

SENATE COMMITTEE ON JUDICIARY

February 09, 1999 Hearing Room 343

3:00 pm Tapes 30 ñ 31

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judy Minnich, Administrative Support

MEASURE/ISSUES HEARD: Possible Measure Introduction

Public Hearing and Work Session

SB 230

SB 267

SB 273

SB 268

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 30, A		
003	Chair Bryant	Calls the meeting to order at 3:15 pm.
008	Counsel Anne Tweedt	Introduces: <ul style="list-style-type: none"> • LC 2346, relating to water improvement districts, • LC 61, relating to sex offender registration, • LC 3560, relating to aggressive driving.
009	Sen. Bryant	MOTION: Moves LC's: 2345, 61, 3560 BE INTRODUCED as committee bills.
		VOTE: 5-0 EXCUSED: 2 - Qutub, Burdick
Chair Bryant		Hearing no objection, declares the motion CARRIED.
012	Chair Bryant	Opens public hearing on SB 230.
<u>SB 230 PUBLIC HEARING</u>		
020	Chuck Craig	Assistant Director, Department of Agriculture Submits written testimony and testifies in support of SB 230 (EXHIBIT A). SB 230 exempts from public disclosure names and addresses submitted to commodity council, board or commission. Explains that commodity commissions feel that disclosing their mailing lists is an invasion of privacy and would like these lists to be exempt under the Oregon public disclosure law.
061	Chair Bryant	Do the commodity commissions charge a fee for the mailing lists?
065	Susan Hiller	Commodity Commission Program Manager, Department of Agriculture Indicates that the number of requests for their mailing list varies and the fee, if assessed, doesn't cover the fair market value of the list. Sixty-five requests have been made in the past three years.
087	Chair Bryant	If you charged more for the lists would that dissuade organizations from asking for them?

092	Hiller	The charge doesn't seem to effect the requests since the charge is minimal.
090	Chair Bryant	Are there other ways that people can obtain these lists?
092	Craig	There are indirect ways in which this could be done.
108	Paul Rains	Oregon Fryer Commission (OFC) Testifies in support of SB 230. Concerned about an organization that doesn't like their type of farming getting their mailing list and creating problems for their membership. Discusses other reasons security is needed for their lists.
138	Barbara Buhler	Oregon Fryer Commission, Polk County Testifies in support of SB 230. Indicates that she and her husband raise fryers for Foster Farms and details past trouble with harassing phone calls and other security issues.
151	John McCulley	Tree Fruit Growers Testifies in support of SB 230. Represents those who pay a fee to the Bartlett Pear Commission and the Cherry Commission. It should be emphasized the lists contain home addresses. Believes that the fees paid are a form of taxes and therefore, since the names are tax records, the address of the payer should not be made a public record.
180	Sen. Tarno	Ms. Buhler, what kind of phone calls did you receive, if you don't mind? , Did you contact the police when you received them?
182	Buhler	They were calls of a sexual nature. I did contact the police.
190	Sen. Tarno	Nothing to do with chickens, though.
192	Buhler	That's correct.
202	Dave Nelson	Oregon Seed Commission Testifies in support of SB 230. Representing the Tall Fescue Commission, the Fine Fescue Commission, and speaking on behalf of the Berry Growers Commission, the Seed Council and the Dairy Farmers Association. Discusses his belief that people who organize in support of their business or interest should not be subjected to unwanted attention.
241	Don Moisan	Oregon Beef Council Testifies in support of SB 230 as the dairy farmer representative on the Oregon Beef Council.

252	Richard Fritz	Oregon Wheat Commission Testifies in support of SB 230. Many of our members are landlords and aren't actively farming their land. Using their names for marketing purposes is inappropriate. Discusses other ways to reach a target audience.
283	Lori Brocker	Oregon Newspaper Publishers Submits written testimony and testifies in opposition to SB 230 (EXHIBIT B). Discusses privacy needs. There have been records removed from the public record law consistently over the past few sessions and the trend is disconcerting. The balancing of private and public interest should always be considered. Suggests placing this issue under ORS 192.501 instead of ORS 192.502 in order to allow the public need to be considered at the time of the request.
368	Chair Bryant	Mr. Craig, are you familiar with ORS 192.501 and the process to allow access if needed? Does this cause you a problem?
374	Craig	It doesn't cause me a problem, however, the commissions did consider this issue and asked that it be placed in ORS 192.502.
381	Hiller	The commissions considered all the options and they requested that they not be required to weigh the public interest each time there is a request.
400	Chair Bryant	Closes public hearing on SB 230. Will bring it back after reviewing it in terms of all the possibilities under ORS 192. Opens public hearing on SB 273.
<u>SB 273 PUBLIC HEARING</u>		
425	Dan Kennedy	Department of Administrative Services Testifies in support of SB 273. SB 273 exempts from public disclosure name and other identifying characteristics of applicant for employment with state agency. Indicates that this bill is particularly needed to protect those people wishing to apply for state higher level positions. Many wish to keep their interest quiet in order to protect themselves from repercussions in their current employment.
Tape 31, A		
043	Sen. Courtney	My experience with higher education is that if you are one of the finalists, it is difficult to keep these names private. The finalist names should be released.
066	Kennedy	In fact, by the time we do get to the finalists that information is already known. It is the earlier search, with its long list of applicants, that we would like to keep confidential. We expect to have very high turnover in the next few years and want to be in the best position possible to attract qualified candidates.

