

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

February 24, 1999 Hearing Room 357

1:00 p.m. Tapes 46 - 47

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Bill Taylor, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: SB 29

SB 47

SB 49

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 46, A		

004	Chair Shetterly	Calls meeting to order at 1:05 p.m.
<u>SB 29 - PUBLIC HEARING</u>		
007	Counsel Taylor	SB 29 makes permanent temporary child support provisions.
032	Tammy Dentinger	Lawyer, Family Law Section, Oregon State Bar Testifies in support of SB 29. Discusses why practitioners like this bill.
047	Rep. Wells	HB 2324, a law passed in 1997, had a four-year sunset provision which will come due after this legislative session. Why are we now presented with SB 29, that will make HB 2324 laws permanent, and not later?
050	Dentinger	It would be very beneficial to repeal it now because HB 2324 is very confusing for the practitioner as to what rules to follow and what laws are in effect.
054	Rep. Wells	Could someone relate the history of HB 2324 and why it was only temporary?
058	Counsel Taylor	Discusses the history of HB 2324.
071	Rep. Uherbelau	States that HB 2324 was very extensive and there were many changes made. The sunset provision was applied, so that first it could be practiced in the courts for effectiveness.
083	Rep. Well	Asks if SB 29 is now perfected.
087	Ronelle Shankle	Department Of Justice, Support Enforcement Division (DOJ) Testifies and submits written testimony in support of SB 29 (EXHIBIT A). Submits written testimony in behalf of Phil Yarnall (EXHIBIT B). Discusses the reasons why DOJ likes this bill, but has two points that needs to be considered regarding the Oregon Child Support State Plan (OSCP). States that this bill does not change the way the OCSP currently conducts its business.
126	Chair Shetterly	Advises that the sunset provision came about because the federal government funding was in jeopardy if Oregon didn't comply with federal law and this was a way to make a statement.
139	Shankle	SB 29 is not only tied to the Federal Funding for the Child Support Program, but a requirement for the Welfare Cash Assistance Program (Taniff) which would lose federal funding as well. The annual penalty for Taniff a CSP was between \$16.8 - \$33.6 million.
145	Chair Shetterly	Was that penalty just for the Child Support Program?

146	Shankle	The penalty included Taniff.
147	Rep. Witt	What law, previous to SB 29, penalizes the employer for not forwarding funds to the state and has this been a problem for SED?
160	Shankle	Discusses the "contempt action" which applies a fine imposed on the employer who does not forward the employee's withheld funds established by the withholding order from the State of Oregon.
171	Rep. Witt	Is there a provision for a fine against an employer who does not comply with an order?
173	Shankle	This provision is available under the temporary laws in HB 2324.
174	Rep. Witt	How frequently has a fine been imposed for those employers failing to comply to a contempt order?
178	Shankle	I do not have the statistics on that. We would not immediately use the fine as a remedy, we would call first and see if it was an oversight.
184	Rep. Witt	Is there a time line involved if the employer fails to comply to a withholding order?
192	Shankle	When we send a withholding notice out to an employer, it gives them the dollar amount to withhold and states a certain number of days from their payroll date to forward that money to the state.
192	Chair Shetterly	States that this law of withholding notices has been in temporary law for the past 1- $\frac{1}{2}$ years.
207	Layne Barlow	Oregon Men's Association Testifies and submits written testimony against SB 29 (EXHIBITS C), and submits testimony on behalf of Gary Hull and Tom Boon (EXHIBITS D, & E). Discusses why some supporters are not paying child support and gives examples. Discusses joint custody in the State of Oregon and why it doesn't work regarding child support. Discusses why this bill does not need to be passed just because the federal government mandates. We have concerns regarding this bill and would like a couple of weeks to work on an amendment to this bill.
344	Rep. Wells	HB 2324 does not change the current law and the state has been operating under this bill, so what is there to understand?
360	Barlow	HB 2324 is a new bill and proposes permanent measures. The State of Oregon and lawyers have not been using this law and until forced to use this law, judgments are still being overturned according to old law.

