and we decided in our executive judgement, if we could help fashion it in some way so that it was asking the right questions, if we could frame the questions, then we could see a helpful role for the Commission in answering those questions.

272 Hans Linde Requests one other question to ask: it is important not to let the church and state issues swamp everything else. There are genuine and interesting state constitutional issues about money flows and such. Asks if Commissioner Myers tell us what knowledgeable person, if someone is available, could explain about using public funding. We really ought to have legal advice since very few of the people here are really thoroughly knowledgeable about the law governing appropriations to be spent through private entities.

288 Dave Kenagy Responds to Commissioner Linde's observation. During the process of thinking about people to consider for Work Group participation, we gave to Senator Shields' Legislative Aide, Matt Shields, the name of a contact person who was well known to us within the Department of Justice, the name of Phil Schradle, so at least they could understand that any Work Group that is connected to these issues simply must be connected to the Attorney General's Office without question. The point of involving the Department of Justice was made early in this discussion.

304 Chair Shetterly Asks about continuing on with HB 3374 and HB 3165.
306 Hardy Myers Asks what is the status of the Senate Joint Resolution?
307 Dave Kenagy Replies that it is out of the Senate Committee and onto the floor of the Senate as of two days ago.

310 Hardy Myers Asks if there is a Fiscal Impact Statement that was generated and was it presented to the Senate Committee.

312 Dave Kenagy Affirms that he prepared and presented it to Legislative Fiscal in advance of the hearing, so it was in the Bill packet but there was no discussion at the work session that passed the Bill to the floor. So, what is interesting is what does that tell us and what should we be doing?

321 Hardy Myers Comments that maybe we should resolve it as a Commission how we might want that issue addressed in the House. If picked up by a House Committee he thinks that we need to engage in some very specific discussion with that Committee about the fiscal impact.

329 Chair Shetterly Suggests that that would be an appropriate bill to request for the Judiciary Committee on the House side and there is some confusion whether that \$50,000 *de minimis* limit applies this session as it has in the past or bills under \$50,000 just do not go to Ways and Means. At \$30,000 it is in a gray zone and we would have some conversation at least in the hall with Representative Westland to get a lead on the sense of the Ways and Means interest. It may be that this Bill is insignificant enough in its fiscal impact that it may not have to go to Ways and Means.

343 Dave Kenagy States that on the basis of some research that was done on the funding question that a joint resolution may, by its content, authorize expenditures out of legislative expense appropriations. We should consider amending the resolution expressly to make that statement. Asks if that is the direction that is being suggested as a possible alternative.

351 Kate Brown Comments that this issue, as opposed to tying down the resolution itself, is that it be a specific item in the Law Commission's budget when the budget is heard and that we have been directed by the Legislature to take on this particular project, we anticipate that the project will cost us \$x and let the Ways and Means committee make a determination whether they want to fund 50 plus 30 or whatever it is. This would just be another way.

362 Chair Shetterly Explains that timing may play into this; it depends when the budget comes up and when this gets assigned and heard in committee. Surmises that if the Commission is comfortable he needs to work with Dave as it goes through and we will work the fiscal piece of this, whichever way is most appropriate depending on timing and other considerations but we will try and keep the appropriation attached to the resolution. Clarifies that the first step in getting it to the Judiciary

379 Chair Shetterly Committee on the House side is the most important and the rest will
380 Hans Linde be worked out.
387 Dave Kenagy States that in terms of subject matter, it raises Judiciary issues.
Affirms the statement.
The second is HB 3374 – 3165 (**EXHIBIT G**), *Memorandum from
David Kenagy re: Testimony Regarding HB 3165 and HB 3374
(combined) directed to Senate Health and Human Services
Committee*, which at one point were to be combined but are presently
separate Bills, each have now enjoyed a hearing before the House
Advancing E Government Committee; neither has, at this point,
enjoyed a work session nor made it to the floor of the House.
Comments that they are both ‘alive’ and informs as to what they do.

