

SENATE COMMITTEE ON JUDICIARY

May 07, 2001 Hearing Room 343
1:00 P.M. Tapes 124 -127

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: **Marilyn Odell, Counsel**
 Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2230A Public Hearing and Work Session**
 HB 2377 Public Hearing and Work Session
 HB 2608 Public Hearing and Work Session
 HB 2616 Public Hearing and Work Session
 HJM 2 Public Hearing and Work Session
 HB 2427A Public Hearing and Work Session
 HB 3260 Public Hearing and Work Session
 HB 2493A Public Hearing and Work Session
 SB 423A Work Session
 SB 114 Work Session

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 124, A | | |
| 004 | Chair Minnis | Calls the meeting to order at 1:10 p.m. and opens a public hearing on HB 2230A. |
| <u>HB 2230A PUBLIC HEARING</u> | | |
| 010 | Sheila Baker | Legislative Fiscal Office Submits testimony and testifies on HB 2230A that eliminates references to MacLaren School and Hillcrest School of Oregon (EXHIBIT A). Says that this is a housekeeping bill with no fiscal impact. |
| 030 | Chair Minnis | Closes the public hearing on HB 2230A and opens a work session. |
| <u>HB 2230A WORK SESSION</u> | | |
| 031 | Sen. Duncan | MOTION: Moves HB 2230A to the floor with a DO PASS recommendation. VOTE: 5-0-2 |
| 034 | Chair Minnis | EXCUSED: 2 - Courtney, Harper Hearing no objection, declares the motion CARRIED SEN. DUNCAN will lead discussion on the floor. |

| | | |
|--------------------------------------|----------------------|---|
| 038 | Chair Minnis | Closes the work session on HB 2230A and opens a public hearing on HB 2377. |
| <u>HB 2377 PUBLIC HEARING</u> | | |
| 042 | Esther Cronin | Services for Children and Families |
| 056 | Carl Myers | Testifies in opposition to HB 2377 because of the budget impact. Oregon Juvenile Department Directors Association |
| 086 | Chair Minnis | Testifies in support of HB 2377. Says that the net effect of this bill would eliminate the requirement that counties pay witness fees for proceedings handled by the state of Oregon. |
| <u>HB 2377 WORK SESSION</u> | | |
| 088 | Sen. Beyer | Closes the public hearing on HB 2377 and opens a work session. MOTION: Moves HB 2377 to the floor with a DO PASS recommendation. VOTE: 5-0-2 EXCUSED: 2 – Harper, Courtney Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor. |
| 090 | Chair Minnis | |
| 094 | Chair Minnis | Closes the work session on HB 2377 and opens a public hearing on HB 2608. |
| <u>HB 2608 PUBLIC HEARING</u> | | |
| 097 | Counsel Odell | Introduces HB 2608 that authorizes member or committee of Legislative Assembly to inspect public record of public body. Legislative Counsel |
| 124 | Greg Chaimov | Clarifies HB 2608 for the committee. |
| 134 | Sen. Beyer | Asks for clarification of Section 2, line 8, page 2. |
| 138 | Chaimov | Gives clarification. |
| 206 | Chair Minnis | Closes the public hearing on HB 2608 and opens a work session. |
| <u>HB 2608 WORK SESSION</u> | | |
| 208 | Sen. Duncan | MOTION: Moves HB 2608 to the floor with a DO PASS recommendation. VOTE: 5-0-2 EXCUSED: 2 - Courtney, Harper Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor. |
| 215 | Chair Minnis | |
| 221 | Chair Minnis | Closes the work session on HB 2608 and opens a public hearing on HB 2616. |
| <u>HB 2616 PUBLIC HEARING</u> | | |
| 229 | Bob Joondeph | Oregon Advocacy Center Submits testimony and testifies in support of HB 2616 (EXHIBIT B) that requires court to receive testimony from respondent regarding respondents receipt and understanding of certain information at hearing on respondent’s ability to give informed consent to sterilization. |
| 342 | Sen. Burdick | Asks for clarification of when this legislation would apply. |
| 354 | Joondeph | Replies that this bill would not affect a person who does not want to be sterilized. |
| 363 | Chair Minnis | Closes the public hearing on HB 2616 and opens a work session. |
| <u>HB 2616 WORK SESSION</u> | | |
| 365 | Sen. Metsger | MOTION: Moves HB 2616 to the floor with a DO PASS recommendation. |

VOTE: 5-0-2

EXCUSED: 2 - Courtney, Harper

Hearing no objection, declares the motion CARRIED.

SEN. MINNIS will lead discussion on the floor.

369 Chair Minnis

373 Chair Minnis

Closes the work session on HB 2616 and opens a public hearing on HJM 2.

