

SENATE COMMITTEE ON JUDICIARY

February 13, 2001 Hearing Room 343

1:00 PM Tapes 32 - 33

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Peter Courtney, Vice-Chair
 Sen. Roger Beyer
 Sen. Ginny Burdick
 Sen. Verne Duncan
 Sen. Steve Harper
 Sen. Rick Metsger

STAFF PRESENT: **Craig Prins, Counsel**
 Annola DeJong, Administrative Support

MEASURE/ISSUES HEARD: **LC 153 Reconsideration Work Session**
 SB 393 Public Hearing
 SB 342 Public Hearing and Work Session
 SB 406 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 31, A		
001	Chair Minnis	Calls the meeting to order at 1:07 p.m. Opens a work session on LC 153.
<u>LC 153 WORK SESSION</u>		
003	Vice Chair Courtney	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote by which LC 153 was adopted as a committee bill.
004	Vice Chair Courtney	Explains that the draft measure has flaws and that he requests that the committee not adopt it as a committee bill (EXHIBIT A).
012		VOTE: 7-0-0
013	Chair Minnis	Hearing no objection, declares the motion CARRIED.
017	Vice Chair Courtney	MOTION: Moves to RECONSIDER the vote by which LC 153 was adopted as a committee bill.
021		VOTE: 7-0-0
022	Chair Minnis	Hearing no objection, declares the motion CARRIED.
023	Chair Minnis	Closes the work session on LC 153 and opens a public hearing on SB 393.
<u>SB 393 PUBLIC HEARING</u>		
030	Georgena Carrow	Manager, Criminal Records Unit, Department of Human Services (DHS) Submits testimony and testifies in support of SB 393 (EXHIBIT B).
078	Carrow	Describes the provisions of the bill.
135	Keith Menk	Senior Manager Human Resources, Department of Human Services (DHS) Submits testimony and testifies in support of SB 393 (EXHIBIT C). Describes changes that DHS proposes be made to SB 393.

155	Chair Minnis	Requests clarification as to why the word “shall” is inappropriate.
162	Menk	Responds that DHS desires to retain the flexibility to tailor the background check to the applicant or the position, including the ability to perform a more stringent check.
174	Chair Minnis	Presumes DHS uses the “Career Criminal History” (CCH) query when performing background checks. Describes what a CCH query entails.
190	Carrow	Indicates that the background checks access all information available to the Oregon State Police (OSP).
200	Sen. Burdick	Asks whether background checks look into both Oregon Justice Information Network (OJIN) and the Law Enforcement Data System (LEDS).
208	Menk	Explains that some DHS programs run background checks only through LEDS, while others are more stringent and require fingerprinting on all applicants. Indicates that the variation reflects the different clientele and mission of various programs.
224	Sen. Burdick	Requests confirmation that DHS has access to OJIN records.
230	Sen. Harper	Asks whether it is necessary to codify this practice into statute, as opposed to adopting in by administrative rule.
235	Carrow	Assures that most of the work is taken care of through administrative rule, but that codifying it makes it clear and consistent for federal compliance.
241	Chair Minnis	Asks whether the FBI requirements are in federal code and if the committee can be provided with the reference.
247	Carrow	Offers to provide the federal citations.
250	Chair Minnis	Asks how many employees and applicants are screened through the background check system.
255	Menk	Clarifies that DHS looks at not only their own applicants but also those of affiliated agencies and entities. Indicates that DHS must determine by rule who is subject to which level of background check.
270	Carrow	Remarks that DHS ran background checks on approximately 200,000 individuals last year, of which 2,800 were DHS employees and 4,000 were volunteers.
279	Vice Chair Courtney	Asks for clarification regarding the suggested change to page 1, line 27, which would replace “shall” with “may.” Presumes that the background checks are either state-level or federal-level checks. Opines that the change nullifies the effectiveness of the measure.
320	Carrow	Explains that current statute uses the word “may.”
325	Vice Chair Courtney	Predicts that the reversion to the word “may” will likely create problems should the bill become law.
344	Menk	Indicates that the department has determined that the “shall” language would not provide any additional relevant information.
371	Carrow	Offers to check with the Attorney General’s Office (AG) to determine whether Sen. Courtney’s objection has merit.
376	Chair Minnis	Comments that the bill does not require a consistent policy for all applicants, which may be problematic.
383	Carrow	Responds that current statute allows for the adoption of rules.
386	Chair Minnis	Concurs with Sen. Courtney’s assertion regarding the adoption of language that fails to provide the agency with sufficient statutory authority.
395	Carrow	Reiterates that she will consult with the AG and OSP regarding

