

OREGON LAW COMMISSION

March 19, 1999 Hearing Room 357

1:30 p.m. Tapes 20 - 21

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Dean Robert Ackerman

Janise Augur

Justice W. Michael Gillette

Jeff Carter

Prof. Hans Linde

Atty. Gen. Hardy Myers

Rep. Floyd Prozanski

Prof. Bernie Vail

Prof. Dom Vetri

Rep. Max Williams

MEMBERS EXCUSED:

Sen. Kate Brown, Vice-Chair

Greg Mowe

STAFF PRESENT: Bill Taylor, Counsel

Dave Heynderickx, Counsel

Travis Prestwich, Judiciary Intern

Sarah Watson, Office Manager

MEASURE/ISSUES HEARD:

Review of the Law Commission Report

Report from the Program Committee

Report on Elective Shares

Update on Law Commission Bills

Update on Willamette Law School RFP

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 20, A		
004	Chair Shetterly	Calls meeting to order at 1:37 p.m. Welcomes committee and discusses agenda.
022	Heynderickx	Discusses the biennial report of the Oregon Law Commission (OLC) that was submitted to the standing committees and the leadership offices of the Legislature (EXHIBIT A).
051	Augur	Asks if there were any bills submitted to the Legislature that would provide funding for the OLC.
053	Chair Shetterly	Yes, that will be discussed later in the meeting.
058	Atty. Gen. Myers	Discusses the report from the Program Committee and the projects that they were asked to undertake: 1) Revision of ORS Ch. 18, 23 and 29 ñ relating to judgments ñ work group to be set up; 2) Reorganization of ORS Ch. 659 ñ relating to civil rights, unlawful employment practices; 3) develop a term similar to "public body" to use throughout the ORS ñ work group to be set up; 4) status trichotomy of land owner liability to invitees, licensees, and trespassers (EXHIBIT B).
105	Chair Shetterly	Discusses that the repeal of the Anti-Apartheid Act was passed by the House this week. Discusses that the first project dealing with ORS Ch. 18, 23, 29 would need a work group. <i>Dave Heynderickx, Bradd Swank of the State Court Administrator's Office, and Greg Mowe volunteer to makeup that ORS revision group.</i>
130	Rep. Williams	Asks the work group to reach out to those people involved in the garnishment areas to get their input.
138	Chair Shetterly	Suggests Jim Markee from the Collectors Association and someone from the Debtor-Creditor Section of the Oregon State Bar to be involved in the work group.
142	Chair Shetterly	Discusses the second project dealing with the ORS Ch. 659 - civil rights issue that also needs a work group. <i>Dave Heynderickx, Jeff Carter, and Commissioner</i>

		<i>Roberts ñ or someone he appoints -volunteer to make up the Ch. 659 work group.</i>
153	Chair Shetterly	Discusses the third project dealing with the public body issue. <i>Dave Heynderickx, Bradd Swank, Prof. Bernie Vail, and someone from the Dept. of Justice will serve as the work group on the public body issue.</i> Professor Dom Vetri will work on the fourth project dealing with status of trichotomy of invitees, licensees, and trespassers.
170	Prof. Vail	Discusses a memo submitted regarding the elective share issue (EXHIBIT C). Discusses recommendations made by the Estate Planning section of the Oregon State Bar regarding the elective share issue. Discusses that the Estate Planning section came to the conclusion that the system was getting closer to a community property system.
290	Prof. Linde	Prof. Vail, what are your own thoughts on this issue?
292	Prof. Vail	Discusses his views on the elective share issues and that he feels the community property system is a good system.
365	Carter	It is my understanding that once a recommendation is made by the Estate Planning section that the recommendation would then go before the Program Committee to be looked at further.
370	Justice Gillette	Why are there four recommendations and only one suggestion?
373	Prof. Vail	Explains that there was only one option that the committee members could agree on and felt comfortable with suggesting.
387	Justice Gillette	But a majority of the committee was willing to suggest this proposal?
390	Prof. Vail	Yes. Explains the Family Law section's view on community property.
410	Prof. Vetri	What are some of the major ramifications of community property outside of the elective share area that would be affected by this?
415	Prof. Vail	Explains that there are different provisions in the community property system for the management of the property.
Tape 21, Side A		
010	Chair Shetterly	How many states have adopted a community property system?

