

SENATE COMMITTEE ON JUDICIARY

February 04, 1999 Hearing Room 343

3:00 pm Tapes 26-27

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Tarno

MEMBER EXCUSED: Sen. Qutub

STAFF PRESENT: Anne Tweedt, Counsel

Judy Minnich, Administrative Support

MEASURE/ISSUES HEARD: Public Hearing and Work Session

SB 391

SB 401

SB 396

SB 397

SB 453

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 26, A

022

Chair Bryant

Calls the meeting to order at 3:17 pm.

SB 391 PUBLIC HEARING

026

Pete Shepherd**Attorney General, Department of Justice**

Testifies in support of SB 391. SB 391 establishes a Department of Justice Client Trust Account for deposit of and distribution of funds recovered in civil enforcement actions by the Department of Justice. Requires interest to be credited to account rather than to the General Fund. Currently there is no statutory authority authorizing this account or authority to attribute interest back to this account instead of the General Fund.

058

Chair Bryant

How much money are we talking about?

060

Shepherd

The Legislative Fiscal Office thinks that it will be less than \$1000 that the General Fund will lose per biennium. We don't hold the funds for a long period of time.

087

Sen. Burdick

Does this apply only to money that goes to state agencies, not consumers?

093

Shepherd

It would apply to both.

094

Sen. Burdick

Where do the consumer funds go now?

098

Shepherd

We keep the money in a "suspense account" and distribute the interest to the consumer.

108

Sen. Burdick

Have you already been doing what SB 391 will authorize you to do?

110

Shepherd

We believe the authority is there, however, we would like to have express authority.

114

Robert Muir**Assistant Attorney General, Department of Justice**

Testifies in support of SB 391. We are talking about money kept in trust but it is not clear that these funds fall under the laws relating to trusts.

139

Chair Bryant

Are the majority of funds in the trust due to punitive damages?

141

Shepherd

This bill will have no impact on funds recovered under criminal law. Only civil cases including racketeering actions which might have punitive awards.

155	Sen. Nelson	Why is this an emergency?
162	Shepherd	This has been a problem and we are anxious to fix it as quickly as possible.
171	Chair Bryant	Close public hearing and open work session on SB 391.
<u>SB 391 WORK SESSION</u>		
174	Sen. Brown	MOTION: Moves SB 391 to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Qutub
		Chair Bryant Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor.
224	Chair Bryant	Opens the public hearing on SB 401.
<u>SB 401 PUBLIC HEARING</u>		
233	Christine Chute	Assistant Attorney General, Department of Justice Submits written testimony, a proposed amendment, and testifies in support of SB 401 (EXHIBIT A and B). SB 401 modifies the Administrative Procedures Act (APA) relating to judicial review of orders issued by state agencies in contested cases. It specifies that the agency is not required to explain how facts and evidence in record support an order if agency is not otherwise required to make findings of fact or conclusions of law. It is not clear to us whether the agencies who have been exempted from the APA are still exempt based on recent court cases. The amendments (Exhibit B) we hope will meet some of the concerns we have met in discussing this bill with others.
349	Diane Rea	Chair, Board of Parole& Post-Prison Supervision Because the Board has been exempt from this APA requirement, doesn't mean that we are not accountable for our orders. Explains how the Board of Parole handles this now, and explains that the Board has a review process and answer concerns in detail. The Board issues over 400 releases with parole conditions a month. If they are not issued in a timely manner, then there is nothing legal which binds an offender to behavioral conditions during parole. Public safety