401	Chair Minnis	the language. Acknowledges the desire for consistency across all state agencies, as well as the need for flexibility.
TAPE 33, A		
050	Chair Minnis	Requests an example of a person forgetting a conviction.
052	Menk	Cites examples of individuals who were unaware whether a particular crime applied to the questions being asked. Says that such individuals are generally dismissed initially, with a follow-up procedure to determine the reason why disclosure was not given.
070	Chair Minnis	Asks if the applicants are provided with an application that has sufficient explanation of what information is being requested.
076	Carrow	Answers affirmatively and describes the questions that are on the applications.
085	Menk	Clarifies that the applications do not list the particular crimes, but ask only whether the individual has been convicted of a felony.
087	Chair Minnis	Asks to see the form in question.
090	Carrow	Indicates that there is more than one form.
094	Minnis	Suggests that the bill be amended to require that a single form be used.
097	Menk	Replies that work has commenced on a common form.
107	Sen. Duncan	Requests that DHS return to the committee once the single form has been prepared.
113	Chair Minnis	Acknowledges that DHS was reluctant to come before the committee at this time.
117	Carrow	Appreciates the committee's understanding and permission to perform further work.
123	Sen. Beyer	Remarks that lying on an application should not be tolerated.
137	Carrow	Acknowledges and expresses appreciation for the committee's comments and pledges to continue working on the bill.
144	Chair Minnis	Reiterates doubt that an individual could forget a past offense, considering the lengthy process necessary for conviction.
150	Sen. Metsger	Asks about the request to delete lines 28-32 on page 4. Gives personal interpretation.
167	Carrow	Disagrees with Sen. Metsger's interpretation.
176	Sen. Metsger	Restates his perspective on the section. Disagrees with deleting a provision that simply requires further checks prior to employment.
186	Menk	Explains that the purpose of the change is to prevent cases where an individual fails to disclose a crime from long ago. Says that misdemeanors from 25 years ago should not halt the application process, which is what the provision under consideration could do.
200	Sen. Metsger	Refers to the bill's current language and says that the bill seems to offer the department the discretion whether to hire an individual until the background check has been conclusive.
208	Chair Minnis	Says that inconsistent policies set the state up for liability.
220	Carrow	Agrees, adding that some applicants are required to undergo multiple, conflicting background checks.
230	Chair Minnis	Concurs that there should be a consistent state law as a defense against an applicant asserting that they were treated unfairly. Solicits members of the committee to assist in preparing amendments.