HJM 2 PUBLIC HEARING

381 **Deborah Shelby**

Legislative Aid to Representative Betsy Close

Submits testimony and testifies on behalf of Rep. Close **(EXHIBIT D)**.

Closes the public hearing on HJM 2 and opens a work session.

429 Chair Minnis

HJM 2 WORK SESSION

431 **Sen. Duncan**

MOTION: Moves HJM 2 be sent to the floor with a BE ADOPTED recommendation.

VOTE: 5-0-2

EXCUSED: 2 - Courtney, Harper

Hearing no objection, declares the motion CARRIED.

DUNCAN will lead discussion on the floor.

434 Chair Minnis

438 Chair Minnis

Closes the work session on HJM 2 and opens a public hearing on HB 2427A.

HB 2427A PUBLIC HEARING

444 **Rep. Lane Shetterly**

House District 34

Testifies in support of HB 2427A that establishes rebuttable presumptions in domestic relations proceedings favoring parents in disputes between parents and other persons over custody of or visitation with children.

TAPE 125, A

094 Chair Minnis

Asks if there isn't already an assumption that a parent acts in the best interest of the child.

| | | |
|--------------------|-------------------------|---|
| 115 | Vice Chair Courtney | Asks Rep. Shetterly for his opinion about grandparent visitation rights. |
| 130 | Rep. Shetterly | Replies that Mr. Travis is better equipped to reply to that question. |
| 149 | Timothy Travis | Oregon Judicial Department Testifies as neutral on HB 2427A. Says that this legislation does not have anything to do with child abuse or neglect, that it is strictly a custody issue. Gives an overview of the bill and discusses the –A2 amendments (EXHIBIT D). |
| 229 | Chair Minnis | Asks for further definition of “unable to adequately care for the child”. |
| 231 | Travis | Says that it is based on the determination of the court on the ability of a parent to feed, clothe, educate a child. |
| 243 | Tammy Dentinger | Family Practice Attorney, Salem, OR Testifies in support of HB 2427A. Comments that to limit the definition too tightly would impair the court's ability to use the language to establish what is in the best interest of the child. |
| 324 | Chair Minnis | Asks what kinds of reasons are currently being used by the courts to determine that a parent is unable to adequately care for a child. |
| 340 | Dentinger | Says current statute is very vague and that this bill gives the court some methodology of how to get to the final conclusion and what order the court must follow. States that the most common reasons heard are those of mental illness, drug or alcohol dependency and abandonment to grandparents. |
| 374 | Counsel Odell | Clarifies that the statute deals with a private right of action that does not involve the state and is different than a juvenile court proceeding. |
| 402 | Sen. Burdick | Asks what happens if this measure is not passed. |
| 408 | Travis | Replies that that question is included in the “frequently asked questions” submitted by counsel to the committee (EXHIBIT F). |
| TAPE 124, B | | |
| 032 | Phillip Schuster | Attorney, Clackamas County Testifies in support of HB 2427A and explains the best interest of the child aspect of this legislation. |
| 109 | Travis | Says that there is some danger that some placements made under the current statute could be overturned because of violation of the Troxel case, which upholds the parents’ liberty interest under the 14 th Amendment to the Constitution. |
| 132 | Sen. Burdick | Asks about the “clear and convincing” issue. |
| 135 | Schuster | Replies that if this bill doesn’t pass, judges will not have the guidelines needed. |
| 147 | Chair Minnis | Asks about permanency if these cases can be appealed. |
| 150 | Travis | Explains that any custody decision can be changed when situations change. |
| 271 | Maureen McKnight | Legal Aid Services of Oregon Testifies as neutral on HB 2427A and expresses her concerns about the standard of proof regarding custody. States that she also disagrees with the third party relationship. Explains that she believes that this is a best efforts legislation. |
| 340 | Schuster | Discusses equal protection of child and parent. |
| 420 | Travis | Explains the burden of proof and discusses the grandparent |

relationship and visitation rights.