In the case of HB 3374 - it invites Legislative Counsel to take a look
at obstacles to E-Government that agencies would report to
Legislative Counsel so that Legislative Counsel could make
appropriate recommendations for law changes that may be needed to
facilitate *e.g.* e-mail communication within agencies and agencies to
those they serve. That’s a fairly modest suggestion and a good one,
which we think will advance.

The other, HB 3165, is much larger in its scope; it is a bill that was
fashioned after the recommendations of the Governor’s Internet
Commission, one of which recommendations included a pervasive,
all-encompassing study of Oregon law to determine whether there are
problems with E-Commerce that could be resolved through changes
to our legal infrastructure (a very broad charge). The Internet
Commission suggested that Legislation authorizing funding and
further study and research be created and this bill embodies that
notion. It is drafted to invite the Oregon Law Commission to
organize, supervise and process that look at Oregon law for purposes
of advancing Electronic Commerce within the state; it is a potentially
enormous project but, of course, depends on funding. We have been
invited through the work of the Internet Commission to provide that
service. In consultation with our Chair we approach the funding
question in the same way as SJR 39 with the same amount, asking for
an additional \$15,000; the essence was to retain where necessary,
appropriate expertise to look at some of the challenging issues that
will be before us.

446 Chair Shetterly Asks for questions on those bills. Comments that this is why we have
an Executive Director who can track these things on a daily basis
because ‘things’ move quickly in this process.

452 Kate Brown Notes her concern about HB 3165 in that the fiscal impact of it is
underestimated. Her gut reaction is that when experts are involved
then it will double the your fiscal on that particular project.. Explains
that she is concerned to limiting it to \$30,000.

468 Chair Shetterly Concludes that we will keep working on that. Moves on to Item 5A.
Commission Standard Operating Procedures, which is Tab 9
(**EXHIBIT H**), *Agenda Items for Oregon Law Commission: Post-
Report Procedures*. Asks Dave Kenagy if he wants to introduce this.

Tape 8-B
029 Dave Kenagy Introduces by reference to the author of the contents behind Tab 9,
that being Commissioner Linde, but he does say that during the
course of this 2001 Legislative Session a number of issues have arisen
as to how we as Commission Staff on your behalf appropriately
shepard these bills, the comments and the reports through the
legislative process, particularly under those circumstances in which
the bills inevitably face amendment. It ultimately has to do with the
philosophy of how we view the work of the Law Commission. One
view would be that anytime an amendment to a Law Commission
recommended bill is proposed, we should immediately reconvene the
Law Commission, bring that tiny amendment back, vote and re-
recommend or not so that we are current with the legislative process.
In effect, walking in parallel tandem with the legislative process
itself. The critique of that view is, first of all, we are not set up as a
matter of staffing and convenience to do that because we are not a
legislative committee; we are a Law Commission. But, secondly and
possibly more important, is the observation that to behave in that
fashion during legislative session is to undermine the very nature of
the Law Commission as a deliberative, thoughtful body taking time to
do what is right. Therefore, we are advised to take another approach
that says that the Law Commission makes it recommendations, winds
the clock and sets it loose into the legislative process and really has no
further input on the subject. The legislative process takes its own
directions and makes amendment as necessary. We have confronted
along the way and Professor Linde has guided our thinking about
these issues and related issues. What you have before you are some
thoughts about operating procedures that we might want to discuss as
a Commission, to guide staff in advancing those kinds of interests.

054 Chair Shetterly Invites discussion on this matter – does not plan to take any action
today. Notes that we have two legislative sessions to look at. Much
the same thing happened at the last legislative session – however, we

did not have an Executive Director – you just didn't know about it. Described how the Commissioners handled business without an Executive Director. Asks Professor Linde to introduce his memo on post-report procedures.

064 Hans Linde Stated that Mr. Kenagy covered the content of his memo. Did not intend to have any action taken on his agenda item. Explains the purpose of the report – what procedures should be followed when preparing a proposed bill, etc. He stresses that it is very important that proper procedures are always adhered to by the Commission. Asks that this be part of the minutes and of record.

