

SENATE COMMITTEE ON JUDICIARY

February 18, 1999 Hearing Room 343

3:00 pm Tapes 42-43

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

MEMBER EXCUSED: Sen. Courtney

STAFF PRESENT: Anne Tweedt, Counsel

Judy Minnich, Administrative Support

MEASURE/ISSUES HEARD: Possible Measure Introduction

SB 415 Public Hearing and Work Session

SB 396 Work Session

SB 397 Work Session

SB 401 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 42, A		

003	Chair Bryant	Calls the meeting to order at 3:11 p.m.
007	Counsel Anne Tweedt	Introduces LC 2524 (SJR 19) declaring a day of acknowledgment to promote racial equality.
009	Sen. Bryant	MOTION: Moves LC 2524 BE INTRODUCED as a committee resolution.
		VOTE: 5-0-2 EXCUSED: 2 ñ Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
011	Chair Bryant	Opens the public hearing on SB 415.
<u>SB 415 PUBLIC HEARING</u>		
024	Mark Comstock	Oregon State Bar, Debtor-Creditor Section Submits written testimony and testifies in support of SB 415 (EXHIBIT A). Urges the adoption of 415-1 amendments (EXHIBIT B). SB 415 eliminates the requirement that a lien certificate be filed with the court before a judgment becomes a lien on the real property of a judgment debtor. It also modifies the judgment form and lien record abstract to include information previously reflected in the lien certificate. Indicates that SB 415 is the result of an interim work group effort. Discusses the handling of the cases that will fall into a time gap between the previous statute and the enactment of SB 415.
090	Chair Bryant	If SB 415 becomes law and you haven't filed a lien abstract and complied with the 1997 legislation, you will not have a lien on real property until January 1, 2000?
099	Comstock	That's right.
107	Jim Markee	Oregon Collector's Association Testifies in support of SB 415 including the ñ1 amendments.
141	Chair Bryant	Closes public hearing and opens work session on SB 415.
<u>SB 415 WORK SESSION</u>		

142	Sen. Brown	MOTION: Moves to ADOPT SB 415-1 amendments dated 02/15/99.
		VOTE: 5-0 EXCUSED: 2 - Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
144	Sen. Brown	MOTION: Moves SB 415 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 EXCUSED: 2 - Courtney, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
153		Opens work session on SB 397.
<u>SB 397 WORK SESSION</u>		
156	Counsel Tweedt	SB 397 specifies the legal arguments that can be made by lay and agency representatives in contested hearings heard in front of state agencies. The previous hearing on this bill surfaced concerns and the ñ1 amendments (EXHIBIT C) and the ñ2 amendments (EXHIBIT D) are the result of that concern. The Oregon Menís Association has submitted an amendment (EXHIBIT E) which is similar in intent to the ñ1 amendments, but substantially broader.
173	Jack Roberts	Commissioner, Bureau of Labor and Industries Discusses the ñ2 amendments (EXHIBIT D) that have been offered to loosen rules regarding lay persons making arguments before an administrative law judge.
254	Chair Bryant	Asks if using lay presenters or hearing officers instead of attorneys for agency

		hearings saves money.
257	Roberts	Yes, and time.
266	Sen. Burdick	Do you have to have a lawyer from the Attorney General's Office at these hearings in order to monitor the legal arguments and should case law be cited, take over the hearing?
271	Roberts	We just don't argue case law.
283	Sen. Burdick	If you had an argument which required citing case law you would have to have a representative of the Attorney General's office as well as your agency case presenter in attendance?
291	Roberts	Under those circumstances we would probably use only the Attorney General's staff.. It is more likely that we would just not use case law.
313	Layne Barlow	Oregon Men's Association Discusses the amendments (EXHIBIT E) which he would recommend to open up all agency hearings to lay representation.
347	Amy Veranth	Assistant Attorney General, Department of Justice Discusses the Justice Department's opposition to the ñ1 and ñ2 amendments. The Department of Justice offered SB 397 to codify existing practice. Since the statute was amended to allow lay representatives and agency representatives to appear in contested hearings, the Attorney General has had the authority to determine which cases would be allowed to utilize lay representation. The Attorney General has the responsibility to ensure that the state is consistent in their enforcement and interpretation of the law.
421	Chair Bryant	How does one avoid arguing case law?
424	Veranth	There is some leeway to allow interpretation of the statutes. Arguing case law crosses a fairly clear line.
Tape 43, A		
014	Henry Tilghman	Oregon State Bar, Unlawful Practice of Law Committee Argues against expanding representation by lay persons in contested hearing cases. The licensing of lawyers is a protection for the public. The Oregon State Bar has an ethics code and the ability to discipline its members as well as a remedy for mistakes through liability insurance. Non-lawyers do not have these