380	Rep. Wells	Are we changing or adding anything with SB 29 or are we making permanent law to what was enacted last session?
387	Taylor	We are making a permanent law out of a temporary law and SB 29 does not change anything from last session. Discusses and explains why there is confusion with the old and new laws.
412	Chair Shetterly	Comments on SB 29 and the tenacity of the bill.
421	Barlow	States that SB 29 is not the original bill and that amendments have been made.
424	Rep. Edwards	Are there still policy questions regarding the congress law of Welfare Reform?
432	Taylor	Discusses the federal government involvement in HB 2324 and how it effected child support which led to the creation of this bill.
469	Rep. Edwards	Does the Menís Association feel that passing SB 29 would be a protest to the new Welfare Reform?
Tape 47, A		
031	Barlow	I am not suggesting legislature make a protest against congress. Discusses the effect of the federal child support laws on the State of Oregon.
044	Rep. Witt	Does SB 29 make permanent laws out of temporary law that is not required by federal legislation?
050	Taylor	If SB 29 does not pass, we still have the sunset provisions of HB 2324. HB 2324 is difficult for the practitioner and the citizen to find and understand child support policy.
058	Rep. Uherbelau	Explains what sunset provisions are and why this provision was used in HB 2324. States that the temporary law needs to be made permanent law to meet the requirement of federal laws regarding child support.
082	Rep. Witt	Are we making additional decisions regarding child support that goes beyond the federal laws?
088	Taylor	No, we are not making additional decisions. States that we are only making the temporary law into permanent law.
090	Rep. Witt	Does federal law require us to adopt the provisions in SB 29?

092	Taylor	We are in conformance with federal law right now, but in two years, we will not be. Explains how the federal child support laws effects Oregonís state laws and how the federal government wanted more uniform laws for all states to follow.
114	Rep. Uherbelau	A lot of questions about the provisions came from the 1997 session group that worked on the bill with DOJ. We tried to comply with federal law so our state wouldnít lose child support money from the federal government.
125	Shankle	Discusses the three separate folders that were used during the last session that explained HB 2324 making it clearer. We were not going beyond what the federal government required for child support. Explains why Legislative Counsel created amendments.
155	Rep. Edwards	Are there issues regarding the changes made by federal government on child support that we should be aware of?
164	Shankle	Discusses the concerns brought up in last session on HB 2324 that were resolved.
172	Rep. Edwards	States that he doesnít see any problem with this bill passing because every problem with SB 29 has been addressed.
179	Shankle	Discusses 1988 provisions regarding HB 2324 and that there has not been any difficulties using this law. Explains that there was a mistake made in the figures from last sessionís testimony with penalties of \$16.8-\$36 million, which was just a phase one penalty. The true figure was \$400 million.
192	Rep. Backland	Mr. Barlow mentioned that SB 69 had 168 violations of the constitution. Could we have some examples of those violations ?
190	Jeff Mills	Citizen, Washington State Testifies against SB 29. Discusses his move to the State of Washington and why the child support laws effected this move. Discusses how the State of Oregon does not have to follow federal laws. Discusses the problems with SB 29 in regards to the current state law and the federal law. Promotes joint custody that would save millions of support money because 90% child support is paid. Explains separation of powers between state government and federal government that this bill takes away.
335	Chair Shetterly	Has there been a constitutional challenge in the courts regarding HB 2324 in the last two years?
348	Shankle	Relates the one case where the bill was challenged regarding the support order and that the case has not been heard yet.
353	Chair Shetterly	Stating the fact that there has been only one challenge proves the bill is working.