TAPE 125B

| | | |
|-----|---------------------|---|
| 115 | Vice Chair Courtney | Says that this is an impossible area of the law and that everyone thinks they know what is in the best interest of the child. |
| 132 | Schuster | Explains that the idea of this bill is to give judges some guidance and criteria to work with. |
| 151 | Robin Pope | Oregon State Bar Family Law Section Submits testimony and testifies in support of HB 2427A (EXHIBIT G) . Discusses the –A3 amendments to HB 2427A (EXHIBIT H) that relates to payment for counseling in adoption matters. |
| 203 | Sen. Burdick | Asks why this amendment should be in the proposed HB 2427A. |
| 205 | Pope | Says that it was a stand along bill before the Health and Human Services Committee, which has been closed. |
| 213 | Sen. Metsger | Asks if counseling is currently a right of the parties involved. |
| 214 | Pope | Says that this bill would create a right for a birth parent to receive counseling and would be paid for by the adoptive parents. |
| 223 | Sen. Duncan | Asks if she is in support of HB 2427A. |
| 227 | Pope | Replies, yes. Relates an example. |
| 367 | Vice Chair Courtney | Closes the public hearing on HB 2427A and recesses the meeting at 3:00 p.m. until 6:00 p.m. |
| 373 | Vice Chair Courtney | Reconvenes the meeting at 6:10 p.m. and opens a public hearing on HB 3260. |

HB 3260 PUBLIC HEARING

| | | |
|-----|---------------------|---|
| 378 | Bob Oleson | Oregon State Bar Submits testimony and testifies in support of HB 3260 that extends from 10 to 15 days the amount of time recalled delegate of Oregon State Bar has to resign before ballots on recall decision are mailed (EXHIBIT I) . |
| 386 | Bob Tyner | Oregon State Bar Provides an analysis of HB 3260 and says that it is a housekeeping measure. |
| 416 | Vice Chair Courtney | Closes the public hearing on HB 3260 and opens a work session. |

HB 3260 WORK SESSION

| | | |
|-----|----------------------------|---|
| 423 | Sen. Duncan | MOTION: Moves HB 3260 to the floor with a DO PASS recommendation. |
| | | VOTE: 4-0-3 |
| 433 | Vice Chair Courtney | EXCUSED: 3 – Minnis, Burdick, Harper Hearing no objection, declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor. |

| | | |
|-----|---------------------|--|
| 444 | Vice Chair Courtney | Closes the work session on HB 3260 and opens a public hearing on HB 2943A. |
|-----|---------------------|--|

HB 2493A PUBLIC HEARING

| | | |
|-----|---------------------|--|
| 461 | Shawn Miller | PacifiCorp Submits testimony and testifies in support of HB 2493A (EXHIBIT J) that provides that electric utilities are immune from civil liability for pruning or removing vegetation under specified circumstances. Discusses the –A4 amendments (EXHIBIT K) . |
|-----|---------------------|--|

TAPE 126, A

| | | |
|-----|---------------------|-------------------|
| 035 | Randy Miller | PacifiCorp |
|-----|---------------------|-------------------|

| | | |
|-----|---------------------|---|
| 074 | Sen. Metsger | Testifies in support of HB 2493A. Says this bill is important for safety and service reliability reasons. |
| 079 | Shawn Miller | Asks for clarification of the amendments. |
| 114 | Vice Chair Courtney | Explains the requested change. |
| | | Closes the public hearing on HB 2943A and opens a work session. |

HB 2493A WORK SESSION

| | | |
|-----|---------------------|--|
| 115 | Sen. Duncan | MOTION: Moves to ADOPT HB 2493A-A4 amendments dated 04/30/01. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 – Minnis, Harper |
| 119 | Vice Chair Courtney | Hearing no objection, declares the motion CARRIED. |
| 121 | Sen. Duncan | MOTION: Moves HB 2943A to the floor with a DO PASS AS AMENDED recommendation. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 – Minnis, Harper |
| 125 | Vice Chair Courtney | Hearing no objection, declares the motion CARRIED. |
| | | SEN. BEYER will lead discussion on the floor. |
| 135 | Vice Chair Courtney | Closes the work session on HB 2943A and opens a work session on SB 423A. |

SB 423A WORK SESSION

| | | |
|-----|---------------------|--|
| 138 | Counsel Odell | Introduces SB 423A that modifies criminal and civil penalties for violations of cigarette tax laws. Explains the –A6 amendments (EXHIBIT L) . |
| 160 | Sen. Duncan | MOTION: Moves to ADOPT SB 423-A6 amendments dated 4/25/01. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 – Minnis, Harper |
| 168 | Vice Chair Courtney | Hearing no objection, declares the motion CARRIED. |
| 169 | Sen. Duncan | MOTION: Moves SB 423A to the floor with a DO PASS AS AMENDED recommendation. |
| 172 | Sen. Beyer | Asks why the bill was returned to this committee. |
| 190 | Jim Gardner | Phillip Morris |
| | | Explains that the –A6 amendments were written when the bill was in Revenue and it was decided that the amendment should be introduced in Judiciary. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 – Minnis, Harper |
| 262 | Vice Chair Courtney | Hearing no objection, declares the motion CARRIED. |
| | | SEN. COURTNEY will lead discussion on the floor. |
| 275 | Sen. Burdick | MOTION: Moves to SUSPEND the rules for the purpose of voting on HB 3260. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 – Minnis, Harper |
| 279 | Vice Chair Courtney | Hearing no objection, declares the motion CARRIED. |
| 280 | Sen. Burdick | Votes AYE on HB 3260, and declares a conflict of interest. |
| 288 | Vice Chair Courtney | Closes the work session on SB 423A and opens a work session on SB 114. |