		safeguards.
041	Chair Bryant	Do you object to the Bureau of Labor and Industries being added to the list of agencies under Section 1 of SB 397?
044	Veranth	No we don't object.
045	Ronelle Shankle	Department of Justice, Support Enforcement Division Testifies in opposition to the bill amendments to SB 397. Explains that their underlying concern is protection for the public should lay representatives be allowed in contested hearings.
077	Chair Bryant	Indicates he would like to take a closer look at ORS Chapter 180 before any further action is taken. Closes work session on SB 397 and opens work session on SB 396.
<u>SB 396 WORK SESSION</u>		
083	Counsel Tweedt	SB 396 requires a party to civil litigation involving a state agency or a tort action against public bodies to submit a written request for state agency records relating to the case. Notification of this request must be to the Attorney General's office as well as the custodian of the records that are being sought. The bill amendments narrow the field of parties who must comply with this to those involved in a civil judicial proceeding (EXHIBIT F).
116	Sen. Bryant	MOTION: Moves to ADOPT SB 396-1 amendments dated 02/09/99.
		VOTE: 4-0-3 EXCUSED: 3 - Brown, Courtney, Qutub
Chair Bryant		Hearing no objection, declares the motion CARRIED.
Sen. Bryant		MOTION: Moves SB 396 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0-3 EXCUSED: 3 - Brown, Courtney, Qutub

	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BRYANT will lead discussion on the floor.</p>
119	Counsel Tweedt	Notes for the record that testimony has been received from Mr. Schaffer on SB 396 (EXHIBIT G).
126	Chair Bryant	Closes work session on SB 396 and opens work session on SB 401.
<u>SB 401 WORK SESSION</u>		
128	Counsel Tweedt	SB 401 modifies laws relating to judicial review of orders issued by state agencies in contested cases. The ñ1 amendments clarify the language to mirror the stated intent (EXHIBIT H). The original language caused some concern that state agencies would be able to adopt a rule exempting themselves from the requirement to issue findings of fact and conclusions of law.
156	Sen. Bryant	MOTION: Moves to ADOPT SB 401-1 amendments dated 02/18/99.
		<p>VOTE: 4-0-3</p> <p>EXCUSED: 3 - Brown, Courtney, Qutub</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
158	Sen. Bryant	MOTION: Moves SB 401 to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 4-0-3</p> <p>EXCUSED: 3 - Brown, Courtney, Qutub</p>
	ChairBryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. NELSON will lead discussion on the floor.</p>

161	Chair Bryant	Adjourns the meeting at 3:50 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 415, written testimony, Mark Comstock, 5 pp

B ñ SB 415, SB 415-1 amendments dated 2/15/99, (LC 1177) 1 pp

C ñ SB 397, SB 397-1 amendments dated 2/17/99, (LC 1138) 1 pp

D ñ SB 397, memo dated February 17, 1999 and the SB 397-2 amendments dated 2/17/99, (LC 1138) 2 pp

E ñ SB 397, written testimony from the Oregon Menís Association, 2 pp

F ñ SB 396, SB 396-1 amendments dated 2/9/99, (LC 540) 1 pp

G ñ SB 396, written testimony from T.J. Schaffer, 2 pp

H ñ SB 401, SB 401-1 amendments dated 2/18/99, (LC 1141), 1 pp