357	Rep. Wells	Has SB 69 broadened the issues of child support?
368	Mills	Discusses "an order to withhold", why it is not defined in the bill, and this separates federal law from state law.
390	Chair Shetterly	Explains that in law before the 1997 session, "an order to withhold" meant a judicial order or an administrative order. This phrase just clarifies that you have two different orders and is not a matter relating to separation of federal and state.
402	Mills	Discusses several problems with SB 29 that needs to be clarified.
418	Chair Shetterly	Closes public hearing.
424	Rep. Edwards	MOTION: Moves to ADOPT SB 29-A3 conflict amendments dated 02/24/99 and amendment re: emergency clause.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
428	Taylor	Explains the conflict amendment and why it is needed to pass.
455	Rep. Edwards	MOTION: Moves SB 29-A to the floor with a DO PASS AS AMENDED recommendation.
463	Rep. Uherbelau	Discusses the merit of the two written testimonies submitted by Gary Hull and Tom Boon and how they do not refer to SB 29. States her support for SB 29.
Tape 46, B		
033	Rep. Walker	Explains why she is in favor of passing SB 29.
040	Rep. Witt	Expresses his concern regarding SB 29 and why he is not supporting this bill.
057	Chair Shetterly	Discusses the process of the work group that discussed the issue of child support during interim and that they were satisfied with the outcome. States that he understands if there are some discrepancies toward this bill.
070	Rep. Edwards	Making the law work as we see it today is the committee's job.

080	Rep. Backlund	Expresses why he supports the bill.
095		<p>VOTE: 8-1</p> <p>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</p> <p>NAY: 1 - Witt</p>
	Chair Shetterly	<p>The motion CARRIES.</p> <p>REP. UHERBELAU will lead discussion on the floor.</p>
<u>SB 47 - PUBLIC HEARING</u>		
102	Counsel Taylor	SB 47 allows expert witness to be questioned concerning statements contained in certain treatises, periodicals and pamphlets if treatise, periodical or pamphlet is established as reliable authority.
107	Jeff Johnson	<p>Attorney, Oregon State Bar's Procedure and Practice Committee</p> <p>Testifies and submits written testimony in support of SB 47 (EXHIBIT D). Discusses how SB 47 intends to cure a problem in existing trial practice concerning cross-examination of expert witnesses. Explains "learned treatise" and how it can cause witnesses to be impeached.</p>
144	Chair Shetterly	Gives example to explain "learned treatise".
148	Johnson	Gives a court example of "learned treatise" and if it is not accepted as a reliable authority, the witness is impeached.
156	Rep. Uherbelau	Asks about pamphlets and periodicals as being questionable "learned treatises".
172	Johnson	States that there is no concern regarding a pamphlet or periodical because it would be subject to cross-examination, but it is presented in court as a reliable element.
190	Rep. Uherbelau	States that the procedure of presenting "learned treatise" is a safeguard of establishing a reliable authority and gives the three ways that it can be done.
192	Johnson	That is correct.

194	Rep. Wells	Why is this issue of learned treatise a problem now?
197	Johnson	Discusses how the Oregon Evidence Code lacks a "learned treatise" and why it is needed.
213	Mike Hurley	Oregon State Police Forensic Services Division Expresses his concern regarding his position as a witness and how SB 47 effects witnesses in court. Gives court case examples that explain his stand on what this bill does and why it does not need changing.
256	Johnson	Comments on Mr. Hurley's testimony and how this bill does not effect his concern about being a reliable witness. Explains how the judge controls judicial notice on evidence and when it will be used.
299	Rep. Uherbelau	Asks about the impeaching of a witness by establishing authoritative evidence and how SB 47 effects this procedure.
313	Hurley	Explains how the bill effects impeaching witnesses.
323	Chair Shetterly	Discusses how this bill effects impeaching a witness when the evidence is accepted as a learned treatise.
332	Johnson	Gives examples of using a pamphlet as a learned treatise in a court case. This bill defines consistent standards that deal with the rule of learned treatise.
382	Rep. Witt	Does SB 47 have the same language regarding learned treatise as the federal law?
385	Johnson	No, it is not the same because of the way we litigate cases in this state. Explains the difference in federal and state law regarding the procedure of learned treatise
413	Rep. Lowe	Is there anything in SB 47 that would make the informational source of the expert witness discoverable?
421	Johnson	No, the bill doesn't change the way the learned treatise is going to be used.
436	Rep. Williams	How long was this procedure of learned treatise a discussion for the Procedure and Practice Committee?
442	Johnson	There was lengthy discussion in the committee regarding this issue.
436	Rep. Uherbelau	States that anything brought before the legislature has been fully discussed.