SB 114 WORK SESSION

| | | |
|--------------------|---------------------|---|
| 298 | Sen. Duncan | MOTION: Moves to ADOPT SB 114-A8 amendments dated 5/7/01. |
| 309 | Counsel Odell | Explains the –8 amendments (EXHIBIT M) to SB 114 that imposes civil penalties for violations of genetic privacy statutes. Gives a sectional analysis of the amendments. |
| TAPE 127, A | | |
| 058 | Sen. Metsger | Expresses his concerns with Section 15, page 16, lines 26 through 29 and is not convinced that the language should be deleted. |
| 077 | Jim Mattis | Counsel, Oregon Health Sciences University Explains the property clause. |
| 096 | Sen. Metsger | Wonders why deleting this language would be harmful. |
| 107 | Maddis | Explains personal property law as opposed to the privacy issue. |
| 126 | Sen. Duncan | Asks what Sen. Metsger is concerned about with regard to privacy. |
| 136 | Metsger | Explains that he thinks removing the property rights language is wrong. |
| 185 | Sen. Burdick | Asks about the royalties involved with genetic research that results in a revolutionary breakthrough. |
| 190 | Maddis | Replies that this is one of the reasons for the amendments. |
| 197 | Vice Chair Courtney | Asserts that this bill creates protections greater than any other state. |
| 212 | Ted Falk | Work Group Member Talks about the property clause versus the privacy clause. |
| 346 | Sen. Burdick | Asks if the question of royalties came up during work group discussions. |
| 353 | Falk | Replies that there are still many open issues with regard to royalties. |
| 393 | Counsel Odell | Clarifies the issue of penalties in the –8 amendments, section 2e on page 1 and 3e on page 2. |
| 435 | Sen. Metsger | States that his issue with this amendment is not economic value, but the ownership of one’s DNA no longer exists as an ownership right. |
| 451 | Counsel Odell | Discusses the notification provision that has been added to the amendment. |
| TAPE 126, B | | |
| 017 | Vice Chair Courtney | Explains the discussions that have taken place over the past two years and the struggles to come up with the right language. |
| 058 | Falk | Discusses the anonymous aspect of genetic privacy. VOTE: 4-1-2 AYE: 4 - Beyer, Courtney, Duncan, Burdick NAY: 1 – Metsger EXCUSED: 2 - Minnis, Harper |
| 090 | Vice Chair Courtney | The motion Carries. |
| 091 | Sen. Duncan | MOTION: Moves SB 114 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 4-1-2 AYE: 4 - Beyer, Courtney, Duncan, Burdick NAY: 1 – Metsger EXCUSED: 2 - Minnis, Harper |
| 157 | Vice Chair Courtney | The motion Carries. SEN. COURTNEY AND SEN. DUNCAN will lead discussion |

159

Vice Chair Courtney

on the floor.

Closes the work session on SB 114 and adjourns the meeting at
7:20 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Marilyn Odell,
Counsel

EXHIBIT SUMMARY

- A – HB 2230A, written testimony submitted by Sheila Baker, dated 5/7/01, 1 p**
- B – HB 2616, written testimony submitted by Bob Joondeph, 3 pp**
- C – HJM 2, written testimony submitted by Rep. Betsy Close, dated 5/7/01, 2 pp**
- D – HB 2427, -A2 amendments submitted by staff, dated 4/25/01, 1 p**
- E – HB 2427, written testimony submitted by Phil Schuster, dated 5/4/01, 6 pp**
- F – HB 2427, written testimony submitted by Timothy Travis, 3 pp**
- G – HB 2427, written testimony submitted by Robin Pope, dated 5/7/01, 1 p**
- H – HB 2427, -A3 amendments submitted by staff, dated 5/2/01, 2 pp**
- I – HB 3260, written testimony submitted by Bob Oleson, dated 5/7/01, 1 p**
- J – HB 2493, written testimony submitted by Shawn Miller, dated 5/7/01, 2 pp**
- K – HB 2493, -A4 amendments submitted by staff, dated 4/30/01, 1 p**
- L – SB 423, -A6 amendments submitted by staff, dated 4/25/01, 1 p**
- M – SB 114, -8 amendments submitted by staff, dated 5/7/01, 11 pp**