085	Lori Brocker	Oregon Newspaper Publishers Submits written testimony and testifies in opposition to SB 273 (EXHIBIT C). Indicates that their concerns are the same as with SB 230 and asks that the possibility of placing this bill under ORS 192.501 be considered.
103	Sen. Courtney	How would you decide when the public interest is involved?
106	Brocker	I would imagine the Attorney General would decide.
117	Sen. Courtney	You really do want this huge list?
121	Brocker	I don't believe many of these requests happen, but I don't want something in the law to dictate that these requests could not happen.
126	Chair Bryant	Closes public hearing on SB 273 and opens public hearing on SB 268.
<u>SB 268 PUBLIC HEARING</u>		
153	Dan Hartman	Department of Administrative Services, Chief Risk Officer Submits written testimony and testifies in support of SB 268 (EXHIBIT D). SB 268 creates an affirmative defense in action under Oregon Tort Claims Act based on year 2000 failure of automated systems. Provides that it is a complete defense if a public body made good faith efforts, as described in the bill, to avoid failures. Discusses various ways to insure against loss, including self-insurance, commercial insurance and remedies through tort law. SB 268 is a narrowly drawn statute that absolves government from failure if a good faith effort has been made. Proof that this effort has been made is five fold and outlined in Section 2 (3) of SB 268.
238	Don Mazziotti	Chief Information Officer, State of Oregon Submits written testimony and testifies in support of SB 268 (EXHIBIT E). He is responsible for the overall management of the states Y2K problem. Indicates that the state has a comprehensive program to address the Y2K problem. Believes that this legislation will be a very good incentive to continue to find and fix the Y2K problems that exist Indicates that this legislation is needed to limit the scope of possible claims if, despite our best efforts, there are problems we haven't been able to anticipate and fix.
311	Chair Bryant	Is there an emergency clause? Why is this necessary?
318	Mazziotti	We have posted on our web site 23 dates between now and July of next year which could be a problem. Some of these dates occur before October, 1999 when, if passed in the normal course, this bill would take effect.
337	Sen. Nelson	Haven't some states passed total immunity for both private and public sectors?

340	Hartman	Three states, Nevada, Virginia and Hawaii, have given public entities immunity. I am not aware of any private immunity that has been mandated. Discusses various bills in process at the federal and state levels.
363	Sen. Nelson	It is a given that the state will not be 100% compliant, although Oregon is far ahead of other states. This bill gives us an opportunity to protect the state from overwhelming liability.
381	Chair Bryant	In your written testimony you mention the deletion of Section 4 of SB 268.
382	Hartman	Yes, we find that Section 4 would be harmful to our working relationships with local governments and so we ask that it be removed.
388	Sen. Courtney	This doesn't just apply to state agencies does it?
393	Mazziotti	It applies to all public entities as defined in statute.
400	Sen. Courtney	And the incentive to do a good job is to document that a good faith effort has been made?
405	Mazziotti	By offering the prospect of an affirmative defense we believe this bill will be an incentive for agencies now to work as hard as possible in order to establish that affirmative defense.
428	Sen. Qutub	At this point in time, how many state agencies would already have met this standard and complied with the good faith effort as delineated in this bill?
433	Mazziotti	23 of the agencies we are tracking are in compliance. The balance are in various stages, all with their individual program for compliance.
Tape 30, B		
006	Sen. Qutub	23 of the 89 agencies are in compliance, or all 89 are?
007	Mazziotti	23 are complete; we are monitoring another 89.
014	Sen. Qutub	Do you mean just completing the work as identified in subsection 3, or they have done all their testing to make sure the system works? It looks to me that completion of subsection 3 doesn't mean they are in compliance.
022	Mazziotti	Each agency has a slightly different problem, so each agency has a different work plan. Testing isn't necessarily the end of their work. An overall assessment needs to be done.