250	Kathryn Weit	Oregon Developmental Disabilities Coalition Submits testimony and testifies in opposition of SB 393 (EXHIBIT D) . Urges the committee to encourage DHS hold those who work with populations that are “non-reporting” to a higher standard of scrutiny.
285	Tim Kral	Executive Director, Oregon Rehabilitation Association Submits testimony and testifies in opposition of SB 393 (EXHIBIT E) . Asserts that DHS should continue to perform fingerprint checks on all applicants.
315	Jean Olson	Vice President, Disability Services, Albertina Kerr Centers Testifies in opposition of SB 393. Objects to the measure’s reducing the current standards of background checks.
370	Vice Chair Courtney	Closes the public hearing on SB 393 and opens a public hearing on SB 342.
<u>SB 342 PUBLIC HEARING</u>		
380	Connie Gallagher	Director, Crime Victims’ Assistance Section, Department of Justice (DOJ) Submits testimony (EXHIBIT F) and informational materials (EXHIBIT G) and testifies in support of SB 342. States that the bill allows DOJ to proceed with an independent cause of action for recovery of the department’s crime victim’s compensation cost.
TAPE 32, B		
020	Gallagher	States that DOJ has been reluctant to recover its costs out of concern that it may limit the ability of victims to file suit at a later time against the offender. States that the measure will allow both DOJ and the victim to recoup costs. Proposes amending the bill by deleting section 2, as section 1 is sufficient to achieve the desired goal.
058	Sen. Harper	Asks why DOJ has not chosen to amend section 2 to clarify it so that it achieves the desired result.
064	Gallagher	Acknowledges that could be done.
072	Chair Minnis	Asks if there are any groups that oppose section 2.
075	Gallagher	Replies no.
078	Chair Minnis	Closes the public hearing and opens a work session on SB 342.
<u>SB 342 WORK SESSION</u>		
080	Vice-Chair Courtney	MOTION: Moves to ADOPT SB 342-1 amendments (EXHIBIT H) dated 2/9/01.
083	Chair Minnis	Says he sees no reason to amend section 2 out of the bill, as it does no harm and is unopposed.
085	Vice-Chair Courtney	Withdraws the motion.
086	Counsel Prins	Explains the purpose of removing section 2.
130	Chair Minnis	Asks whether DOJ receives notice when a victim is awarded damages from the offender.
138	Gallagher	Responds that was the intent of the measure. Remarks that DOJ has since become concerned that the issue may be more appropriately dealt with through administrative rule.
147	Chair Minnis	Asks whether there is similar statute to that proposed by section 2.
151	Counsel Prins	Answers that he would need to investigate further.
160	Vice-Chair	MOTION: Moves to ADOPT SB 342-1 amendments dated

161	Courtney Sen. Metsger	2/9/01. Requests clarification as to what is deleted by the –1 amendments.
165 176	Chair Minnis	Clarifies that the amendments delete only section 2 of the bill. VOTE: 6-0-1
178	Chair Minnis	EXCUSED: 1 - Duncan Hearing no objection, declares the motion CARRIED.
180	Sen. Courtney	MOTION: Moves SB 342 to the floor with a DO PASS AS AMENDED recommendation.
183 184	Chair Minnis	VOTE: 7-0-0 Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor. Sen. Duncan's AYE vote is recorded later in the meeting (TAPE 33, B, #277).
185	Chair Minnis	Closes the work session on SB 342 and opens a public hearing on SB 406.
<u>SB 406 PUBLIC HEARING</u>		
191	Jack Yarbrough	Private Investigator, Keizer, OR Submits testimony and testifies in support of SB 406 (EXHIBIT D). Distributes additional testimony (EXHIBITS J & K) and informational materials (EXHIBIT L). States that the measure will deter investigators from filing frivolous or vindictive requests for hearings.
272	Sen. Metsger	Refers to the exhibit of requested statistics (EXHIBIT M) and asks how many judgements were challenged.
281	Yarbrough	Replies that he is only familiar with one such case, adding that he was only recently appointed to the board.
287 293	Sen. Burdick Yarbrough	Requests an explanation of the contested hearings process. Explains that the process is an independent hearing with an arbitrator, similar to that of a worker's compensation hearing.
300	Sen. Burdick	Asks whether thought was given to structuring the bill so that only non-prevailing people would need to pay the fee.
307 319	Yarbrough Chair Minnis	Clarifies that is the current practice. Says he has heard nothing but negative comments regarding the Oregon Board of Investigators (OBI). Asks how an individual can become a licensed private investigator (PI).
350	Yarbrough	Describes the process by which an individual can become a licensed PI. Says in the past there were those who worked as a PI without a license. Lists the costs for working as a PI.
TAPE 33, B		
010	Tom Mann	Oregon Association of Licensed Investigators Submits testimony and testifies in opposition to SB 406 (EXHIBIT N). Acknowledges that the intent of the bill is to deal with a few individuals who misuse the process but asserts that discouraging people from exercising their right to a contested hearing is bad public policy.
084	Sen. Burdick	Solicits suggestions as to how to address the problem of frivolous and vindictive hearings.
089	Mann	Responds that he does not believe the problem is as serious as the proponents of the measure say.
104	Michael Jacobs	Executive Director, Oregon Board of Investigators