102 Dom Vetri Agrees that Professor Linde has done a fine job and given useful information. Also suggests that Mr. Kenagy obtain information from other state Law Commissions to look at their procedures and operating techniques. Elaborates on how he feels about the process and what should or should not happen during the process. Suggests various proposals on how the bill process should continue through legislation once it leaves the hands of the work group.

130 Chair Shetterly Interjects that when there are drastic changes made to the proposed bill the Commission can offer a disclaimer that at that point the bill does not represent the views of the Commission. Asks Bob Oleson of the Oregon State Bar to come forward and give his opinion on this matter. What is the Bar's process when this happens? Questions what happens when bill proposals are presented by the sections and they get amended to death later? How does the Bar handle it when this happens?

141 Bob Oleson Explains that the procedures are printed in the Bar Bulletin directory. They work reasonably well. It is the same kind of process that the Professor is talking about. The Bar has a Board Committee that oversees that process. Some discussion follows.

158 Symeon Symeonides States that the formula that Commissioner Vetri states is a very sensible and practical formula. As an example, in Louisiana the Reporter is authorized to make certain concessions up to a point and use his or her judgment on when to involve others. It is a good idea to have two actively involved people there and then the involvement of the Chair of the Commission to provide some additional safe guards

185 Chair Shetterly Advises that Dave should take a look at other Commissions and how they handle this type of situation. Also should look at the Bar's procedures. We should have some established protocols in the future. We have done fine so far but we need to think about this in the future working with the Legislature.

193 Symeon Symeonides Advises that in the future when we have a lot of bills we might not be able to depend exclusively on Legislators who are members of the Commission so we would be seeking sponsors from the two houses. We should be very careful to seek sponsors who are not only knowledgeable on the subject but who are also willing to be there and support the product. As a practical matter it would be helpful to have members of the work group there so they can see how the process works and be there to answer questions of the Committee and some times questions from the floor.

207 Hans Linde Seconds Dom's and Symeon's suggestions.

223 Chair Shetterly Advises that Dave and Linda will be looking into this and report back to us at the July meeting. Look at other models from other states.

229 Dave Kenagy States that Michelle has been busy looking at two other states on this very point. They were Connecticut and New Jersey. Hopefully by July we can adopt something or at least before the next legislative session.

249 Chair Shetterly Asks for questions. Advises that there will be another Commission meeting on July 13 and hopefully the building will be quiet and we can have our pick of rooms. Asks if there is a preference on having the meeting in the morning or afternoon? It was decided that the next meeting would be held in the afternoon. Gives a heartfelt thanks to both Michelle and Shirley. Welcome to Linda. Meeting is adjourned at 4:30 p.m.

Submitted By,

Reviewed By,

Rosalie M. Schele,
Administrative Assistant

David R. Kenagy,
Executive Director

EXHIBIT SUMMARY

- A -- Memorandum dated April 16, 2001, from Alexa Crutchfield, re: Recommendation of Program Committee on the issue of the "Saving Statute", 3 pages.
- B -- Memorandum dated April 13, 2001, from Kristin Flickinger, re: Recommendation of the Program Committee on the issue of "Eminent Domain", 2 pages.
- C -- Oregon Law Commission Bill Status Report, 3 pages.
- D -- Section by Section Analysis on HB 2611, 13 pages.
- E -- Conflicts Law Applicable to Contracts Comments, 8 pages.
- F -- Memorandum from David Kenagy re: Testimony on SJR 39, dated April 4, 2001, directed to the Senate Health and Human Services Committee, 7 pages.
- G -- Memorandum from David Kenagy re: Testimony Regarding HB 3165 and HB 3374 (combined) directed to Senate Health & Human Services Committee, 2 pages.
- H -- Agenda Item for Oregon Law Commission – Post-Report Procedures, 2 pages.