		requires that these orders be issued before an offender is released.
399	Chair Bryant	I presume that the reason the Parole Board was exempt from the APA was for those reasons you just listed.
411	Chute	The exemption was a part of the APA since 1973.
421	Chair Bryant	Can you summarize the reasons the court has for asking that this exemption be eliminated?
422	Chute	ORS 183.482, (8) elucidates certain things the court is to look at in reviewing orders. In order to do this in a meaningful way, we need some detail to review. We are, however, very concerned about the workload for these high volume agencies.
447	Sen. Burdick	The habeas corpus issues come out of where?
452	Chute	Strangely, there are many inmate challenges that are going directly to circuit court in the county where the inmate is incarcerated.
468	Sen. Burdick	Does the Department of Corrections have the same kind of accountability backstops that you do?
476	Chute	I've seen lots of prison disciplinary orders and they tend to be fairly detailed, but they are still not to the level of formal hearing APA orders.
492	Sen. Burdick	I gathered from the Parole Board that they have a process for going into more depth if the inmate wants it. Do you know if the Department of Corrections has such a process?
Tape 27, A		
040	Chute	There is no exact parallel in corrections.
052	Jim Nass	Assistant Attorney General, Department of Justice Submits proposed amendments and testifies in opposition to SB 401 (EXHIBIT C). Indicates that although they are in opposition to SB 401 as it is, the Department of Justice believes that some provision needs to be made for the high volume agencies. Discusses proposed amendment. Indicates they would call for a review of orders by the agency when they are needed for judicial review and detail added, if needed, in order that the courts can do a meaningful review.
096	Chair Bryant	This is a request for review to the Court of Appeals?

097	Nass	Most of them are to the Court of Appeals, some to Circuit Court.
100	Chair Bryant	The court would have the record available?
102	Nass	Yes.
104	Chair Bryant	By reading the record they would know what the evidence was?
105	Nass	This is not always clear. We are asking that some connection be made between the facts and the findings.
110	Chair Bryant	How many requests for review do you receive?
112	Nass	I'm not certain of the answer to that since the conditions of review have changed and we don't have those figures yet. The amendments, as I have offered them, will only apply to judicial review, not to habeas corpus. We have perhaps ten to fifteen cases per month in judicial review.
138	Sylvia Caley	Oregon Law Center Testifies that the amendments submitted as Exhibit B meet their needs.
152	Sen. Burdick	Do you think there is a fairness issue here in allowing this process for the Court of Appeals but not for the Circuit Court?
154	Nass	In some ways there is a fairness issue. It would be good to review the whole process.
188	Chair Bryant	Asks Ms. Chute how many requests for review and how many habeas corpus requests they get a month?
190	Chute	Sixty-five requests for review per year in Court of Appeals and 251 habeas corpus appeals in 1998. Adding a 30 day period to review orders will not improve anything. We would rather be released from this requirement.
230	Chair Bryant	Closes the Public hearing on SB 401. Indicates that the final amendments (Exhibit B) will be drafted by Legislative Counsel. Opens public hearing on SB 453.
<u>SB 453 PUBLIC HEARING</u>		
248	Greg Chaimov	Legislative Council Submits written testimony and testifies in support of SB 453 (EXHIBIT D). Discusses the functions which Legislative Counsel currently performs and

		indicates SB 453 will authorize these functions by statute.
308	Sen. Burdick	Nothing about this would effect our ability to allow Legislative Counsel to share information about a bill we have requested if we so choose?
315	Chaimov	That's correct.
318	Sen. Courtney	Discusses provisions of the bill in relation to the Judiciary Department. Feels that the Judiciary Department has been left out of specific mention as an agency. Seems that this should be clarified.
354	Chaimov	Indicates that Legislative Counsel uses their discretion in relation to Judiciary Department bill drafting.
394	Chair Bryant	Indicates that if they were to be specifically added, it should be the Court Administrative Office rather than the individual judges.
416	Chaimov	We do bill drafting for the Judiciary Department whether they're listed or not.
420	Sen. Courtney	I thought this was a bill to more adequately describe what you do?
427	Chaimov	That's correct.
431	Chair Bryant	Closes the public hearing and opens the work session on SB 453.
<u>SB 453 WORK SESSION</u>		
433	Sen. Courtney	MOTION: Moves SB 453 to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Qutub
Chair Bryant		Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
<u>SB 396 PUBLIC HEARING</u>		