454	Johnson	Describes who the members are on the Procedure and Practice Committee and that it was a committee of distinction.
468	Rep. Wells	How do the courts determine written evidence as the truth?
Tape 47, B		
030	Johnson	States that the jury will decide what the truth is. Discusses how the material in the learned treatise is tested by way of independent examination and the process of cross-examination.
046	Chair Shetterly	States that to establish something coming from a learned treatise doesn't need to be true, just that it is reliable. It is up to the judge and jury to establish which treatise is more reliable.
047	Rep. Wells	Once a learned treatise is established to be true, can the court challenge the testimony of the first witness or whether he agrees that the treatise to be true?
059	Hurley	Asks Mr. Johnson if once the first witness establishes the learned treatise, does that declare the second witness's statements obsolete.
071	Johnson	States that the problem with the current law is inconsistency. SB 47 will not allow the first witness to have established learned treatise and it gives the court a chance to challenge the truth of the treatise.
096	Rep. Williams	Explains that SB 47 states that if a witness has a learned treatise and is denying it, you can call another witness to establish that premise. States that this is a good rule.
127	Rep. Witt	States that a learned treatise does not make a case and the jury does not have to accept the truth of the treatise, it is just a way to get it into evidence.
136	Johnson	Yes, this is correct. Explains the difference of a learned treatise in the federal court from the state courts.
154	Rep. Uherbelau	It is the jury that is going to decide what to believe between the expert witnesses' testimonies. States that the discovery role is the important factor.
161	Johnson	That is true, but SB 47 provides some order to this procedure.
166	Hurley	Does SB 47 just apply to civil cases?
175	Johnson	The bill does apply to criminal cases and civil cases.

180	Chair Shetterly	Closes public hearing.
<u>SB 47 n Work Session</u>		
180	Rep. Lowe	MOTION: Moves SB 47 to the floor with a DO PASS recommendation.
		VOTE: 9-0 AYE: 9 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Witt, Shetterly
	Chair Shetterly	The motion CARRIES. REP. WILLIAMS will lead discussion on the floor.
<u>SB - 49 PUBLIC HEARING</u>		
200	Counsel Taylor	SB 49 modifies rule of evidence regarding impeachment of witness for bias or interest.
204	Stacy Hankin	Oregon State Bar, Procedure & Practice Committee Testifies and submits written testimony in support of SB 49 (EXHIBIT G). Discusses how this bill alters the foundational requirements for impeaching a witness for bias and interest with a prior statement and how it makes requirements of that rule consistent with legislative intent. Discusses the committee's amendment to the bill restoring lines 14-17 and deleting lines 18-24 on page one.
270	Rep. Backlund	Points out a typing error on the proposed amendment submitted by Ms. Hankin. The word "a" before the word "shall" needs to be removed on the second line of sub-section 2.
278	Rep. Lowe	The first error regarding foundational requirements for cross-examining a witness was ORS 609-1 in 1983. Why are we examining this 15 years later?
287	Hankin	I do not know why it came up now. The foundational requirements of this rule are cumbersome and they do not necessarily keep anyone from impeaching a witness for bias and interest with a prior statement.
299	Rep. Wells	Could someone give an example to explain SB 47.

309	Hankin	Gives an example to explain how SB 47 will simplify the procedure of inconsistent statements in court trials which could impeach a witness' credibility. Discusses how ORS 609-1 coincides with the bill.
380	Chair Shetterly	Closes public hearing.
		Adjourns meeting at 2:54 p.m.

Submitted By, Reviewed By,

Nancy Richards, Bill Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - SB 29, Written testimony, Ronelle Shankle, p. 3

B - SB 29, Written testimony, Phil Yarnall, p. 1

C - SB 29, Written testimony, Layne Barlow, p. 9

D - SB 29, Written testimony, Gary Hull, p. 3

E - SB 29, Written testimony, Tom Boon, p. 9

F - SB 47, Written testimony, Jeff Johnson, p. 1

G - SB 49, Written testimony and proposed amendment, Stacy Hankin, p. 2

H - SB 29 A3 amendment, p. 2