		Testifies in support of SB 406. Lists the reasons why the bill was brought forward.
118	Chair Minnis	Asks who came up with the idea for the bill.
121	Jacobs	Answers that the measure was originated by the board members through a work session.
125	Chair Minnis	Requests an assessment of how OBI has functioned so far.
127	Jacobs	Opines that the board has done a good job. Concedes that it is difficult for any agency to start up without some criticism. Defends the board's fee structure.
135	Chair Minnis	Asks how many licensees are governed by the board.
136	Jacobs	Estimates there are 450 licensees, including registered operatives.
141	Chair Minnis	Asks for a definition of registered operatives.
142	Jacobs	Describes registered operatives. Says OBI's current budget is \$351,000.
151	Chair Minnis	Asks if there was a specific problem that the bill was designed to deal with.
152	Jacobs	Replies that the primary concern is licensure costs.
160	Chair Minnis	Asks how many unlicensed operators there are in Oregon.
161	Jacobs	Replies that the agency does not know and is looking into that issue.
165	Chair Minnis	Asks if the motivation is to gain control over legal costs, which are estimated at \$150,000.
167	Jacobs	Replies affirmatively.
175	Sen. Duncan	Asks whether PIs and law enforcement officials work together.
183	Chair Minnis	Replies that law enforcement officials typically have very little contact with PIs.
194	Jim Hennings	Executive Director, Metropolitan Public Defender's Office. Submits testimony and testifies with a neutral position on SB 406. Discusses issues related to private investigators and practicing law.
250	Hennings	Brings forth proposed changes to ORS 703, which governs private investigators (EXHIBIT O).
277	Chair Minnis	Closes the public hearing on SB 406 and reopens the work session on HB 342.

HB 342 WORK SESSION

282	Sen. Duncan	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. DUNCAN to BE RECORDED as voting AYE on the motion to send SB 342 to the floor with a DO PASS AS AMENDED recommendation.
286		VOTE: 7-0-0
289	Chair Minnis	Hearing no objection, declares the motion CARRIED. (The vote count registered on TAPE 32, B, #180 has been revised to reflect Sen. Duncan's AYE vote.)
294	Chair Minnis	Closes the work session on SB 342 and reopens the public hearing on SB 406.

SB 406 PUBLIC HEARING

300	Hennings	Continues testimony regarding SB 406.
339	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies to a position of neutrality regarding SB 406 and in support of the amendments proposed by Mr. Mann.

340

Chair Minnis

Additional testimony regarding SB 406 (**EXHIBIT P**) was submitted for the committees consideration
Closes the public hearing on SB 406 and adjourns the meeting at 2:00 p.m.

Submitted By,

Reviewed By,

Annola DeJong,
Committee Assistant

Craig Prins,
Counsel

Transcribed By,

Patrick Brennan,
Committee Assistant

EXHIBIT SUMMARY

- A – LC Draft 153, submitted by staff, dated 2/07/01, 6 pp.**
- B – SB 393, testimony, Georgena Carrow, 3 pp.**
- C – SB 393, testimony, Keith Menk, 2 pp.**
- D – SB 393, testimony, Kathryn Weit, 1 p.**
- E – SB 393, testimony, Tim Kral, 1 p.**
- F – SB 342, testimony, Connie Gallagher, 3 pp.**
- G – SB 342, informational materials, Connie Gallagher, 2 pp.**
- H – SB 342, -1 amendments, staff, 1 p.**
- I – SB 406, testimony, Jack Yarbrough, 1 p.**
- J – SB 406, testimony, Leroy Chastain, 2 p.**
- K – SB 406, testimony, Michael Miller, 2 p.**
- L – SB 406, informational materials, Jack Yarbrough, 3 pp.**
- M – SB 406, informational materials, Jack Yarbrough, 2 pp.**
- N – SB 406, testimony, Tom Mann, 1 p.**
- O – SB 406, informational materials, Jim Hennings, 9 pp.**
- P – SB 406, testimony, Chip Lazenby, 1 p.**