038	Sen. Qutub	This bill doesn't really require an agency to do anything. Just to plan to do something.
052	Sen. Brown	Do you see this as discouraging agencies from getting ready for the Y2K problem?
056	Mazziotti	I think it encourages them and is an incentive to increase their effort. This bill creates an affirmative defense. Through diligent effort agencies can defend themselves should they fall short despite their best efforts.
072	Sen. Brown	Most of the agencies have completed sections (a-e) in this bill and therefore would be exempt under this bill?
078	Mazziotti	The agencies are in various stages of completion based on their work plan.
084	Sen. Nelson	Discusses the difficulty of rewriting computer codes and coordinating with other entities in order to be ready for the year 2000.
095	Sen. Burdick	What is the certification process under this bill?
098	Mazziotti	We have a process in which the agency self identifies the steps needed and when they complete this plan we consider their effort completed.
114	Sen. Burdick	Who monitors the agencies and their work plan?
118	Mazziotti	Monitoring the agencies is my job and the job of six other people. We also have two audit processes underway including one by the Secretary of State's audit division and the other done by two independent firms who have been hired specifically to audit the veracity of what is being reported to us. Despite all these efforts we are still looking at the possibility of enormous litigation possibilities.
128	Sen. Burdick	Maybe there could be something in the bill to certify effort and completion.
144	John Warsinske	Benton County Submits written testimony and testifies in support of SB 268 (EXHIBIT F). Indicates that SB 268 will provide incentive to local jurisdictions to make their best effort. Indicates that the withdrawal of Section 4 is a good idea. Also believes that the Y2K problem should be more rigorously defined in the bill.
184	Paul Snider	Association of Oregon Counties Testifies in support of SB 268. We agree that Section 4 should be eliminated for the reasons already given. Sometimes it is difficult to decide whether protection from suits encourages or discourages action. I think SB 268 goes a long way to encourage rather than discourage action.

219	Beth Vargas Duncan	League of Oregon Cities Testifies in support of SB 268. Believes that the bill will encourage agency efforts to get in compliance. Supports the removal of Section 4 from SB 268.
239	Sen. Qutub	I still am concerned that this may be a planning exercise rather than a real method of completion. Will those agencies who have completed their planning actually try to cure the problem if we exempt them from liability?
258	Warsinske	Those people working on this problem have a tremendous pride in their work. Tax bills going out incorrectly are a powerful incentive. Our budget and time lines are already set and SB 268 just allows us the ability to focus on these efforts.
288	Snider	There is a disincentive to share information right now because of the liability concerns. The admission of problems creates a possible admission against interest. Expressing confidence can create a possible warranty. Both of these are disincentives to share information. We want to create incentives to share information.
318	Sen. Nelson	I have been involved in the oversight of Y2K issues since 1997 and the state agencies are working very hard. The lawyers are out there getting ready for the lawsuits.
340	Sen. Qutub	I just don't want any incentives given to agencies to not work as hard as possible on this problem.
383	Jim Whitty	Eugene Water and Electric Board (EWEB) Testifies in support of SB 268. Discusses the actions EWEB has taken to get ready for the Y2K problem. Indicates that despite all their efforts if the entities EWEB connects with have problems, EWEB will be effected.
418	Sen. Nelson	What other requirements to ensure Y2K compliance do you have that aren't in SB 268? Are there some specific things that you could mention that could be added to this bill?
440	Whitty	We will be running tests on our system on June 30, 1999. I am reluctant to indicate that testing could or should be done by other entities.
446	Sen. Qutub	Could the state test also?
452	Sen. Nelson	Testing is one of the five procedures listed in the bill. Maybe we need to take a look at that.
460	Whitty	EWEB has identified the resources to do the testing. I can't say that other public entities should or could do this.

Tape 31, B

026	Mark Rauch	City/County Insurance Services Trust (CIS) Submits written testimony and testifies in support of SB 268 (EXHIBIT G). Discusses what the CIS insurance pool is and the issues surrounding liability insurance for the Y2K problem. The insurance industry is very wary about covering this problem. Many will exclude coverage completely. If they do cover it they will have huge exclusions from coverage.
088	Hartman	Many of us have been concerned about the possible liability posed by the Y2K problem for public financial resources. We would like to put something together which is acceptable to this committee.
109	Sen. Nelson	Has the state followed the five steps that are in SB 268?
112	Hartman	Yes, but we think that we can do everything we are supposed to and still get sued.
119	Sen. Qutub	I appreciate the effort that has been expended.
135	Sen. Courtney	Adjourns the meeting at 4:45 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

- A ñ SB 230, written testimony from Charles Craig, 2 pp**
- B ñ SB 230, written testimony from Lori Brocker, 1 pp**
- C ñ SB 273, written testimony from Lori Brocker, 1 pp**
- D ñ SB 268, written testimony from Dan Hartman, 2 pp**
- E ñ SB 268, written testimony from Don Mazziotti, 4 pp**

F ñ SB 268, written testimony from John Warsinske, 2 pp

G ñ SB 268, written testimony from Mark Rauch, 3 pp

H ñ SB 268, written testimony from the City of Eugene, Mayor James Torrey, 1 pp

I ñ SB 268, written testimony from Oregon Health Sciences University, 2 pp