012	Prof. Vail	Wisconsin and eight other states.
018	Rep. Prozanski	Most of those are western states.
020	Prof. Vail	Yes, we are basically surrounded by community property states.
032	Prof. Linde	Discusses that he feels that there needs to be more than one lawyer working on this work group.
041	Chair Shetterly	I would like to refer this issue back to the Elective Share work group to look at this more and further discuss it at our next meeting.
045	Susan Gary	Professor, University of Oregon School of Law Discusses that she agrees with the idea of the community property system. The community property issue could solve a lot of the property problems that come out upon divorce.
065	Chair Shetterly	Discusses that the members of the Elective Share work group are Sen. Brown, Jeff Carter, and Rep. Shetterly.
079	Carter	In community property states, does estate planning become a more important aspect for elective share reasons?
086	Prof. Vail	I don't think it makes it more important, but it just looks at the issue from a different angle. Upon divorce each spouse has a right to dispose of his or her half of the property.
091	Carter	Discusses a situation when there is family stock in a family business and what happens to that stock if a couple divorces.
095	Prof. Vail	Explains that community property is defined as property that is acquired during the marriage.
104	Chair Shetterly	In relation to the previous example, if stock were given to the couple after they are married, would that be community property?
108	Prof. Vail	Most community property states define property that was acquired by gift or devise as separate.
132	Travis Prestwich	Intern, Judiciary Committee Discusses the history of SB 20 and some of the amendments that were made to the bill. Discusses some of the problems and resolutions that arose upon looking at SB 20.

155	Heynderickx	Discusses the amendment that dealt with the DMV's concerns over Y2K problems and that their concerns were satisfied.
176	Prestwich	Discusses the amendments for the district attorneys regarding handling of misdemeanors and violations.
195	Chair Shetterly	Discusses that the photo red light issue was a bill that was passed out of the House but will not get a hearing in the Senate and there was some suggestion to insert it into SB 20.
225	Heynderickx	The amendments that were made in the Senate regarding SB 20 were simple amendments to clarify concerns for the cities and counties.
236	Prestwich	Discusses HB 2279, the teacher retirement system, which passed both chambers and is waiting for the Governor to sign.
242	Chair Shetterly	Discusses that he carried HB 2279 on the House floor and that it was a good opportunity to discuss what the OLC does.
253	Prestwich	Discusses HB 2277, to bring the ORS in accordance with <i>State v. Cheney</i> decision, has also passed both chambers.
265	Chair Shetterly	Discusses that HB 2278 regarding the procedural aspect of prison siting, is in the House Judiciary - Civil Law committee, which has not been heard yet, but will be. Discusses HB 3572 (LC 2698) which is the OLC funding bill.
328	Carter	Asks if HB 3572 will include filing fee money.
329	Chair Shetterly	No, trial and hearing fee money.
333	Prof. Vail	What will HB 3572 take money from?
337	Heynderickx	This is just a debit to the General Fund.
344	Prof. Vail	Would this cause our judges to take a cut in salary?
350	Heynderickx	No, this money would be coming from fees in the General Fund. Discusses HB 3737 from the 1997 Legislative Session, which was a judicial administration bill and required a 2/3 majority because of the additional filing fee charge.
384	Chair Shetterly	As drafted HB 3572 doesn't raise that issue. Discusses HB 2433, which is a bill that would amend the statute that created the OLC.

402	Prof. Linde	Do you know where this bill came from? It is very important to guard this statute to not include other policy statements that might hinder the statutes or the Law Commission.
428	Carter	Is there a move to try to change juvenile funds from the local counties to the state? Is that where this bill comes from?
438	Rep. Williams	I think that it is Rep. Kruseis bill that would take money and move the funding.
453	Chair Shetterly	Discusses that the next meeting date will be June 25 th , 1999. The Elective Share work group and the Program Committee will need to meet between now and then.
480	Chair Shetterly	Adjourns hearing at 2:34 p.m.

Submitted By, Reviewed By,

Sarah Watson, Bill Taylor,

Office Manager Counsel

EXHIBIT SUMMARY

A ñ Biennial Report of the Oregon Law Commission, Staff ñ 49 pgs.

B ñ Memorandum regarding the Program Committee, Hardy Myers ñ 2 pgs.

C ñ Memorandum regarding the Elective Shares issues, Prof. Dom Vetri ñ 2 pgs.