443	Steve Bushong	<p>Assistant Attorney General, Department of Justice</p> <p>Submits written testimony, including an amendment, and testifies in support of SB 396 (EXHIBIT E). SB 396 requires request in writing for state agency records relating to litigation or claims. Requires requester to provide notice of request to Attorney General. In the past we have found out that an agency has provided information and we were unaware of it. The amendments narrow the focus of this requirement to litigation related requests only.</p>
488	Sen. Burdick	Don't the plaintiffs have to let you know a request has been made during discovery?
498	Bushong	Yes, they should, but sometimes they don't.
Tape 26, B		
040	Lori Brocker	<p>Oregon Newspaper Publishers Association</p> <p>Submits written testimony and testifies in support of SB 396 as amended (EXHIBIT F).</p>
046	Chair Bryant	Closes public hearing on SB 396 and opens the public hearing on SB 397.
<u>SB 397 PUBLIC HEARING</u>		
058	Amy Veranth	<p>Assistant Attorney General, Department of Justice</p> <p>Submits written testimony and testifies in support of SB 397 (EXHIBIT G). SB 397 clarifies the legal arguments that may be made by lay and agency representatives authorized to appear in contested case hearings conducted by state agencies. SB 397 has provisions which are identical to the Attorney General's Model Rules of Procedure. Other provisions are to update language and correct references.</p>
085	Layne Barlow	<p>Oregon Men's Association</p> <p>Testifies against SB 397 and offers a conceptual amendment to the bill. Would like to open contested cases to representation by competent lay persons. Offers to draft amendment to do so.</p>
118	Sen. Brown	Asks which agencies are able to use lay representation.
120	Veranth	Indicates that it would be limited to the agencies listed in Section 1 of SB 350.
139	Barlow	Discusses the ability of lay persons to be representatives.

146	Chair Bryant	How is the distinction to be made as to who is competent and who is not?
148	Barlow	Indicates he believes that the APA has provisions to decide who makes this decision.
152	Sen. Brown	For the most part, people don't have the money and attorneys may not want to spend their time representing clients at administrative hearings. It may actually make the proceedings go more smoothly.
160	Chair Bryant	Indicates that Mr. Barlow should get proposed language to staff.
168	Veranth	We will need to discuss this with the agencies that would be affected.
174	Chair Bryant	Asks Ms. Veranth to please check with the agencies who would be affected and the Oregon State Bar for their suggestions.
180	Paul Tiffany	Bureau of Labor and Industries (BOLI) Submits written testimony from Jack Roberts, Labor Commissioner in support of SB 397 (EXHIBIT H). Indicates that Commissioner Roberts believes that the investigators and case presenters who work for the BOLI are generally more knowledgeable about the statutes and cases in these areas than are most attorneys in general practice. Discusses the conceptual amendment in Exhibit H that addresses the suggestion that restrictions on case presenters be lifted.
242	Chair Bryant	We will have the amendments to SB 397 drafted. If a hearing is a contested case hearing at BOLI, do you have to have attorney represent you?
248	Tiffany	No. We use case presenters at the Bureau of Labor and Industries and have been doing it for years.
256	Chair Bryant	Closes the hearing at 4:30 pm.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 401, written testimony dated February 4, 1999, Christine Chute, 2 pp

B ñ SB 401, proposed amendments, Christine Chute, 1 pp

C ñ SB 401, written testimony dated February 4, 1999, Jim Nass, 6 pp

D ñ SB 453, written testimony dated February 4, 1999, Gregory Chaimov, 1 pp

E ñ SB 396, written testimony and amendments dated February 4, 1999,

Steve Bushong, 3 pp

F ñ SB 396, written testimony, Lori Brocker, 1 pp

G ñ SB 397, written testimony, Amy Veranth, 1 pp

H ñ SB 397, written testimony, Jack Roberts, 1 pp